



THE RIGHT TO SELF-DETERMINATION AND THE MUNICIPAL LAWS OF STATES

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ABSTRACT

This paper interrogates the complex relationship between the international right to self-determination and its expression within the municipal legal orders of states. It examines the tension between the universal recognition of peoples' right to freely determine their political status and pursue economic, social, and cultural development as articulated in the UN Charter and the International Covenants on Human Rights and the domestic constitutional frameworks that often restrict its practical application. Adopting the doctrinal research methodology, the paper analyses how different legal systems reconcile this tension through constitutional provisions, judicial interpretation, and political accommodation, highlighting case studies from both postcolonial and established democracies. Particular attention is given to how self-determination claims intersect with state sovereignty, territorial integrity, and minority rights. By comparing the normative force of self-determination in international law with its implementation or resistance in municipal law, the paper exposes the persistent gap between principle and practice. It concludes that while self-determination has evolved beyond decolonisation to encompass internal dimensions such as autonomy and participation, its effective realisation depends on the willingness of states to harmonise their domestic laws with evolving international norms.

KEYWORDS: Civil Rights, International Community, Municipal, Self-Determination, States.

1. INTRODUCTION

The right to self-determination occupies a central place in contemporary international law, embodying the principle that all peoples are entitled to freely determine their political status and pursue their economic, social, and cultural development. Initially conceived as a decolonization norm, the right has evolved to encompass internal dimensions, including autonomy, participation, and recognition of minority and indigenous identities.¹ Yet, its domestic application remains contentious, as states often invoke sovereignty and territorial integrity to limit its reach. This tension raises fundamental questions about the relationship between international obligations and municipal law. How far can states integrate self-determination within their constitutional frameworks without undermining national unity? ² This paper explores these questions through a comparative legal analysis, assessing how different jurisdictions interpret and implement self-

¹ G Alfredsson, 'The Right of Self-Determination in International Law' in *Minority Self-Government in Europe and the Middle East* (Brill 2019) 3-31; R Bereketab, 'Self-determination and Secession: A 21st Century Challenge to the Post-Colonial State in Africa' (Nordiska Afrikainstitutet 2012).

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² V Gudeleviciute, 'Does the Principle of Self-Determination Prevail Over the Principle of Territorial Integrity?' [2005] 2(9) IJBL (2005) (2) 48-74.



determination claims. It argues that the transformative potential of the right depends on the capacity of municipal law to internalize and give effect to international human rights norms.³

The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of human rights. The implementation of the right to self-determination has varied and has, in most cases, been restricted by the municipal laws of the various states. The scope of its implementation within and by states has often been determined by the type of self-determination being demanded, whether external or internal.⁴ It is also influenced by the level of development that the state has attained. Usually, the perception of the right of self-determination by a developed state will differ considerably from the perception by developing states. This notwithstanding, States have been more receptive and tolerant of a claim by any of their nations or indigenous peoples for internal or economic self-determination. Claims for external self-determination *vis-à-vis* secession have been perceived as a threat to the territorial integrity and sovereignty of the state in question.⁵

In post-colonial international society, claims for self-determination are represented in two forms: either a claim for external self-determination, that is secession, or a claim for internal self-determination, that is, the claim by indigenous peoples for the protection and preservation of economic, social, cultural or linguistic rights and/or the creation of autonomous units.⁶

It can be said that the international community has recognized that a domestic statute or even a constitution which dictates to a people arbitrary conditions on which it will exercise its right of self-determination will be deemed as depriving the people of their right to self-determination; hence the argument that matters of self-determination cannot be within the exclusive jurisdiction of a state. It has also been reiterated that states are prohibited from using force to deny people their right to self-determination. This principle has been expressed in numerous instruments, including Article 2(4) of the UN Charter. The use of force may breach self-determination by either undermining the ability of a people to exist (for example, through acts of genocide) or by compromising the people's ability to access government through violence or threat of violence.⁷ This raises the question of whether, and to what extent, the international community can influence the contents of the

³ A Khan and S Vudathu, 'Significance of International Law in Fostering Stability in an Interconnected World' (Int'l JL Mgmt. & Human (2024) 7 (1) 1907.

⁴ D. Cambou, 'The UNDRIP and the Legal Significance of the Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with A Multidimensional Perspective' in *The United Nations Declaration on the Rights of Indigenous Peoples* (Routledge 2020) 33-49.

⁵ M Pomerance, 'Self-Determination in Law and Practice: The New Doctrine in the United Nations' (Martinus Publishers 2024) Sep 16.

⁶ R Bereketeab, 'Self-Determination and Secession in Africa' (London: Routledge 2016).

⁷ R Pails, 'Self-determination, the Use of Force and International Law: An Analytical Framework' (UTLR 2001) 20 (1) 70-97.



municipal laws of a state in relation to the right of self-determination and a state's method of implementation of that right.

Although the questions cannot be answered with any form of certainty, it must be noted that the controls put in place by the international community, particularly the United Nations, in the form of Committees to oversee the implementation of the right of self-determination, have been wrought with challenges ranging from a lack of funds to outright disregard by the states in question.⁸ The only other achievement recorded in this regard has been actual recognition and indeed incorporation of the tenets of the right of self-determination into the municipal laws of states.

2. INTERNATIONAL PERSPECTIVE ON SELF-DETERMINATION

The Constitution of the United States of America provides binding and effective standards of human rights protection against any arbitrary action of all levels of government. The United States of America, in the document by which it ratified the International Covenant on Civil and Political Rights (ICCPR), declared that the provisions of the Covenant in its Articles 1 through 28 are not self-executing. This means that the Covenant does not by itself create private rights directly enforceable in the courts in the United States.⁹ It can, however, be successfully asserted, claimed and enforced by individuals with the help of the judicial system. It should be noted that Article 1 recognizes the right of all peoples to freely determine their political status, pursue their economic, social and cultural goals and manage and dispose of their own resources. The right of self-determination is, however, set forth in Article IV, Section 4 of the Constitution of the United States, which provides for the guarantee of a democratic form of government in every state. This implies that every state is expected to be governed by popularly elected officials. Similarly, Articles I and II of the Constitution, as amended by the Twelfth, Seventeenth, Twenty-Second and Twenty-Third amendments, and the second clause of the Fourteenth amendment, went further to describe in detail how the national government is to be elected. Hence, the people of the United States are free in law and in practice to determine their political status within the structure of the Constitution.¹⁰

The United States also made provisions for the Insular areas. These are areas which, though constituting an integral part of the US, elect their own local governments and make their own rules.¹¹ This was particularly in line with Chapter XI of the Charter of the United Nations on the declaration regarding non-self-governing territories, which provided that trust territories and non-self-governing territories were to be assisted by their administering states towards the achievement

8 S MSM Omar, *'The Right to Self-Determination and The Indigenous People of Western Sahara'* (Cambridge Review of International Affairs (2008) 21 (1) 41-57.

9 N Jones, *'Self-Determination as voice: The participation of indigenous peoples in international governance'* (Cambridge University Press 2024).

10 D Currie. *'The Constitution of the United States: Primer for the People'* (University of Chicago Press 2000).

11 C Burnett *'United States: American Expansion and Territorial De-annexation'* (The University of Chicago Law Review (2005) 72 (5) 797-879.



of independence.¹² An example of such an area is Puerto Rico, which was one of the largest and most populous of the United States' insular areas. Puerto Rico was acquired by the United States in 1899 after the Spanish-American War. In 1950, the United States Congress enacted legislation which authorised Puerto Rico to organise its own government and adopt its own constitution.¹³ In 1952, through a referendum, they became a free-associated state or commonwealth of the United States. In recent times, though, there have been new movements for complete independence for Puerto Rico.¹⁴

Usually, before the right of self-determination can be exercised in a States a referendum is required to be passed by the people demanding the right. In the case of the breakup of the Soviet Union and Yugoslavia, the constituent units held a referendum before declaring independence.¹⁵ The Declaration on the Guidelines for the Recognition of New States in Eastern Europe and in the Soviet Union spelt out several conditions that must be met before a state can be recognized.¹⁶ It stated that recognition would only be granted to the republic which respected the 'rule of law, democracy and human rights' and which 'guarantees the rights of ethnic and national groups and minorities'. The Arbitration Committee of the International Conference on Yugoslavia made it clear that these conditions implied that any exercise of external self-determination had to be based on the realization of internal self-determination *vis-à-vis* representative democracy.¹⁷

The role of the UN Charter in the interpretation of and indeed clarification of the scope of the implementation of self-determination by states cannot be overemphasized. The Charter of the UN is, by its character, a treaty, therefore binding on its member states. In fact, in the *Expenses case*,¹⁸ the ICJ opined that a state is bound by the provisions of the UN Charter whether or not it has ratified it. This is usually the case in treaties that embody customary practices among states. The right of self-determination can rightly be said to have attained the status of a customary practice among states.¹⁹

¹² Ibid.

¹³ U.S. Insular Areas: Application of the U.S. Constitution <https://apps.dtic.mil/sti/html/tr/ADA331610/> accessed 25 November 2025.

¹⁴ B Brennan, 'Contemporary Democratic Separatist Movements: The Politics of New State Creation by Referendum'. (Doctoral dissertation, University of Illinois at Urbana-Champaign 2021).

¹⁵ M Qvortrup, 'A Brief History of Self-Determination Referendums before 1920' in *Self-Determination in the Early 21st Century* (Routledge 2018) 126-133.

¹⁶ E Wistrich, 'After 1992: The United States of Europe' (Taylor & Francis 2025); R. Rich, 'Recognition of States: The Collapse of Yugoslavia and the Soviet Union' (EJIL 1993) 4 36.

¹⁷ S Janković, 'Internal Self-determination and the Prevention of Secession in International Law' (BRILL 2025).

¹⁸ Certain Expenses of the United Nations (Art 17, (2) of the Charter), Advisory Opinion, (1962) ICJ Rep 151.

¹⁹ F Benziger, 'Self-determination of Peoples in the Context of Supranational Governance', (Doctoral dissertation, Middlesex University 2023).



The United Nations Charter, by its inclusion of the right of self-determination in its Charter and through several of its resolutions, Resolution 1514 and the international covenants, elevated the principle of self-determination to that of a universal right. Article I of the United Nations Charter specifies that self-determination is one of the core purposes of the United Nations.²⁰

2.1 Self-Determination as a Norm of *Jus Cogens*

In the light of contemporary international realities, the right of self-determination qualifies as a norm of *jus cogens*. In the Legal Consequences of States of the Continued Presence of South Africa in Namibia, the ICJ per Ammoun, J opined that it recognised the *jus cogens* nature of self-determination. *Jus cogens* or peremptory norms are rules of international law that permit no derogation and requires obedience at all times.²¹ Norms of *jus cogens* do not need to be consented to before they can be binding on states. In one of the earliest cases on *jus cogens* norms before the PCIJ between the *United Kingdom v Germany*, it was stated that sovereignty cannot be an excuse to derogate from peremptory norms. Under Article 53 of the Vienna Convention on the Law of Treaties, any treaty that conflicts with a peremptory norm is void. The Convention also allows for the emergence of new peremptory norms.²²

Clothing the right of self-determination with the character of a *jus cogens* norm means that it is an obligation owed by the states. This implies that the right of self-determination is a right that states must permit, whether or not they have ratified the instruments establishing the right. What this connotes is that any international or even national act which violates the right of self-determination could be considered void. The activities of the UN and several of its resolutions can be said to have aided the attainment of the status of *jus cogens* by the right to self-determination. The ICCPR and the ICESCR, both expressed under their common Article 1, that the right of a people to freely dispose of their wealth is also a part of self-determination.²³

2.2 Self-Determination as an *Erga Omnes* Obligation

The right of self-determination under the UN Charter and the International Covenants creates an obligation on states that is owed to the international community at large. These obligations under the covenants can be deemed to be obligations *erga omnes* inter parties.²⁴ These are rights and

²⁰V Kattan, 'Self-Determination as Ideology: Ther cold War, the end of Empire, and the making of UN General Assembly Resoilation 1514 (14 December 1960)' in *International Law and Time: Narratives and Techniques* (Springer International Publishing 2022) 441-473.

²¹K A Johnston, 'Identifying the *jus cogens* Norm in the *jus ad bellum*' [2021] 70(1) *ICLQ*, 29-57.

²²S Matsumoto, '*Jus Cogens and the Right to Self-Determination: Falsifiability of Tests*', (Policy Center for the New South 2020) 20. P

²³PCIJ See, A No I (1923).

²⁴A Booley and J V Van Schalkwyk, 'The Legal and Social Complexities Relating to Self-Determination: Internal and External Self-Determination and Obligation *Erga Omnes*' (South African Yearbook of International Law 2019) 22-44.



obligations that States owe to the whole world. In the *East Timor Case*,²⁵ The ICJ held that the right of peoples to self-determination is the same as the to be a right to *erga omnes*. In this case, it was stated that every state has an *erga omnes* duty to recognise self-determination and that, to this end, Australia was in breach of that duty to the people of East Timor, their right to exercise sovereignty over their natural resources.²⁶ A combined interpretation of the two characteristics attached to the right of self-determination, i.e. *jus cogens* and obligation *erga omnes*, means that it is an obligation owed by states to their citizens and the international community from which no derogation is allowed.

2.3 Self-Determination and the Principle of Territorial Integrity

It was the concern for territorial integrity that led the makers of the instruments of self-determination to insist on the maintenance of colonial borders at independence. The principle of territorial integrity is elaborated in Article 2 of the UN Charter, where it states that ‘all members shall refrain in their international relations from the threat or use of force against the territorial integrity or independence of any state...’²⁷

There is a certain tension between the right of self-determination and the principle of territorial integrity. The right of self-determination implies that a people should be allowed to choose even their own territorial boundaries. In the Friendly Relations Declaration, it was reiterated that the right of self-determination should not be construed as authorizing or encouraging any action which will dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in accordance with the principles of equal rights and self-determination of peoples...²⁸

The right to secession, which is one of the remedies which can be sought by oppressed peoples in the exercise of their right to self-determination, is a violation of the territorial integrity of a state.²⁹ Therefore, although self-determination is recognized as a principle of international law, its exercise should not violate or threaten the territorial integrity of sovereign states.³⁰ The independence of people should therefore occur only with the consent of the sovereign state, as it happened in the case of South Sudan.

²⁵ *The East Timor Case (Portugal v Australia, 1995)*, Judgement [1995] ICJ, Rep 90.

²⁶ Ibid.

²⁷ V Gudeleviciute, ‘Does the Principle of Self-Determination Prevail Over the Principle of Territorial Integrity?’ [2005] 2(1) *IJBL*, 48-74.

²⁸ *Portugal v Australia* (advisory opinion) [1995] 1CJ rep 90, 102

²⁹ P Carley, ‘Self-Determination: Sovereignty, Territorial Integrity, and the Right to Secession’, (US Institute of Peace 1996).

³⁰ Ibid.



There is also the clarification made by the Special Rapporteur of the Sub Commission on Prevention of Discrimination and Protection of Minorities, 1980, that for the avoidance of misunderstanding, if the national unity and territorial integrity claimed are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-determination, the subject people are entitled to exercise with all the consequences thereof, their right to self-determination.³¹

3. CONTEMPORARY ISSUES OF SELF-DETERMINATION

Self-determination was applied in the decolonisation era as a right of colonised people to freedom from colonial domination. During the years immediately following the Second World War up to the 1990s, virtually all colonised peoples attained their independence or at least attained one of the forms of self-determination as specified in Resolution 1541.³²

Claims for the right of self-determination, however, did not cease with the end of colonization, they instead broadened into new domains. In recent times, self-determination has been posited to apply to the population of a state, either as a single people or as several different peoples extending to all areas of their life: cultural, economic and social.³³ In its advisory opinion in 2004 in the case of *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,³⁴ the ICJ detached the right of self-determination from the decolonization context and declared that the Palestinian people had a right to self-determination. The ICJ concluded that the construction of the wall infringed on the right of the Palestinian people to self-determination and that by the construction of the wall, Israel breached its duty to respect the right. The wording of the international instruments establishing the right of self-determination, attaching the right to ‘all peoples’, supports the position. Self-determination applies to all people beyond the colonization context in the affirmative.³⁵

4. THE RIGHT OF SECESSION

Beyond decolonization, one of the most popular applications of the right of external self-determination is to oppressed peoples. Usually, the issue with this application is its remedial implication of secession. States have been wary of recognizing the right to secede because of its threat to the territorial integrity of the already existing nation state, and that recognizing secession

³¹ Henrique Santos Costa de Souza: *The Principle of Self-determination and the Right of Territorial Integrity: a Legal and Political Issue*: available at www.mundorama.net: accessed on 14th June, 2020.

³² M Koskenniemi, ‘*National Self-Determination Today: Problems of Legal Theory and Practice*’ (ICLQ) (1994) 43 (2) 69-241

³³ U G Oyibodoro, P I Gasiokwu and P C Aloamaka, ‘*The Ambiguity and Complexity of the Right to Self Determination: A Legal and Political Perspective*’ [2024] 5(2) *IRJMS*, 78-663.

³⁴ Advisory Opinion, ICJ GL No. 131, (2004) ICJ Rep 135.

³⁵ J Summers, ‘*Peoples and International Law: How Nationalism and Self Determination Shape a Contemporary Law of Nations*’ (Martinus Nirihoff. 2007) 167.



claims could ignite additional internal state conflicts and increase the number of self-determination claims asserted by minorities in other states.³⁶

International law does not specifically grant parts of sovereign states the legal right to secede unilaterally from their parent state; it also does not provide an explicit denial of the right. The Canadian Supreme Court stated in the case regarding the secession of Quebec that: The international law right to self-determination generates at best, the right to external self-determination...where a people is oppressed... or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to the right to external self-determination because they have been denied the ability to exert their self-determination internally.³⁷ Therefore, because international law places a lot of emphasis on the territorial integrity of nation-states, it also recognizes the fact that secession is, at present, one of the modes of implementing self-determination. States, in certain circumstances, have the duty to recognize and legitimize a demand for secession.³⁸

According to the current principles of state practice, most recently used to analyse the secession of Bosnia-Herzegovina, Croatia and Macedonia, minorities within states can secede as a means to gain self-determination when they meet the following six criteria:³⁹

1. The existence of a distinct self-defined group within a state that overwhelmingly supports separatism
2. A legitimate claim to territory;
3. A pattern of systemic discrimination or exploitation against a sizeable, self-defined minority;
4. The central government's rejection of compromise solutions.
5. The prospect of the territory and people concerned becoming a viable state, and
6. The effect of granting or refusing self-determination on regional and international peace, the effectuation of authoritative governmental processes and respect for human rights and the impact on both regional and global value processes.⁴

Yet another requirement is the existence of an area that is easily severable. This is necessary because while a people may be the majority within an area, self-determination cannot compromise the rights of minorities living in the region. It is, however, trite in international law that secession should be

³⁶ N Brando and S. Morales-Gálvez, 'The Right to Secession: Remedial or Primary?' *Ethno politics* (2019) 18 (2) 18-107.

³⁷ Ibid.

³⁸ D J Javier Leon, 'Minority Rights: Status and Scope' available at <www.javier-leon-diaz.com>, accessed 12 June 2025.

³⁹ D Kofman, 'Self-Determination in a Multi-ethnic State: Bosnians, Bosniaks, Croats and Serbs' in *Reconstructing Multiethnic Societies: The Case of Bosni-Herzegovina* (Routledge 2018) 41-72.



an option of last resort, justified by serious and consistent governmental violations of human rights, discrimination and other grave injustices.⁴⁰

In the issue of Kosovo, the first response of the international community to the systemic and continuing discrimination, suppression and violations of the rights of the Kosovo people by Serbian authorities was not to immediately grant Kosovo's claims for self-determination through secession and independent statehood. The initial response was the pressuring of the Yugoslavian government to sign a unilateral agreement requesting the Serbian military to pull out of Kosovo. When this agreement did not stand for long, and the conflict persisted and even escalated, the United Nations Security Council passed Resolution 1244, which provided for the UN administration of Kosovo and the autonomy of Kosovo within the Federal Republic of Yugoslavia⁴¹. In 2006, the final status of Kosovo was to be determined and 'supervised independence' for Kosovo was proposed. Though this proposal was rejected by Russia, the Kosovo Assembly on 17 February 2008 unilaterally declared independence. Consequently, in 2010, the International Court of Justice was called upon, on the request of Serbia, to give an advisory opinion on whether the unilateral declaration of independence by the Kosovo people was in line with international law. In its advisory opinion, the ICJ stated that the declaration did not violate international law.⁴² For secession to be valid, there is also the requirement that there must be an agreement between the seceding state and the parent state. South Sudan is usually characterized as a legitimate secession because it happened, though after a protracted struggle, with the consent of the parent state. The case of South Sudan also strongly establishes that the requirement of respect for the territorial integrity of a state is no longer an absolute and unconditional one.⁴³

5. INDIGENOUS PEOPLES AND THEIR RIGHT TO SELF-DETERMINATION

The second area of the application of self-determination in contemporary society is the internal right of self-determination. The internal right of self-determination basically provides for a people to be able to have a full voice within the legal system of the already existing state, control over their natural resources, preservation and protection of their culture, language and distinct way of life.⁴⁴

⁴⁰ J P Harris, 'Kosovo: An Application of the Principle of Self-Determination' Human Rights Brief, (1999) 6 (3) 28-30.

⁴¹ G Wilson, 'Self-Determination, Recognition and The Problem of Kosovo' (NILR) (2009) 56 (3) 45-81.

⁴² Ibid.

⁴³ K Legide, 'The 'Consent of the Affected State' Requirement during Internal Secession in Federal Systems: Navigating Competing Rationales and Challenges' (IJMGR) (published online ahead of print 2025), <https://doi.org/10.1163/15718115-bja10235> . accessed 25 November 2025 1-58.

⁴⁴ M Murphy, 'Indigenous Peoples and the Struggle for Self-Determination: A Relational Strategy', (CJHR 2019) 8 (67) 54.



The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on 13 September 2007. This Declaration has been stated to be the most comprehensive universal statement of the aspirations and rights of the world's indigenous peoples." The declaration establishes a universal framework of minimum standards for the survival, dignity and well-being of the world's indigenous peoples.' It spells out the fundamental collective and individual rights specific to indigenous peoples. It prohibits discrimination against them and advocates for their effective participation in matters that concern them. Notable among its provisions are its articles 33-36, which elaborate on the exercise of self-government and its articles 37-46, which provide for the measures to give effective implementation to the exercise of indigenous rights according to international human rights obligations.⁴⁵

Indigenous people, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their local affairs.⁴⁶ Several countries, including the United States of America, have claimed that the right to internal self-determination does not include the right of independence or sovereignty over mineral resources. Nigeria can be said to stand where America does because the control of mineral resources in its territory is expressly vested in the state.⁴⁷

It is argued, however, that this position as regards internal self-determination and control of mineral resources should not be the case. The situation of the Ogoni people of Nigeria is illustrative of this fact.⁴⁸ Granted, the Constitution of the Federal Republic of Nigeria 1999 (as amended) expressly states that the 'state shall direct its policy towards ensuring that the material resources of the nation are harnessed and distributed as best as possible to serve the common good' (section 16(2)(a)), the state's method of doing this harnessing however may not always be in the interest of the people from whom it is being harnessed. In most cases, even the government does not give the people the opportunity to deliberate with the oil companies before these companies are granted licences to explore oil in their regions.⁴⁹

The Ogoni people of Nigeria are known to traditionally depend on agriculture and fishing. However, since the discovery of crude oil in the region in 1958, the Ogoni land has been plagued by degradation caused by the oil exploration activities on their land, which has consequently

⁴⁵ UN General Assembly, *United Nations Declaration on The Rights of Indigenous Peoples* (UN Wash 2007) 12 1-8.

⁴⁶ F Panzironi, 'Indigenous Peoples' Right to Self-Determination and Development Policy (faculty of law, University of Sydney 2006) 53(1) Article 43.

⁴⁷ Ibid.

⁴⁸ A U Musa and I. Saminu, 'The Challenges of the Movement for the Survival of Ogoni People (MOSOP) in Nigeria: From Environmental Movement to Movement for Self-Determination' [2024] 7(1) JRCS IIUM 97-113.

⁴⁹ P C Aka, 'Sovereignty and Self-Determination in a Non-Constitutionalized Setting: Nigeria in Comparative Perspective' in *Navigating the Tension Between Sovereignty and Self-Determination in Postcolonial Africa: Blueprints for the Mid-century* (Cham: Springer Nature Switzerland 2024) 173-260.



drastically reduced the agricultural viability of the land. Spillages have also caused oil to seep into their rivers, causing death to the marine life and seriously affecting the availability of safe water. Through the activities of the Movement for the Survival of the Ogoni People (MOSOP), they have sought a remedial address of the issue to no avail.⁵⁰ In 2012, the Ogoni people declared their political autonomy, but this declaration was decried by the then Governor of Rivers State, Rotimi Amaechi, who described it as an act of treason, hence its non-recognition to date.

Other universal instruments relating to the rights of indigenous peoples are the International Labour Organisation Convention No 107 Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, and the International Labour Organisation Convention No 169 on Indigenous and Tribal Peoples.⁵¹ These Conventions represent a notable contribution to the body of norms relating to indigenous peoples and their claims for self-determination. The ILO Convention 169 covers a wide range of subjects, including provisions on health, education and social security. It recognises, for the first time in international law, rights over traditionally owned or occupied lands and the natural resources connected to these lands. It promotes the highest degree of self-government and autonomy possible within nation-states, and establishes obligations by state parties to "consult the people concerned, through appropriate procedures and in particular through their representative institutions whenever consideration is being given to legislative or administrative measures which may affect them directly". This Convention has, overall, helped to define indigenous rights within national jurisdictions.

In the *Endorois case*, the African Commission made a detailed ruling which among other things affirmed that the Kenyan government had violated the rights of the Endorois people under Article 8, 14, 17, 21 and 22 of the African Charter on Human and Peoples Rights which are the right to free practice of religion, right to own property, right to education, freedom to dispose of wealth and natural resources and the right to development respectively. Drawing from this decision, indigenous peoples can therefore claim a violation of any of the above-stated rights as grounds for a demand for the right of self-determination.⁵²

In the case of *Social and Economic Rights Action Centre (SERAC) v Nigeria*,⁵³ the African Commission declared that governments had the duty to protect their citizens not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts perpetrated by private parties.

⁵⁰ A U Musa and I. Saminu, 'The Challenges of the Movement for the Survival of Ogoni People (MOSOP) in Nigeria: From Environmental Movement to Movement for Self-Determination' (JRCS IIUM) (2024) 7 (1) 97-113.

⁵¹ ILO Convention 169, article 6(1).

⁵² International Labour Conference. 40th session. 16 June 1957. entered into force 2 June 1959, International Labour Conference, 76th session, 7 June 1989, entered into force in September 1991

⁵³ (2001) AHRLR 60.



6. IMPLEMENTATION THROUGH THE ESTABLISHMENT OF AUTONOMOUS UNITS

Autonomy is generally defined as the free choice of one's own acts without external compulsion. It is the devolution of certain powers from a central government to an autonomous entity.⁵⁴ An autonomous unit is that part of a state's territory that is authorized to govern itself in certain matters by enacting laws and statutes, but without constituting a state of its own. It could be considered a form of self-government within an already existing state, what differentiates it from self-government properly so called is that it is given with or without the promise of independence in the long run. The creation of autonomous units is a useful tool in halting conflict. It is worth noting that autonomy can only be granted to people by a democratic and representative government.⁵⁵

The case of Nigeria, as regards the ownership of mineral resources, is an indication that a democratic government does not necessarily mean that the rights of indigenous people are being respected. The Nigerian Petroleum Act expressly states that the ownership of all mineral resources in Nigeria is vested in the federal government.⁵⁶ To this end, autonomous units should not be created merely to fulfil all righteousness; they should go beyond the appearance of it to an actual implementation and institutionalization of what autonomy should entail. It must not be forgotten, however, by the indigenous peoples seeking self-determination and the states from which it is sought, that the goals should not be to acquire power, but rather to achieve the freedom and right to live quality lives as human beings.

7. CONCLUSION

The importance of the right to self-determination in the decolonization process cannot be overemphasized. Despite the seeming uncertainty in its scope and content, the right of self-determination was one of the leading principles that propelled the process of decolonization and saw numerous Western colonies attain their political independence. This, however, was only possible by its inclusion in the United Nations Charter and its subsequent expansion through the numerous United Nations practices and resolutions and the help of other international instruments like the African Charter on Human and Peoples' Rights.

Claims for self-determination have remained the subject of continuing debate. The right of self-determination in this new context is being claimed by indigenous peoples for either secession or better control of and participation in their local affairs. Even though this new context is barraged with its own set of problems, its existence as a right accruing to indigenous peoples cannot be

⁵⁴ G Dworkin, 'The Nature of Autonomy' [2015] 2(1) *Nordic Journal of Studies in Educational Policy* 28.

⁵⁵ H Spector, 'Autonomy and Rights' in *The Routledge Handbook of Autonomy* (Dec 30 (Routledge 2022) 313-323.

⁵⁶ R Suso, 'Territorial Autonomy and Self-Determination: Opportunity and Willingness cases from Bolivia, Niger and Thailand', (2009), 12-13.



contested, and through practice in different states, and with the help of international instruments, contemporary rights of people to self-determination have come to stay.

To be sure, the right of peoples and nations to self-determination remains as relevant as ever. It still embodies claims for independence and for autonomy. It has, however, been limited by the need to maintain both national and international peace and security. So long as governments continue to question the right of self-determination and refuse to give effect to the claims because of the above-stated factors, conflicts will continue to be witnessed in the states, and grave injustices will continue to be meted out on indigenous peoples in already existing states. The respect for territorial integrity and the principle of *uti possidetis juris* cannot continue to be absolute.

The effort of the United Nations so far in the promotion of the rights of indigenous peoples through its Resolutions, especially the Declaration on the Rights of Indigenous Peoples, must be applauded. It is, however, recommended that the declarations of the United Nations be made more definite. The Declaration on the Rights of Indigenous Peoples toed the line of the Charter of the United Nations by creating a lot of ambiguity as to the content and ownership of the right. The declaration is also not clear on what qualifies a people to the claim of the right to self-determination.

Accordingly, it is suggested that the African Court on Human and Peoples' Rights play a more proactive role in outlining the characteristics of the people to whom the right of secession and autonomy attaches and the processes that must have been fulfilled before a people can claim any of the rights, and the procedures to be followed by a people so qualified to either secede or attain autonomy. This will not only ensure that the right is not abused by the people seeking it, but also that its ambiguity is not exploited either to the detriment of the people seeking the right or the state from which the right is sought. Moreover, it is recommended that, just as Canada did with the Quebecan people, the Ogoni people of Nigeria should be granted internal self-determination with enhanced autonomy and the right to decide how their mineral resources are to be explored. There is also the compelling need to ensure the full implementation of the decision of the African Commission in the case of *Social and Economic Rights Action Centre v Nigeria*, the African Commission requiring Nigeria to undertake a comprehensive clean-up of the Ogoni lands and rivers damaged by oil exploration. The current activities of the Hydrocarbon Remediation Project (HYPREP) appear only to be scratching the surface of the massive degradation of the Ogoni lands and rivers. The African Union and UNEP can take more decisive action to ensure the full implementation of the directives of the African Commission on Human and Peoples' Rights as they pertain to the Ogoni people in Nigeria and the Endorois people in Kenya.