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AN ASSESSMENT OF THE RIGHTS OF INDIGENOUS PEOPLES OF BIAFRA
TO SELF-DETERMINATION UNDER INTERNATIONAL LAW

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ABSTRACT

This paper explores the rights of indigenous peoples under international law with particular focus on the rights to self-determination of the Indigenous Peoples of Biafra in Nigeria. It is common knowledge that the movement for secession by the said Biafrans have recently resurfaced in national and international discourse. This paper therefore, evaluates the relevant regional and international human rights laws and apply the provisions thereof, to the explanation of the propriety of the rights of the Indigenous Peoples of Biafra to secede from the current national configuration of Nigeria. It argues that, the indigenous peoples of Biafra (IPOB) cannot invoke the contemporary international laws for the sake of gaining autonomy from the present Nigerian sovereign nation-state because, the IPOB lacks the basic criteria for nationhood. The paper concludes that, the highest form of rights that IPOB can achieve are well entrenched in the Nigerian constitution hence, the task of gaining international backings with which to pursue and attain self-rule is probably impossible for the foreseeable future. We recommend amongst others that; the current map of Biafra should be redesigned in that, it is deficient which was one reason for the fall of Biafra in 1970; Also, that, the IPOB urgently require a working board of trustee that will act as mouthpiece at local and international level.

Keywords: Biafra; Nigeria; Human Rights, Peoples' Rights; IPOB, Indigenous Peoples; Self-Determination; Secession.

1. CONCEPTUAL FRAMEWORK

Biafra is a notion that has lately created some definitional difficulties among scholars and practitioners.¹ There is no single synonym for the word “Biafra”. The word became prominent at the period of the scramble for Africa² names were given to various parts of Africa to ease identifications. The coastline that runs across Calabar to Warri was named as Bight of Biafra which later changed to Bight of Benin and now known as Gulf of Guinea. Shortly after Nigeria gained independence in 1960, the natives of the present day South East Nigeria were fused with the present-day Niger Delta (also known as the South-South) as Eastern region of Nigeria with administrative head quarter at Enugu. Hence, the Eastern region had the Bight of Biafra as its shoreline. In 1966, the Eastern region attempted to break off from Nigeria to carve out a separate sovereign country known as ‘*The Republic of Biafra*’, a name coined from the Bight of Biafra, the consequence of the attempted secession led to a bloody civil war.

Biafra has since become an identity of the predominantly Igbo ethnic nationality of Nigeria also known as the IPOB. The Biafra struggle thus, is synonymous with the struggle of the Igbos for equity, justice and fairness within the Nigerian State. Oloyede³ puts it vividly, that, “the continued marginalization of the indigenous people of Biafra in the scheme of things in the Nigerian nation has continued to place Biafra on the international focus.”

The problematic issues with the Biafra project are partially fuelled by the inclusion of non-core Igbo ethnic territories in its geographical map. As of 1966, all the ethnic peoples in the former Eastern region were geographical placed in the Biafra map for the purpose of secession struggles. After the defeat of the Biafra agitators in the civil war, the Nigerian Federal Government redesigned the map of the country by creating several states from the former three regions. The successive creation of states, disconnected the core Igbo states of Anambra, Imo, Abia, Ebonyi, Enugu from the Niger Delta (South-South) States of Akwa-Ibom, Bayelsa, Cross-Rivers, Delta, Edo and Rivers. It becomes very complex for the non-core Igbo states to fully identify with the Biafra project. One constantly given reason is that, the Niger Delta states are comprise of several independent indigenous peoples with their various unique native customs, tradition and heritage and, an attempt to be coerced into Biafra would be a violation of their rights to self-determination. It is important to infer that, the same reason contributed to the fall of the Biafra Republic in 1970. As of 1966 and currently, the map of Biafra arguably shows that the territory comprises of nearly 77,310 square kilometres of land with land borders with Nigeria and Cameroon. The shoreline is the Gulf of Guinea in the south.

2. THE THRESHOLD OF SOVEREIGNTY AND SELF DETERMINATION

Sovereignty is a legal and political term which is used to describe the rights and powers of institutions and/or nation-state to control its affairs free from external interference. It is thus, a purposeful concept which distributes superlative authority to a prevailing institution or governing unit.⁴ Parpworth⁵ observes that sovereignty is the power of legislativeness that is

¹ See generally, AO Omaka “The Forgotten Victims: Ethnic Minorities in the Nigeria – Biafra War, 1967-1970” (2014) *Journal of Retracing Africa*, Vol. 1, Issue 1 at 25-40 available at <http://www.encompass.eku.edu/jora/vol.1/iss1/2>.

² During the colonisation of Africa by the Europeans between, the colonial powers attempted to prevent intra-European clash over Africa thus, they convened in Berlin, Germany – The Berlin Conference of 1884 – 1885 in which African territories were shared among the Europeans.

³ O Oloyede “Biafra in the Present: Trauma of a Loss” (2009) *African Sociological Review*, Vol. 13(1)

⁴ Jennings, W. Ivor *The Law and the Constitution* (London: University of London Press, 1st ed., 1933); R.T.E. Latham *The Law and the Commonwealth* (Oxford, Oxford University Press, 1949); Geoffrey Marshall, *Constitutional Theory* (Oxford, Oxford University Press, 1971); *Jackson v. Attorney*

unimpeded by any legal limit. Precisely, the concept of sovereignty has been at the forefront of political and legal discourse in international law for more than a century.

The progress and growth of the applicability of the socio-legal jurisprudence of international law hinges on sovereignty and its interconnectedness with the growth of the system of states. Sovereignty became a relevant terminology before the industrial revolution in Europe when the term was first used by Monarchs when invoking their powers as the governing forces within their own States or territorial boundaries. At the outset of industrial growth in Europe, States commenced active engagements with one another to foster commercial transactions. It became necessary for each nation thereof, to exert its sovereign autonomous status over its goods and services hence, it was characteristic for monarchs of individual state and territory to exert their credentials to protect the independent powers of their states, and to assure its citizens of adequate protection from the outsider. In the exercise of sovereign powers, each sovereign territory views itself harmoniously as sovereign nation, therefore, the links between such self-governing nations had to be legitimately one of equality and independence.

“On the international [arena], the sovereignty of the “sovereign” State is not a truly international sovereignty, but a transposed internal concept of sovereignty - a description of a legal status possessed in some other (i.e., the internal) legal order.”⁶

National sovereignty is often linked to nationalism and constitutionalism of states. It is primarily a constituent of productive control of ultimate power in a progressively constructed internal legal context, whereby the interest reclines in categorising the status of that authority inside the nation-State. Nevertheless, peripheral sovereignty constitutes some degrees of repudiation of the existence of peripheral sovereign power, with consequential burden on the neutrality and, distinctiveness as the legal setting for international relations. For example, in Nigeria, on the face of it, is politically and legally equal to and independent of all other similar sovereign nations. The international personality is that of Nigeria as an independent country, is represented collectively by the President as the head of State. Therefore, all internal affairs such as security, defence and legislation are generally regarded as being done by the National Assembly for and on behalf of the President for the entire country. However, the sovereign powers of Nigeria do not lie in the President but on the citizens with powers to elect the president as custodian of the sovereign powers.

Based on the foregoing explanation of the concept and applicability of sovereignty, it is therefore, correct to conjecture that, for an existing nation-state to achieve an internationally recognised political standing, such a state must have sovereignty. In essence, every sovereign state or territory must possess certain attributes without which the status of sovereignty cannot be proclaimed. The attributes are:

- (a) Population consisting of willing citizens that are not coerced or compelled to form a State or to enter into a union of co-existence.
- (b) Undisputable territorial land ownership. A sovereign state cannot exist in astral perception. It must be realistic hence, for a people to claim sovereign status, there must be an existing landmass to which the people lay their claims. They must be confined within an area that is

General [2005] UKHL 56 at [81] per Lord Steyn; *Harris v. Minister of the Interior* 1952 (2) SA 428(A).

⁵ Parpworth, Neil (2002) ‘Constitutional and Administrative Law’, London: Butterworths Press, p.61

⁶ J H Jackson “Sovereignty-Modern: A New Approach to an Out-dated Concept” (2003) *The American Journal of International Law* Vol. 97 at 782-802.

not under conflict or subject to conflict of ownership interest of others. Such landmass must exist in a well-defined and ascertainable location.

- (c) A sovereign country must attain international recognition. Such recognition must be such that international law is able to capture the very essence of it. Typically, the sovereign state must be recognised by the United Nations and similar international agencies and community of nations.
- (d) A prospective or existing sovereign state must be self-governing or if a prospective sovereign state, it must possess the machineries capable of administering the sovereign entity without external assistance.

By all possible yardsticks of assessment, the prospective state of Biafra seems to fall significantly short of the basic ingredients to qualify as an independent sovereign nation. Nonetheless, it does possess a few features namely: territory (the five core-Igbo states), and a relatively sizeable population.⁷

In the past few decades, several indigenous groups across the world have tried and are trying to invoke the provisions of international laws such as the African Charter⁸ and several other International Covenants⁹ to proclaim the third-generation rights for political autonomy. Nevertheless, the efficacy and enforceability of international legal with regards to self-determination is somewhat complicated. It is important to state that, the United Nations Charter,¹⁰ emphasises the crucial nature of right to self-determination human rights that should be promoted and strengthened. Yet, the importance attached to these rights are subject to political manipulations.¹¹ Basically, self-determination cannot be attributed to an individual but to the rights of a group of people who are of distinctive and unique culture, and of common heritage and co-habiting within a geographical proximity.¹² Self-determination is not classified under absolute rights but, are qualifying rights.¹³ In reality, to invoke the rights to self-determination, they claimants must establish that the rights to self-determination is a group right and, the beneficiaries must be easily ascertainable.

Two other attributes must exist for self-determination to be successfully invoked *inter alia*: Firstly, internal self-determination is ascertainable where the claimants' social and cultural growth subsists without external intrusions as contained Article 5 of the ICERD.¹⁴ Secondly, there should be a realistic chance that external aspect of self-determination will be possible, this means that, the claimants can guarantee that all peoples shall have the rights to freely determine their political standing and their position in the international community based upon the code of equal rights and typified by outlandish conquest, authority and manipulations.¹⁵ Intertwined

⁷ O O Okeke (ed.) *Issues in African Politics*, (Data Globe, Nigeria 1971).

⁸ Article 20.

⁹ Common Article of ICCPR and ICESCR.

¹⁰ 1945, Article 1(2).

¹¹ HG Espiel "The Right to Self-Determination: Implementation of United Nations Resolutions." A 'Study Prepared by Hector Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities' (1980, E/CN.4/Sub.2/405/Rev.1).

¹² United Nations Charter 1945 Article 1(2); United Nations Declaration Article 3 and common Article I ICCPR and ICESCR.

¹³ L Buchheit *Secession: The Legitimacy of Self-Determination* (1978).

¹⁴ International Convention and the Elimination of All Forms of Racial Discriminating (ICERD) 1963.

¹⁵ A Agbaje, Suberu and Hault *Nigeria Federalism and Political Restructuring in Niger*, Spectrum Books, 1998; Agreement on granting of independence to colonial people and countries, 1960. However, this was enshrined few months after the purported independence of Nigeria; thus, the agitators can still rest on the doctrines of non-retroactive and retrospective nature of law.

with the two features – internal and external facets of self-determination is the crucial question of territorial integrity.

Even where the peoples' seeking to assert self-determination passes all the aforementioned hurdles, international law respects the sovereignty and territorial integrity¹⁶ of an existing independent state hence, the IPOB already exist within the Nigerian nation and, the territorial integrity of Nigeria is protected by international law. Hence, it will be very difficult for IPOB intended secession from Nigeria to gain international law backings except where there is evidence to show that, the IPOB continuous existence in Nigeria will lead to their collective death or something more terrible will possibly happen to them that may negatively impinge on their collective well-being.

3. THE LEGALITY OF THE IPOB MOVEMENT

3.1 *The IPOB Rights Under the African Charter on Human and Peoples' Rights*

The rights of indigenous people are well entrenched in international laws. In accordance with international law, four concepts are used interchangeably namely: "Tribe peoples, native peoples, minorities and indigenous peoples."¹⁷ Kingston explains that, indigenous people derive their standing and rights from their significant connection with inherited lands and, their rights to lands are communal in nature. The collective nature of communal indigenous lands has been recognised by Article 1 of the United Nations Declaration on the Rights of Indigenous Peoples General Assembly 2007 (Resolution 61/295). It provides that:

"Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."¹⁸

The IPOBs are a pre-colonial group of peoples of same heritage therefore, can invoke the protections of international laws. For example, Miguel Alfonso Martínez Cobo, the UN Special Rapporteur explains that: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as

¹⁶ Article 2 of the Charter of the United Nations.

¹⁷ Kingston, Kato Gogo (Unpublished) *Pollution and Environmental Responsibility In Petroleum Extraction In The Niger Delta Of Nigeria: Modelling The Coase Theorem (The Kingston Theorem)*; Being A thesis submitted in partial fulfilment of the requirements of the University of East London, England, United Kingdom (2014), for the degree of Doctor of Philosophy degree in *Energy and Natural Resources Law*.

¹⁸ Adapted from Kingston, Kato Gogo, *ibid*

the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”¹⁹

IPOB seems to qualify to invoke the rights for protection pursuant to Article 1 of the International Labour Organisation Convention (ILO) Number 169 which listed the features of indigenous peoples as:

“(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; and, (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”²⁰

It must be pointed out that, despite the evidence that shows that the Indigenous peoples of Biafra have met the above requirements for protection under international law, Nigeria is not bound by some crucial international laws. For example, on 13th September 2007, Nigeria was one of the 11 countries that abstained from the United Nations General Assembly vote on the Declaration on the Rights of Indigenous Peoples.²¹

Nonetheless, Nigeria is a member of The African Commission on Human and Peoples’ Rights (Commission) and a subscriber to the African Charter on Human and Peoples’ Rights. Article 19 of the Charter provides: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.” Also, Article 20 provides protection for “unquestionable and inalienable right to self-determination.”²² Article 20(2) entitles “colonized or oppressed peoples” to possess the rights to seek and attain freedom from “bonds of domination by resorting to any means recognized by the international community.”

Erroneously, The African Charter on Human and Peoples’ Rights failed to provide a definition of the word “peoples”. We can only infer that the IPOB qualify as “peoples” within Article 20 thus, are entitled to exercise their collective rights to self-determination under the Charter. However, in accordance with the African Charter, self-determination of indigenous peoples is justiciable as an economic social or cultural right or a civil and political right. This

¹⁹ Paper of the UN workshop on data collection and disaggregation for indigenous peoples, New York, 19th to 21st January 2004 (PFII/2004/WS.1/3) citing the UN (1984) ‘Study of Discrimination Against Indigenous Peoples; A Report Prepared by Special Rapporteur, Miguel Alfonso Martínez Cobo’, UN Doc. E/CN.4/Sub.2/1986/Add.4. Footnotes adapted from Kingston, Kato Gogo, *ibid*.

²⁰ *ibid*

²¹ (A/RES/61/295)

²² Article 20(1)

was illustrated in *Katangese Peoples Congress v. Zaire*,²³ where the African Commission on Human and Peoples' Rights ("the Commission") held that, the inalienable right of self-determination under Article 20 of the African Charter on Human and Peoples' Rights (ACHPR) is justiciable.²⁴ Secondly, in the case of secession of the separatist movement of Casamance in Senegal,²⁵ the Commission rejected the claim of the separatists for lacking "pertinence" in that the disputes should be handled within the context of "the cohesion and continuity of the people of the unified Senegalese state in a community of interest and destiny."²⁶ In both the *Katangese and Casamance* cases, the Commission did not define the concept of "peoples" or "peoplehood."²⁷

3.2 *The United Nations Declaration on Rights of Indigenous Peoples*

As previously mentioned, in the event that, the IPOB is able to sustain its claim of indigenous status within the Nigerian State, it will thus, qualify to invoke the backings of the *United Nations Declaration on Rights of Indigenous Peoples*. Article 3 provides that,

"Indigenous 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."

By the wordings of the Article 3, it implies that, where a people are able to obtain international recognition as indigenous people, they can determine their whether they remain autonomous or remain as a part of a large nation-state. This is further re-affirmed by Article 4 which provides that, indigenous people can exercise "their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." In the same direction, the Charter provides that, "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."²⁸ Above all, and probably most significantly, Article 6 emphatically states that, "every indigenous individual has the right to a nationality." However, the contemplation of the Charter is that, indigenous people have the rights to be citizens of a sovereign country. This does not necessarily imply that, indigenous peoples have the right to embark on rebellion, treason and volatile act designed to accomplish secession goals.

²³ No. 75/92 (African Commission for Human and Peoples' Rights 1995) in the 8th Annual Activity Report of the African Commission on Human and Peoples' Rights (1994-1995). ACHPR/RPT/8th, Annex VI (1995) (hereinafter *Katangese Peoples' Congress*).

²⁴ ACHPR 1981, entered into force I 1986.

²⁵ African Commission Report on the Mission of Good Offices to Senegal of the African Commission on Human and Peoples' Rights Tenth Annual Activity Report (1996-1997) Annex VIII reprinted in Murray & Evans 530.

²⁶ *ibid* at 537.

²⁷ SA Dersso "The Jurisprudence of the African Commission in Human and Peoples' Rights with Respect to Peoples' Rights" (2006) *African Human Rights Law Journal*, Volume 6 No. 20, 333-357. Cited as (2006) 2 AHRLJ 333-357

²⁸ See: Article 5

3.3 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁹

The United Nations International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly on December 19, 1966. It became effective on March 23, 1976. The convention was designed to guarantee the protection of civil and political rights of human. It re-affirms and align with the Universal Declaration on Human Rights (UNHR) jointly as authoritative International Bill of Rights. Therefore, it requires state parties to abide by the provisions and emphasises both conventions as the International Bill of Rights by which everyone within the territory of the state parties should honour. In accordance with the International Bill of Rights, indigenous peoples around the world can prosecute acts of violation such as the infringement of the rights to self-determination, in the United Nations Security Council.³⁰ IPOB can only avail itself of the opportunity to commence such actions where and if it meets the qualifying requirements earlier discussed and, if it can prove any infringement of those rights by the Nigerian government.

4. THE BORDERLINE BETWEEN SELF-DETERMINATION AND SECESSION

Self-Determination in the context of politics and law is the unchallenged fortitude and freedom of a group of persons to make decisions concerning their own statehood and their own government without coercion or interference by external powers. On the other hand, secession is an act by which a group of persons extract itself and its geographical territory from a larger political, legal and social entity. Secession³¹ can be achieved either by force of violence or by politically negotiated agreement.³² In some instances, the threat of secession can be strategically applied in order to gain some vital objectives by the agitating territory. Whilst both concepts, that is, self-determination and secession are very different, both are two sides of the same coin.

Secession is often necessitated by perceived injustice on the one hand, and the zest for autonomy on the other hand. In Nigeria, there is consistent agitation by some of the indigenous peoples for autonomy and self-rule due to what they, the indigenous peoples including the IPOB are perceiving as injustice and unfair political, social and economic scale of the federal power-structure. Despite the constitutional provisions in Chapter IV of the 1999 Constitution which safeguards human rights, and discourages discrimination. The IPOB are displeased with what it described as Yoruba-Hausa intimidation with consequential perception of low representation in upper level of federal governance; discriminatory access to justice; victimisation; discriminatory share of natural resources benefits; degradation of cultural and language rights; and, regular

²⁹ Ibid, above note 59.

³⁰ IPOB and MASSOB have petitioned the United Nations and ICC, available at <http://www.netelegrphonline.com>, number 25, 2016.

³¹ According to Theodore Christakis, "Secession", is "the term *secession* designates the unilateral withdrawal from a state of part of its territory and population with the will to create a new state. It is commonly admitted today that, outside the context of decolonization and situations of military occupation, there is no "right" to create an independent state. "External self-determination" was granted to colonized peoples only on the basis of the "salt-water" test. But this does not mean that secession is prohibited." Christakis further argues that, Secession is easier when the territory is a colony of an external power. Hence, the factual standard for the advent of a new nation, distinctive of any colonial setting, is the value of efficacy: if the secessionist unit is able to accomplish the criteria of nationhood, a new nation is created. Online adapted, at: www.oxfordindex.oup.com/retrieved on 27 June 2017

³² Secession is an act meant to create a new sovereign state from an existing territory by force or by threat of force. See: M Kohen (ed.) *Secession: International Law Perspective* (2006) (Cambridge: Cambridge UP) Maffai, Maria Clara 'The Case of East Timor Before the International Court of Justice' – Some (1993) at p.375.

assault on religious rights. The IPOB is of the firm belief that, they have the rights to safeguard their collective dignity through secession by which their sovereignty can be sustained.³³ It is evidently clear that the right to self-determination is protected under international law but the desire to engaged in activities leading to secession is not protected under international law therefore, may be illegal.

5. THE IMPROBABLE HURDLES AGAINST THE IPOB

We acknowledge that, perhaps, nothing is impossible in time and space. However, from the available evidence herein discussed, it seems unlikely that, the IPOB quest for a separate nation-state and sovereignty is unlikely to succeed. For example, in *Re-Secession of Quebec*,³⁴ the three issues were raised for determination as follows:

- (a) Whether under the Constitution of Canada, can the National Assembly, legislature of government of Quebec affect the secession of Quebec from Canada unilaterally?
- (b) Whether international law give the National Assembly, legislature or government of Quebec the right to affect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?
- (c) Whether in the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

The Supreme Court of Canada held that the Canadian Constitution does not give Quebec the right to secede and become an autonomous nation-state. It went further to emphasise that the principles of self-determination under international law has not made provisions for secession as a right. The court thus, held that there were no conflicts between the Canadian Constitution and international law. The court also failed to provide for the third question in the sense that, there were no evidence to support the claims that Quebec as unique peoples are victimised and oppressed by the government of Canada. In specific terms, the court held that the peoples of Quebec are not authorised to unilateral secession. It is likely that, the Indigenous peoples of Biafra (IPOB) may likely face the same outcome as that of Quebec in the event that they litigate on the basis of exercising their rights to secede from Nigeria.

The core-Igbo states are currently well represented in all corridors of the federal government, for example, Imo State alone has 5,825 personnel³⁵ in the federal civil service which is the state with the highest number of persons in the federal civil service. Igbos are also well represented in the Judicial Service of the federal government and in all other relevant agencies. It is therefore, unlikely for the IPOB to substantial the allegation of oppression which is a key variable for secession to gain international backings. The five core-IPOB states receive annual remittance and project allocations from the federation account in proportion to the

³³ See, ILO/ACHPR *Nigeria: Constitutional, Legislative and Administrative Provisions Concerning Indigenous Peoples* (2009) International Labour Office Switzerland and Information and Documentation Centre, African Commission on Human and Peoples' Rights, Banjua, the Gambia.

³⁴ In the matter of a Reference by the Governor-in-Council concerning certain questions relating to the secession of Quebec from Canada, as set out in Order in Council P.C. 1996-1947 (sic), dated the 30th day of September, 1996. Indexed as: Reference re Secession of Quebec. 1998 Can. Sup. Ct. Lexis 39 (hereinafter *In Re Secession of Quebec*).

³⁵ Adapted from the 2015 Nominal Roll of the Bureau of Public Service Reforms, Abuja.

principles of need and, the principle of equality of states. Also, there is no restriction on IPOB citizens from contesting into any of the elective offices in the federal setup.

It doubtful that, the IPOB grounding of their struggle on the provision of the UN Declaration on Indigenous Peoples' Rights, will ever yield any success because, the UN instrument require voluntary compliance and not legally binding. The UN Declaration does not provide the mechanism for its enforcement. In this discourse, we have explained that several international legal instruments including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), generally referred to as the International Bill of Human Rights identifies the peoples' right to self-determination. It is important to note that, the ICCPR provides for judicial enforcement which can only be brought to bear by initiating a communication form of petitions in accordance with the Optional Protocol. In *Lubicon Lake Band v. Canada*³⁶ the Committee held that an individual cannot initiate a communication for violation of the common Article 1 of the ICCPR and ICESCR. The committee also held that the First Optional Protocol made the provision for procedure in respect of petitions for the violations of individual rights as contained in Part II of the Covenant in Articles 6 to 27 only. Thus, if a group wish to enforce their collective rights to self-determination, they can do so, only through their countries' communication procedures.

6. CONCLUSION

The rekindling of the struggle for a sovereign state of Biafra by IPOB has reached international proportions, but of chaotic proportion. The arrest and detention of Mr. Nnamdi Kanu (the self-acclaimed leader of IPOB) brought Biafra to international limelight through the electronic media. The tenacious crackdown on IPOB by the federal government of Nigeria followed by the alleged extra-judicial killings of IPOB supporters has led to outcry by human rights activists and NGOs.

The major of the IPOB is the setting up of Radio Biafra and a few social media network platforms by which they call for external self-determination and for the break-up of Nigeria. On the face of it, the current agitation by the IPOB appears better organised and purposeful but, the task of secession is not an easy one. We have explored and put forward the arguments to illustrate that the IPOB cannot successfully back the argument that the Igbo nationality is facing repression and oppression from the federal government thus, cannot secure the support of the international organisations such as the United Nations and the European Union.

Based on the foregoing, we opined that the highest right to self-determination that the IPOB can attain under the current circumstances is internal self-determination. Internal self-determination will only confer the same rights that the core-Igbo states and citizens are already entitled and receiving within the sovereign Nigerian nation. It is unlikely that, any rational international organisation and legitimate foreign entities shall ever support IPOB in their efforts to break away and split up the sovereign nation and territorial integrity of Nigeria. Also, for IPOB to have any reasonable chances of success, it has to prove that the Biafra territory and its peoples are facing extreme conditions and that the government of Nigeria has continued to worsen their human rights and collective safety. The IPOB are not a colony under Nigeria but, an integral part of the country therefore, they are not a people under colonial rule of alien domination, hence cannot invoke the right to independence under that international law

³⁶ *Chief Ominyak and Lubicon Lake Band v. Canada*, Comm. No 167/1984 (United Nations Human Rights Committee 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990).

principle. For this reason, the maxim of *uti possidetis* which provides that colonial borders should not be altered is inapplicable.³⁷

In accordance with the principles of the case of *Katanga*,³⁸ the right to self-determination is difficult to prove where there is no evidence of massive violation of human rights under the African Charter. In *Katanga*,³⁹ it was held that several methods of governance or self-determination are available including but not limited to federalism, unitarism, confederation, and self-determination which can be exercised by the aggrieved indigenous peoples provided that any choice made conform with current national sovereignty and territorial integrity of a State Party.⁴⁰ Secession is a costly transaction, it took about 30 years of civil war for Eritrea to secede from Ethiopia. Also, it took South Sudan about 20 years of civil war with Sudan before international intervention aided the settlement of the conflict by two-states solution. The attempt by Biafra to secede in 1966-1970 cost lives and material resources yet failed to achieve Biafra State. The Nigerian Constitution⁴¹ forbids any act of treason and any act of secession or external self-determination. In section 2(1) it provides *inter alia*: "Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria." Section 2(2) provides that, "Nigeria shall be a Federation consisting of States and a Federal Capital Territory." We argue that the IPOB has a tough task of sustaining the claim that the union between Nigeria and the IPOB has irreversibly broken down. The IPOB need to build a strong case to buttress its argument in order that, the world bodies can intervene as it were the circumstances in South Sudan, Eritrea, Katanga and Bangladesh.⁴²

7. RECOMMENDATIONS

The IPOB as an organisation is akin to a pressure group seeking for an independent home country. However, the group appears to lack the basic organisational structure. It thrives on public opinion through media information system which currently achieves spontaneous violence. For secession and autonomy to be achieved, such an organisation ought to have a working structure such as a board of trustee. A board of trustee of any non-profit organisation is usually responsible for launching and piloting the crucial purpose and mission of the organisation. Such a trustee board is usually responsible for safeguarding the vision and values of the organisation by developing long-term strategies and designing the programme of actions. The current deficiency of not having a working board of trustee is hampering the organisation's ability to engage in negotiations with the Nigerian government. Also, IPOB cannot be able send acceptable representations to the European Union, UN, and other international fora where they, the IPOB ought to approach for needed supports.

There is also the problem of territorial integrity. IPOB dwells on the 1966 Map of the defunct Republic of Biafra which is a subject of disagreement. The map includes some States from the Niger Delta and, the majority of the citizens of the States are against the IPOB. Should IPOB continue to lay claims to those States, conflicts are likely to arise which will derail the

³⁷ Article 4(5) of the Constitutive Act of the African Union and AHG/RES16(1) on Border Disputes Among African States.

³⁸ *Ibid, op cit*

³⁹ *Ibid, op cit*

⁴⁰ 266/03 *Kevin Mgwanga Gunme et al/Cameroon* 27 May 2009, decided on merits, concerns the African Charter on Human and Peoples' Right (ACHPR) – violations suffered by the people of Southern Cameroon emanated from the UN plebiscite of 11 February 1961 that determined the political future of Southern Cameroon.

⁴¹ The Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴² See generally, AA Mazrui 'The African State as a Political Refugee: Institutional Collapse and Human Displacement' (1995) 7 *International Journal of Refugee Law* 23.

secession efforts of the IPOB. No state in the Niger Delta should be coerced to join the hypothetical nation of Biafra.

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