EXPLORING THE MEANING AND PLACE OF SELF-DETERMINATION VIS-À-VIS NIGERIAN SOVEREIGNTY UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) *[1]

Abstract
The topic of this article is: Exploring the Meaning and Place of Self-Determination vis-à-vis Nigerian Sovereignty under the Constitution of the Federal Republic of Nigeria, 1999 (As amended). The aim of the research is to review and ascertain the position of the Constitution of the Federal Republic of Nigeria, 1999, on the interrelationship between the international law rule of self-determination and the established principle of state sovereignty. In other words, the aim of the research is to ascertain whether or not there is constitutional provision on right to self-determination and if so to what extent that rule can be exercised in the context of the Nigerian sovereignty as provided by the Constitution. The methodology employed in the research is doctrinal using primary and secondary resources. Study found that there is no specific constitutional provision on self-determination except by inference through the statute. Moreover, although the Constitution itself clearly declared that sovereignty belongs to the people from whom the government derives its own, the same Constitution has taken away the power of exercising that popular sovereignty by making the provisions thereof non-justiciable and thereby subjecting that popular sovereignty to state sovereignty. Thus, our recommendation is that the Constitution should be amended to reflect the issue of self-determination as it is central to the survival of any people and to remove the issue of non-justiciability regarding the exercise of the popular sovereignty.

Keywords: Sovereignty, indivisibility, indissolubility, non-justiciability and self-determination.

1. Introduction:

There is no gainsaying the fact that the international law concept of self-determination often tends to be at loggerheads with two other major international law principles of state sovereignty and territorial integrity. Thus, every sovereign state in the exercise of its sovereign power often guards jealously its territorial integrity. Nigeria, as a sovereign entity, is not left out in this attitude of guarding its territorial integrity jealously. This jealousy is clearly expressed in the Constitution of the country. This notwithstanding though, the concept of self-determination also enjoys a place of prominence in the international arena and thus any sovereign nation which seeks to enjoy international acceptance among the comity of nations cannot gleefully trample upon the rule of self-determination which clearly is a major issue of human rights protection and enjoyment. The question is on how to strike a balance between the principle of sovereignty and the rule of self-determination especially in view of the Nigerian domestication of the African Charter on Human and Peoples' Rights. This is the core of this research paper.

2. Definition of Basic Terms

Sovereignty

The term 'sovereignty' is a derivative of the Latin term, 'superanus' which in turn was derived from the French word, 'souverainete'. This term was originally meant to be the equivalent of 'supreme power' and was said to have originated in the 16th and 17th centuries when the Europeans were looking for a secular basis for the authority of the emerging nation-states as against the out-phasing divine reign of kings. Thus, at the time of its emergence, sovereignty was defined in the mould of the theory of absolutism- a political system in which there is no legal, customary, or moral limit on the governmental power as was developed by some European political thinkers to defend the divine right of kings. That theory was based on the assertion that kings and queens represent God's authority and that they are not subject to the laws that govern ordinary people. However, following the emergence of the new nation-states, the political thinkers of the period sought to establish a secular source of power for those in authority based on the law of nature as against that of divine connection. But contrary to the old-held concept of sovereignty, recent developments have shown that such understanding of the concept can no longer be sustained. Indeed, the global trend now is to define the term in the mould of state responsibility to protect all people under its territory in general and to protect its citizens in particular. This development came at the heels of the present international prominence being accorded to the concept of human rights and the need to ensure that priority is given to the dignity and the protection of human lives as against the hitherto upheld State's right to do as it wishes with the lives of its citizens.

Indivisibility

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The term 'indivisibility' is a noun form of the adjective 'indivisible' which simply means 'not capable of being separated into parts.' As we shall see later below, the 1999 Constitution has employed the term 'indivisible' in its description of the nature of the Nigerian political entity meaning that the country is incapable of being separated into parts.

Indissolubility

The term 'indissolubility' is a noun derivative from the adjective 'indissoluble' which means 'incapable of being dissolved, broken or undone.' This is also a term employed by the 1999 Constitution in the description of the nature of the Nigerian political entity entailing that the entity cannot be dissolved or broken into parts.

Non-justiciability

The term, non-juticiable is the opposite of the word 'justiciable' which simply means 'able or required to be tried in a court of law.' By virtue of section 6(6) (c) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended), all the provisions under chapter two of the Constitution entitled, 'Directive Principles of State Policy', are declared to be 'non-justiciable' i.e. they cannot be litigated upon or tried in court. Section 14 of the Constitution which provides for the sovereignty of the people i.e. 'popular sovereignty' is within that chapter two as against 'state sovereignty' provided under section 2(1) of the Constitution.

Self-determination

The term 'self-determination' has acquired so many meanings but all linked to the idea of freedom of choice or will. In general usage, the term has both group and individual aspects. To that extent, it may refer to the right of a 'people' or a 'person' to freely decide his or their political, economic, social or cultural future or to generally decide their fate without any external interference. In this light, Mia Abel has noted that, 'The quintessential definition of self-determination is having control over one's own life.'[2] However, in a more strict and technical legal sense, self-determination is an international law concept which has to do with the right of a 'people' or a 'group of persons' as distinct from that of individual persons. Notwithstanding Cassese's assertion that the wording of the legal instruments on self-determination does not offer any concrete indication as to what it really means,[3] and the earlier observation made by Starke that, 'There still remains some difficulty as to what the expression 'self-determination' itself means or includes,'[4] a look at the various definitions of the concept may throw some light on the meaning of the term. Thus, according to Oxford Advanced Learner's English Dictionary (8th ed.), the term 'self-determination', inter alia, refers to 'the right of a country or a region and its people to be independent and to choose their own government and political system'. For the Merriam Webster's Collegiate Dictionary[5], the term, among other things, refers to the 'determination by the people of a territorial unit of their own future political status.' On its part, the BBC English Dictionary defines the term as 'the right of a country to be independent instead of being controlled by a foreign country, and to choose its own form of government.' Finally, the Black's Law Dictionary (10th ed.) gives a more technical, albeit rather too limited, definition of the term as, 'The right of each culturally homogenous country to constitute an independent state.'

It is worthy of note that the above definitions basically cover the general conception of the term as it relates to the right of a group of people to freely decide or choose those to govern them and the nature of their governance. However, to better understand the exact meaning and significance to which the term has acquired under the contemporary international law, a look at the opinions of some learned authors and jurists will be germane at this point. To begin with, the International Court of Justice has described self-determination as, 'the need to pay regard to the freely expressed will of peoples'.[6] In his own definition of the term, Blay has stated that, 'Defined in its simplest terms, self-determination is the principle by virtue of which a people freely determine their political status and freely pursue their economic, social and cultural development. Self-determination is in essence the right of self-government.[7] Again, whilst Brownlie has defined the term as, 'the right of cohesive national groups ('peoples') to choose for themselves a form of political organization and their relation to other groups'[8], Ediberto has stated that it is, '[t]he right of a people or a nation to determine freely by themselves without outside pressure to pursue their political and legal status as a separate entity'.[9] What one can make out from all the above definitions is that self-determination is concerned with

[2] M Abel, *Is There a Right to Secession in International Law?* published online on May 18, 2020 and accessed on 15th July, 2020.
[3] A Cassese, 'Political Self-determination – Old Concepts and New Developments', in Cassese, A., ed., *UN Law/Fundamental Rights: Two Topics in International Law* (Sijthoff and Noordhoff, Alphen aan den Rijn, 1979), pp.137-65 at 143-4.
[4] J G Starke, *Introduction to International Law*, 9th Edition, (London: Butterworths, 1984), at pp.119-121.
[5] Frederick C Mish, et. al., *Merriam Webster's Collegiate Dictionary, (Tenth Edition)*, (Massachusetts: Merriam Webster Incorporated, 1993), p. 1008.
[6] *14 Western Sahara (Advisory Opinion), ICJ Reports (1975)*, p.33, para.59.
[7] K N Blay, 'Changing African Perspectives on the Right of Self-Determination in the Wake of the Banjul Charter on Human and Peoples' Rights' (1985), *J.A.L., Vol.29, No.2,* p.147.
[8] Brownlie, *Principles*, at p. 599.
[9] R Ediberto, 'Reconstructing Self-Determination: The Role of Critical Theory in the Positivist International Law Paradigm', 53 *U. Miami L. Rev*. 943 (1999), at p.944

the right of a group of individuals acting collectively as a unit to freely decide on the affairs concerning their present and future political, economic and social life as well as their relationships with other groups or entities.

3. Sovereignty Under the Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The position of Nigeria on the concept of self-determination especially in reference to the external aspect of the concept (secession) vis-à-vis the principle of sovereignty may be seen as clearly provided in sections 1(2) and 2(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), hereinafter referred to as CFRN. According to section 1(2) of the CFRN: 'The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution'. On the other hand, section 2(1) of the Constitution provides that, 'Nigeria is one indivisible and indissoluble Sovereign State to be known by the name of the Federal Republic of Nigeria.' The above provisions do not leave anybody in doubt as to the intendment of the Constitution. It clearly prohibits taking over the political governance of the country or any part of the country by any person or group of persons except in accordance with the provisions of the Constitution. In other words, the Constitution itself provides for the manner for the taking over of the governance of the country or any part thereof namely by way of democratic governance expressed by periodic elections. Thus, according to section 14 of the Constitution:

(1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.
(2) It is hereby, accordingly, declared that –
(a) Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;
(b) The security and welfare of the people shall be the primary purpose of government; and
(c) The participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.

By the above provision of section 14 of the Constitution, sovereignty is declared to belong to the people whom are to exercise same by ensuring a participation… in their government. Although section 14 of the Constitution falls under the Fundamental Objectives and Directive Principles of State Policy set out in Chapter two of the Constitution which has been declared non-justiciable by virtue of section 6 (6) (c) of the Constitution, the issue of democratic governance by way of periodic election is an exception to the non-justiciability provided in the said section 6 (6) (c). And this democratic governance by way of periodic elections has been well-defined under the Electoral Acts operative at different times in the country. Yet, this periodic electoral governance is only in respect of making political decisions as to the internal governance of the country. It has nothing to do with any decision regarding the external political status of either the entire country or any part thereof. According to Falkowski, 'The people, and not the King, are the source of all legitimate governmental power'. This assertion by Falkowski is quite in line with and perfectly agrees with section 14 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) reproduced above. However, whether the above provision of the Constitution - that sovereignty belongs to the people of Nigeria - have been complied with positively or in the breach, is quite a matter of great debate especially in view of the recently-concluded general elections in Nigeria. This is more so bearing in mind the volume of allegations of electoral fraud that we have witnessed in this country over the years. In fact, it is much in doubt whether, in view of the current Nigerian experiences, the 'security and welfare of the people' is still 'the primary purpose of government'. Perhaps, one of the major factors responsible for the current agitations for self-determination among various ethnic groups in Nigeria is the failure of successive Nigerian governments to positively and conscientiously observe the letters and spirit of the provisions of section 14 of the CFRN, 1999 (As Amended).

4. The Question of Nigerian Indivisibility and Indissolubility under the Constitution

The Constitution by declaring in section 2(1) that the country is 'one indivisible and indissoluble sovereign state' has thereby raised the 'virtue' of Unity as an important Nigerian ideal. This issue of the unity of Nigeria has been a subject of hot discussion among scholars and statesmen alike. A few instances of this debate may suffice here. In his cerebral work, *The Trouble with Nigeria*, Achebe had cause to surmise that:

> The most commonly enunciated Nigerian ideal is unity. So important is it to us that it stands inscribed on our coat-of-arms and so sacred that the blood of millions of our countrymen, women and children was shed between 1967 and 1970 to uphold it against the secessionist forces. I think it was Mr. Ukpabi Asika who defined Nigerian unity as 'an absolute good.' How valid is this notion of unity as an absolute good? Quite clearly it is nonsense. Unity can only be as good as the purpose for which it is desired. Obviously, it is good for a group of people to unite to build a school or a hospital or a nation. But supposing a group of other people get together in order to rob a bank. Their unity is deemed undesirable. Indeed, lawyers will call their kind of unity by the unflattering name of conspiracy. Therefore, we cannot extol the virtues of unity without first satisfying ourselves that the end to which the unity is directed is unimpeachable.[10]

[10] C Achebe, *The Trouble with Nigeria*, (Enugu: Fourth Dimension Publishers, 1983) pp.14-15.

After analyzing the other twin virtue of faith as contained in the Nigerian coat-of-arms, Achebe went further to assert that:

> [V]irtues' like unity and faith are not absolute but conditional on their satisfaction of other purposes. Their social validity depends on the willingness or the ability of citizens to ask the searching question. This calls for a habit of mental rigour, for which unfortunately, Nigerians are not famous.[11]

Achebe then probed further to know the reason why the founding fathers of the country were rather, 'drawn in the first place to concepts like unity and faith with their potentialities for looseness?' He wondered why we did not think, for example, of such concepts as Justice and Honesty 'which cannot be so easily directed to undesirable ends?' He reasoned that, 'Justice never prompts the question: Justice for what? Neither does Honesty, or Truth.' And made the scathing poser: 'Is it possible that as a nation we instinctively chose to extol easy virtues which are amenable to the manipulation of hypocrites rather than difficult ones which would have imposed the strain of seriousness upon us?'[12] The above was Achebe's probing search for the true meaning of unity as enshrined in the Nigerian Constitution as well as the coat-of-arms. There is no doubt that the issue of Nigerian unity has been touted by successive political rulers as a matter of first priority. Yet, it does appear that the purpose for that unity has not been clearly defined. In making reference to the assertion accredited to former president Muhammed Buhari that 'Nigeria's unity is settled and non-negotiable', Segun Akande wrote as follows:

> After returning from a lengthy medical leave in August, 2017, President Muhammed Buhari held his first presidential address in months. Under gleaming lights and gaze of millions of Nigerians, Buhari said, 'Nigeria's unity is settled and non-negotiable.' They were strong words, emphatic in their purpose. But they were so familiar that they have turned stale- too simple to capture the reality of the British commercial experiment that became Nigeria.[13]

Now, the first question to ask here is: if Nigerian political rulers believe so much in the unity of the country as they claim, what really are they doing to preserve and protect that unity? The second corollary question is: is Nigeria's unity actually non-negotiable as Buhari claimed or do we really need to negotiate our unity in order to make it stronger? Finally, what is even the reason for that unity? Is it to achieve progress and development or is it to achieve backwardness and repression of some components of the country? In apparent reaction to the claim of President Buhari that Nigeria's unity is 'non-negotiable', former President Olusegun Obasanjo warned that:

> You cannot preach unity and indivisibility of the country on TV and all your actions point to discrimination against the components of the country. It is hypocrisy. It is as dangerous as it is foolhardy. Let those who preach unity walk the talk and stop open discrimination of their countrymen. History has shown that you cannot decree peace. You cannot decree unity. You cannot force any group to belong to a country by force. It may work for a time. But never sustainable.[14]

Towing the same line as Chief Obasanjo, Senator Adeyeye, a one-time member of the upper chambers of the National Assembly, had cause to lament that:

> Although I am an incorrigible believer in the unity of Nigeria, I have taken extensive time to discuss the pros and cons of Nigerian unity so as to debunk the oft-repeated fallacy that Nigerian Unity is non-negotiable. Those who tout this arrant superstition do so because of their mistaken ideology that the greatest purpose of nationhood is unity. The truth, of course, is that whenever being 'united' becomes inimical to the peace and progress of a country, its citizens should summon the wisdom and courage to peacefully disunite. The Unity of any country must never be an end unto itself. Rather, it should be a tool for strength through dynamic synergism, peace through necessary accommodations and progress through voluntary cooperation. In a multi-national enterprise such as the Nigerian Republic, unity must not be canonized as an end unto itself. Rather, it is a means to an end. Therefore, for us to properly contemplate and solve Nigeria's seemingly intractable problems, we must first overcome the Gale of False Assumptions about National Unity.[15]

The above, I believe, is enough recipe for contemplation on the Nigerian unity. However, just recently, in a somewhat simple but touchy language, Bishop Kukah, re-echoed the above opinions when he declared as follows:

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[11] Ibid., at pp.15-16.
[12] Ibid., at p.16.
[13] S Akande, 'How a Meeting in Ghana Changed Nigeria Forever', published online on 21st September, 2017.
[14] C Onuegbu, 'WHY IGBOS ARE ANGRY WITH NIGERIA: OBASANJO'S RESPONSE ON BBC'S HARDTALK, published online on September 17, 2017 via www.linkedin.com or www.twitter.com/RNNetwork1.
[15] Senator Adeyeye, 'Averting the Approaching Gale', Being A Speech presented to the National Association of Oduduwa Students and Youths, posted on facebook on 19 August, 2019 at 10:59, available at https//m.facebook.com/story.php?story_fbid=1320913868076506&id=391789070988995_tn_=)

> I have been accused of making divisive comments rather than appealing to citizens for unity. Again, unity is based on facts. This is like an abusive husband; you cannot convince a victim of domestic abuse to form unity with her husband unless he changes his character. So, unity is not just a bland word; if certain things are absent, there will not be unity.[16]

It follows then that whether the above declaration of former President Buhari that Nigeria's unity is 'non-negotiable' is a statement of fact, law or of hope and desire is left for the future to decide. This is bearing in mind the avalanche of voices which have in the recent time been calling for the restructuring of the country for which the government has largely ignored so far. Therefore, inasmuch as Nigerian unity may be a worthy goal, it does appear that Nigerian politicians have more often than not used that term as a control mechanism to achieve their political interest while at the same time refusing to address the problems being faced by the people which is what has been aggravating the agitations for the exercise of their right to self-determination.

The above notwithstanding, it is stating the obvious that CFRN, 1999 (As Amended) has decreed the absolute unity of Nigeria when it declared in section 1 that Nigeria shall be one indivisible and indissoluble entity. Therefore, in view of the provisions of the Constitution, it is clear that there is no clear constitutional mechanism provided for the exercise of the right to self-determination with respect to the external aspect of that right except, perhaps, the presumption of such provision under section 14 of the Constitution to the extent that if 'sovereignty belongs to the people', then they thereby reserve the right to decide the nature of government under which they are to be governed- whether to belong to the government as presently constituted or rather to choose an entirely new government. But assuming that the 'people' even decide to exercise their power of 'sovereignty' as enshrined in section 14 of the Constitution as they may seem right, they will suddenly discover that the said section 14 of the Constitution falls under the provisions of the Constitution which have been declared 'non-justiciable' by the selfsame Constitution as we saw above.

Additionally, even when such power is exercised by the people by means of electioneering as a way of expressing their sovereignty, the question as to how democratic such election has been in terms of being free, fair and transparent, is a different question altogether. This question has generated a lot of turmoil or furors in the country in the recent times. And such political question, though beyond the scope of this research paper, is indeed one of the major yardsticks for measuring the level of social justice in the country as contained in section 14 of the Constitution. This is simply because, whenever the people, to whom the 'sovereignty belongs', feel that the manner of the democratic governance in the country no longer guarantees social justice, they may begin to agitate for other alternatives as a means of expressing their right to self-determination as guaranteed to them by the same Constitution, perhaps not by way of going through the court process which the Constitution itself has debarred them from exploring, but rather by other visible means which will eventually tell the government that the governed are no longer enjoying their governance. This is especially so whenever the government of the day can no longer provide for the people the 'primary purpose of government' namely: 'security and welfare.'

5. Self-Determination under the African Charter on Human and Peoples' Rights (Ratification and Enforcement), Act, Cap. A9, Vol.1, LFN, 2004:

Pursuant to section 12 of the CFRN, 1999 (As Amended), the African Charter on Human and Peoples' Rights became domesticated by the National Assembly of Nigeria as The African Charter on Human and Peoples' Rights (Ratification and Enforcement), Act.[17] By virtue of that domestication, the Charter has become part and parcel of our legal corpus. By Articles 19 and 20 of the Charter,

> 19. 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.
> 20(1) All peoples shall have the right to existence. They shall have unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
> (2) Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
> (3) All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

By virtue of Article 20(2) of the Charter reproduced above, it is clear that both 'colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community'. However, in the case of *Abacha v. Gani Fawehinmi*[18], although the Supreme Court of Nigeria held that this Charter by virtue of the domestication became a law with international flavour and as such

[16] M H Kukah (Bishop), 'Current System Suffocating Nigerians', published online by the Nigerianlawyer, edited by Unini Chioma, on February 24, 2022.
[17] *Cap. A9, Vol.1, LFN, 2004.*
[18] *(2000) 6 N.W.L.R. (Pt. 660) 228 at 289.*

supersedes every other domestic law, it excluded the Constitution as one of those domestic laws. Thus, where any of its provisions conflicts with the Constitutional provisions, such provision shall be void to the extent of the inconsistency but the case is not the same with respect to other domestic laws. As the apex court put it:

> No doubt Cap. 10[19] is a statute with international flavour. Being so, therefore, I would think that if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation…. But that is not to say that the Charter is superior to the Constitution as erroneously, with respect, was submitted by Mr. Adegboruwa, learned Counsel for the Respondent.[20]

Later on, in 2010, the Supreme Court had another opportunity to pronounce on the status of an international Convention vis-à-vis a domestic legislation. Thus, in the case of JFS Investment Ltd v. Brawal Line Ltd & Ors,[21] the apex court per Adekeye, JSC, held as follows:

> I agree with the reasoning therefore that an international agreement embodied in a Convention such as Hague Rules is autonomous and above domestic legislation of the subscribing countries and the provisions cannot be suspended or interrupted even by agreement of the parties (italics ours).

From the above, the big question will be whether the Constitution qualifies as one of such 'domestic legislation'? If it does, is the recent case of JFS Investment Ltd conflicting with or reversing the earlier case of *Abacha v. Fawehinmi*? In other words, it is not quite clear whether or not the apex court meant to include the Constitution as part of its definition of the 'domestic legislation' which it referred to. If the court meant to include the Constitution in that categorization, then it would mean that the court has laid down a new precedent different from its position in Abacha's case. But if not, then it means that the status quo is still maintained. If the latter is the case, it then means that, not minding the wide provisions of Articles 19 and 20 of the Charter, the Constitutional provisions reproduced above will still supersede the Charter provisions and as such is bound to prevail in the face of any conflict with the Charter by virtue of section 1(3) of the Constitution. But if the former is the correct interpretation, then it simply means that the provisions of international legal instruments including the 1966 Human Rights Covenants as well as the African Charter on Human and Peoples Rights will supersede the provisions of section 1(3) of the 1999 Constitution (As Amended).

In view of the foregoing, it is quite unclear as to what may be the decision of the Supreme Court if it is confronted with the specific interpretation of Articles 19 and 20 of the African Charter on Human and Peoples Rights. Therefore, until this issue is finally decided by the apex court, it will remain unsettled as to the position of the apex court regarding the external aspect of the right of self-determination. However, judging from the present atmosphere in the country, it may be safe to surmise that it will be a big surprise if the apex court will ever go against its earlier decision in Abacha v. Fawehinmi.

6. The 1999 Constitution Contrasted with Some other Constitutional Provisions

As is clearly shown from our discussion under unit 3 above, there is no specific constitutional provision on the exercise of the right to self-determination except perhaps by inference with the provision on ensuring the participation of the people in the governance of the country under section 14 of the Constitution which the Constitution itself has declared non-justiciable. This is in contrast to the Constitution of some other countries where there is a specific constitutional provision on right to self-determination. In those constitutional provisions, the requirement is that such constitutional provisions must be strictly complied with. Although some writers have strongly argued against constitutional provision for self-determination, Allen Buchanan is one of those who have expressed a different opinion. According to him, there are numerous advantages for making provisions for self-determination in the Constitution of a state. There are some instances of such constitutional provisions. Thus, according to Article 39 of the new Ethiopian Constitution of 1995, there is a constitutional recognition of not only the self-determination of nations, nationalities and peoples within the country, but also their right to secession. The said Article 39 entitled, 'Rights of Nations, Nationalities, and Peoples' provides in paragraphs (1) and (4) thus:

> 1. Every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession.
>
> ……..
>
> 4. The exercise of self-determination, including secession of every nation, nationality and people in Ethiopia is governed by the following procedures: (a) When a demand for secession has been approved by a two-thirds majority of the members of legislative council of any nation, nationality or people; (b) When the Federal Government has organised a referendum which must take place within three years from the time it received the concerned Council's decision for secession; (c)

[19]Now Cap. A9, Vol. 1, LFN, 2004.
[20] *Abacha v. Fawehinmi (supra) at 289*.
[21] (2010) LPELR- 1610 (SC).

> When the demand for secession is supported by a majority vote in the referendum; (d) When the Federal Government will have transferred to the people or to their Council its powers; and (e) When the division of assets is effected on the basis of a law enacted for that purpose.[22]

The above clearly indicates that while the Ethiopian Constitution has provided for a clear constitutional mechanism for the expression of the right to self-determination, the Nigerian Constitution is rather silent on that matter even while at the same time declaring that sovereignty belongs to the people.

Other Constitutional provisions on self-determination include those of the former USSR. Thus, before the collapse of the USSR, the Russian Constitution, with regard to the Union Republics, provided in article 72 of its Constitution that 'Each Union Republic shall retain the right freely to secede from the U.S.S.R.' However, that position appears to have changed as evidenced in articles 4(3) and 5(3) of the Russian Constitution of 1993. While Article 5(3) provides that:

> The federative make-up of the Russian Federation shall be based upon its state integrity, a uniform system of state authority, the separation of jurisdiction and powers between the bodies of state authority, the Russian Federation and bodies of state authority of the members of the Russian Federation, and the equality and self-determination of the peoples within the Russian Federation.

Article 4(3), on the other hand, provides that: 'The Russian Federation shall ensure the integrity and inviolability of its territory.'[23] Moreover, Article 66(5) of the Constitution provides that a subject of the Federation could only change its status by mutual agreement. On its part, the South African Constitution of 1996, while recognising in Article 235, the 'right of the South African people as a whole to self-determination', still limited the exercise of this right by any community 'within a territorial entity in the Republic or in any other way, determined by national legislation.'[24]

From the above, it is quite clear that unlike the Ethiopian Constitution which made a wide and clear, though rigorous, provision on the right to external self-determination, the Constitutions of Russia and South Africa respectively provided for the peoples' right to self-determination although restricting the scope of the exercise of the right within the territories of the respective countries. However, as could be seen from the South African Constitution, the exercise of such right may be as 'determined by national legislation'. By this provision, the national legislature is at least given the power to decide as to the means or ways of exercising such right- whether internally or externally. This is clearly not the case in Nigeria. It is submitted that given the present agitations in the country, a constitutional provision such as that of Ethiopia or at least that of South Africa, on the exercise of self-determination has become imperative.

7. Conclusion

In conclusion, it is our humble submission that in view of the present agitations for self-determination in Nigeria vis-à-vis the calls for restructuring of the political structure of the country, the earlier the political leaders listen to the popular outcry of the people and do the needful, the better for all of us. Until that is done, the hue and cry for self-determination may not soon come to an end and the often-seen military approach to the issues of self-determination may not actually be the best approach to finding a lasting solution to this intractable phenomenon.

[22] G H Flanz, 'Ethiopia' in G. H. Flanz ed., *Constitutions of the Countries of the World* (Oceana Publications, New York, 1995) at pp. 18-9.
[23] V V Belyakov & W J Raymond ed., *The Constitution of the Russian Federation* (Lawrenceville: Brunswick Publishing, 1994) pp. 15-7.
[24]M Rwelamira, 'South Africa' in G. H. Flanz ed., *Constitutions of the Countries of the World* (Oceania, New York, 1997) at p. 118.