

# **THE RIGHT TO SELF-DETERMINATION AND SECESSION IN AFRICA: THE CASE OF SOUTH SUDAN AND LESSONS FOR THE REGION**

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## **ABSTRACT**

The right to self-determination will continue to be a complex matter for the international community and African policymakers are not exempted from it. The complexity of the matter does not stem from the existence or not of this right, which can be found in various international and regional legal instruments, but from the failure of these instruments to present more nuanced views on who exactly is qualified to claim this right. Is it a group of people with unique characteristics or a nation based on other factors? And equally important, what does this right present?

The international community since the post -World War II has vehemently stood for the indivisibility of territorial borders irrespectively of how and when these borders were formed. This stance has prompted many groups and individuals that exist as minorities within a state to invoke the principle of the right to self-determination in recent years to fight for greater participation in government and in some cases, outright autonomy, particularly in Europe, as witnessed recently in the Catalanian case. Some territories have resorted to arms struggle to achieve this goal

The reasons are usually the same when groups press for the exercise of the right to self-determination, the demands are always for an improved government system or an end to human rights abuses from the central government. The inability of the international community and

authors of international law to give definite interpretation to what the right to self-determination involves has led to more confusion and chaos within some existing state.

The right to exercise the principle of self-determination has led to conflicts in some instances and academics have struggled to find the origin to this initiative, more disturbing is that the international community has not paid enough attention to agitators and secessionists leading to skirmishes that would have been avoided. This impression makes groups believe that the only way to press home their demands is to carry up arms and defend what they usually claim is rightfully theirs. A case in question is the on-going crisis in the Cameroons that has left hundreds of “Anglophone” speaking Cameroonians dead. When violence ensues, dispute settlement becomes more difficult and threatening to arrive at.

In light of the above, this paper will examine the place of self-determination side-by-side with secession and how South Sudan emerged from the exercise after a referendum in January 2011. It will also investigate how the South Sudan experience has encouraged other secessionist movements in the region and the lessons that are there to be learned, going forward.

**Keywords:** African Union, Humanitarian Intervention, International Law, Military Force, Peoples, Rights, Self-determination, Secession

## INTRODUCTION

Under international law, it is agreed that it is the right of the people to exercise the right to self-determination. This principle is enshrined in the UN and other legal texts as both the moral and the legal right of peoples. Essentially, the principle of the right of self-determination is perceived to be the right of a people to determine their government.<sup>i</sup> Hence, the people are allowed to choose their political destiny and to determine their form of political, economic, cultural and social development.

Self-determination is divided into two practical types and these are internal and external self-determination. To gain independence or control a sovereign entity means you have invoked the right to external self-determination.<sup>ii</sup> This right is applicable to a people that already exist

within a sovereign territory and can also be applied by a group that do not yet control or run a sovereign state. In the case of a group that already exist within a state; the attempt to exercise self-determination comes in contrast with the principle of territorial integrity which is recognized in international law.<sup>iii</sup>

Self-determination can metamorphose into secession when the people decide to externally self-determine by declaration independence from an existing state or in some cases, integrate into another state as witnessed in the Crimean case in 2014. Internal self-determination involves the right of the people to agitate for improved participation in the political, economic, social and cultural activities of a state in which they belong to. This is the interpretation given to the notion in the UN Charter of 1945 and also in the UN Declaration on friendly relations among states of The UN Declaration on the rights of Aboriginal Peoples of 2007 also explained the principle in a similar manner.

Self-determination is a concept created under international law comprise of the United National General Assembly (UNGA) Resolutions 1514(XV), the International Covenants on Human Rights of 1966, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States; it also includes the Helsinki Accords Final Act of 1975 and 1993 Vienna Conference on Human Rights.<sup>iv</sup> The International Court of Justice (ICJ) also added impetus to the principle, affirming it as a new notion of international law, branding it in an *erga omnes* nature.<sup>v</sup>

The Organization of African Unity (OAU) adopted the measure to uphold the boundaries as drawn by the colonists on the attainment of independence for the fear that any attempt to redraw the boundaries might lead to political disorder.<sup>vi</sup> Colonial boundaries were therefore seen as sacred and matters that should not be discussed in political circles. These boundaries defined the newly independent states and the basis for international relations among states.

Interestingly, this idea to comply with colonially drawn boundaries did not prevent political conflicts resulting from self-determination in the continent; academics would argue that most of these conflicts were not boundary related, however, they agree that identity-based disputes with the intent to secede from an existing state became a commonplace. This self-determination quest was experienced from the onset in post-colonial Africa and a case in question is the secession of Katanga which this paper will discuss at length as it progresses.

Some of the bids for secession lacked legitimate reasons, while some others were within legal bounds, but generally, they were treated as the same and completely thwarted. From the time of the Katanga experiment to subsequent years, newly formed African states witnessed different forms of self-determination, some of them leading to massive human rights abuse and outright carnage.<sup>vii</sup>

The South Sudan experience of 2011 has given rise to so many questions regarding self-determination and secession in Africa. It could be recalled that in 1964, the OAU declared that territories drawn at independence could not be tempered with; however, the South Sudan case brought that declaration into different scrutiny.<sup>viii</sup> The initial apprehension of the OAU was that the continent was too fragile to allow identity groups to form states and governments of their own, that if that is allowed to happen, the entire continent would be brought to its knees.

Subsequently, the OAU stood its ground on that resolve and the African Union which succeeded the OAU continued in the same direction; insisting that secession was not an option permissible by law within the continent. The secession of South Sudan has brought in a new matrix in the discussion of self-determination and secession not only in Africa, but internationally. The South Sudan reality culminated in the climax of the debate on the principle of self-determination and secession.

Legal scholars conclude that the secession of South Sudan violates the OAU/AU Charter, which has been in place since the early years of most African states,<sup>ix</sup> the fear, therefore, is that this might trigger more secession and end up defeating the principles and objectives of the regional organization.<sup>x</sup> This has made academics ponder on the new fate of the AU in the wake of the independence of South Sudan; would this experience put the organization under pressure when other groups ask for a similar treatment? Perhaps, the AU will have to depend on the actions of the Security Council of the UN to fight back new secessionist movements, it might also refuse to break or bow to new pressures like it has continually done in the case of Somaliland.

This paper, therefore, aims to add to this debate as regards to self-determination and secession in the region, with greater emphasis on South Sudan and the lessons that could be gained from it, going forward. This issue has been swept to the footnotes of legal academic discussions,

knowing fully well that several secessionist groups are still active within the region, with new ones gearing up to take the limelight.

## **SELF-DETERMINATION IN THE CONTEXT OF DECOLONIZATION**

The principle of self-determination has come to stay and has gained its place of recognition in international law. Various treaties, covenants, protocols, declarations and judicial rulings add up to make the principle of self-determination an accepted notion of international law.<sup>xi</sup> More also, independent states have laid credence to this principle, regarding it as an integral part of international law; this right belongs to the people and they are allowed to freely express it in matters that affect their well-being.

The first time the principle of self-determination was raised was after World War I when President Woodrow Wilson of the US proposed the idea, but it failed to gain international acceptance as many leaders at the time saw it as purely a political idea. The Aaland Islands case<sup>xii</sup> during this period was a clear demonstration of that resolve. It was not until the end of World War II when the UN was formed that the issue was taken more seriously. It was at that point that the UN under its Charter laid serious emphasis on the matter, and subsequently, the principle was put into practice by states.<sup>xiii</sup>

Several years down the line, this principle experienced some critical changes and this can be attributed to the amount of work put in by the UN, the organization ensured that the doctrine was respected as a human right and that the people are allowed to determine their political destiny as they seem appropriate. This concept paved the way for many territories to call for independence, particularly those under the colonial yoke.

With all the good intentions, the UN failed to deliver on the interpretation and scope of the exercise of this all-important right, and this has led to so many divergent interpretations within the academia. The argument surrounding the Colonial Declaration was more specific as it was directed to colonies that had had the right to self-determination based on the 1945 Charter and as reiterated in the 1960 Declaration. In the same vein, the 1970 Declaration confirmed in the bid to be independent, Trust and Non-Self-Governing territories had to pay attention to the

concept of territorial integrity as enshrined in the UN Charter. The International Court of Justice (ICJ) buttressed this argument in 1971 when it alluded that the principle was applicable to all Non-Self-Governing territories and in 1975 consented to the limited interpretation of the principle. The whole idea was to ensure that the international order was not disrupted and every unsatisfied group does not have the impetus to press for secession or compromise territorial integrity.<sup>xiv</sup>

The self-determination case involving East Timor which led to its independence in 2002 was centered on the argument that the territory was still under the control of its former colonists – Portugal and not Indonesia which was administering for some time before 2002. If East was to break away from Indonesia without attaching the decolonization link to the process, it would have been a difficult fete to achieve, considering that many major states would have opposed to it, particularly those in the Security Council.<sup>xv</sup>

However, with that experience well documented, the issue of self-determination continues to polarize the academia, particularly when one looks at the practice itself. Contrasting the East Timor case with that of Western Sahara, it is crystal clear that self-determination as a principle has no definite form or shape. Looking at the customary decolonization notion, it would appear that the case of Western Sahara should have been resolved a long time ago, but that is not the case at the moment.

Looking into the Western Sahara conundrum, the United Nations General Assembly (UNGA) requested an Advisory Opinion from the ICJ by posing these questions: “Was Western Sahara at the time of colonization by Spain a territory belonging to no one (terra nullius)?” If the investigation proves that it did belong to someone, “What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?” To this end, the ICJ on October 16, 1975, delivered the following verdict: 1. the territory did belong to someone at the time of colonization and 2. The documents put forward before it showed the relationship at the time of Spanish occupation, some legal ties between the Sultan of Morocco and some of the ethnic nationalities living in the territory of Western Sahara. The court also established some legal rights linking the territory to the government of Mauritania; however, the international court concluded that on the basis of the information and documents presented to it, there was no evidence of territorial sovereignty between the disputed territory of Western Sahara and Morocco or Mauritania.<sup>xvi</sup>

This quagmire is one of the examples where self-determination has not well defined in theory and practice. The international community is still divided on the Western Sahara case even as it supports the principle of self-determination and the lack of enforcement mechanism under international law continues to be a thorn in the flesh of international jurisprudence.

## **SELF-DETERMINATION UNDER INTERNATIONAL AND AFRICAN LAW**

To contextualize this subject matter in its legal form, it is imperative that the place of self-determination in international law and African law be well spelled. The UN Charter of 1945 was the first legal instrument to portray self-determination as a principle under international law.<sup>xvii</sup> The League of Nations made an attempt towards actualizing this notion, but at that time, most states perceived it more as a political status than a legal one, thus, it could not stand the test of time.

Examples, where the UN Charter enunciated on the principle of self-determination are under the premise of encouraging “friendly relations among states”, in the submission of Rosalyn Higgins, the principle of self-determination of peoples as ascribed in the UN Charter tend to refer to the right as one belong to peoples of one entity that should be protected from any form of eternal interference, therefore, the term “people” in that context has to do with the citizens of a defined territory.<sup>xviii</sup>

In the preamble of the UN Charter, it read: “we the people of the United Nations”, this statement advances credibility for the notion of the word “peoples”,<sup>xix</sup> it is clear that the UN refers to nations as states and therefore, the population (people) are needed to build a state.<sup>xx</sup> This understanding is also in sync with the principles and objectives of the UN and its Charter, specifically, when the issue of the principle of territorial integrity is raised and the concept of non-interference in matters of internal jurisdiction.<sup>xxi</sup>

The most recognized and accepted definition of self-determination is centered on the free will of the people of a sovereign entity to politically determine their political destiny without the interference of another state. The UN Declarations of the 1960s further interpreted self-determination in the context of decolonization, these declarations transformed self-

determination from just a principle under international law to the right of a people. This explanation can be further explored in the UNGA legal documents of 1960 and 1966. Article 2 of the 1960 Declaration read as follows: ‘All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’<sup>xxii</sup>

Most importantly, the principle of self-determination as the right of a people was conceived as a notion for people under colonial rule, subjugation, domination or exploitation, and therefore was not applicable in all circumstances.<sup>xxiii</sup> This concept under international law means that people under colonial yoke were under foreign subjugation, domination or exploitation and thus have the right to exercise self-determination as they deem necessary.<sup>xxiv</sup>

The 1970 UNGA Declaration further polished the right to self-determination with more emphasis on “friendly relations”; stipulating that the duty of the government to ensure that the people are well represented and carried along in the political process of the state irrespective of their political affiliation, race, religion or ethnicity.<sup>xxv</sup> This declaration broadened the scope of self-determination to inculcate a system that ensures that the people freely demonstrate their political will within the state which they belong to only the basis of equality.

The inclusion of self-determination as not only a principle of international law but the right of a people made room for the principle to expand and encompass and cover more grounds. The 1966 UN Covenants were clear demonstrations of how the principle has evolved. These Covenants were: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These additional legal instruments afforded the right to self-determination a more prominent position in international law and buttressed Article 1 of the UN Charter.<sup>xxvi</sup>

Within the context of self-determination as a right of peoples, the most advanced concept internal self-determination which means that a state should be open to various institutional frameworks and regulations between it and the citizens.<sup>xxvii</sup> What this means is that all sections of the state demand equal treatment and should be allowed to determine their political, social, cultural and linguistic destiny within the confines of the sovereign state.

Within the continent of Africa, the notion of self-determination is perceived as one closely related to the decolonization process. In reference to the Charter of the Organization of African



Unity (OAU Charter),<sup>xxviii</sup> the right to self-determination was briefly mentioned in the preamble and principles. As contained in paragraph 1 of the organization's Charter, the governments of the various states represented in the organization alluded to the notion that it is the inalienable right of all people to control their own political destiny.<sup>xxix</sup>

The OAU Charter in Article 3 subsequently buttressed the compliance to the principle of self-determination by stating that 'absolute dedication to the total emancipation of African territories which are still dependent' was a priority of the organization. The OAU, in this case, referred to "people" as those still under colonial control or those still subjected to apartheid rule as witnessed in South Africa and Namibia.<sup>xxx</sup> Therefore, it is safe to say that the OAU dealt with the matter of self-determination only within the context of decolonization and independence from colonial rule.

The term peoples, therefore, differ in the African context when one contrasts it with that of the UN; here it only emphasized on people still under colonial regime and clutch of apartheid. The OAU was reluctant to allow the principle of self-determination become a tool for groups and people to seek for individual independent states, it was bent on maintaining the boundaries that were drawn by the colonists; while the organization was strongly against colonial dominance,<sup>xxxi</sup> it was keen to keep the lines the process brought about; an attempt to tamper with it was seen as a violation of the principle of territorial integrity.

Interestingly, newly independent African states were keen to adhere to the principle of protection of sovereignty and territorial integrity of members of the OAU and the need to defend independent territories vigorously as members.<sup>xxxii</sup> In 1963 when the OAU was established, one of the objectives was to preserve the legal principle of *uti possidetis juris* and in 1964, it included it in its Declaration famously known as the Cairo Declaration.<sup>xxxiii</sup> This agreement has continued to guide the organization until date, even after transforming from the OAU to the AU in 2002

To the then OAU, self-determination meant only one thing and one thing only, and that was the independence of all African states and the right of the people to determine their political destiny without foreign interference. This was cardinal in the Charter of the OAU and all members worked towards its adherence. The whole idea was to ensure that newly independent

states did not come against each other in cross-border conflicts and that the proposed unity of the region should not be compromised.

This vow by African governments did not stop some states from interfering in the internal matters of others; some governments based on various interests sponsored groups in other countries and provided safety to dissidents. This was one of the early challenges of the organization and has continued to plague it even up to date. Instances of governments accusing each other of meddling in internal affairs are common within the region.

Arguments and calls for self-determination outside the colonial contexts did not receive adequate attention from the OAU, and this applies to the current AU as well. To the organization, self-determination must connect to decolonization and liberation of subjugated people.<sup>xxxiv</sup> Any claim outside this concept is seen as a breach of both international law and regional law and should not be permitted.

The creation of the African Charter on Human and Peoples' Rights<sup>xxxv</sup> as the pioneer human rights text in the region introduced a new paradigm of legal rights to self-determination beyond the colonial context. Therefore, it could be right to contend that the principle of self-determination has a new lease of life in Africa and is now dynamic in line with prevailing international circumstances. Different groups can exercise this right within the legal framework of the African Charter.<sup>xxxvi</sup>

The legal ruling submitted by the African Commission on Human and Peoples Rights, the body charged with the task of monitoring the promotion and protection of rights under the African Charter brought a new angle to the argument of self-determination in the continent. The case of the *Congrès du peuple katangais v Zaire*, witnessed the complaint of the leader of the Katanga group who pressed for recognition of the secessionist territory on the basis of the content of Article 20 paragraph 1 of the African Charter.<sup>xxxvii</sup>

The Katanga case gave a new angle and debate to what actually constitutes a “people” in international and regional law since the Katanga people are a part of the then Zaire and made up of people from different ethnic extractions. Under the African Charter, a unique people are entitled to self-determination, but that cannot be said of the Katanga people based on their divergent ethnic makeup; the two largest groups being the Luba and Kongo groups.

This created some sort of a legal lacuna since it was not interpreted in the Charter that various ethnicities could come together to form a “people”. Therefore, the answer to the question becomes elusive as it is not clear if the Katanga people are qualified to exercise the right of self-determination on the grounds of uniqueness under the African Charter.

In regards to external self-determination (independence) from an existing state, international law and practice recognizes the right of self-determination of a group of people under colonial control, alien subjugation or domination and those that have suffered massive human rights abuses; there are also some circumstances where international law recognizes self-determination outside of the above mentioned. But, most essentially, the bid must be the voice of the majority of the people and should be worked out with the parent state in a non-violent manner.<sup>xxxviii</sup>

The Eritrean example of 1991 in Africa was a secessionist action that was legal based on the blessing it received from the parent state-Ethiopia. Therefore, it cannot be said that the Eritrean case created a precedent that could be detrimental to territorial integrity within the region.<sup>xxxix</sup> Some legal academics are of the opinion that the independence of Eritrean was a decolonization exercise and not merely a secessionist attempt to divide the territory of Ethiopia.<sup>xl</sup>

If a section of a sovereign state decides to secede on the basis of its domestic law which allows for such an exercise, then the countries in the African region would not frown at it. Ethiopia has this option has enshrined in the 1994 Federal Constitution of Ethiopia under Article 39 of the Constitution which stipulates that ‘nations, nationalities, and peoples have the right to full measure of self-determination, including and up to secession’.<sup>xli</sup>

Subsequently, if any of the internal ethnic constituencies unanimously agree to separate from the parent body, it is free to do so as long as it complies with the procedures as laid down in the constitution.<sup>xlii</sup> And such an action would be recognized by the parent state and the international community. This action would not be in violation of the principles of the African Charter on self-determination and secession since it has no provision that caters to such political action.

Conclusively, the issue of self-determination in international and African regional law stipulates that such an exercise should not come in conflict with the principle of territorial integrity or what could also be called the concept of *uti possidetis juris*.

The only permissible circumstance under the law is in the event of massive abuse of human rights that questions the integrity of the state as witnessed in Sudan prior to the independence of South Sudan in 2011; another rare instance could be like the Ethiopian situation, where the parent state grants the secessionist group consent to be externally autonomous.

## **PEOPLES CLAIMING SELF-DETERMINATION AND SECESSION THAT FAILED – CASES OF BIAFRA AND KATANGA**

### *The Biafran Experience*

The Nigerian state for quite a long time now has been torn by groups that feel unrepresented and treated unfairly – a feeling that has brewed some sense of suspicion and nervousness among various ethnic nationalities in the country. Different agitation groups have emerged in the country and have all pressed for one form of autonomy of the other. The Igbo people in the east are one of them, we have also witnessed the Ogoni people from the South asking for self-determination and recently some Yoruba groups in the western part of Nigeria are asking the question of self-determination.

The Biafran experience from the Igbo people sprouted series of legitimate and unanswered questions about the validity and scope of the right to self-determination, territorial integrity and decolonization in the African context. The events that culminated in the Biafran secession have left academics divided on the true nature of self-determination, with some asking questions about the principle as a legal and political right of a people.

The failure of Biafra to actualize its ambition during the 1967-1970 “civil war” afforded legal scholars the opportunity to re-assess the nature and scope of self-determination in the context of decolonization and Africa itself as a fragile continent; the fact that self-determination is a right of the people under international law makes it even more perplexing for analysts to understand the spectrum and limits of the principle. The failed attempt to bring the Biafran state to fruition further highlights the vagueness and blurredness of state sovereignty and the principle of self-determination under international law. The inability of secessionist groups like that of the Igbo people casts further doubts on the sincerity and consistency in the application of the law.<sup>xliii</sup>

The Nigerian “civil war” ended the 15<sup>th</sup> of January 1970, when the last batch of the Biafran army surrendered to the Federal troops.<sup>xliv</sup> The failure of one of Africa’s earliest secessionist attempt provoked lots of sentiments among politicians and academics alike. The experience was seen as an example of how governments can relentlessly quell secessionists’ attempts and how the international community perceives external self-determination. The Igbo people at the end of the war tried to find solace in a united Nigeria and accepted the terms and conditions for re-integration into the polity. There was no reported violence against the Igbo people post-civil war but there were other levels of injustices that the people experienced and could no longer fight against due to lack of will and capacity to do so having lost millions of its citizens during the conflict.

Supporters of the principle of territorial integrity and *uti possidetis juris* were particularly satisfied at the way the Biafran action was crushed, hinting at the clouded complications of self-determination and the broadness that has served as leverage for many groups to secede. This group believes strongly that sovereignty is everything and obstructing the international order through secession was dangerous as it could lead to the threat of peace and security.<sup>xlv</sup> The Biafran people at the end of the war in 1970 had a population of close to 13.5 million people (irrespectively) of the millions that died during the three-year-old war, this number at the time would have made Biafra one of Africa’s most populated countries if the bid had not failed.<sup>xlvi</sup>

The Igbo enclave houses abundance of mineral and natural resources and sits on a large chunk of Nigeria’s huge oil wealth, yet, opponents of the Biafran secession argue that the territory lacked an organized government, population and economic viability to become an independent state – some of the conditions to be recognized as a state according to the Montevideo Convention of 1933 which states that for a state to be recognized, these criteria must be constant: (i) government (ii) population (iii) defined borders (iv) capacity to enter into relations with the other states.<sup>xlvii</sup> The Biafran people met all of these criteria at the time, yet could not fulfill their right to self-determination.

The minority groups that existed within the Biafran “state” at the time of the bid for secession did not face harsh treatments from the Nigerian troops unlike the core Igbo people that were constantly being bombarded by the central government; this made it difficult for the Biafran troops to gain support from those groups and thus were vulnerable within.<sup>xlviii</sup> The quest to

actualize the Biafran state met with resistance outside of the Nigerian borders as well, with international observers contending that the “newly” created state was too fragile to survive and lacked national cohesion for sustainability.<sup>xlix</sup>

Some of the early proponents of decolonization and African unity believed strongly in size and population as the fulcrum for sustainability, this set of pundits share the opinion that small states were militarily weak, politically vulnerable and economically frail.<sup>1</sup>

The biggest opposition the Biafran “state” faced came from outside the parent state, the majority of the independent states in Africa at the time refused to recognize it and those from outside the continent shared the same sentiments. It was believed that permitting self-determination to a group that “aggressively” wanted to part ways with the parent state would lead to the balkanization of the region and set precedent for other groups with similar political ambition.<sup>li</sup>

Newly formed states in Africa had arbitrary borders drawn by the colonialists who did not take into account the unique characteristics of the people, but only bothered with land area and waters. This made it very critical and essential for these states to pursue the idea of national unity as the top priority and try to unite diverse ethnic nationalities together for fear of disintegrating and losing grounds in the international community. Some African politicians at the time saw secession as a political crime against the continent and strongly opposed the notion.

The Biafran experience continues to be a debate among legal scholars to date, with some asking questions about the sanctity of territorial integrity, the legacy of colonial Africa and the nature and scope of the principle of self-determination. The central government of Nigeria has not been able to give a nuanced opinion on the question of Biafra apart from holding on to territorial integrity and opposing the actualization of self-determination which is legal in international law.<sup>lii</sup>

### ***The Secession of Katanga and its Outcome***

The people of Katanga were under a special colonial arrangement, the territory was administered until 1910 by the privately-owned Special Committee of Katanga (Comite Special du Katanga). At this time, the running of the affairs of the territory was handled by a

vice governor-general whose portfolio was unconnected with matters in the rest of the Belgium Congo.<sup>liii</sup>

It was not until 1933 that the Katanta enclave was integrated with the rest of the Belgium Congo under the colonial government seated in Leopoldville. This initiative was strongly resented and opposed by the people of Katanga. The Katanga people saw themselves as the richest on the country and that belief heightened their sense of pride and secludedness; in the months leading to the independence of the Congo, the Katanga people insisted on having their own separate state, this call went unanswered and on June 1960, the country was declared an independent Africa state by the Belgian government<sup>liv</sup> which presided over the handover ceremony.

The build-up to the independence was met by some degree of resistance from the Katanga people who were led by Moise Tshombe. Few days to the independence ceremony, the Belgium government flew military reinforcements into Kitona and Kamina. They also marched to Elisabethville, the port of Matadi, Leopoldville, and Jadotville to secure all Belgian properties and kept tight security in the areas. The central government at the time of independence was fragile and this played into the hands of Tshombe who seized the opportunity to unilaterally declare independence for the people of Katanga on July 11 1960. The declaration was nullified by Belgium at the time, but the Katanta people equally received economic and military support from the Belgians who were keen to crush the political programme of the first elected Prime Minister, Patrice Lumumba which was perceived as anti-Belgium.<sup>lv</sup>

Interestingly, the unilateral declaration of independence by Tshombe was rejected by the Baluba ethnic group from the northern part of the territory. The Balubas were split by the border in the north of Katanga and in August of 1960, the Baluba people of Kasai also declared their independence.<sup>lvi</sup>

The central government of the newly independent Congo and some other African countries at the time of the secession bid of Tshombe regarded the move as a Belgian orchestrated agenda to advance a neocolonial plan in Katanga and by extension the entire Congo territory. The Belgians were pressed by the international community to properly integrate Katanga with the rest of the provinces in the country to signal a successful independence of the Congo,<sup>lvii</sup> but the government in Brussels was reluctant to make that happen. The whole idea was to continually

have access to the abundant minerals in the Katanga area and keep the central government in Leopoldville on its toes.

To Tshombe, his agenda was simple- to maintain Katanga's autonomy as much as possible and to continue to lead the charge for total independence from the newly independent Congo. He knew he was under pressure to integrate his Katanga province with the rest of the Congo but he was not convinced it was in the best interest of Katanga; thus, he refused to shift grounds on the matter. He was aware that the international community opposed his secession quest, he got pressure from the UN headquarters and military forces on the ground in the Congo, the US government also persuaded him to drop the idea of an independent Katanga, but he did not cave-in.

The Belgian at some point tried to persuade the Katanga people to drop their self-determination bid as it was leading the country into further chaos, but was able to achieve the desired result; they were unable to sway the Union Minière du Haut Katanga also known as the UMHK's representatives in Katanga. It attempted to use the Katanga people residing in Belgian to press him their call for Katanga to unite with the rest of the country, but these Katanga indigenes were equally unsuccessful in persuading those on the ground to accept the integration plea.

The secession quest led by Tshombe last from July 11, 1960, to January 14, 1963 and this was mainly due to the effort of the Belgian government and its army that supported the Katanga people, but from the onset, the bid was strongly opposed and it ran into so many difficult moments which eventually culminated to its demise.<sup>lviii</sup>

One major impediment to the self-determination bid of the Katangese was the inability of Tshombe to reconcile with the Balubakat inspired resistance in the north of the territory. The Baluba people were heavily attacked to subdue their secession aspiration but they held firmly to their territory and resisted any attempt by Tshombe's army to take effective control of the area. Out of support to a united Congo and to ensure that Katanga does not become a state, the Baluba people proclaimed the secession of the north from the rest of Katanga; this was a major blow to the entire Katanga independence.

Another factor that militated to the failure of the Katangese to actualize their dream of self-determination was the lack of international recognition by members of the international community. Even the Belgian government never officially gave recognition to Katanga. And



the event that led to the final collapse of Katanga was the UN action passed to prevent any form of civil war and also to prevent any form of human rights abuses. The UN resolution urged all warring parties to halt operations and insisted that the organization would use military force if necessary, to restore peace and order in the country.<sup>lix</sup>

The UN Security Council's action was necessitated by the increasing violence in the Congo and ultimate to put pressure on Tshombe and his troops to reintegrate with the bigger Congo community.<sup>lx</sup> The UN resolution enabled the organization to act to prevent civil war and requested all foreign advisers and mercenaries to leave the country immediately.<sup>lxi</sup>

## **THE JOURNEY TO SELF-DETERMINATION OF SOUTH SUDAN**

Sudan and indeed Africa witnessed a historic political event in the year 2011, the unprecedented internationally observed referendum took place in the country; the event was strongly supported by the UN and the AU. The referendum was held to confirm if the people of South Sudan would continue to be a part and parcel of Sudan separate to become an independent state. At the end of the referendum. A vast majority of the South Sudanese voted to form a new state.<sup>lxii</sup>

The protracted civil war in the southern part of Sudan made it almost inevitable for the building of a new state from the parent state. The war took a heavy toll on the country and thousands of lives were lost in the build up to an agreement for a referendum. The scope of the referendum was drawn at the 2002 Machakos Protocol signed between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) and canonized in the 2005 Comprehensive Peace Agreement (CPA) in Naivasha, Kenya.<sup>lxiii</sup>

The disputing parties formally agreed to work together in uniting the various groups in the spirit of oneness, equity and fairness for all the citizens of Sudan. It was agreed that the agitations of the people of South Sudan would be properly looked into with a bid to find a lasting solution profitable to all concerned. It was set out to dispel any possibility for external self-determination and the 6-year interim period was meant to appease all aggrieved parties.<sup>lxiv</sup> Few months to the referendum date, the headlines read that self-determination was inevitable and tension grew among the parties and concerned observers.<sup>lxv</sup>

The questions on the lips of politicians and academics alike were centered on the deteriorating state of the Sudan body polity and how a peace agreement was drawn to unify warring groups became a tool for division. The initial plans of the SPLM were to press for an improved participation in the government of Sudan, but the peace agreement designed to achieve that ended up pushing the people towards secession. The unity on paper and the practice on the ground could not tally, thus, the agitation for a “new Sudan”.<sup>lxvi</sup> This agitation was not completely novel; in fact, the people from the southern part of the country have been asking the question of self-determination since the independence of Sudan since they saw themselves as a minority in the state.

The 1950s and 1960s political experiment in Sudan did not help the cause of the southern Sudanese so much, the idea of moving the nation towards true federalism was soon quelled by series of military coups that were prevalent in the land at a time. The attempt by some military personnel from the south to break away in 1955 was met with stiff and radical opposition and was soon to be forgotten about. The territory was under threat from the guerilla insurgence in 1963, but with the Addis Ababa Agreement of 1972, the activities of the insurgence were suspended.<sup>lxvii</sup> The agreement did not discuss true federalism or the option of external self-determination for the aggrieved Sudanese; however, it granted them some degree of autonomy which was deemed satisfactory at the time.

It was not until 1983 that the nation was besieged by another round of civil unrest when the then military President, Gaafar Mohamed el-Nimeiri single-handedly dissolved the Southern Region and nullified their so-called autonomy. The conflict that ensued soon after was larger than the initial one, more lives were lost and many more in danger. The John Garang led SPLA spelled out its agenda and it was to gain more political and economic power within the Sudanese state. The SPLA pressed for the restructuring of Sudan to allow for the south to have greater participation in government.

The central government in Khartoum was reluctant to yield to the demands of the SPLA and this elongated the civil strife; it was not until 22 years later that a solution was sought after. South Sudan’s bid for self-determination for the first time received international attention based on the countless reports of human rights abuses going on in the southern part of the country. The 2002 negotiations which finally led to the 2005 peace agreement were inevitable if the lives of civilians were to be saved.<sup>lxviii</sup>

As a principle under international law, self-determination is the right of peoples to determine their political, economic, social, cultural and linguistic way of existence within a defined territory.<sup>lxi</sup> The international community, along with the UN and the AU saw the need to respect this principle in the light of the atrocities that were reported in Sudan at the time, thus the exercise of the right to self-determination was the only option.

Why self-determination was always treated with iron fists within the African continent was due to the apprehension that breaking of already defined territories would threaten the stability of the region. If this is true or not, is a discussion for another day; however, the arbitral demarcation of Africa by Europeans continues to be subject of debate among legal scholars around the world and policy-makers alike.

The South Sudan experience demonstrated that some Africa groups are still unsatisfied with the machinations of the colonialists and are determined to push for the attainment of a new paradigm. It is important to note therefore that throughout the 6-year interim period, self-determination was almost the only answer to the Sudan political debacle and its actualization in 2010 is a milestone event in international law and international relations as well.<sup>lxx</sup>

## **THE STALEMATE TO ‘MAKE POLITICAL UNITY ATTRACTIVE’**

The government of Sudan suspended its engagement in the talks being negotiated by the Inter-Governmental Authority on Development (IGAD), just a few weeks into the second phase of the negotiations reached in Machakos, Kenya. The central government was triggered due to the capture of the town of Torit in the southern part of the country by the Sudan People’s Liberation Movement/Army (SPLA).<sup>lxxi</sup> The negotiations agreed in Machakos were about the best deal reached by the two disputing parties since the beginning of the crisis and the move by the central government weakened the process.

Comprehensive Peace Agreement (CPA) timeframe of 2005-2011 could be divided into two segments, the first one which was a four-year period witnessed the position of the Sudan People's Liberation Movement/Army (SPLM/A) and the right to self-determination which was not very forceful, but kept within the party ranks. The agenda was to reintegrate into the bigger Sudan under the Sudan-wide Government National Unity (GoNU).<sup>lxxii</sup> The second segment

resumed in 2009 with a focus on the elections and deliberations on secession with a stronger emphasis on drawing international political sympathy to the cause of the Southern Sudanese.

During the first segment of the interim period, the warring group was expected to get more organized and build a political party that would ultimately lead the government and other institutions within the territory; this initiative was drafted but was not put into practice at the time. This period witnessed a disjointed southern solidarity front, the SPLA/A was perceived as not being the party that represented the interests of all ethnicities in the south. This experience was first witnessed in the 1970s after the Addis Ababa agreement when groups from the south refused to work together for a common autonomous South Sudan.<sup>lxxiii</sup>

The first segment of the peace process also witnessed the dilemma of the party on which way to stand – if to push for self-determination and secession or to continue to support the GoNu concept with the intent to build a more formidable Sudan. The John Garang group was keen on seeing a united Sudan come to fruition. Even the uncertainty surrounding the future of areas such as Southern Kordofan, Blue Nile and Abyei also tilted their support towards a strong and united Sudan

The SPLM's position on the matter was clear and that was their commitment towards building a united Sudan and the New Sudan policy which was discussed at the party's national convention remained the focal point of the party's political stance.<sup>lxxiv</sup> The SPLM insisted before the elections that all candidates had to prove their loyalty to the united Sudan cause, therefore, subscribing to making "political unity appealing".

With enthusiasm, it was expected that things would move faster and uninterrupted in line with Garang's initiative of a united Sudan, unfortunately, that was not the case. The SPLM was serious towards making political unity appealing; however, the central government of the National Congress Party (NCP) was busy with another problem. The Darfur crisis was keeping President Omar al Bashir on his toes and the arrest warrant issued by the International Criminal Court (ICC) IN March 2009 did not make the matter any easier for the central government.<sup>lxxv</sup> During this period, the NCP was hoping that the SPLM would collapse under the weight of its own internal crisis, but that did not happen.

In the years after the demise of John Garang, the issue of self-determination took center stage and technicalities to actualize were the main issues being raised by the top guns at the SPLM. What the new state would look like, and what would it mean for the entirety of the people of southern Sudan formed the issues being deliberated at the party meetings. But self-determination was never in doubt, in fact, the successor to Garang, Salva Kiir Mayardit was once quoted to say that the South Sudanese were fed-up of being second-class citizens within the Sudan state.<sup>lxxvi</sup> With few weeks to the referendum, the position of the SPLM became clearer on the issue and international community at this time knew they were about to welcome a newly independent state into their fold.<sup>lxxvii</sup>

The lack of will and desire from the top hierarchy of the SPLM and the NCP of the central government combined to weaken the political structure of Sudan and paved the way for an unprecedented exercise of the right to self-determination.<sup>lxxviii</sup> The whole political zeal and enthusiasm shown in the early days of the peace agreement died towards the end, and political enthusiasts that were keen to see a peaceful and coherent united Sudan were left very disappointed. The idea that the south could be given greater autonomy within the Sudan state soon was relegated to the footnotes of political discussions among scholars. The year 2011 witnessed a peaceful referendum and an overwhelming response from the people to secede and form a new state.

## **LESSONS FROM SOUTH SUDAN SECESSION**

As the youngest member of the United Nations, South Sudan has been embroiled in civil strife since 2013-barely two years after gaining independence from Sudan.<sup>lxxix</sup> The citizens of this young nation have been subjected to severe hardship since the country was thrown into crisis. Many of them have sought refuge in neighbouring countries while many more are displaced and at risk of losing their lives due to hunger or bad climatic conditions.

It was just in 2018 that the two warring factions agreed to meet at a round table and iron out a way to end hostilities. The serving president Salva Kiir Mayardit and Rick Machar, the head of the opposition and former vice-president on 12 September signed a power-sharing deal

pledging an end to the five-year conflict that has claimed close to 400,000 lives and displaced over one-third of the population of the country.<sup>lxxx</sup>

Looking back at how we got to this conundrum in South Sudan, it would be safe to say that the British administrators that colonized the territory failed to implement a programme of smooth transition that would give each unique ethnicity some level of autonomy within the state. This oversight, thus, made Sudan vulnerable and subsequently forced the secession of the southern part of the country. The British were aware of the South Sudan problem but were lackadaisical in addressing it; it was, therefore, made an African problem that took with it plenty of lives before a solution was reached.

For the South Sudanese that voted overwhelmingly for independence in 2011 and also for many other self-determination enthusiasts, the making of the new state was greeted with pomp and pageantry and many good things were expected to follow. Unfortunately, the celebration did not last, just over two years into independence; civil war broke, throwing the world's youngest country into serious political commotion.<sup>lxxxi</sup>

The civil unrest started when the military troops of the largest ethnic group in the country, the Dinka came head-on with the Nuer people known as the second in population.<sup>lxxxii</sup> Each ethnic group stood behind its leader-the Dinkas were behind Salva Kiir Mayardit while the Nuer gave their unflinching support to Rick Machar.

The South Sudan experience had led some scholars to think that the country was country through the "secession curse" which is akin to "natural resources curse". The world has witnessed many civil wars in resource-rich countries, particularly those in Africa and it then appeared that South Sudan was going through a double-spell bearing in mind that the country is very rich in crude oil; exposing it to foreign influences and interferences.<sup>lxxxiii</sup>

The post-independent South Sudan, therefore, poses the question of the viability and sustainability of self-determination. What lessons are there for self-determination groups in Africa to learn? Are there lessons that could encourage them to push their agendas further or retract and have a second thought? Would internal self-determination be more endearing than an outright secession based on the experiment of South Sudan?

Self-determination arises when a people feel unrepresented or marginalized within a sovereign state, therefore, the bid to always have a bigger and equitable stake in government by a group would continue when they feel it is non-existent. To ensure that the people live peacefully within the polity, the need for people-oriented governance becomes essential. To minimize the possibilities of secession, all peoples must be adequately carried along in the day-to-day running of the affairs of the state.

The political unrest in Cameroon has been attributed as the failure of the central government to allow groups to practice self-determination within the body polity. The people are asking for more participation in government, particularly as it relates to their own circumstances; but the continued denial by the central government has not helped the cause.<sup>lxxxiv</sup> International law recognizes the right of peoples to self-determination, the government of Cameroon should abide by this principle.

One important lesson to draw from South Sudan is the failure of the central government to implement policies of national unity and social cohesion, in Sudan, before to the break-away of South Sudan, the central governments from almost the time of independence have marginalized and subjugated the people from the south, treating them more or less like second class citizens within the country. There were obvious signs that the state was not running an all-inclusive government.<sup>lxxxv</sup>

Self-determination always arises when there are marginalization, exclusion, inequality and unfair distribution of national wealth. It would also arise when there is evidence of religious and cultural suppression.<sup>lxxxvi</sup> The Igbo people of Nigeria agitating for the sovereign state of Biafra are of the school of thought that within the Nigerian state, they are not well represented and have been economically maligned. The same can be said of the groups parading themselves as the Southern Cameroons Independence Restoration Movement in Cameroon; the Oromo Independence Movements in Ethiopia, the Kabyle Movement for Self-Determination in Algeria, and the Mombasa Republic Council in Kenya, are also a few more examples.<sup>lxxxvii</sup>

The lack of a responsible and democratic government in Sudan also precipitated the secession of South Sudan, the lack of consultation and representation of all people by the central government hastened the quest for independence. Therefore, the government was responsible for redrawing its own borders with the secession of South Sudan. This type of inaction is still

prevalent in many countries in Africa and has continued to push groups towards self-determination.

The lack of even distribution of national wealth and as experienced in Sudan was also a strong factor that pushed the people towards self-determination and secession. The government failed to orchestrate a fair system of revenue sharing after oil was discovered in Sudan in 1978, instead, it decided to make a law which facilitated the re-drawing of the north-south borders so as to push all oil revenues accruing from the south to the north, leaving the people in the south with nothing to hold on to;<sup>lxxxviii</sup> this is similar to the Katanga case and some would also add Biafra to that.

The lessons learned from the secession of South Sudan is very important for the political stability of Africa, from the above, it is clear that many African states still suffer from the hangover of colonial indiscretion as they relate to geography and socio-cultural mappings. The lessons here present the key elements that could easily prompt the people to press for self-determination while offering solutions to African governments on how to manage political affairs and resolve secessionist conflicts when they arise.

## CONCLUSION

The principle of self-determination has continued to polarize the academia and has been a difficult topic for policy-makers and politicians all over the world. The events after World War II and the new awareness of the right of peoples to choose their political destiny have altered the international order and continue to reshape the international political landscape. Due to the prevalence of oppressive governments and the absence of equity within many states, particularly in Africa, the people continue to pose the question of self-determination with the intent to secede and form new states.

The relationship between self-determination and territorial integrity is a frenzy one, and under international law, these two principles are laced with ambiguities in terms of their definite interpretations and applications; therefore, allowing various groups to interpret and apply them how they feel best suits them.



These principles are well enshrined in international law, with self-determination well highlighted in the colonial context and placed as a second fiddle to territorial integrity, however, events of recent years have broadened the scope of self-determination beyond decolonization and various international legal texts have come to recognize this phenomenon. In Africa, beyond the colonial context, the independence of South Sudan set a new rule for secession, but one that must be handled with care and interpreted only within the circumstances and events that led to its creation.

With the concept of democracy, it appears that self-determination would continue to form part of revolutionary activities. Sovereign states that understand the pressure a group can cause when not well-represented within a state should understand that when international self-autonomy fails, the group will press for secession as the last resort, just like the experience in South Sudan and what is being witnessed in Eastern part of Nigeria and among the Katanga people of the Democratic Republic of the Congo. The paper also cited the cases of Somaliland and Ambazonia – people from southern Cameroon,

There is no argument that a right to self-determination and secession would not solve every political conflict, and would make some cases worse; but the bright side is that it would make governments sit up and avoid violence that might arise from agitations. While the agenda is to gain more political leverage within a state, a group can demand outright secession if the parent state is not taking such a request seriously; the danger is that these unanswered requests breed civil tension. It took South Sudan five years of arms struggle with the central government before its request was finally answered.

The real danger to peace and security is not always the people's quest for self-determination or secession; it is always the will of the parent state to resist such action with violence and abuse of human rights. Violence and deaths are not always solutions to agitations, the cases of Biafra and Katanga are clear examples; the South Sudan experience that took over 400,000 lives within the span of five years would have also been avoided if the central government refrained from violence and suppression of the oppressed people.

For Africa, the lesson to learn is clear, self-determination and secession will continue to form core debate topics when oppressive governments continue to take charge of the affairs of the

people. South Sudan has offered a proposition to governments in the region on how best they can avoid and/or manage political conflicts arising from self-determination.

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