KIU Interdisciplinary Journal of Humanities and Social Sciences

INTERROGATING THE RIGHT TO SELF-DETERMINATION UNDER THE AFRICAN CHARTER AND ITS ENFORCEMENT IN NIGERIA

Oluwaseye Oluwayomi Ikubanni[1] & Mojeed Olujinmi A. Alabi[2]

[1] Doctoral Student at the Osun State University. E-mail: ooikubanni@jabu.edu.ng, Tel: +2348107295253
[2] Dual Faculty Professor in the Department of Political Science and Public and International Law Osun State University, Nigeria. E-mail: mojeed62@yahoo.co.uk; Tel: +2348121432670

Citation: Oluwaseye Oluwayomi Ikubanni & Mojeed Olujinmi A. Alabi (2024). Interrogating the right to self-determination under the African charter and its enforcement in Nigeria. *KIU Interdisciplinary Journal of Humanities and Social Sciences, 5*(2), 162 - 177.

ABSTRACT

Since the end of colonialism, the quest for self-determination has remained a phenomenon across African states, especially Nigeria. In Nigeria, while the 1999 Constitution lacks any express or implied support for exercising the right to self-determination, agitators have justified their claims on Article 20 of the African Charter to which Nigeria is a signatory. This paper interrogated the right to self-determination under the African Charter and its enforcement in Nigeria. Further to this, the judicial attitude of the African Court and ECOWAS court to the enforcement of the right to self-determination under the African Charter formed part of the central focus of this study. The study found that having domesticated the African Charter, it is enforceable in Nigeria. It equates to any other Act validly made by the legislative arm except the Nigerian Constitution. Thus, any provision of the African Charter inconsistent with the Constitution is null and void. The paper concluded that, though Nigeria has domesticated the African Charter which recognises the right to self-determination, the exercise and pursuit of this right in any manner as to dissolve Nigeria is inconsistent with the 1999 Constitution thus null and void.

Key words: Self-Determination, African Charter, Secession, Inalienable Right, Territorial Integrity

INTRODUCTION

In the realm of international law, the right to self-determination is an inalienable right that is available to all peoples (Aidonojie et al, 2021). It is the right of a people to determine their destiny and the legal right of a particular ethnic or indigenous people to choose their purpose under international order (Emerson, 2017; Medina, 2020; Olomojobi, 2016). The right to self-determination is highly contested in international law considering the uncertainties surrounding

its nature, scope, content, and enforceability, especially within a domestic sovereign state (Ikubanni and Alabi, 2024; Iguh and Alita, 2022; Cass, 1992; Hannum, 1998). Self-Determination was first a principle rather than right around the 19th century but more particularly during the American and French revolutions towards the end of the 18th century. It was regarded as a principle that guaranteed democratic consent within the emerging state entities (Franck, 1992). The upsurge in the popularity of the concept of self-determination was witnessed in the 20th century due to the works of early writers such as Woodrow Wilson who opined that with the free will of the people and through a democratic process, self-determination is exercisable (Sterio, 2009). This is often regarded as the first phase of the historical trajectory of the right to self-determination.

The second phase began with the incorporation of self-determination into major international instruments such as the United Nations Charter,1945, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social, and Cultural Rights, 1966, Declaration of Principles of International Law concerning Friendly Relations and Co-operation Among States of 1970, and regional laws such as the African Charter on Human and People's Rights, 1981 was the beginning of the recognition of self-determination as a right rather a principle (Ikubanni and Alabi, 2024). These international laws recognise the right to self-determination as a collective right belong to the people. Thus, an exercise of this right by individuals cannot be made (Hannum, 1998). More importantly, scholars agreed that the right to self-determination has both internal and external dimensions (Saul, 2011).

The internal dimension refers to the right of a people to realise their aspiration, interest, and sovereignty within a sovereign state (McCorquodale, 1994; Szpak, 2018). This also connotes the right of the people to determine and choose their political destiny within a sovereign state without necessarily existing the state to create a new one. According to Sterio, internal self-determination is when people who have the right to political autonomy, self-government, and cultural, religious, and linguistic freedoms co-exist within a larger central state provided the mother state is willing to allow such people to exercise such rights internally (Sterio, 2009; Senaratne, 2013). It is worthy of note that the idea of internal self-determination gives a people existing within a sovereign state the opportunity to continue to exist within that sovereign state while possessing its constitution, and government, and exerting total control within its territory in the form of democratic governance. Little wonder internal self-determination is considered a 'right to democracy' (Pentassuglia, 2002).

External dimension on the other hand grants peoples the authority to make decisions that influence the borders of their territories and gives them the freedom to decide on the type of territorial autonomy or external political standing they want to have (Beran, 1998; Anghie, 2008). McCorquodale opines that external self-determination may occur either through the emergence of an independent state, integration with an independent state, or free association with an independent state (McCorrquodale, 1994). It often affects the territorial borders of a sovereign

such as division, enlargement, or change of the territory of a state on one hand and its relationship internationally with other states (McCorrquodale, 1994). It seems to be the position that the basic difference between internal and external self-determination is that the former does not affect the territory of the state while the latter usually affects the state territory (Weldehaimanot, 2012)

Over the decades, the African continent has been faced with a series of agitation by different groups for self-determination (Pain, 2019). The speedy creation of artificial borders by colonial powers at the end of colonialism without any engagement from or consideration regarding what the African peoples who might have been affected might have wished (Gimba, 2018). The resultant effect is therefore the desire of people to secede from a country where they do not have a sense of belonging (Bamfo, 2012). Though several such struggles have failed, the cases of Eritrea and South Sudan were the two examples of successful secession in the African continent (Waal, 2021; Atinafu, 2014) The self-determination agitation of Eritrea and South Sudan had opposition from the parent states which resulted in the violence of unprecedented levels (Lee and Lee, 2023). before eventual secession. This is usually the hurdle that any indigenous group seeking to secede from a sovereign state would have to face.

In Nigeria, though not a recent development, there has been agitations from different ethnic group for self-determination (Nwefuru, 2010; Olasupo et al, 2017). Unfortunately, the Nigerian government has always resorted to the use of force, threat, and militarisation to quell this self-determination pursuit (Oluyemi, 2022). The justification for this approach is that the right to self-determination violates the territorial integrity of the country and contravenes the provision of Section 2 of the 1999 Constitution of the Federal Republic of Nigeria. The agitators argue that the recognition of the right to self-determination under the African Charter, a regional law treaty to which Nigeria is a signatory confers legality and enforceability on the right to self-determination in Nigeria notwithstanding its conspicuous absence in the Nigerian Constitution.

This paper interrogates the right to self-determination under the African Charter and determine its enforceability in Nigeria. The justification for this study is the necessity ascertain the validity of the claim of the self-determination agitators that the recognition of the right to self-determination in the African Charter renders the right exercisable in Nigeria even though the 1999 Constitution of Nigeria has no express provision on self-determination. Furthermore, the paper will examine the judicial responses of the two major African regional courts i.e the African Court of Human Rights and ECOWAS court in the interpretation and enforcement of the right to self-determination under the African Charter.

1.2 Right to Self-Determination Under the African Charter

This is arguably the most vital instrument in Africa that touches on Human Rights. The African Charter on Human and Peoples' Rights (also known as Banjul Charter) herein called "the Charter"

or ACHPR was adopted by the Organisation of African Unity (OAU) now called African Union (AU) in 1986. It is a major regional instrument that adequately reflects the history, traditions and values of Africa. The Charter enhances the development of Africa through the entrenchment of basic human rights values. The Charter has been lauded for the promotion of not just universally acknowledged individual rights but also for declaring collective rights and individual duties and fusing African ideals with international rules. It is observed that the African Charter in many respects possesses some fundamental attributes whose inspiration is derivable solely from Africa's colonial history, philosophy of law and conception of man.

Article 20(1) of the African Charter recognises the right to self-determination as 'unquestionable and inalienable' right by which people can freely determine their political status and economic and social development. By Article 20(2), the right to self-determination is available for two categories of people-*colonised and oppressed* though some scholars have argued that Article 20 applies also to those who desire to exercise their right to self-determination within the confinement of their state (Shelton,2011). According to Hill and Lee C Bucheit, Article 20(2) of the African Charter expands the scope of the right to self-determination from its decolonization construct to the post-colonial construct since the right is available to colonized and oppressed peoples (Hill, 1995; Bucheit, 1978). The erudite scholars state that a government that oppresses its people is a colonial government, therefore, such oppressed people have the right to secede from such an independent state. Ekeke and Lubisi buttressed this position when he says that under the African Charter, people who are undergoing oppression and domination in their state can exercise their right to secession (Ekeke and Lubisi, 2020).

1.3 Response of African Human Right Courts and ECOWAS Court to Right to Self-Determination

There are a few numbers of regional courts in Africa, however, this paper focuses on the African Commission on Human and Peoples' Right, a quasi-judicial body to the African Court and the Economic Communities of West African State Court of Justice (Helfer, 2018). These courts have at various times adjudicated over disputes arising from Article 20(1) of the African Charter and they have direct jurisdiction over Nigeria. The African Commission in the *People of Southern Cameroon in Kevin Mgwanga Gunme v. Cameroon* considered the applicant's quest for secession as a means of achieving their right to self-determination under Article 20(1) of the African Charter. According to the Commission, the grant of right to secession endangers the territorial integrity of the Republic of Cameroon (Para. 189) though it agreed that the Charter permits the exercise of autonomy inside a sovereign state in the context of self-government, confederacy, or federation as long as a state party's geographical integrity is preserved (Para. 190). Furthermore, the Commission notes the implied acknowledgment in the response of the Respondent's State that the Complainants may exercise their right to self-determination if they can show instances of severe human rights breaches or denial of participation in public affairs (Para. 190).

The Commission held further that the Complainants were unable to prove evidence of violations of fundamental human rights enough to require that the territorial integrity of a state be questioned. The Commission in its words states thus

> The Commission has so far found that the Respondent has violated Articles 2, 4, 5, 6, 7, 11, and 19 of the Charter. It is the view of the Commission, however that, in order for such violations to constitute the basis for the exercise of the right to self-determination under the African Charter, they must meet the test set out in the Katanga case, that is, there must be: "concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13 (1) (Para. 194).

It states further that

> "The Commission is not convinced that the Respondent State violated Article 20 of the Charter. The Commission holds the view that when a Complainant seeks to invoke Article 20 of the African Charter, it must satisfy the Commission that the two conditions under Article 20(2), namely oppression and domination have been met (Para. 197). The Complainants have not demonstrated if these conditions have been met to warrant invoking the right to self-determination (Para. 198).

Furthermore, in the case of the *People of Katanga in Katangese Peoples' Congress v. Zaire*, the Commission while rejecting the Katanga people's application for secession noted that though Article 20(1) of the African Charter recognises the claim, self-determination may be exercised in any of the following ways: independence, self-government, local government, federalism, confederalism, unitarism or any form of relations that accords with the wishes of the people but fully cognisant of other recognised principles such as sovereignty and territorial integrity. Furthermore, the Commission held that the right to the secession of the people of Kantaga is denied on the basis that the Complainant was unable to prove concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13 (1). The Commission amplified this position thus

> In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire (Para. 7).

Clearly, from the findings of the Commission, the principle of territorial integrity and sovereignty of a state prevails over the right to self-determination whether internal or external. The Commission made it clear when it considered that it is obliged to protect the territorial integrity and sovereignty of the state (Mhango, 2012). Though the African Charter states that the right to self-determination is an inalienable and undeniable human right, the Commission prioritises territoriality over self-determination. It, however, appears that secessionists can only enjoy the blessings of the Commission if they are able to prove "*concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13 (1)*" (Para. 194).

The ECOWAS Court of Justice (ECJ) in *Nosa Ehanire Osaghae & 3Ors v Federal Republic of Nigeria* (2017) CCJELR considered the complaint brought on behalf of the Niger Delta People against the federal government of Nigeria for their perceived marginalization that culminated into the violation of their human rights recognised under the African Charter and the ICCPR and ICESCR. The plaintiff relied on Articles 1, 2, 4, 16, 21, 22, and 24 of the African Charter and consequently prayed the court to order the respondent to conduct a referendum for the exercise of their right to self-determination. The ECJ held that the suit having being filed on behalf of the Niger Delta people requires the evidence of consent of the Niger Delta people obtained except the violations complained against serious or grave as indicated under Section 58 of the African Charter.

The ECOWAS court of Justice however stated that where the applicant is a Non- governmental Organisation (NGO) such consent is not needed as decided in the case of *Serap v Federal Republic of Nigeria* (2012) CCJELR., The ECOWAS Court of Justice therefore held that the applicant lacked locus standi to file the action on behalf of the Niger Delta people. On the substantive claim, the court relied on the case of *Kemi Penheiro San V. Republic of Ghana* ECW/CCJ/JUD/11/12 (2012) (Unreported) when it held that the right to self-determination is a collective right belonging to people not an individual right. Therefore, for the court to ascertain the violation of Article 19- 24 of the African Charter, the applicant must establish evidence of violation because he that asserts must proof *(Petrostar (Nigeria) Limited V. Blackberry Nigeria Limited & 1 Or. 2011)*. The ECJ, therefore, held that the plaintiff failed to establish evidence of violation of human rights under the African Charter. The decision of the ECJ in this case established the principle that the applicant in a suit seeking enforcement of their right to self-determination must have locus through securing the consent of the people whose rights human rights were violated. Secondly, the burden of proof lies on the applicant to establish the human rights violations alleged against the member state.

In the case of *Risqat Badmus & 3 Ors. v Federal Republic of Nigeria* CW/CCJ/APP/08/22 (Unreported). the applicant on behalf of the Yoruba people sought to enforce their right to self-determination under Article 20 of the African Charter. The alleged the inadequacy of the 1999

constitution to administer the territory of the Yoruba people as well as that the 1914 amalgamation by the British failed to take cognizance of the social, cultural, religious, and ethnic configuration of the country. They prayed the court to rule over the self-determination of Yoruba people and persuade the respondent to organize referendum for the exit of the Yoruba people. However, the court held that as individuals the applicant failed to prove that they can act as he bearers of the right to self-determination on behalf of the Yoruba people. More so, the applicant failed to show that they have the right to represent the Yoruba people. The court, therefore, stated that representative action is the most appropriate to institute an action on the right to self-determination.

The ECJ's attitude to the enjoyment of the right to self-determination indicates that it is a collective right rather than individual's that is personal. Therefore, an applicant seeking the intervention of the ICEJ on the enforcement of the right must institute the action in representative capacity, obtain the consent of the victims whose human rights have been violated, and must prove the alleged human rights violation. Importantly, the necessity for obtaining consent would not be required where the applicant is an NGO or the human right violation is serious or grave as provided under Article 58 of the African Charter.

1.4 Enforcement of the Right to Self-Determination Under African Charter in Nigeria

Essentially, regional treaties such as the African Charter are agreements between states that require them to uphold their sovereign borders (Garner, 2009; Shaw, 2003). Though there exists a relationship between regional and domestic laws, it has been difficult to determine how these two legal systems should interact on a domestic level (Brownlie, 2008; Nwaguri, 2011). Regrettably, individual state parties' execution of regional treaties poses a significant obstacle to their effectiveness. This is so because treaties do not impose direct duty and enforceable rights on individual people. Thus, citizens cannot benefit from a treaty through the execution of its provisions unless the state actively works to domesticate the same instrument (Alabi, 2008). According to Alabi,

> Generally, international treaties are compact among states and bind the state parties only, with no direct effect application to individual and corporate bodies. This means treaties cannot ordinarily confer enforceable rights and obligations on individual citizens except positive actions have been taken by the state Parties to domesticate such laws (Alabi, 2008).

The principle of sovereignty justifies the necessity for regional and international treaties to be domesticated within a state before they become enforceable (Anushiem and Ehujuo, 2017). Thus, once domesticated, domestic courts have the power to interpret any provision of the domesticated treaty in the determination of any issue before it. This is so given that the operation of the international system is largely determined also by the performance of the domestic courts

(Sloss, 2009). The application and enforcement of regional treaties within a domestic state are based on some basic theories. These theories are briefly examined as follows:

1.4.1 The Monism, Dualism, and Harmonization Theories

Several theories abound in the determination of the relationship between regional and domestic laws on the one part and the legal status of regional laws within a domestic state on the other part. The most important of these theories are dualism, monism, and harmonization theories (Onomrerhinor, 2016). According to the dualists, regional law just like international law and domestic law are two distinct systems of law that do not override each other in superiority (Onomrerhinor, 2016). Regional laws are only recognized as applicable in domestic courts based on the reception of regional laws as forming part of domestic law in a sovereign state but not because of the dominance of the former over the latter (Bazuaye and Enabulele, 2016).

Dualism stemmed from the positivist belief that international law is established by states' consent (Alabi, 2008). Thus, for any international or regional law to be enforceable within a domestic state, it must transform considering that it is within the overall power of a state to either integrate or isolate the principles (Oppenheim, 1955; Alabi, 2008; Slomanson, 2000). The respect for the sovereignty of a state remains the justification for the dualist approach. Regional and international law cannot apply directly in the state unless such state exercises its sovereign power to transform the international law in her legal system. Spaak summarized the dualism theory thus:

> There are at least two important legal consequences of the choice between monism and dualism. First, under dualism, but not under monism, a state will not be bound by international law, unless it has recognized it. Secondly, a state that accepts dualism, but not a state that accepts monism, will have to transform the norms of international law into state law by means of state legislation – if no such transformation has taken place, the national courts will not be (legally) able to give effect to the relevant norms of international law (Spaak, 2013)

The monism theory founded on Kantian philosophy dismissed the dualism theory (Umozurike, 2005). The monists believe that both domestic and international laws including regional law are part of a universal set of principles that apply to all people (Umozurike, 2005). The monists opine that a cohesive legal system whereby international law and regional law are applicable in conflict situations results from the intrinsic relationship between international law and domestic law (Rigaux, 1998). According to Kelsen, international law just like regional law and municipal law is to be considered as a fused system of law (Kelson, 1992) and this fusion is such that both international including regional law and domestic law cannot be separated (Kelson, 1945). However, the overall goal of international law (regional law) and domestic laws remains the welfare of the people (Nwaguri, 2011).

Generally speaking, the monist school of thought holds that domestic and international (regional) laws are parts of a single, all-encompassing legal system. Because they are a part of the same legal system and do not clash with one another, ratified treaties are immediately incorporated into municipal law and are enforceable there (Nwaguri, 2011). The debate amongst the monists on the superiority between international (regional) laws and domestic law ushered in inverted monism (another form of monism). Bergbohm argued that domestic law overrides international (regional) law because international (regional) law impetuously limits the sovereign will of a state whereas a state is superior to the international community and it is the only law-making entity (Umuzurike, 2005).

The monist and dualist schools of thought have the methodology for the domestic recognition of international treaties. The incorporation technique is used by monists, meaning that after they are signed, international treaties are instantly binding on the state and its citizens and are not subject to legislative domestication. Dualists, on the other hand, adopt the transformation methodology which implies that the bindingness of an international treaty on a state is dependent on the legislative effort of the state party to first domesticate the said treaty and clothe it with the garment of a municipal law before it attains its potency within a sovereign state (Umozurike, 2005). Ben Nwabuaze while affirming this submission asserts that

> It may be noted that the question to be considered under this head does not arise where the method of transformation is used, since when a treaty is transformed, its stipulation lose their character as treaty stipulations and become transformed into ordinary statutory or legislative provisions. The transformation statute is entirely at par with other statutes enacted by the same legislature (Nwabueze, 2003)

In the case of *Trendtex Trading Corporation Ltd v. Central Bank of Nigeria* (1977) QB 529 (C.A) 553-554*,* Lord Denning dichotomized transformation and incorporation when he stated that:

> when we talk about incorporation the rules of International Law have incorporated into English Law automatically and are considered to be English Law unless they are in conflict with the Act of Parliament" while in the case of transformation "the rules of International Law are not to be considered as part of English Law except so far as they have been already adopted and made part of our law by the decisions of judges or by Act of Parliament, or by established custom…Under the doctrine of incorporation, when the rules of International Law change, the English changes with them. But under the doctrine of transformation, the English Law does not change. It is bound by precedent.

The Monist and Dualist theories are rejected by the Harmonisation theory because they are unable to explain how international (regional) law and domestic law relate to one another. Advocates of this idea put up the argument that similar to state and federal laws, international law and municipal law coexist in a wider sense (O'Connell, 1965; Webber, 2012). These laws cooperate to control human conflict even if their purviews vary in that they govern various facets of behaviour. Since the goal is to further the welfare of humanity, municipal courts have the authority to apply international law in legal matters and vice versa (Umozurike, 2005).

Nigeria adopts the dualist framework that prevents the application and incorporation of international agreements—especially those relating to human rights—directly into the country's legal system unless legislative activity codifies them into national law. (Egede, 2007; Enabulele, 2009). Affirming this position, the Court of Appeal in the case of *Mhwun v Minister of Health & Productivity & Ors* [2005] 17 NWLR (Pt. 953) 120, Muntaka- Coomassie JCA ruled on the status of the International Labour Convention in Nigeria that

> There is no evidence before the court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly. In so far as the ILO convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply....Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria1990, it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the Courts.

Ogundare, JSC emphasized this position in the case of *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 that the international treaty which the Nigerian government has entered into cannot have a binding effect unless the National Assembly has re-enacted it into law (Nwapi, 2011; Dada, 2012; Okeke, 2015). This position is anchored on the provision of Section 12 (1) of the Constitution of the Federal Republic of Nigeria, 1999 states very explicitly that no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. Apparently, the provision of Section 12(1) of the 1999 Constitution is a deliberate attempt by the drafters of the Constitution to reiterate the supremacy of the Nigerian Constitution and the sovereignty of Nigeria. Onomrerhinor opines that the said provision is not to hinder Nigerians from benefitting a right under international law but to safeguard the territorial integrity of the country (Onomrerhinor, 2016).

To demonstrate the commitment of the Nigeria government to abide by the provisions of the African Charter, on the 17th of March 1983, the African Charter on Human and Peoples' Rights was domesticated in Nigeria through the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9, Laws of the Federation of Nigeria, 2004 which is referred to as the African Charter Act. Nigeria is noted to have been the first African country to domesticate the African Charter (Viljeon, 2012). The domestication of the African Charter in Nigeria puts the Act on the same level as other domestic legislations in Nigeria. However, there is an obvious conflict between the 1999 Constitution and the African Charter Act on the status of the right to self-determination in Nigeria. The African Charter Act, particularly Article 20 provides for the right to self-determination as an unquestionable and inalienable right. However, self-determination is not mentioned at all in the 1999 Constitution. It is therefore imperative to determine the enforceability of the right to self-determination under the African Charter domesticated as the African Charter (Ratification and Enforcement) Act when the 1999 Constitution of Nigeria does not recognise the right. Thus, the exercise of the right to self-determination in Article 20 of the African Charter Act will be dependent largely on which of the African Charter Act and 1999 Constitution takes superiority over the other.

In resolving this puzzle, the Supreme Court in the case of *General Sani Abacha v. Chief Gani Fawehinmi* (2000) 6 NWLR (Part 660) 228, carefully interpreted the provision of Section 12(1) of the 1979 Constitution to the effect that international treaty remains unenforceable in Nigeria unless enacted into law. Per Ejiwunmi, JSC in the said case held that

> It is, therefore, manifest that no matter how beneficial to the country or the citizenry an international treaty to which Nigeria has become a signatory maybe it remains unenforceable if it is not enacted into the law of the country by the National Assembly.

Furthermore, the Supreme Court embarked on the community reading of Sections 12 (1), Sections 1(1), (2), and (3) of the 1999 Constitution on the supremacy of the Constitution to come to the unanimous conclusion that the 1999 Constitution supersedes or prevails over any other law or domesticated treaty in Nigeria. For clarity, Section 1 sub-section 3 of the 1999 Constitution provides that

> If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void". Therefore, if there is any conflict between the provision of the 1999 Constitution and the African Charter Act, the Constitution shall prevail (Egede, 2007).

Flowing from the above, the provision of the African Charter Act is valid only to the extent to which it is consistent with the 1999 Constitution by virtue of Section 1 sub-section 3 of the Constitution. Therefore, since the right to self-determination recognized in Article 20 of the

African Charter Act is not recognized by the 1999 Constitution, the logical conclusion to be drawn in the light of the combined effect of the decision in *Abacha v Fawehinmi* and Section 1 sub-section 3 of the 1999 Constitution is that the Yoruba nation cannot enforce Article 20 of the African Charter Act in a Nigerian court for being inconsistent with the 1999 Constitution of Nigeria.

Lugard et al assert that though the African Charter is domesticated in Nigeria, its provisions do not override that of the Nigerian Constitution (Lugard et al, 2015). These writers state that the unilateral secession or declaration of sovereignty of a people in Nigeria under the guise of the domestication of the African Charter is grossly unconstitutional. They, therefore, postulate that any arrangement short of secession such as autonomy would be permissible. This agrees with Weller's observation that the alternative way to secession by which a group may settle a claim is through self-government, regionalism, autonomy, federalisation, or union with confirmation of territorial units (Weller 2009; Mnyongani, 2008). Buttressing this position further but from a different perspective, the African Charter recognizes the right to self-determination but does not recognise the exercise or enforcement of the right to self-determination outside its decolonisation concept unless a people seeking to secede can establish a gross violation of their right by the sovereign state. Therefore, the right to self-determination under the African Charter Act cannot be exercised because Nigeria is no longer under colonization (Mrabure, 2015).

1.5. Conclusion

The right to self-determination is a recognised right under the African Charter to which Nigeria is a signatory. It is a settled principle of law that while the African Charter Act equates with any Act validly passed by the National Assembly of Nigeria, its provision does not override the Nigeria Constitution. Thus, judicial decisions and the community reading of Sections 1(3) and 2 of the Constitution of Nigeria indicate that if any provision of the African Charter though domesticated is inconsistent with any provision of the Nigerian Constitution, such provision shall be null and void. The African Charter recognises the right to self-determination whereas the Nigerian constitution states that Nigeria is an indissoluble and indivisible state. Unless the Nigerian constitution is amended to introduce the right to self-determination, its enforcement is a mirage. In Africa, the decisions of the Commission examined show that the historical experiences of African States during colonialism have formed the basis upon which African states conceive the idea of the right to self-determination. This research has shown that though the right to self-determination is an inalienable right in African Charter, it is only recognised in its decolonisation concept, similar to the United Nations Charter. African states disallow any exercise of a right that will disturb, distort or disrupt its territorial integrity and sovereignty.

REFERENCES

1) Addo, MK. (1988). Political Self Determination within the Context of the African Charter on Human and Peoples Rights. *Journal of African Law* 32(2) 184
2) Alabi, MOA (2008). UN Reforms: Withdrawal of Membership as an Option? *African Journal of International Affairs and Development* 13(1&2) 66-93.
3) Aidonojie, P.A., Agbale, O.P., Adojor, OA, and Ikubanni, OO. (2021). Human Rights: Universalism and Cultural Relativism. *African Journal of Law and Human Rights.*Vol. 5, 97
4) Anghie, A. (2008). The Evolution of International Law: Colonial and Postcolonial Realities. *Third World Quarterly* 27(5) 739, 749.
5) Anifowose, DJ, Ikubanni, OO, Oyebanji, AO, Antai, GO, and Okpoko, M. (2024). An Examination of Property Tax Within the Context of Fiscal Federalism in Nigeria. *NIU Journal of Humanities* 9(2) 39-50
6) Anushiem, M.I. and Ehujuo, K.C. (2017). Implementation of Treaty as Basic for Regional Cooperation Vis-à-vis Absolute Sovereignty: Nigeria in Perspective. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 8(1), 161-172.
7) Atinafu, K. (2014). Ethio-Eritrean Post-Secession Hostility: Lessons for Sudan and South Sudan. *International Journal of Political Science and Development* 2(11) 314-327
8) Bamfo, N (2012). The Menace of Secession in Africa and Why Government Should Care: The Desperate Causes of Katanga, Biafra, South Sudan, and Azawad. *Global Journal of Human Science* 12(10) 13.
9) Bazuaye, B. and Enabulele, O. (2016). Teachings on Basic Topics in Public International Law. *Benin City, Ambik Press* 72.
10) Beran, H. (1998). A Democratic Theory of Self-Determination for a New World Order. In PB Lehning, (ed), *Theories of Secession*, Routledge, 32, 35.
11) Bereketeab, R. (2015). Self-Determination and Secession in Africa: The Post-Colonial State' in Redie Bereketeab (eds) *Self-Determination and Secession: African Challenges.* Routledge, 1-16.
12) Brownlie, Ian (2008). *Principles of Public International Law* (7th ed, Oxford: Oxford University Press, 2008) 31-35.
13) Buchheit, LC (1978). Secession: The Legitimacy of Self-Determination. *New Haven and London: Yale University Press*, 84.
14) Cass, DZ. (1992). Rethinking Self-Determination: A Critical Analysis of Current International Law Theories. (1992) *Syracuse Journal of International Law and Commerce* 18(1) 22.
15) Dada, JA. (2012). mpediments to Human Rights Protection in Nigeria. *Annual Survey of International and Comparative Law*, Vol. 18, 67.
16) Egede, E. (2007). Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria. *Journal of African Law,* 51(2), 249-284.
17) Ekeke, AC & Lubisi N. (2020). Secession in Africa: An African Union Dilemma. *African Security Review,* 4.
18) Emerson, R. (2017). Self-Determination. *American Journal of International Law* 65(3) 459-475
19) Enabulele A. (2009). Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts. *African Journal of International and Comparative Law,* 17(20) 326.
20) Franck, TM (1992). The Emerging Right to Democratic Governance. *American Journal of International Law* 82(1) 46-91.

21) Garner, B.A. (2009). *Black's Law Dictionary* 9th Edition, 1540.
22) Genugten, W. (2010). Protection of Indigenous Peoples on the African Continent: Concepts, Position Seeking, and the Interaction of Legal Systems. *The American Journal of International Law*, 104(1) 38–43.
23) Gimba, BG (2018). Why Equatoria Region in South Sudan May opt to Secede.) *African Journal of Political Science and International Relations* 12(8) 155-166, 156.
24) Hannum, H. (1998). The Right to Self-Determination in the Twenty-First Century. *Washington and Lee Law Review*, 55(1) 773.
25) Helfer, L. (2018). Sub-Regional Courts in Africa: Litigating the Hybrid Right to Freedom of Movement *International Journal of Constitutional Law,* 16(1)*,* 235-253.
26) Hill, MA. (1995). What the Principle of Self-Determination Means Today. *ILSA Journal of International and Comparative Law,* Vol.1, 126.
27) Iguh NA and Alita, ME. (2022). Critical Examination of the Concept of Right in Right to Self-Determination Under International Law. *Law and Social Justice Review* 3(3), 43-49.
28) Ikubanni, OO and Alabi, MOA (2024). Yoruba People's Quest for Self-Determination Within the Nigerian Constitution. *Fountain University Law Journal* 1(1) 37-53.
29) Ikubanni, OO and Saheed, AA. (2022). Impact of Technology on Alternative Dispute Resolution in Nigeria and the Birth and Challenges of Online Dispute Resolution. *Global Journal of Politics and Law Research.* 10(4) , 1-13
30) Ikubanni, OO, Oyebade, AA, Ololu, T., Mohammed, IB, Adam, A, Hussaini, M. and Hussinai, Y. (2023). Planning for Divorce Before Marriage: The Concept of Pre-nuptial Agreement and Its Enforceability in Nigeria. *Journal of Commercial and Property Law* 10(2) 215-228.
31) Kelsen, H. (1992). Introduction to the Problems of Legal Theory. *Oxford University Press*, 111
32) Kelsen, H. (1945). The General Theory of Law and State*. Cambridge, Mass.: Harvard University Press,* 346
33) Lee, HE and Lee, S. (2010). Positivism in International Law: State Sovereignty, Self-Determination, and Alternative Perspectives. *Asian Yearbook of International Law* Vol. 16, 1-24.
34) Lugard SB, Zechariah M and Ngufwan TM (2015). Self-determination as Right of the Marginalized in Nigeria: A Mirage or Reality. *Journal of International Human Rights Law,* 1(1).
35) McCorquodale, R. (1994). *Self-Determination: A Human Rights Approach*. *International and Comparative Law Quarterly* 44(3) 857–885, 864.
36) Medina, R. (2020). The Right to Self-Determination as a Strategy to Dispute the Legal Field. *Utopia Y Praxis Latinoamericana* 25(3) 74
37) Mhango MO. (2012). Governance, Peace and Human Rights Violations in Africa: Addressing the Application of the Right to Self-Determination in Post-Independence Africa. *African Journal of Legal Studies* 5, 199–214.
38) Mnyongani, F. (2009). Between a Rock and a Hard Place: The Right to Self-Determination Versus Uti Possidentis in Africa. *The Comparative and International Law Journal of South Africa,* 41(3) 463-473.
39) Mrabure, KO. (2015). The Right to Self-Determination Under International Law: The Current Biafra Struggle. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* Vol. 6, 66-74.
40) Nwabueze, B. (2003). Constitutional Democracy in Africa. *Ibadan: Spectrum Books Limited*, 92.

41) Nwaguri, M. (2011). From Dualism to Monism: The Structure of Revolution in Kenya's Constitutional Treaty Practice. *Journal of Language, Technology & Entrepreneurship in Africa,* 3(1), 145-146.
42) Nwapi, C. (2011). International Treaties in Nigerian and Canadian Courts. *African Journal of International and Comparative Law* Vol. 19, 38
43) Nwefuru NH. (2010). Ethnic Separatist Agitation: Implication for Political Stability in Nigeria. *African Journal of Politics and Administrative Studies* 5(1) 60-72.
44) O'Connell, (1965) International Law. *Stevens*, 41-43
45) Okeke, CN. (2015). The Use of International law in the Domestic Courts of Ghana and Nigeria. *Arizona Journal of International and Comparative Law,* Vol. 32, 396.
46) Olasupo, O., Oladeji IO, and Ijeoma EOC. (2017). Nationalism and Nationalist Agitation in Africa: The Nigerian Trajectory. *The Review of Black Political Economy* 44, 262-283
47) Olomojobi, Y. (2016). The Existing Cause of Biafrexit and Its Right to Self-Determination. *African Human Rights Journal* 1, 111-113.
48) Oluyemi, OA. (2022). Suggestible Consequences of Militarisation of Self-Determination Movements in Nigeria: A Case for Study of Separatist Movement. *Journal of Humanities and Social Sciences* 4(4) 249-262
49) Onomrerhinor, F.A. (2016). A Re-Examination of the Requirement of Domestication of Treaties in Nigeria. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 17-25.
50) Oppenheim, L. (1955). International Law. *8th ed, Longmans, Green & Co. London* 37.
51) Oyebanji, AO, Ikubanni, OO, Oyebade, AA, and Ololu, T. (2023). A Comparative Study of the Legal Framework on Trafficking in Persons for Organ Removal in Nigeria and the United Kingdom. *Unizik Law Journal,* 19(2),
52) Pain, J. (2019). Ethnic Violence in Africa: Destructive Legacies of Pre-Colonial States. *International Organisation* (2019) 73(3) 645-683.
53) Pentassuglia, G. (2002). State Sovereignty, Minorities, and Self-determination: A Comprehensive Legal View. *International Journal on Minority & Group Rights*, 9, 303, 305
54) Rigaux, F. (1998). Hans Kelson on International Law. *European Journal of International Law*, Vol. 9, 325-343
55) Saul, M. (2011). The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right. *Human Rights Law Review* 1(4) 609-644, 614.
56) Senaratne, K. (2013). Internal Self-Determination in International Law: A Critical Third-World Perspective. *Asian Journal of International Law* 3(2) 305-339.
57) Shaw, MN, *International Law* (5th Edn., UK: Cambridge University Press, 2003) 811.
58) Shelton, D. (2011). Self-Determination in Regional Human Rights Law: From Kosovo to Cameroon. *American Journal of International Law,* 105(1) 64
59) Slomanson, W.R. (2000). Fundamental Perspectives on International Law. *3rd ed, Belmont, CA: Wadsworth,* 42
60) Sloss, D. (2008) The Role of Domestic Courts in Treaty Enforcement: A Comparative Study. *Cambridge University Press* 5-6.
61) Sterio, M (2009). On the Right to External Self-Determination: "Selfish," Secession and Great Powers' Rule. *Minnesota Journal of International Law* 9.

62) Szpak, A. (2018). The Right of Indigenous People to Self-Determination: International Law Perspective. *Polish Political Science Studies*, 59, 178-204, 180
63) Umozurike, U.O. Introduction to International Law*. 3rd ed., Spectrums Books Limited*, 28.
64) Viljeon, F. (2012). *International Human Rights in Africa.* 2nd ed, Oxford University Press, 522.
65) Waal, A. (2021). The Ambiguities of Self-Determination: IGAD and the Secession of South Sudan. *Nations and Nationalism, 27,* 80-95
66) Weldehaimanot, SM (2012). The ACHPR in the Case of Southern Cameroons. *SUR-International Journal on Human Rights* 9(16) 89.
67) Weller, M. (2009). Settling Self-Determination Conflicts: Recent Developments. *European Journal of International Law*, 20(1). 111-165