

## RESEARCH ARTICLE

# The Right to External Self-Determination of the South-East People of Nigeria: A View from International Law

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### Abstract

There has been recurrent agitation for external self-determination by most of the South-East people of modern Nigeria through the secessionist group the Indigenous People of Biafra (IPOB). This agitation reached crisis point in 2015 with military action which escalated into a violent confrontation, in which the IPOB claimed some of their members were killed. The IPOB's request for external self-determination fell on deaf ears, however, the counter-claim being that Nigerian territorial integrity cannot be compromised. This article examines the right to self-determination under international law and in the African system, as well as the types of this right that have been identified by scholars and whether the IPOB's call can be justified. It argues that the type of self-determination sought by the IPOB and the manner in which they seek it may not be attainable under international law, except through a consensus-based process between the Nigerian government and the South-East people of Nigeria.

**Keywords:** Biafra; human rights; Nigeria; secession; self-determination

### Introduction

The Indigenous People of Biafra (IPOB), whose members are mostly from the South-East people of modern Nigeria, seek to exercise their right to external self-determination and thus secede from Nigeria.<sup>1</sup> The IPOB claim they have a right which is equal to that of the people of East Timor, who gained independence from Indonesia in May 2002, and of South Sudan, who gained independence

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1 Most people in south-eastern Nigeria overwhelmingly support the agitation for secession championed by the IPOB. This is evident in the complete compliance with the various “sit at home” orders by the IPOB and support for Biafra Day celebrations. See O Ikokuwu “IPOB sit-at-home order records total compliance in Aba” (9 August 2021) *Punch Newspaper*, available at: <<https://punchng.com/IPOB-sit-at-home-order-records-total-compliance-in-Aba>> (last accessed 17 December 2024); V Ujumadu, F Ahon, C Nkwopara, C Alozie, U Alaribe, C Nwaiwu, N Okonkwo, I Odu, C Adonu and S Oko “Biafra Day: Total lockdown as the IPOB sit-at-home records 100% compliance” (1 June 2021) *Vanguard Newspaper*, available at: <<https://www.vanguardngr.com/Biafra-Day-Total-lockdown-as-IPOB-sit-at-home-records-100%-compliance>> (last accessed 17 December 2024).

from Sudan in July 2011 and whose independence has been recognized by the United Nations.<sup>2</sup> The region of Biafra captured the world's attention when in 1967, their leader, Colonel Chukwuemeka Odumegwu Ojukwu, unilaterally declared independence and subsequently led the people of the South East of Nigeria to a painful war with the Nigerian government. Although they fought for three years to sustain the independence declared by their leader, they were eventually bombed and starved into submission.<sup>3</sup> Renewed agitations by the IPOB for the South-East people's right to external self-determination stems from their perceived ethnic, tribal and political marginalization.<sup>4</sup>

The right to self-determination is one of the most important human rights, which is the reason it is protected under article 1(2) of the United Nations Charter. Today we hear of self-determination claims from South Sudan, Eritrea, Catalonia, Quebec, Scotland, the Sahrawi Arab Democratic Republic, Somaliland, Kosovo, Crimea and the Southern Cameroons.<sup>5</sup> While some secessionist movements have succeeded (for example South Sudan, Eritrea, the Sahrawi Arab Democratic Republic, Somaliland and the Republic of Kosovo), others have failed (for example Catalonia, Quebec, Scotland, Crimea and the Southern Cameroons). This article first examines the right to self-determination under international law and in the African system, including the types of this right that have been identified by scholars, and whether the call for the right to external self-determination by the IPOB can be justified within the provisions of international law.

### The right to self-determination under international law

Self-determination is an important right in contemporary international law; it brings an aspiration and hope to peoples who are dependent and oppressed. Self-determination is a basic norm that has quickly evolved from a political principle to a universal human right; it is the right of a group of people to assert a claim to political autonomy within a state or to sovereign statehood, to determine their collective purpose and to control their political, economic or socio-cultural future.<sup>6</sup> Self-determination further denotes the process by which a group of people form their own state and elect their own government. This may comprise choices concerning the exercise of sovereignty and independent external relations (external self-determination or self-determination through secession), or it can refer to a choice of form of government (internal self-determination). (These are discussed in more detail below.) The fundamental concept of self-determination, the right to choose, has its roots in the American and French revolutions in the 18th century, with their emphasis on justice, liberty and freedom from authoritarian rule.<sup>7</sup> The USA's Declaration of Independence of 4 July 1776 proclaimed that governments derived "their just powers from the consent of the governed" and that "whenever any form of government becomes destructive of these ends, it is the Right of the People to alter or to

2 P Worsnip and M Davies "South Sudan admitted to UN as 193rd member" (2011), available at: <<https://www.reuters.com/article/us-sudan-un-membership-idUSTRE76D6F920110714>> (last accessed 28 March 2023); see also G Hokker *South Sudan Conflict, and Democracy Consolidation: Trying to Resolve Issues* (2017, Lulu Press).

3 See AO Uzokwe *Surviving in Biafra: The Story of the Nigerian Civil War. Over Two Million Died* (2003, Writers Advantage); C Korieh *The Nigeria-Biafra War: Genocide and the Politics of Memory* (2012, Cambria Press).

4 See II Ojibara "Why Igbo want to secede" (2016) 4/1 *Arabian Journal of Business and Management Review (Nigerian Chapter)* 53 at 58; see also L Njoku "Why Biafra agitation is gaining momentum" (9 June 2022) *Guardian Newspaper* (Lagos), available at: <<https://guardian.ng/news/why-biafra-agitation-is-gaining-momentum/>> (last accessed 21 April 2023).

5 See S Byrne (ed) *Identity and Nation in 21st Century Catalonia: El Procés* (2021, Cambridge Scholars Publishing); RM Hanna "Right to self-determination in Re Secession of Quebec" (1999) 23 *Maryland Journal of International Law and Trade* 214; B Levites "The Scottish independence referendum and the principles of democratic secession" (2015) 41/1 *Brooklyn Journal of International Law* 373; JP Pham "Not another failed state: Toward a realistic solution in the Western Sahara" (2010) 1/1 *Journal of the Middle East and Africa* 1; CC Ngang "Self-determination and the Southern Cameroons' quest for sovereign statehood" (2021) 29/2 *African Journal of International and Comparative Law* 288.

6 Hanna "Right to self-determination", id at 214.

7 M Nawaz "The meaning and range of the principle of self-determination" (1965) 1 *Duke Law Journal* 83.

abolish it”.<sup>8</sup> Furthermore, the leaders of the French Revolution promoted the idea of “one nation, one state” as well as the belief that nations ought to have control of their territories.<sup>9</sup> One of the foremost contributors to the theory of self-determination was Woodrow Wilson; while he did not precisely define the idea, his positive predisposition towards self-determination was evident in his statement that “peoples may now be dominated and governed only by their own consent”.<sup>10</sup> He promoted the principle of self-determination during World War I in his Fourteen Points (1918), which was one of the treaties concluded under the League of Nations.<sup>11</sup>

The Universal Declaration of Human Rights did not categorically affirm the right to self-determination; however, it states that “[t]he will of the people shall be the basis of the authority of the government”.<sup>12</sup> The implication in this statement is the idea that governments must follow the will of the people they govern. The United Nations has made several declarations concerning self-determination; its stance on self-determination that may lead to secession seems at times to be to some extent contradictory, as it expresses support for both self-determination and territorial integrity. Self-determination is a right embodied under articles 1(2) and 55 of the UN Charter;<sup>13</sup> yet in article 2(4), the Charter also clearly indicates that the territorial integrity of states is important (as will be seen below, I argue here that a state’s sovereignty and territorial integrity is conditional). The position of the UN on external self-determination is very important, since the seceding state’s accession to the UN is regarded by the international community as equivalent to being recognized universally. The right to self-determination is also incorporated in article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as in some other international treaties.<sup>14</sup>

Self-determination was mostly strongly used in the post-World War II period to assert the right of independence from colonialists.<sup>15</sup> However, the concept has developed, and the understanding of it has gone beyond how it was interpreted in the immediate postcolonial time.<sup>16</sup> The frequent citation of self-determination in several international legal instruments shows two approaches to realizing the right.<sup>17</sup> First, it has been portrayed as the right of colonized people to establish their own territory, free from colonial power and oppression.<sup>18</sup> This approach can be found in article 1(2) of the UN Charter and the United Nations Declaration on Principles of International Law Concerning

8 The Declaration of Independence in Congress, 4 July 1776, para 2, available at: <<https://www.archives.gov/founding-docs/declaration-transcript>> (last accessed 17 May 2025).

9 See C Keitner “National self-determination in historical perspective 1789/1989: Insights from the French Revolution for today’s debates” (2000) 2 *International Studies Review* 4.

10 Nawaz “The meaning and range”, above at note 7 at 83.

11 AC Ekeke and N Lubisi “Secession in Africa: An African Union dilemma” (2020) *African Security Review* 3.

12 Universal Declaration of Human Rights (1948), art 21, para 3.

13 Art 1(2) says that among the objectives of the United Nations is the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”; art 55 refers to “the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.

14 ICCPR, art 1, and ICESCR, art 1, both state: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Other treaties include the UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (resolution adopted at the 25th Session of the UN General Assembly, 24 October 1970, res 2625 (XXV)), the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution adopted by the UN General Assembly, 14 December 1960, res 1514 (XV)), and the Vienna Declaration and Programme of Action (1993), art 1(2).

15 VP Nanda “Self-determination under international law: Validity of claims to secede” (1981) 13 *Case Western Reserve Journal of International Law* 258.

16 Ekeke and Lubisi “Secession in Africa”, above at note 11 at 3.

17 MYA Kadir “Application of the law of self-determination in a postcolonial context: A guideline” (2016) 9 *Journal of East Asia and International Law* 13.

18 Ekeke and Lubisi “Secession in Africa”, above at note 11 at 3.

Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. The latter states that achieving self-determination could be through independence or by “free association or integration with an independent State or the emergence into any other political status freely determined by a people”.<sup>19</sup> Second, self-determination is also portrayed as the right of a people to claim autonomy within a state and to regulate their affairs in their quest for economic, social and cultural development. This is described in the common article 1 of the ICCPR and ICESCR mentioned above and in the analogous article 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

Two types of self-determination have been identified, internal and external. Where a group of peoples within a country are asserting internal self-determination, they are claiming two things: (1) the right of the group to participate in decision-making and to freely determine its political autonomy within the state, and (2) a right to exercise its linguistic, religious, economic, social and cultural autonomy.<sup>20</sup> An example is the autonomy exercised by Scotland within its mother state of the United Kingdom, Quebec within its mother state of Canada, and Catalonia within its mother state of Spain. In this case, internal self-determination is purely of domestic concern. In contrast, external self-determination or “complete self-determination” concerns the splitting of the state’s territory, which will result in secession. It concerns the right of a group to freely claim sovereign control over territory, set up a new independent state and become a subject of international law.<sup>21</sup> External self-determination is mostly claimed by colonized peoples, in a situation of occupation or of severe oppression and human rights abuses (including war crimes, genocide or crimes against humanity).<sup>22</sup>

The right to external self-determination has been used to justify the secession of people who, although not under colonization, are under oppression, including massive human rights abuses. An example is the Republic of Kosovo’s unilateral declaration of independence, thus seceding from Serbia in 2008. Kosovo’s secession came after years of oppression in which an estimated 12,000 civilians were killed in the 1998–99 conflicts.<sup>23</sup> Following the secession, the UN General Assembly proceeded to ask the International Court of Justice (ICJ) for an advisory opinion on the following question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”<sup>24</sup> On 22 July 2010, the ICJ delivered its Advisory Opinion, where it concluded that “the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law”.<sup>25</sup> Although the ICJ was not asked whether the

19 UN Declaration on Principles of International Law, above at note 14.

20 C Anyangwe “The normative power of the right to self-determination under the African Charter and the principle of territorial integrity: Competing values of human dignity and system stability” (2018) 2 *African Human Rights Yearbook* 49.

21 MC Praag and O Seroo “The implementation of the right to self-determination as a contribution to conflict prevention” (report of the International Conference of Experts, Barcelona, 21–27 November 1998) at 12, available at: <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>> (last accessed 29 November 2022).

22 See the Declaration on the Granting of Independence, above at note 14, arts 4–5. The ICJ proclaimed the right to external self-determination in its Advisory Opinion on the legal consequences of Israel’s construction of a wall around the West Bank; see ICJ “Legal consequences of the construction of a wall in the Occupied Palestinian Territory” (2004), para 122, available at: <<https://www.un.org/unispal/document/auto-insert-178825/>> (last accessed 17 May 2025).

23 K Mulaj “Resisting an oppressive regime: The case of Kosovo Liberation Army” (2008) 31/12 *Studies in Conflict and Terrorism* 1103. See also D Hamilton “Remember why Kosovo wants independence” (11 February 2008) *Reuters*, available at: <<https://www.reuters.com/article/usserbiakosovo-walker-interview/rememberwhykosovowants-independence-says-envoyidUSL1068087820080210>> (last accessed 29 November 2022).

24 Resolution of the UN General Assembly, 8 October 2008, res 63/3, UN doc A/RES/63/3, available at: <<https://digitallibrary.un.org/record/638712>> (last accessed 17 May 2025).

25 ICJ “Accordance with international law of the unilateral declaration of independence in respect of Kosovo: Overview of the case”, para 84, available at: <<https://icj-cij.org/case/141>> (last accessed 17 May 2025).

people of Kosovo had a right to self-determination, it acknowledged that there is a right to external self-determination under international law that could end in the creation of a new state.<sup>26</sup>

In other circumstances where the group seeking the right to external self-determination is not under occupation, colonization or oppression, international law seems to be neutral. Instead, the pursuit for external self-determination which will lead to secession is left to domestic laws and to political negotiations between the mother state and the people seeking to exercise their right to external self-determination. An example is Montenegro's secession from Serbia through a referendum held on 21 May 2006, where 55.5 per cent of Montenegrins voted in favour of ending the federation of Serbia and Montenegro.<sup>27</sup> On 3 June 2006, Montenegro declared its independence, which was recognized by the Serbian parliament two days later, and on 28 June it was accepted as a United Nations member state by General Assembly resolution A/RES/60/264.<sup>28</sup>

Another example is the bid for Scotland to secede from the United Kingdom. After the pro-independence party of Scotland, the Scottish Nationalist Party, won a parliamentary majority in 2011, it started calling for an independence referendum; eventually Scotland and the government of the whole of the UK agreed that in 2014 Scotland would vote in a referendum on their independence.<sup>29</sup> The referendum question was "Should Scotland be an independent country?", which voters answered with "Yes" or "No". When all votes were collated in an outstanding 84 per cent turnout, the final result was 45 per cent in favour of independence and 55 per cent for remaining.<sup>30</sup> While negotiating with the Scottish government, the UK government knew that the implication of a Yes vote in the referendum would split the country and threaten its territorial integrity and sovereignty.<sup>31</sup> Yet the UK would have respected the referendum and worked to implement it if Scotland had voted in favour of secession.

The Scottish independence referendum is therefore an important example in international law and has laid down an important precedent. Scotland was able to resolve its quest for secession within international law, first by obtaining the consent of its parent state, the UK, to initiate a referendum for independence; second, by proposing a direct and clear question regarding independence in the poll; and lastly, by determining the issue based on a simple majority. These principles establish a significant precedent which ensuing secessionists must follow, a process that is peaceful and with no cost to human life. However, this is hardly obtainable in Africa.

### The right to self-determination in Africa during and after colonization

In Africa, the idea of self-determination is perceived as a concept mostly associated with the decolonization process. The right to self-determination was highlighted in the preamble and principles of the Charter of the Organization of African Unity (OAU); in its paragraph 1, it asserted that "it is the inalienable right of all people to control their own political destiny". Furthermore, in article 3(6) it declared member states' adherence to the principle of self-determination when it stated its "absolute dedication to the total emancipation of African territories which are still dependent". At

26 E Cirkovic "An analysis of the ICJ Advisory Opinion on Kosovo's Unilateral Declaration of Independence" (2010) 11/8 *German Law Journal* 900.

27 See J Vidmar "Montenegro's path to independence: A study of self-determination, statehood and recognition" (2007) 3/1 *Hanse Law Review* 98.

28 Resolution adopted by the UN General Assembly, 28 June 2006, res 60/264, UN doc A/RES/60/264, available at: <<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/UNMembers%20ARES60%20264.pdf>> (last accessed 17 May 2025).

29 Levites "The Scottish independence referendum", above at note 5.

30 CM Glen "Nationalism, identity and Scotland's referendum" (2015) 1 *Contemporary European Studies* 5 at 11.

31 Id at 10.

its summit in Cairo in 1964, the OAU declared that the colonially inherited borders were sacrosanct and must not be altered, thus converting them into international borders.<sup>32</sup> Subsequently, the OAU adopted some resolutions condemning self-determination that may result in secession. One such resolution is the Kinshasa Resolution on Biafra, where the OAU reiterated its condemnation for external self-determination or secession in any member state.<sup>33</sup>

The African Union (AU), the OAU's successor, has accordingly also followed the OAU's position against external self-determination.<sup>34</sup> One of the positions in this regard is in the resolution of the AU Assembly of Heads of State and Government, adopted in July 2012 during the crisis of Azawad. While deliberating on a report of the African Union Peace and Security Council on the crisis, the AU stated that it "condemn[s] the secessionist tendencies observed in some parts of the Continent, particularly in Mali, and underscores the unalloyed commitment of the AU to the principle of inviolability of borders inherited by African countries at independence, as well as the respect of the national unity and territorial integrity of member states".<sup>35</sup> The reasoning behind the AU's strong stance against secession was the fear that the African states would be plunged into internal conflict if every group were allowed to secede.<sup>36</sup> Yet Africa is inundated with conflicts arising from secession attempts, despite the AU's strong stance against it. However, the AU has issued resolutions going against its long and determined stance against secession in some cases. For example, when the referendum in South Sudan favoured secession, the AU assembly stated:

"We commend the people of southern Sudan, whose choice has been clearly, freely and credibly expressed in the referendum. The African Union looks forward to solemnly accepting the outcome of the referendum as soon as it is formally proclaimed by the competent authorities, and calls upon all States to do so."<sup>37</sup>

Africans fought for independence in order to be free from oppression, exploitation, illegal occupation and threats to cultural extermination from their colonial masters.<sup>38</sup> Some African states that were already independent, as well as the OAU, provided funding and diplomatic backing to the struggles for the independence of Mozambique, Guinea-Bissau, Zimbabwe, Angola and South Africa from the oppression, exploitation and illegal occupation of their colonial masters.<sup>39</sup> Conversely, the OAU and some African states did not support Biafra's 1967–70 attempt to become independent from Nigeria nor other attempts in Sudan, Eritrea and Chad, but condemned them, without considering the facts of the peoples' claims to self-determination and to freeing themselves from oppression. Nevertheless, after a long period of opposing the struggles of Eritrea and South Sudan, the AU finally supported and even welcomed them as new members of the AU, on 24 May 1993 and 9 July 2011 respectively.

32 Organization of African Unity "Resolutions adopted by the First Ordinary Session of the Assembly of Heads of State and Government held in Cairo, UAR, from 17 to 21 July 1964", AHG/Res 16(1), available at: <[https://au.int/sites/default/files/decisions/9514-1964\\_ahg\\_res\\_1-24\\_i\\_e.pdf](https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf)> (last accessed 17 May 2024).

33 Organization of African Unity "The Assembly of Heads of State and Government of the Organization of African Unity meeting in its Fourth Ordinary Session in Kinshasa, Congo, from 11 to 14 September 1967", OAU AHG/51 (IV), available at: <[https://archives.au.int/bitstream/handle/123456789/436/AHG%20Res%2051%20\(IV\)%20\\_E.pdf](https://archives.au.int/bitstream/handle/123456789/436/AHG%20Res%2051%20(IV)%20_E.pdf)> (last accessed 17 May 2024).

34 See the Constitutive Act of the African Union, art 4(b).

35 African Union "Assembly of the African Union, Nineteenth Ordinary Session, 15–16 July 2012, Addis Ababa, Ethiopia", AU doc Assembly/AU/6 (XIX), available at: <<https://www.peaceau.org/uploads/assembly-au-6-xix-e.pdf>> (last accessed 17 May 2025).

36 Ekeke and Lubisi "Secession in Africa", above at note 11 at 9.

37 African Union "Solemn declaration of the Assembly of Heads of State and Government of the African Union on Sudan", para 3, available at: <[https://au.int/sites/default/files/pressreleases/24166-pr-declaration\\_sudan\\_eng\\_.pdf](https://au.int/sites/default/files/pressreleases/24166-pr-declaration_sudan_eng_.pdf)> (last accessed 17 May 2025).

38 Ekeke and Lubisi "Secession in Africa", above at note 11 at 9.

39 G Binaisa "Organization of African Unity and decolonization: Present and future trends" (1977) 432/1 *The Annals of the American Academy of Political and Social Science* 61.

The AU may have changed their tone in the cases of South Sudan's and Eritrea's bids for self-determination because of the mother states – Sudan and Ethiopia consented to referendums. The creations of South Sudan and Eritrea were based on these referendums, in which the majority of the populations voted for independence. The referendum on the self-determination of South Sudan took place in a peaceful and orderly manner, allowing the people of South Sudan to choose their status, and thus the future of the country, through the exercise of their right to self-determination, as recognised by the Comprehensive Peace Agreement signed on 9 January 2005 by the Sudan People's Liberation Movement and the government of Sudan. Likewise, in Eritrea, a highly impressive 98.5 per cent turnout was recorded, including many people in rural and remote desert areas. Remarkably, 99.81 per cent of Eritreans voted for independence from Ethiopia. As stated above, in circumstances where the group seeking the right to external self-determination is not under occupation, colonization or oppression, the pursuit which will lead to secession is left to domestic laws and to political negotiations between the mother state and the people seeking to exercise their right to secede. Since South Sudan's and Eritrea's bids for self-determination were a negotiation between the mother states and the groups seeking the right to external self-determination, the AU had to respect their determination, unlike in the case of the Southern Cameroons and others, which have not sought the consent of their mother state for a referendum.

### *The right to self-determination under the African Charter on Human and Peoples' Rights*

The African Charter on Human and Peoples' Rights (the African Charter) introduced a new standard of legal rights to self-determination, beyond the decolonization process. This Charter proclaims in article 20(1) that “[a]ll peoples shall have [the] right to existence. They shall have the unquestionable and inalienable right to self-determination.” Furthermore, this article protects peoples' freedom to decide their political standing and pursue their economic and social development. Article 19 of the African Charter prohibits the domination of a people by another under any circumstance, and further states in article 20(2) that “[c]olonised or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community”. The African Charter seems to recognize the right to self-determination as both freedom from foreign domination and from internal domination within a state. Consequently, people who are oppressed within a state are entitled to claim the right to self-determination; this could be inferred from article 20(2). The sections in the African Charter that protect self-determination are therefore wide-ranging and more forceful than in either the ICCPR or the ICESCR, and the state responsibility under the Charter is absolute. It is clear from the African Charter that the political domination of a people by another, whether from within the state or outside or in a colonial setting, cannot be justified.

### *Case law on the right to self-determination by the African Commission on Human and Peoples' Rights*

The African Commission on Human and Peoples' Rights (the Commission) is one of the organs of the African Union as established under article 30 of the African Charter. Under article 45, the Commission is charged with protecting human rights in Africa and interpreting the African Charter. The Commission has identified self-determination as a justiciable right under the African Charter and has exhibited a favourable view of this right. In *Katangese Peoples' Congress v Zaire*, the Commission stressed that all peoples have the right to self-determination; it indicated that self-determination could be exercised in any of the following ways: “independence, self-government, local government, federalism, confederalism, unitarism, or any other form of relations that accords

with the wishes of the people”.<sup>40</sup> Nevertheless fully conscious of other accepted principles, for example sovereignty and territorial integrity, the Commission also averred that where a people can prove a breach of the right to participate in government, as guaranteed by article 13 of the African Charter, or that they are oppressed and dominated or suffer a severe human rights abuse, external self-determination may be possible under the Charter.<sup>41</sup>

Similarly, in *Kevin Mgwanga Gunme et al v Cameroon*, the Commission found that the people of the Southern Cameroons qualify as a “people” as envisaged in the African Charter, and possess a distinct identity for which they are entitled to certain collective rights.<sup>42</sup> Referring to a report by a group of experts from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Commission stated that for a group of individuals to constitute a “people”, they need to manifest some or all of the identified attributes, including ethno-anthropological attributes. The Commission found that “the people of Southern Cameroon” manifest these attributes, which include a “common history, linguistic tradition, territorial connection and political outlook”, and they identify themselves as a people with a separate and distinct identity. Therefore they qualify to be referred to as a “people”.<sup>43</sup>

The Commission found that although Cameroon violated articles 2, 4–7, 11 and 19 of the African Charter, for such violations to establish a basis for claiming a right to self-determination under the Charter, they must meet the test set out in *Katangese Peoples’ Congress*, which is that there must be “concrete evidence of violations of human rights to the point that the territorial integrity of the state party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by article 13(1)”.<sup>44</sup> Furthermore, the Commission was of the opinion that to invoke article 20 of the African Charter, a complainant must satisfy it that the two conditions under article 20(2), namely oppression and domination, have been met.<sup>45</sup> The Commission’s ruling against the self-determination of the Southern Cameroons was grounded on its obligation to uphold the principle of territorial integrity; however, is the principle of territorial integrity absolute?

### The right to self-determination and the principle of territorial integrity: Competing principles of international law

There are different views on the relationship between the right to self-determination and territorial integrity.<sup>46</sup> The principle of territorial integrity is regarded as important for achieving international security and maintaining stability among states. Article 1 of the UN Charter states that the purpose of the UN includes “maintain[ing] international peace and security”. Territorial integrity is based on the principle of non-interference in the internal affairs of a state.<sup>47</sup> Paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples as well as the Declaration on Principles of International Law Concerning Friendly Relations confirm the importance of the principle of the territorial integrity of an existing state.<sup>48</sup> They also recognize that self-determination

40 *Katangese Peoples’ Congress v Zaire* (2000) AHRLR 72 (ACHPR 1995), paras 4–6.

41 Ibid.

42 *Kevin Mgwanga Gunme et al v Cameroon* (2009) AHRLR 9 (ACHPR 2009), para 178.

43 Ibid, para 179.

44 Ibid, para 194.

45 Ibid, para 197.

46 V Crnić-Grotić and D Kasipović “The right to self-determination: The Kosovo case before the International Court of Justice” (2013) 34 *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 899.

47 See M Jamnejad and M Wood “The principle of non-intervention” (2009) 22 *Leiden Journal of International Law* 345 at 347–48.

48 The Declaration on the Granting of Independence states that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the United Nations Charter”; above at note 14, para 6. The Declaration on Principles of International Law states that “nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”; above at note 14 at 123.

may disrupt a state's existing territory only in extreme instances of oppression or colonization (note that internal self-determination does not threaten territorial integrity). Territorial integrity is one of the basic characteristics of a state; a state without territory is impossible. It is therefore the obligation of each state to respect and preserve the territorial integrity of other states, provided the state is legitimate.<sup>49</sup> The Declaration on Principles of International Law Concerning Friendly Relations indicates that legitimate states must conduct themselves "in compliance with the principle of equal rights and ... represent the whole people belonging to the territory without distinction as to race, creed or colour".<sup>50</sup> It further suggests that "the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations".<sup>51</sup>

Although territorial integrity is fundamental to the existence of a state, the right to choose one's own destiny essentially belongs to every human. The people make states legitimate; this implies that the people have the freedom to choose territorial boundaries as they wish, in accordance with international law. Thus the principle of territorial integrity underscores that territorial change must be brought about by consent.<sup>52</sup> States can only enjoy territorial integrity if they comply with the principles of equal rights and the self-determination of the people; the government of a state must represent all the people within its territory, devoid of discrimination as to race, belief or colour.<sup>53</sup> This does not mean that every ethnic, religious and linguistic group as well as all communities within the territory of a state must be represented; it means that there should be internal democracy, where all the people participate in the democratic process and no particular group is formally excluded from participating based on their race, belief, or colour.

However, the repudiation of territorial integrity and the promotion of a secessionist movement have been justified in order to avert grave injustices: systematic discrimination, unjust and forceful annexation of territory, violation of fundamental human rights and where the decision to secede is made by the majority of the people.<sup>54</sup> According to Buchanan, legitimate secession can be justified in three cases: "large-scale and persistent violations of basic individual human rights"; "unjust taking of a legitimate state's territory"; and "a state's persistent violation of an intrastate autonomy agreement".<sup>55</sup> Furthermore, territorial integrity may be conditional if a state is deemed to be failed. This notion is supported by the principle of the Responsibility to Protect (R2P), which emerged as an important global principle when the UN World Summit Outcome Document was adopted in 2005.<sup>56</sup> It is articulated in paragraphs 138 and 139 of the document and aims to protect peoples from genocide, war crimes, crimes against humanity and ethnic cleansing. The third pillar of the R2P doctrine says that "[i]f a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations".<sup>57</sup> Similarly, in a report presented on 12 January 2009 to the UN General Assembly on implementing the Responsibility to Protect, the Secretary General noted

49 See *Military and Paramilitary Activities in and against Nicaragua / Nicaragua v USA*, ICJ 14 (27 June 1986), para 73, available at: <[https://www.worldcourts.com/icj/eng/decisions/1986.06.27\\_military\\_paramilitary.htm](https://www.worldcourts.com/icj/eng/decisions/1986.06.27_military_paramilitary.htm)> (last accessed 17 May 2025).

50 Declaration on Principles of International Law, above at note 14 at 9–10.

51 *Id* at 3.

52 Crnić-Grotić and Kasipović "The right to self-determination", above at note 46 at 899.

53 H Hannum "Legal aspects of self-determination", *The Princeton Encyclopedia of Self-Determination*, available at: <<https://pesd.princeton.edu/node/511>> (last accessed 17 May 2025).

54 C Mueller "Secession and self-determination: Remedial Right Only Theory scrutinised" (2012) 7 *POLIS Journal* 298.

55 A Buchanan *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (2003, Oxford University Press) at 219–20.

56 SF Gagno "The Responsibility to Protect (R2P) doctrine" (2014) 3/1 *International Journal of Social Sciences* 61.

57 See Global Centre for the Responsibility to Protect "What is R2P?", available at: <<https://www.globalr2p.org/what-is-r2p/>> (last accessed 17 May 2025).

that “[r]esponsible sovereignty is based on the politics of inclusion, not exclusion”.<sup>58</sup> The notion that breaching the principle of R2P can undermine a state’s sovereignty and territorial integrity has mostly been used as a basis for humanitarian intervention rather than secession. However, some scholars suggest that such intervention may lead to interference in support of secessionist groups if the group is facing persecution, genocide, war crimes, crimes against humanity or ethnic cleansing, as in the cases of Bosnia and Herzegovina and South Sudan.<sup>59</sup> Nevertheless, is the secession bid of the South-East region of modern Nigeria and its attempt to undermine Nigeria’s sovereignty and territorial integrity through the secessionist group IPOB justifiable?

### The Indigenous People of Biafra: A synopsis

Before looking at a synopsis of the IPOB, let us examine the political and historical background to its emergence and its persistent demand for the right to external self-determination from South-East Nigeria. An analysis of the grievances that led to the Nigeria–Biafra war of 1967–70, as well as grievances resulting from how the war was fought and from how the post-war settlement was implemented, indicates that a feeling of collective victimization is a critical element of the Biafrans’ agitations for the right to external self-determination.<sup>60</sup> This feeling of victimization is divulged in most of their discussions; for example, Chinua Achebe, a renowned author from South-East Nigeria, identifies shared resentment of people from South-East Nigeria by other Nigerians as the foundation of the feeling of collective victimization. He stated that:

“Nigerians of all other ethnic groups will probably achieve consensus on no other matter than their common resentment of the Igbo ... Modern Nigerian history has been marked by sporadic eruptions of anti-Igbo feeling of more or less serious import; but it was not until 1966–7 when it swept through Northern Nigeria like a flood of deadly hate that the Igbo first questioned the concept of Nigeria.”<sup>61</sup>

Achebe’s statement reverberates with the feeling of collective victimization in South-East Nigeria that was present many years before Nigeria’s independence in 1960. This was also highlighted by Nnamdi Azikiwe, a renowned nationalist from South-East Nigeria, in a presidential address delivered at the Igbo State Assembly held in Aba on 25 June 1949. He declared that “it would appear that God has specially created the Ibo people to suffer persecution and be victimized because of their resolute will to live”.<sup>62</sup> Azikiwe further detailed acts of discrimination against the South-East people:

“On the economic plane, I cannot sufficiently impress you because you are too familiar with the victimization which is our fate ... you [who] have travelled to this assembly by road are witnesses of the corrugated and utterly unworthy state of the roads which traverse Ibo-land in spite of the fact that four million Igbo people pay taxes in order, among others, to have good roads ... how many of our towns, for example, have complete postal, telegraph, telephone and wireless services, compared to towns in other areas of Nigeria? How many have pipe-borne

58 Report of the UN Secretary General to the 63rd session of the UN General Assembly “Implementing the responsibility to protect” (12 January 2009), UN doc A/63/677 at 10, available at: <<https://digitallibrary.un.org/record/647126>> (last accessed 17 May 2025).

59 See R Janik “The responsibility to protect as an impetus for secessionist movements: On the necessity to rethink territorial integrity” in M Kettemann (ed) *Grenzen im Völkerrecht* (2013, Jan Sramek Verlag); AJ Kuperman “Rethinking the responsibility to protect” (2009) 10/1 *The Whitehead Journal of Diplomacy and International Relations* 33.

60 O Ibeanu, N Orji and CK Iwuamadi “Biafra separatism: Causes, consequences and remedies” (2016) *Institute for Innovations in Development* 10.

61 C Achebe *The Trouble with Nigeria* (1983, Fourth Dimension) at 45. Igbo (or Ibo) is the language spoken by the South-East people of Nigeria; they are also sometimes referred to as the Igbo people.

62 N Azikiwe *Zik: A Selection from the Speeches of Nnamdi Azikiwe* (1961, Cambridge University Press) at 242.

water supplies? How many have electricity undertakings? Does not the Igbo tax-payer fulfill his civic duty? Why, then, must he be a victim of studied official victimization?"<sup>63</sup>

Azikiwe then made what could be the first call for the right to external self-determination of the Igbo people when he said, "the only worthwhile stand we can make as a nation is to assert our right to self-determination ... where our rights will be respected and safeguarded".<sup>64</sup>

The collective victimization of the South-East people of Nigeria erupted into violence in 1945 during the Jos riot, which killed at least two and injured many people from the South East.<sup>65</sup> According to Plotnicov, the factors that contributed to the riot were economic competition resulting from the large number of people from the South East who settled in Jos and the rising prominence of the South-East people as a result of the nationalist activities of people like Azikiwe, who was considered to have inspired and engineered the general strike of June 1945.<sup>66</sup> Eight years after the Jos riot, there was a more serious violent attack on the South-East people in Kano, in riots that began on 16 May 1953 and lasted for four days; according to an official report, 36 people died and 241 were injured.<sup>67</sup> The Kano riot was triggered by a motion introduced in the central legislature by Anthony Enahoro, who was not from the South East but was a member of the Action Group (AG), predominantly a South-West party advocating self-government for the regions of Nigeria by 1956.<sup>68</sup> This motion was supported by all the Southern (East and West) legislators but enraged those from the North, who turned against the South-East people in Kano. Underlying the violence were long-term resentments of Southerners living in Northern Nigeria, especially those from the South East, which was further provoked by the self-government debate in the House of Representatives. The high point of the victimization of the South-East people came in the massive pogroms of 1966, a wave of targeted attacks against the South-East people mainly in Northern Nigeria, which happened in the aftermath of the coup of 15 January 1966 and the 29 July 1966 counter-coup.<sup>69</sup> The 15 January coup was led by Chukwuma Kaduna Nzeogwu and Emmanuel Ifeajuna (both from South-East Nigeria) and led to the death of the prime minister of Nigeria, Abubakar Tafawa Balewa, and the premier of the Northern region, Ahmadu Bello, while the president, Nnamdi Azikiwe, and the premier of the Eastern region, Michael Okpara, were spared.<sup>70</sup> This gave the coup the coloration of having an Igbo agenda. However, it is noteworthy that the coup was foiled by Major General Aguiyi-Ironsi and Colonel Emeka Odumegwu Ojukwu, both from South-East Nigeria, and the coup leaders were jailed.<sup>71</sup> Aguiyi-Ironsi became the new Nigerian head of state, a development which further aggravated the misconception that the coup had an Igbo agenda and which provided the Northerners with a reason to embark on massive killing of the Igbos of South-East Nigeria.<sup>72</sup>

In the counter-coup of July 1966, Aguiyi-Ironsi was killed, along with his host, then governor of the Western region, Colonel Adekunle Fajuyi.<sup>73</sup> Subsequently, Major General Yakubu Gowon was installed as the Nigerian head of state, without consideration being given to seniority: he was selected over and above Babafemi Ogundipe, David Ejoor and Emeka Ojukwu, who were his seniors in the military hierarchy but who were Southerners. The officers who killed Aguiyi-Ironsi were

63 Id at 244–45.

64 Id at 245.

65 L Plotnicov "An early Nigeria civil disturbance: The 1945 Housa-Ibo riot in Jos" (1971) 9 *The Journal of Modern African Studies* 298.

66 Id at 299–300.

67 M Lynn "The Nigerian self-government crisis of 1953 and the Colonial Office" (2006) 34 *The Journal of Imperial and Commonwealth History* 254.

68 OC Eze "The indigenous aliens: The case of the Igbo in Nigeria, 1953–2013" (2015) 21 *Historical Research Letter* 7.

69 Ibeanu, Orji and Iwuamadi "Biafra separatism", above at note 60 at 13.

70 MM Duruji "Resurgent ethno-nationalism and the renewed demand for Biafra in South-East Nigeria" (2012) 14 *National Identities* 330.

71 Eze "The indigenous aliens", above at note 68 at 7.

72 Ibid.

73 Ibid.

rewarded with promotion for doing away with the “foreigner” at the seat of government in Lagos.<sup>74</sup> What followed was the huge pogrom in the North, which resulted in over 80,000 casualties and displaced about 1,800,000 South-East people, without any condemnation from either the regional or the Nigerian governments.<sup>75</sup>

One of the consequences of this pogrom was the repatriation of about 2 million people, many of whom were in an impoverished condition (injured, abased and bereft of their material possessions), to South-East Nigeria.<sup>76</sup> The 1966 pogrom and the massive displacement resulting from it contributed to the development of secessionist feelings that culminated in the declaration of the sovereign state of Biafra by Colonel Emeka Ojukwu on 6 July 1967, leading to the Nigerian–Biafran war.<sup>77</sup> This war was tremendously costly for the Igbos of South-East Nigeria and was fought in a barbaric, brutal and cruel manner.<sup>78</sup> It was fought mainly in the South-East territory, with massive and vicious destruction of lives and properties. The mayhem carried out by the Nigerian soldiers during the war and their lack of respect for war conventions (especially article 3 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War) is considered as confirmation of deep-seated hatred for the Igbos of the South East and an extension of the mass killing that preceded the war. During the war, Nigerian soldiers were accused of focusing their assaults on civilian targets. They engaged in the raping of women and civilian massacres in South-East cities and towns like Aba, Onitsha, Calabar, Uyo, Oji River, Okigwe and Asaba.<sup>79</sup> It is estimated that more than 700 South-East people were killed by Nigerian soldiers during these massacres.

Starvation was also employed by the Nigerian government as a weapon during the war. Nigeria’s war-time policy, which regarded starvation as a legitimate weapon of warfare, resulted in mass famine and death.<sup>80</sup> This policy ensured that foreign aid, especially food donations, was not allowed to get to the South East. As a result, there were food shortages, hunger, malnutrition, disease and the deaths of millions of people, especially children. Walter states that the high cost of wars can exacerbate animosity and create a desire for vengeance, which may take a long time to go away.<sup>81</sup> This terrible experience is engraved in the hearts of many Igbos of the South East and creates a deep feeling of communal suffering and collective victimization.

Although the military government of Gowon declared “No Victor, No Vanquished” after the war and subsequently set up the National Rehabilitation Commission, through which the “Reconciliation, Reconstruction and Rehabilitation” (RRR) policy of the federal government came to full force, it prohibited any critical discussion of the pre-war and wartime grievances.<sup>82</sup> The RRR policy, which was intended to rehabilitate infrastructure and the survivors of the war as well as to reintegrate the South-East people into Nigerian society, was not properly implemented.<sup>83</sup> This failure has been interpreted by some people as a continuation of the government’s victimization policy. Despite the insufficiency of supplies, the Nigerian government rejected aid from countries seen to have supported Biafra during the war, such as France, South Africa, Portugal and Rhodesia (Zimbabwe). They were told to keep their aid and stay out; “let them keep their blood money”,

74 Ibid.

75 A Odoemene “The Nigeria–Biafra Civil War, 1967–70: Reconsidering a rejected history” in CBN Ogbogbo (ed) *Perspectives in African History* (2011, Bookwright Publishers Ibadan) 95.

76 Ibeanu, Orji and Iwuamadi “Biafra separatism”, above at note 60 at 13.

77 Ibid.

78 Id at 14.

79 See LN Aneke *The Untold Story of the Nigeria–Biafra War* (2007, Triumph Publishing).

80 Ibeanu, Orji and Iwuamadi “Biafra separatism”, above at note 60 at 15.

81 BF Walter “Does conflict beget conflict? Explaining recurring civil war” (2004) 41 *Journal of Peace Research* 377.

82 O Ekwe and O Chukwuma “Achebe’s *There Was a Country* in the court of public opinion: 43 years after the Nigerian Civil War” (2013) 3 *Developing Country Studies* 142; Ibeanu, Orji and Iwuamadi “Biafra separatism”, above at note 60 at 16.

83 Ibid.

said Gowon.<sup>84</sup> His reason was that these countries contributed greatly to prolonging the war. The rejection of foreign assistance resulted in the death of many Igbos of the South East from diseases and starvation that otherwise would have been avoided if aid were available. The Gowon government also promulgated the Public Officers Decree No 46 of 1970, which progressively screened out senior Nigerian civil servants of South-East extraction on the grounds that they partook in the war.<sup>85</sup> Furthermore, the “ill-reputed” Abandon Project policy implemented by the Gowon regime after the war was used to impound the properties of the Igbos that fled to the South East. When they returned to their former places of residence, they were told that their properties had been declared abandoned by the government that was also executing the RRR policy.<sup>86</sup>

The Banking Obligation Decree of 1970 introduced a policy which directed the Igbo people of the South East to present their Biafran currency for conversion into Nigerian currency; irrespective of the amount of money deposited, the Nigerian government paid twenty pounds to each of the depositors.<sup>87</sup> This policy poached the economic reconstruction of the Igbos and betrayed General Gowon’s statement that he made in a national broadcast on 1 October 1971: “[W]e have been able to achieve complete reconciliation amongst our people within a relatively short period of time; we have succeeded in rehabilitating and resettling our displaced people and we have spared no effort in reconstructing our economy.”<sup>88</sup>

The killing of the Igbos of the South East and the destruction of their properties in the pre-war and wartime periods certainly persisted in the post-war period. They were made the preferred scapegoats of the countless ethnic, political and religious clashes in post-war Nigeria. There were many violent clashes between 1980 and 1993 where the Igbos of the South East were killed and their properties looted or destroyed, notwithstanding whether or not they were involved in the clash. The Oha-Na-Eze Ndi Igbo, an apex Igbo socio-cultural group that represents all Igbo communities within and outside Nigeria, identified eleven such violent events in their petition to the country’s Human Rights Violation Investigating Committee, which include the Kano riots of December 1980 and October 1982, the Buluta Maiduguri riot of 1982, the Yola riot of February 1984, the Gombe riot of April 1985, the Kaduna religious crisis of March 1987, the Zaru religious crisis of May 1988, the religious crisis at Ahmadu Bello University, Zaria, of June 1988, the Bauchi riot of 1992, the Zango Kataf uprising of May 1992 and the 12 June 1993 crisis.<sup>89</sup>

Notwithstanding the question of the insecurity of lives and properties, the Igbos of the South East also express grievances about their economic disempowerment and political marginalization.<sup>90</sup> They claim to have been deliberately excluded from top political positions at the federal level, such as in the National Security Council, the armed forces, the Nigeria Police and in the allocation of ministries, which was the case until recently, with the appointment of Lieutenant General Azubuike Ihejirika as Chief of Army Staff on 8 September 2010 by President Goodluck Jonathan, while others now head ministries. These policies and the inability of successive Nigerian governments to address these grievances have continued to fuel the feeling of collective victimization and the continual call for the self-determination of Biafra.

84 O Chidiebere “The Nigerian Civil War: A historical interpretation” (2016) 2 *Pyrex Journal of African Studies and Development* 32.

85 Ibid.

86 Ibid.

87 HR Lynch K. O. *Mbadiwe: A Nigerian political biography, 1915–1990* (2012, Palgrave Macmillan) at 234.

88 Gowon, cited in Chidiebere “The Nigerian Civil War”, above at note 84 at 32.

89 Oha-Na-Eze Ndi Igbo “The violations of human and civil rights of Ndi Igbo in the Federation of Nigeria (1966–1999): A call for reparations and appropriate restitution. A petition to the Human Rights Violations Investigating Committee” (1999) at 39, available at: <<https://www.scribd.com/document/41446047/Ohaneze-Submission-to-the-Opata-Panel-A-Petition-to-the-Human-Rights-Violation-Investigation-Committee-by-Oha-Na-Eze-Ndi-Igbo>> (last accessed 17 May 2025).

90 Id at 33–41.

The IPOB was founded in 2014 by Nnamdi Kanu, who also ran Radio Biafra at that time. The IPOB stepped up the struggle for the right to external self-determination for Biafra, which was championed by the Movement for Actualization of the Sovereign State of Biafra (MASSOB), formed by Ralph Uwazuruike in 1999.<sup>91</sup> While MASSOB based its agitation on a non-violence pledge, its members, alleging provocation, have clashed repeatedly with the authorities, which has resulted in several deaths.<sup>92</sup> MASSOB was destabilized by both state suppression and internal differences, resulting in deep fractures in its organization. These fractures culminated in the expulsion of Uwazuruike as its leader in 2015 for his failure to maintain Ojukwu's dream of actualizing Biafra. Furthermore, he was accused of compromising the secessionist struggle by deviating into the mainstream of Nigerian politics.<sup>93</sup>

The waning of MASSOB may have paved the way for the IPOB to revive their agitation. Unlike Uwazuruike, who is regarded by some as having become cold towards the struggle, Kanu was not out for peaceful negotiations for the actualization of the right to self-determination for Biafra.<sup>94</sup> In his address to gatherings of his members in the diaspora, he urged Biafrans to take up arms against the Nigerian state, saying “[w]e need guns and we need bullets”.<sup>95</sup> This brought him to the attention of Nigeria's security forces. The renewed call for the right to self-determination for Biafra by the IPOB has heightened security fears and tension in the South-East and South-South regions of Nigeria, which has pressurized the Nigerian government to take action. On 14 October 2015, the government arrested the IPOB leader, Kanu, upon his return to Nigeria and arraigned him in court on charges of criminal conspiracy and treason.<sup>96</sup> He was charged with inciting hatred, threatening state security and mobilizing for secession – a crime which carries the death penalty.<sup>97</sup> He was held in detention and released in April 2017 on bail.<sup>98</sup> His arrest charged the atmosphere in Nigeria, leading to protests by his supporters, including stay-at-home orders against his arrest in various Nigerian states. The protests have most times been broken up by the Nigerian security forces, with the IPOB saying their followers were injured or even killed – allegations which the authorities vehemently deny.<sup>99</sup> However, an Amnesty International report claimed that more than 150 protesters were killed by the Nigerian security forces during IPOB protests in 2015 and 2016.<sup>100</sup> Kanu's arrest led to increased publicity for the group; one analyst described his arrest as a mistake because it played into his hands, brought him the sympathy of the region and put him into the international limelight,

91 Ibeanu, Orji and Iwuamadi “Biafra separatism”, above at note 60 at 2.

92 G Adediran “Why protesting MASSOB, the IPOB members were killed – Nigerian Army” (31 May 2016) *Premium Times*, available at: <<https://www.premiumtimesng.com/news/headlines/204410-protesting-massob-ipob-members-killed-nigerian-army.html>> (last accessed 19 November 2022).

93 O Ndidi “MASSOB expels Uwazuruike, picks new leadership” (30 November 2015) *The Nation*, available at: <<http://thenationonline.net/massob-expels-uwazuruike-picks-new-leadership/>> (last accessed 19 November 2018).

94 T Adibe “MASSOB is dying, but pro-Biafra crusade spreads dangerously” (24 October 2015) *Daily Trust*, available at: <<https://www.dailytrust.com.ng/massob-is-dying-but-pro-biafra-crusade-spreads-dangerously.html>> (last accessed 19 November 2018).

95 See “Biafran leader Nnamdi Kanu: The man behind Nigeria's separatists” (5 May 2017) *BBC News*, available at: <<https://www.bbc.com/news/world-africa-39793185>> (last accessed 19 November 2018).

96 S Tayo “Nigeria: Calls for Biafra independence return to South-East Nigeria” (9 November 2017) *AllAfrica*, available at: <<https://allafrica.com/stories/201711100151.html>> (last accessed 20 November 2018).

97 See Criminal Code Act, Laws of the Federation of Nigeria 1990, sec 37.

98 B Ugorji “Indigenous People of Biafra (IPOB): A revitalized social movement in Nigeria” (2017) International Centre for Ethno-Religious Mediation, available at: <<https://www.icermediation.org/publications/indigenous-people-of-biafra-ipob-a-revitalized-social-movement-in-nigeria/>> (last accessed 20 November 2018).

99 See “Pro-Biafra independence protesters arrested in Nigeria” (15 September 2017) *Business Day*, available at: <<https://www.businesslive.co.za/bd/world/africa/2017-09-15-pro-biafra-independence-protesters-arrested-in-nigeria/>> (last accessed 20 November 2022).

100 Amnesty International “Nigeria: At least 150 peaceful pro-Biafra activists killed in chilling crackdown” (2016), available at: <<https://www.amnesty.org/en/latest/news/2016/11/peaceful-pro-biafra-activists-killed-in-chilling-crackdown/>> (last accessed 20 November 2022).

which he desperately needed.<sup>101</sup> On 20 September 2017 the IPOB was proscribed, designated a terrorist organization and was listed among the 20 deadliest terror groups in the world in the Institute for Economics and Peace's 2023 Global Terrorism Index – although the latter quickly retracted its inclusion of the IPOB, saying instead that it is a secessionist movement that aims to establish an independent state of Biafra.<sup>102</sup> On 18 June 2021, Kanu was again the focus of rising tensions in the South-East region following his arrest in Kenya, where he was subsequently handed over to the Nigerian authorities.<sup>103</sup>

### *Can the South-East people of Nigeria exercise their right to external self-determination within the provisions of international law?*

As discussed above, there are three requirements for a group to successfully affirm their right to external self-determination: they must be a people, and they must be former colonies or must be oppressed. Each of these requirements shall now be examined in the context of the South-East people of Nigeria. UNESCO lists seven features that define a people: “a common history, a common racial or ethnic identity, cultural homogeneity, linguistic unity, common religion or ideological affinity, territorial connectedness, and a common economic life”.<sup>104</sup> Likewise, in *Kevin Mgwanga Gunme et al v Cameroon*, the African Commission found that the people of the Southern Cameroons met the requirement to be called a people because they have a common history, language, tradition, territorial connection and political outlook.<sup>105</sup> Furthermore, they identify themselves as a people with a separate and distinct identity. On the surface, the South-East people of Nigeria appear to meet all of the requirements of UNESCO and the Commission; they share a history, a common racial or ethnic identity, cultural homogeneity, linguistic unity, territorial connectedness and a religion that is distinct from the other people in Nigeria. The South-East people of Nigeria therefore constitute a people; however, qualifying as a people does not alone confer the right to external self-determination, as the people must also be former colonies or oppressed.

Regarding the requirement that a people seeking to exercise their right to external self-determination must be a former colony, the UN has defined a colony as “a territory which is geographically separate and is distinct ethnically and / or culturally from the country administering it”.<sup>106</sup> Scholars are almost unanimous that the right to self-determination applies to former colonies, especially when the colonies were subjugated by people of a different race.<sup>107</sup> The South-East people of Nigeria certainly do not fall under the typical classification of a colony; they are not conquered or occupied by people of a different racial background, nor are they placed in a position of subordination in comparison to the mother state of Nigeria. Although the South-East people are culturally distinct, there has been no attempt to subjugate them; they have the power to administer themselves

101 See “Biafran leader Nnamdi Kanu”, above at note 95.

102 A Adesomoju “Court affirms the IPOB’s proscription, designation as terrorist group” (19 January 2018) *Punch*, available at: <<https://punchng.com/court-affirms-ipobs-proscription-designation-as-terrorist-group/>> (last accessed 21 November 2022); C Ukpong “IPOB among 20 world’s deadliest terror groups – Report” (15 March 2023) *Premium Times*, available at: <<https://www.premiumtimesng.com/regional/ssouth-east/587836-ipob-among-20-worldsdeadliest-terror-groups-report.html>> (last accessed 27 April 2023); C Njoku “An error to rank the IPOB among deadliest terror groups – IEP” (28 March 2023) *The Nation*, available at: <<https://thenationonlineng.net/an-error-to-rank-ipob-among-deadliest-terror-groups-iep/>> (last accessed 27 April 2023).

103 F Olorok “Nnamdi Kanu was arrested in Kenya, brother reveals” (30 June 2021) *Punch*, available at: <<https://punchng.com/nnamdi-kanu-was-arrested-in-kenya-brother-reveals/>> (last accessed 27 April 2023).

104 UNESCO “International Meeting of Experts on further study of the concept of the rights of peoples, Unesco, Paris, 27–30 November 1989: Final report and recommendations” at 7, available at: <<https://unesdoc.unesco.org/ark:/48223/pf0000085152>> (last accessed 17 May 2025).

105 *Kevin Mgwanga Gunme et al v Cameroon*, above at note 42.

106 See Resolution adopted by the UN General Assembly, 15 December 1960, res 1541 (XV), principle 4, available at: <<https://www.ilsa.org/Jessup/Jessup10/basicmats/ga1541.pdf>> (last accessed 17 May 2025).

107 Hanna “Right to self-determination”, above at note 5 at 237.

through the provincial or local and state governments.<sup>108</sup> Therefore they cannot be considered a colony because they do not satisfy the requirements.

Lastly, a people seeking to exercise their right to external self-determination must meet the requirement of oppression. According to Eastwood, oppression “include[s] the violation of the fundamental human rights of the individuals making up the group or the discriminatory denial of political power, such as the right to vote or seek political office, to a particular group by the parent state”.<sup>109</sup> It is generally agreed that oppression of a people can justify a claim to a right of external self-determination.<sup>110</sup> Almost all of the recent successful claims to a right of external self-determination have involved some kind of oppression, such as torture, mass murder, the discriminatory denial of political power, imprisonment and violations of human rights. The secessions of Eritrea and South Sudan and the partition of Yugoslavia are examples of external self-determination as a result of oppression. Although the South-East people of Nigeria perceive that there has been injustice meted on them and that they have been oppressed by the Nigerian government, this may not have risen to the threshold of oppression as defined by Eastwood which may then lead to the right to external self-determination under international law.<sup>111</sup> The justification for the right to external self-determination for the South-East people on the basis of oppression must be based on hard empirical evidence of large-scale and continuous abuse of basic individual human rights and that the South-East people can no longer live in peace and security or fulfil their legitimate individual aspirations within Nigeria. For example, one of the elements considered by the Partition Plan for Palestine was the fact that the people could no longer co-exist in peace.<sup>112</sup> However, for this justification to be probable in the case of the South-East people, it must be shown that all other means to address their grievances have been exhausted. Presently, there is no evidence of continuous large-scale human rights abuses against the South-East people that rises to the threshold of an oppressed people. Furthermore, it cannot be established that they can no longer live in peace and security or achieve their individual aspirations within Nigeria. They have not been denied the right to vote or to seek political office; in fact, in the recently concluded 2023 general elections in Nigeria, Peter Obi of the Labour Party, who is from the South East, contested the presidential elections and was voted for massively by the South-East people and by other sections of Nigeria.

The pertinent question becomes: How can the South-East people of Nigeria justifiably exercise their right to external self-determination since they are not former colonies, oppressed or under occupation? As stated earlier, under this situation the pursuit for external self-determination is left to domestic laws and to political negotiations between the mother state and the people seeking to exercise their right to self-determination. Presently, Nigerian domestic laws do not make provisions for external self-determination or secession. Section 2(1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, provides that “Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria”. The South-East people cannot even

108 South-East Nigeria is constituted of five states or provinces which are administered by themselves: Imo, Abia, Enugu, Anambra and Ebonyi.

109 L Eastwood “Secession: State practice and international law after the dissolution of the Soviet Union and Yugoslavia” (1993) 3 *Duke Journal of Comparative and International Law* 299 at 341–42.

110 See *Katangese Peoples’ Congress*, above at note 40.

111 Examples of perceived oppression include the systemic killings of young men in the South East of Nigeria; see O Kenechi “South East: Rising insecurity and injustice” (13 May 2021) *Sahara Reporters*, available at: <<https://saharareporters.com/2021/05/13/south-east-rising-insecurity-and-injustice-okenyi-kenechi>> (last accessed 31 May 2023). They are also victims of inequality: the South-East geopolitical zone has five states, while other zones (the South South, South West, North Central and North East) have six states each. See H Olatunji “Edwin Clark: South-East most disadvantaged geopolitical zone in Nigeria” (26 June 2021) *The Cable*, available at: <<https://www.thecable.ng/edwin-clark-south-east-most-disadvantaged-geopolitical-zone-in-nigeria>> (last accessed 31 May 2023).

112 See A Winder “UN Partition Plan, 29 November 1947: Paving the way to the impending nakba”, *Interactive Encyclopedia of the Palestine Question*, available at: <https://www.palquest.org/en/highlight/159/un-partition-plan-29-november-1947> (last accessed 22 May 2025).

litigate in their national court on the basis of exercising their rights to secede from Nigeria; if they do, it is likely that they may face the same outcome as that of Quebec in *Re Secession of Quebec*, where the Supreme Court of Canada held that the Canadian Constitution does not give Quebec the right to secede unilaterally, “that is, without principled negotiation with other participants in Confederation within the existing constitutional framework”.<sup>113</sup>

Therefore the process of attaining external self-determination for Biafra must be through a democratic and consensus-based process between the South-East people and the Nigerian government. Similar to the Scottish independence referendum, the South-East people must first obtain the consent of its parent state to initiate a referendum for secession, must then propose a direct and clear question regarding the secession on the poll, and lastly, must determine the issue based on the votes of the majority of the people. However, whether the Nigerian government will consent to this process remains to be seen.

## Conclusion

Comparable to successful and unsuccessful social movements all over the globe, the Biafran secessionist crusade under the canopy of the IPOB has attracted public attention as well as lots of supporters and well-wishers of their demands. The right to external self-determination is guaranteed under international law to a people who are in former colonies or oppressed. There is a trace of inequality or oppression meted on the South-East people of Nigeria, but it may not give rise to the right to self-determination under international law. The IPOB are left with the option of negotiating with their mother state of Nigeria about their desire to be independent. Their crusade may suffer the same fate as MASSOB, which preceded it; MASSOB lost some of its impact after its leader was incarcerated in 2005 and released two years later. What the IPOB’s movement shows more than anything else is more than 50 years of failure in Nigeria to making the idea of Biafra’s secession go away. The continuous demand for external self-determination by the South-East people is a rejection of their post-war socio-political and economic conditions and calls for an effort to rectify the errors of the past. This may include gathering the South-East people or their representatives to discuss their existence, heeding the call for true federalism or restructuring of the current political system, which has recently been at the vanguard of most national discourse in Nigeria. It is by doing this that a true nation will emerge.

**Competing interests.** None

<sup>113</sup> *Re Secession of Quebec* 1998 Can Sup Ct LEXIS 39 at 149.