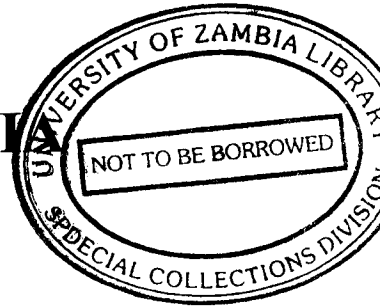


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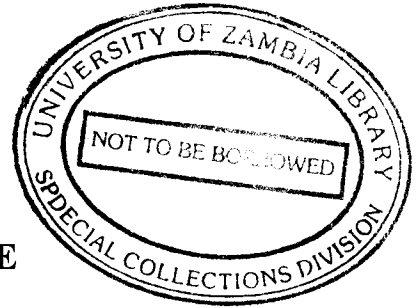
L410 OBLIGATORY ESSAY

**TITLE: THE RIGHT TO SELF-DETERMINATION WITH
SPECIAL REFERENCE TO SOUTHERN CAMEROON
AND SOUTHERN SUDAN**

**By
Monica Lungu Sakala
*Computer No. 80072542***

**This essay is submitted in partial fulfillment of the award of
A Bachelor of Laws Degree (LLB) in the School of Law at the
University of Zambia.**

December 2006



SUPERVISOR'S CERTIFICATE

This is to certify that this Directed Research Paper entitled: **THE RIGHT TO SELF-DETERMINATION WITH SPECIAL REFERENCE TO SOUTHERN CAMEROON AND SOUTHERN SUDAN** Has met the Academic standard and has satisfied the regulations governing the presentation of a Directed Research Paper in the School of Law at the University of Zambia.

Supervisor: Professor Carlson Anyangwe

Signed: *Carlson Anyangwe*

Date: *24/1/07*

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DECLARATION

I, **MONICA LUNGU SAKALA, COMPUTER NO. 80072542** do declare hereby that I am the author of this Directed Research Paper entitled: ***THE RIGHT TO SELF-DETERMINATION WITH SPECIAL REFERENCE TO SOUTHERN CAMEROON AND SOUTHERN SUDAN***; and confirm that it is my original work. I further declare that due acknowledgement has been given where other scholars' work has been used. I verily believe that this research has not been previously presented in the school for academic purposes.

Student's Signature: *M. Sakala*

Date: *22/01/2007*

DEDICATION

To my parents Christine and Adam Lungu who in my formative years sacrificed a lot to give me a good education. My late sisters Moddy and Blandina who did not live to see the fruits of my efforts.

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First and foremost I give thanks to God for giving me hope and strength even during my most trying times, and seeing me through my studies. My supervisor, Professor Carlson Anyangwe for opening up my field of knowledge on the subject of the Right to Self-determination and his guidance. I am greatly indebted for having benefited from his immense knowledge.

Mr Simon Kulusika, Senior Lecturer in the Law School for availing me his book on the subject and generating my interest through his media articles.

To my children Archie, Dee, Kondwani, Zangose, my niece Samaria and my husband Levy Mumba for their perseverance and sacrifice they had to bear during my studies. You gave me the strength to continue my studies inspite of the many challenges. Without your love, encouragement and support, my burden would have been much heavier. My youngest child Alfred who missed my love and attention during my long absences from home in pursuit of my studies, you occupy a special place in my heart.

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To many others, friends and relatives not mentioned but remain dear to me, your contribution, prayers and encouragement in one way or another were a source of inspiration.

Lastly, the graduating class of 2006, you were all such wonderful colleagues and made my studies enjoyable.

Table of Acronyms

UN	United Nations Organisation
OAU	Organisation Of African Unity
AU	African Union
UDHR	Universal Declaration Of Human Rights
ICCPR	International Covenant On Civil And Political Rights
ICESCR	International Covenant On Economic, Social And Cultural Rights
UNGA	United Nations General Assembly
ACHPR	African Charter on Human And Peoples Rights
LRC	Le Republique du Cameroon (The Republic Of Cameroon)
SPLM	Sudan People's Liberation Movement
SPLA	Sudan People's Liberation Army

PREFACE

The primary purpose of this study is to present a concise analysis of the concept of the right to self-determination with respect to two African countries that is, Southern Cameroon and Southern Sudan.

The study will look at the efficacy of the claims of the right to self-determination by the two countries. The study aims to achieve four principle objectives.

Firstly, the study is an attempt to raise awareness on this principle. A survey carried out among students of human rights and international law shows that very few seem to understand and appreciate the concept. This could be attributed to the fact that the problem does not exist in Zambia as self-determination though people have an idea of secession and not self-determination.

Secondly, the paper will endeavor to show the historical, political, economic and social factors that have prompted this claim.

Thirdly, the study brings to light the preconditions under which the right should be supported and lastly, the study will look at the current situation of the peoples of

Southern Cameroon and Southern Sudan and why there should be compelling reason for them to exercise the right to self- determination. These conditions have a bearing on the position taken by these people to claim the right.

In light of the foregoing, the hypothesis is this paper will focus on whether the people of Southern Cameroon and Southern Sudan have valid claims to this right and whether these claims are in conflict with the ideals of the African unity expressed by the African Union in particular, the principle of territorial integrity.

A comparison will be made with countries that have exercised this right and then draw conclusion on the legal and political efficacy of the claims by Southern Cameroon and Southern Sudan.

CHAPTER ONE

An overview of the Principle of Self-determination

Self determination is one of the most difficult questions in international law, especially when it applies to ‘people’ who form part of a sovereign state rather than those under colonial domination or military occupation.¹ This becomes even more difficult when the issue of territorial integrity is brought into consideration as it is one of the ideals of the AU (formerly the OAU). It has been held that territorial integrity is a countervailing principle to self determination. This is applicable in respect of colonial boundaries that were created by the European countries that took part in the scramble for Africa. In the case of both Southern Cameroon and Southern Sudan the areas that are claiming the right to self- determination were distinct territories with a separate colonial administration in charge of those territories. The concept of territorial integrity cannot therefore be used to counter the claims of the right to self- determination.

What exactly requires determination?² On a theoretical plane and especially in practice, the goals or results of self-determination vary in terms. However, Hannum notes that there is a clear preference for independence as the normative result of the exercise of the right to self-determination.³ For the purpose of this paper, we can therefore accept independence as the normative result of exercising the right of self-determination. This in fact ties in well with the ultimate goal of the people of Southern Sudan and Southern Cameroon who are subjects of this discourse.

¹ Niall Mac Dermot, *Self-determination and the Independent Bantustans*: <http://www.anc.org.za/anc/docs/27/07/06>

² By Elizabeth M. Jamilah Kone, ‘*The Right of Self-Determination on the Angolan Enclave of Cabinda*’, <http://www.Africa.upenn.edu/workshop/kore98.html> 27/07/2006

³ Ibid

Having said that, it is necessary to state that in any discussion of self- determination it becomes inevitable to define what is meant by 'people's. The right to self- determination is eminently a democratic right or principle and the right to self- determination is now generally recognized as a right in international law. What is contentious is what it implies, includes and excludes.⁴ Hence the paper will attempt to discuss what constitutes a people. In looking at this issue, the views of a number of writers will be brought to the fore.

The term was used in the Banjul Charter⁵ but was not defined and within the context of the Charter, the word "peoples" it could be said, 'all peoples' refers to the collection of individuals who make up the constituent communities of Africa and to whom the collective rights provided in the Charter are applicable. It is therefore logical to suggest that within the framework of the Banjul charter, "all peoples" as such (it included the distinct category of colonized and oppressed), peoples have a right to self-determination.⁶ There is however no consensus on the definition of a 'people'. The definition of people is important as it will pave the way for determination of the entities that may be said to have the right, freely, to determine their destiny and validly assert a claim for sovereignty and the establishment of an independent state.⁷

⁴ . Issa G. Shivji, *The concept of Human Rights In Africa* (1989) Codesria Book Series p72/73

⁵ 1986 Charter

⁶ S. Kwaw Nyameke, 'Changing African Perspectives on the Right to Self-Determination In the Wake of the Banjul Charter on Human and Peoples Rights' *Journal of African Law* vol. 29 No.2, p.58

⁷ Simon E. Kulusika, *South Sudan Right of Self-determination and Establishment of New State: A Legal Analysis* (2004) University Of Zambia Press, Lusaka.

For the purpose of this paper the definition of a 'people' as given from the sociological point of view shall be relied upon.⁸ In this case a certain criteria will be used namely the objective which requires that the people must be obviously a distinct group and possess features which separates them from others within the state in terms of ethnic, linguistic or religious factors, the group should be assumed to be a minority in numerical terms. This factor holds true for Southern Sudan but in the case of Southern Cameroon, the circumstances of its claim are uniquely different, as the paper will show in the relevant chapter. Southern Cameroon's situation is a case of annexation or colonization of an already existing state by another state. The considerations are that the group must be nationals of the state and be able to exist as a state.

The subjective criterion requires that the group should demonstrate a strong sense of solidarity and belonging as a distinct group and have a wish to continue and not be assimilated in the surrounding population.⁹

Having defined the term 'peoples', it would be necessary to define the term self-determination. Defined in its simplest terms, self-determination is the principle by virtue of where people freely determine the political status and freely pursue their economic, social and cultural development. Self-determination is in essence the right of self-government.¹⁰ This right is exercised by either opting to be an established as an independent state or by associating with an independent state or being integrated into an existing state. Self-determination so defined was thus used as a basis for decolonization

⁸ P.S.Y. Dirstein and M. Tabory (Eds) *The Protection of Minorities and Human Rights*. Martins Nijhoff Publishers Dordrecht, p.5

⁹ . Ibid

¹⁰ S. Kwaw Nyameke, 'Changing African Perspectives on the Right to Self-determination,' *Journal of African Law* vol. 29 No.2., p.147

in Africa and provided the foundation of equal statehood for the former colonies of Africa in international relations.¹¹

The criteria justifying claims for self-determination vis-vis an Established State.

It should be recognized that states are not objectives in and by themselves and conversely the justification for their existence is their capability to discharge a task incumbent upon them in service of their citizens. In other words states are no more sacrosanct and therefore their existence is no longer exempt from challenge even on a legal plane. Rather they have a specific *raison d'être*. If they fundamentally fail to live up to their essential commitments they begin to lose their legitimacy and thus even their very existence can be called into question. This cry for self-determination becomes legitimate in such a scenario.

A state is under a basic obligation to protect the life and physical integrity of its citizens. Therefore, if a state machinery turns itself into an apparatus of terror which persecutes specific groups of populations, those groups cannot be held to be under an obligation to remain loyally under the jurisdiction of that state.¹² To push the argument further, it can be stated that where situations exist like genocide against a certain group of peoples, discrimination in areas of development and in the governance of the country and other violations of human rights would make the state that perpetrates these vices, to forfeit its right to expect obedience from these citizens.

¹¹ Ibid. 147

¹² . Issa G. Shivji, *The concept of Human Rights in Africa*(1989) Codesria Book Series p72/73

International law has been accepted by states as one creating norms that bind relations between states and therefore, if international law is to remain faithful to its premises, it must give the actual victims a remedy enabling them to live in dignity. It is a matter of common knowledge that in its elaboration on self- determination, the Friendly Relations Declaration¹³ of the General Assembly would appear to go even further when stating that the principle of national unity and territorial integrity may have to yield if the state concerned is not possessed of a government representing the whole people belonging to the territory without a distinction as to race, creed or color.¹⁴ State practice would therefore be put to a test in giving justification for recourse to self- determination by a given group.

Under the Friendly Relation declaration¹⁵ different forms of self- determination are listed such as statehood through free association or integration with an independent state or through emergence into any other political status. The text is clear that a free choice is given to the people concerned. They are entitled to exercise any option available to them and they cannot be prevented from choosing independent statehood. Any attempts to suppress demand for self-determination are capable of generating violence and jeopardizing international peace and security. It has also been advocated that people subjugated in violation of international law have a right to regain their freedom and constitute themselves as an independent sovereign state. In addition if a government treats a people in a way that violets its fundamental human rights evidently and severely, there would be a justification for self- determination. This includes all measures aimed at

¹³ Resolution (1970)

¹⁴ Tomaschat, *Modern Law of Self Determination* (1993) Martinus Nijhoff Publishers, The Hague, P11

¹⁵ *Supra* note 13

depriving people of certain rights and freedoms; including imprisonment of its leaders as this is incompatible with the right of self- determination.

The argument in favor of territorial integrity and sovereignty of states has often been used by African governments to suppress the claim for self- determination; But the preservation of the existence of people is by no means in contradiction to the principle of sovereignty and territorial integrity. Thus this fundamental condition of self- determination must be respected by all states. A state that infringes this obligation cannot pit the principle of sovereignty or of territorial integrity against the peoples right to self- determination.¹⁶ Therefore the raising of these two principles to negate any claim for self- determination are a weak argument. If people are denied the right to participate in the internal affairs of the country and the political life of the state they have a right to seek an independent existence as a sovereign state.

Other basic principles of international law reinforce the strength of this limited approach to the notion of peoples entitled to benefit from the right to self- determination. Apart from the territorial and respect for sovereignty others are the prohibition of recourse to force in international relations, principle of *uti possedetis* 'principle of non- intervention, rule prohibiting premature recognition' all plead for a system of the status quo protecting the existing states and government.¹⁷ States therefore use these provisions to suppress claims to the right to self- determination in African. Granted that territorial integrity or political independence should be protected but this should be on condition that states conduct themselves in compliance with the principle of equal rights and self-

¹⁶ Tomaschat (ed) *Modern Law of Self-determination*, Ibid, P27

¹⁷ Tomaschut Ibid pp256 -257

determination. The right to self- determination against those who oppress others is clearly unimpeachable.

In conclusion, it can be said that only general international law grants peoples a license but clearly not a right to vindicate their substantive rights by recourse to force in extreme cases of forceful denial of their right to self- determination. That is why states against whom this is being exercised ought to be accommodating to avoid violence because there is a limit to the amount of injustice that people can take without resorting to force.

CHAPTER TWO

International instruments

There are a number of international instruments that have included the right to self-determination in their provisions. The paper seeks to discuss these instruments and hasten to add that the fact that, this concept is dealt with in a number of international instruments underlies the fact that this concept has been recognized as both an international law and human rights concept. The importance of this concept cannot be underplayed because the world community would not have included it in its provisions if they did not believe in the right of self-determination. These international instruments will be discussed in turn.

1. UNITED NATIONS CHARTER

With the adoption of the United Nations Charter at the end of the second world war, the principle was incorporated in the said Charter and this heralded a new phase for African colonies in international relations Article 1 paragraph 2 of the United Nations charter, provides: to develop friendly relations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace. The issue of self-determination is also stated in articles 55 of the United Nations Charter. Article 1(2) of the UN Charter created rights for colonial peoples and imposed corresponding duties on administering powers.

With these provisions in the Charter of the UN it became mandatory for colonial powers who lorded over African states to prepare them for self-determination through independence. To African States the UN proclamation of the right to self-determination offered a salient political opportunity for their independence struggle based primarily on

the right to self determination. Furthermore, the UN charter proclamation helped to enhance the independence struggle and legitimize their right to establish independent African States. The resolve was further strengthened by the UN Resolution of 1960. It was in the light of this provision that the only two African independent state (Liberia and Ethiopia) who were members of the UN took the matter of Namibia to the International Court of Justice (ICJ). This was in the South West African Cases¹⁸ where the issue of self-determination was discussed. In that case, the two countries contended that South Africa was in breach of its international obligations by not advancing Namibia towards self-rule as required by the mandates of the League of Nations. The court agreed with the two countries that South Africa was obliged to grant the right to self-determination to South West Africa.

It is ironical that the case of Namibia resembles the situation that Southern Cameroon was subjected to. It is in that respect that Chapter 3 of this essay will seek to give a comparative analysis between the two countries. It is from there that we would be able to draw a logical conclusion on why Southern Cameroon may be compelled to take the matter before the International Court for a decision.

2. UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The 1948 Universal Declaration of Human Rights (UDHR) was firstly conceived as a UN General Assembly resolution and hence was not binding upon members. However, it has now been accepted as a normative framework which has acquired the status of jus

¹⁸ . ICJ Reports (1950) p.28

cogens. This means it is now acceptable that the UDHR is applicable *erga omnes*, meaning that it is applicable to all states without exception.

However, though the UDHR makes no explicit reference to self-determination its provision in 21(3) which states that, the will of the people shall be the basis of the authority of government. It can be inferred from this provision that a people who has not consented to or has withdrawn consent from the present government is experiencing a collective human rights violation. As a remedy self- determination may be had recourse to by those who continue to be governed against their will.¹⁹ By necessary implication the UDHR supports the right to self- determination.

3. THE 1960 DECLARATION

The principle of self-determination was further raised under the UN Resolution 1514 (XV) dealing with the 1960 declaration on the granting of Independence to colonial countries and peoples and it provided that inter alia; all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social, cultural development. This accelerated African liberation movements in their quest for self-determination. This period saw an increase in the number of African countries that were granted independence. In this respect self-determination came to be known in the context of a colonial setting and in as far as this objective was achieved, the provisions of the UN charter were adequately met. This resolution was a tremendous step forward by the General Assembly. In straight forward language, that resolution proclaimed the right to self-determination under the auspices of

¹⁹ Kone, Right of Self- determination In The Angolan Encalave, [http: www.africa.upenn.edu/workshop/kone98.html](http://www.africa.upenn.edu/workshop/kone98.html)27/07/2006

the UN. According to the applicable texts, self determination could never be considered an exclusive right of colonial peoples. Even the General Assembly Resolution (XV) 1514, in spite of its specific object of bringing about speedy decolonization, provides that self-determination is a right for all peoples.²⁰ Another Resolution of the General Assembly, under the auspices of the UN, affirmed the principle of self-determination for peoples subjected to colonial oppression under GA Resolution number (XXI) 1966.

The right to self-determination was again a subject of the discussion by the ICJ in the Western Sahara Dispute where an advisory opinion was sought and by this opinion the court was affirming the validity of *self-determination as a legal principle*.²¹

To conclude, though the charter is said to provide only a cursory recognition to self-determination as a principle and does not accord it the status of a right, its subsequent provision gave an obligation on member states to ensure the realization of this right by colonized countries. It also obligated the colonizers to grant independence to colonial territories.

4. THE OAU CHARTER

The OAU Charter does not make any express reference to self-determination. It however shows unequivocal rejection of post-independent territorial claims. Article II, sets as one of the objectives of the OAU, to defend the territorial integrity and independence of member states. Therefore one would suggest that any claim to self-determination in the post-independence era would necessarily impinge on the territorial integrity and

²⁰ Tomuschat (ed) *Modern Law of Self-determination*, Ibid (1993) p3

²¹ .S. Kulusika, *ibid*, p.107

independence of member states. However, on the issue of whether this excludes self-determination within an independent state is a subject that would require different interpretation of the article.

5. THE TWO COVENANTS OF 1966

This involves the Covenants of 1966 namely the International Covenant of Economic, Social and Cultural Rights (ICECSR), and the International Covenant on Civil and Political Rights (ICCPR). The two international covenants on human rights use identical language. Article (1) of the two which covenants is often referred to as common article 1. These articles refer to self-determination as a right not just a mere principle. Common Article 1 provides that, all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic development and in Article 2 it states that all peoples may for their own ends freely dispose of their natural wealth and resources. In no case may a people be deprived of its own means of substance. These provisions are important not only because they accord self-determination the status of a right but are also responsible for an expanded conception of self-determination to include people's right to economic needs.

Antonio Cassese makes reference to the common article 1 by bringing in the issue of internal self-determination. He states that, the choice of the word 'freely' is instructive. One of the primary significance of the provisions is that the article requires that peoples choose the legislators and political leaders free from manipulation or undue influence from the domestic authorities. In this respect internal self-determination presupposes that all members of a population be allowed to exercise all those rights and freedoms which

permit the expression of the popular will. People should enjoy the totality of the rights. Consequently one can claim a breach of Article 1 of the covenant if a state abuses or gravely disregards the limitations on civil and political rights authorized by the covenant.²² It follows therefore that where a states cannot grant self-determination internally, peoples have a right to resort to external self- determination which means the creation of independent statehood. In areas of South Cameroon and South Sudan where there is agitation for self-determination it is clear that their rights covered under the ICCPR are being violated on a sustained basis.

It should be pointed out that the increase in the number of states parties to the UN covenants has increasingly strengthened the impact of Article 1 which has been largely used by western states in the international scene even for those countries which have not ratified the covenants. In other words, Article 1 has been relied upon per se as sanctioning a value that should apply to any state (i.e. erga omnes) whether or not is has become a contracting party to the covenants.²³ The covenants have also acquired the status of the jus cogens and no state is allowed to derogate from its provisions. The Sudanese and Cameroonian governments are therefore bound by these provisions and there is no escape.

It has also been accepted that provisions of common article 1 of the two covenants have crystallized into general norms of customary international law. This implies that even

²² . Antonio Cassese, *Self determination of A Peoples: A legal Appraisal* (1995), Cambridge University Press, London pp52-53

²³ Antonio Cassese Ibid p.66

states that may not have ratified these covenants are bound by the provisions. No state can therefore run away from giving people who are claiming this right.

Although the idea of self-determination is by no means new, scholars have yet to agree upon the actual source of its origin. President Woodrow Wilson was responsible for elevating the principle of self-determination to an international level when in 1916; he included it in his fourteen points²⁴.

When the League of Nations was formed it did not explicitly mention the principle of self-determination in its covenant but scholars are unanimous that self-determination was implicitly embodied in spirit in the mandate system of the League of Nations as a sacred thrust of civilization. By 1945 self-determination gained strong support from various nation states that were under the yoke of colonialism and it eventually found its way in the UN Charter which made a provision for self-determination. By the 1960, the principle was widely articulated and was cited by the ICJ in its advisory opinions, in charters of regional organizations e.g. the OAU Charter made a provision for the right to self-determination. Other provisions were a subject of discussion in chapter two of this discourse.

Today the right to self-determination is considered a jus cogens and a part of customary law that imposes binding obligations on all nation states. It is considered not simply as a principle of international law but rather an affirmative right of all peoples. It is seen as a prerequisite to any genuine enjoyment of any of the human rights.

²⁴ Halim Moris, *Self-Determination: An Affirmative Right or Mere Rhetoric*, file:// E:/Barotse/bohemian.htm.

Self-determination was inserted in Article 1 of the two international covenants on human rights which the General Assembly approved unanimously. These two human rights covenants use identical language. The Human Rights Committee made a general comment on Article 1 of the ICCPR which upholds and confirms the meaning to be derived from the literal interpretation of the provision that self-determination is a right for all peoples. In addition to the two UN covenants namely the 1966 ICCPR and ICESCR have recognized in their provisions, the right to self-determination as a human right.

6. THE BANJUL CHARTER (African Charter on Peoples and Human Rights)

The Banjul Charter was adopted at the Eighteenth Assembly of Heads of States and Government of the OAU meeting in 1981 and came into force in 1986. The Banjul Charter, also known as the African Charter on human and peoples rights is the principal normative instrument. The first part comprises the substantive provisions spelling out the various human and peoples rights and duties of the state and the individuals.²⁵ The Charter provides for collective rights and among peoples rights, the right to self-determination is provided for in Article 2 (1). Other related rights are stated in Article 2(i) through to (vi) which deal, among other rights, with rights to equality with all other peoples right to enjoy the same respect and have the same rights, right not to be dominated by other people, right to existence, right to self-determination and right of colonized or oppressed peoples to free themselves from domination.

²⁵ Carlson Anyangwe, *Introduction to Human Rights and Humanitarian Law* (2004) University of Zambia Press, Lusaka, p118

Self-determination under the Banjul Charter provides for a bundle of individual human rights on the one hand and collective rights on the other hand, hence the name Charter on Human and Peoples Rights. In Article 20 the Charter provides that:

1. All peoples shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue economic and social development according to a policy they have freely chosen.
2. Colonized or oppressed peoples have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

As already stated, self-determination in the OAU Charter presupposes that the concept applies to pre-independence or the colonial era. The provisions in the Banjul Charter go beyond this meaning. By implication, we could therefore possibly interpret self-determination as also applying to peoples in a post-independence era. The Banjul Charter does not therefore support the right to self-determination in a restrictive sense and applying to the pre-independent states.

One thing to note about the Banjul Charter is that it does not expressly make mention of the concept of territorial integrity which is a significant feature of the OAU Charter and OAU pronouncements. This should not however be taken to mean that it supports a *carte blanche* idea of self-determination. What is of essence is to analyze the provisions of the charter in a broader sense so that it encompasses the concept as going beyond the colonial context.²⁶

²⁶ Nyameke, *Journal of African Law* Ibid p 159

In drafting the charter, the experts chose not to foreclose the issue of post-colonial self-determination altogether as was the case under the OAU Charter. On the other hand they refrained from an explicit recognition of the right to secession as such. Its incorporation of self-determination in broad terms is significant. The Charter cannot obviously be called a *carte blanche* for secessionist movements in Africa, but in so far as self-determination is concerned it constitutes a new phase in African thought.²⁷

The African Charter echoes Article 1(2) of the UN Charter where it talks about equal rights of people and the right to self determination. The African Charter states that nothing shall allow the domination of one people by another. The African Charter issued a strong statement that is unambiguous on the fact that all people have a right to exist as a people. It goes on to say that people shall have the unquestionable and inalienable right to exist as a people, and the issue is not debatable. As long as a people meet the criteria they have a right to exercise self-determination without question. Self determination is a human right and is claimable at any time as events in Europe have shown.

The African Charter comes out very strongly on these rights and this has been buttressed by the African Commission which showed in its decision that collective rights are essential elements of human rights in Africa in the case, **The Social and Economic Rights Action Centre and the Centre for economic and Social Rights V. Nigeria**²⁸ It went on to state that the African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. The right to self-

²⁷ Nyameke, *Journal of African Law*, Ibid p159

²⁸ Commission No. 155/96

determination is one of the rights expressly stated and therefore it can be exercised by peoples covered under the charter.

The Charter also imposes duties on the states as well as individuals. States parties to the Charter have a general duty among others to recognize the rights and duties enshrined in the Charter, adopt legislative and other measures to give effect to the rights in the Charter, promote and ensure respect of rights in the Charter, ensure that the rights, obligations and duties in the Charter are understood. These provisions in the Charter notwithstanding, most African governments have not given effect to these provisions especially by enshrining them in the constitution. The right to self-determination is one concept which states have deliberately tried to ignore.

It would be note worthy to point out that giving cognizance to the right of self-determination would not in any way mean that any tribal ethnic grouping would have the right to exercise the right. It can only be exercised under given conditions as discussed in chapter four of this paper. A careful analysis of the right to self-determination would reveal that no group would wish to exercise this right were they are not oppressed, discriminated and subjected to gross human rights violation. People seek self-determination not for its own sake but it is done in response to oppressive conditions that they are being subjected to.

Both Sudan and Cameroon are states parties to the African Charter on Human and Peoples Rights and therefore these instruments are binding on them. Where a people exist who wish to exercise this right, the states parties to the Charter are under an obligation to

ensure that it is given effect. The right to self determination is a human rights principle and as such, it is among the group of human rights principles endowed with special legal force and falling within the legal category known as *jus cogens*. The rights which cannot be derogated from or contradicted by treaty provisions or customary international law are peace, the dignity of the person and self-determination of peoples.²⁹ Therefore denial of peoples rights to exercise the right to self-determination would be a violation of human rights and the African Commission concerned can put up a claim against a states party before the human rights commission of the African Union. The provision in the Banjul Charter was therefore an instrument that gave hope to the oppressed people in postcolonial Africa and this hope remained alive for as long as the charter has maintained this provision.

7. 1970 Friendly Declarations

This was a General Assembly Resolution called the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among states and reiterates the main points of the 1960 resolution. Scholars' interpret the Friendly Relations Declaration as an expansion of the right of self-determination to non-colonial situations.³⁰ This provision is also used as a countervailing principle of territorial integrity. That provision on territorial integrity notwithstanding, it is the contention of this paper that the principle may only be applied where a people tries to encroach on the territorial boundary of another state but where it applies to people within a state who have

²⁹ Anyangwe , *ibid*, p 216

³⁰ Jamilla Kone , www.upenn.edu/workshop/kone98.html 27/07/2006

been identified as a people the exercise does not violate the principle of territorial integrity.

It is on the basis of the dramatic moves encompassed by the Friendly Relations Declaration that the ICJ felt entitled to give its blessings to self-determination as a legal right. Both in its legal opinion on Namibia³¹ and later in the opinion on Western Sahara³² it clearly stated that self-determination was more than a guiding principle to be heeded and promoted by the UN, but a full-fledged right that could be invoked by its holders to claim separate statehood and sovereign independence.³³ Those holders of the right to self-determination have already been identified as those who can be called a 'peoples' within the meaning of international law.

8. Helsinki Accord Final Act 1975

Lastly the other international instrument which has made a provision for self-determination is the Helsinki final Act. This is another human rights instrument which provides that, by virtue of the principle of equal rights and self-determination of peoples, all peoples have the right in full freedom, to determine when and as they wish their internal and external political status without external interference and to pursue as they wish their political, economic and social and cultural development.³⁴

To conclude on international instruments on the right to self-determination, has been adequately provided for and there is therefore no excuse for African States to deny the

³¹ Tomaschut, (ed) *Modern Law of Self Determination*, Ibid p2

³² ICJ Reports (1971) p16

³³ ICJ Reports (1975) p12

³⁴ Issa G. Shivji, *The Concept of Human Rights in Africa* (1984) Codesria Book Series p72 -73

existence of that right. In a general sense, African States have supported the instruments dealing with self-determination and there is no basis upon which they can deny this as a legal right. The African Charter which is closer to home has come out strongly in support of this right. Therefore, the issue is not debatable. African States entitled to this right must be allowed to exercise it without hindrance.

Theories on Self-determination

After the attainment of independence by a number of states the issue of self-determination was still evident. Examples of such incidences which were mostly marred by conflict are Katanga in the then Republic of Congo, Biafra in Nigeria and South Sudan in the Republic of Sudan. Though Southern Cameroon raised the issue of self-determination theirs was not accompanied by conflict on a large scale. All these countries have to date remained part of the states against whom they attempted to claim the right to self-determination. In Africa as a whole, only two countries have thus far exercised this right. These are the Saharan Democratic Republic and more recently Eritrea whose right came to fruition in 1993. Ironically, Africa does not seem to support the idea of self-determination even for cases where that right should deservedly be granted.

The reason for this is historical in the sense that the colonial background has made African states apprehensive to this idea. Though it may be argued that historical factors and the very nature of colonialism in Africa would be a rallying point for people who seek self-determination. In arguing in this manner it is the contention of this paper that in fact the haphazard way the colonial boundaries were drawn up have created a problem in that some distinct groups were banded together without any consideration for factors

that would unite them. It is common in most border areas to find one tribe divided by the colonial boundaries. Having said that, it is not suggested that tribes should be the rallying point for exercising the right to self-determination. The point about which people can objectively be said to deserve the right to self-determination has already been stated in the earlier part of this paper.

As a corollary to the point just mooted, it can be stated that members of the OAU (now AU) have generally not supported self-determination in post-colonial Africa. However, the same African States have supported instruments that espouse self-determination without reservations against it. The OAU Charter provisions and the 1964 resolutions which dealt specifically with colonial boundaries provided a valid basis for post-colonial self-determination claims in Africa. The responses of African states to actual cases of secession over the years even though confusing at times, generally supports this conclusion.³⁵ The question that would arise therefore is, why the African states included self-determination in the African Charter and Banjul Charter if they do not support it in the first place.

The concept of self-determination was propagated by leaders of the African struggle for independence and this seems to have left a legacy into the post-independence era. The question to be addressed by this paper is whether the right to self-determination is still a valid demand in post-independent Africa or it should have died with the end of colonialism.

³⁵ Nyameke Blay, *Journal of African Law*, vol 29, no.2, p152

In the past, African States have generally taken the position that whatever the merits of the ideal of self-determination may have been for decolonization, it does not apply outside the colonial context and in any case it represents a dangerous anachronism for modern African States.³⁶ It has been the view of some academics that in the post-colonial era international law does not recognize self-determination. The general basis of this view is that self-determination was only applicable to people fighting for independence in the colonies and once that was exhausted, the matter should be rested.

Though this may be the view of some sectors of the African thinking, it cannot be accepted as holding true. As recent events in other parts of the world have shown especially Europe this phenomenon has been applied successfully without problems.

African states apprehension to the idea of self-determination have been premised on two reasons. Firstly self-determination is perceived as being incompatible with African unity. This view is premised on the notion that self-determination would lead to territorial division of the states; any exercise of such a right would be against the ideal of African unity espoused by the OAU whose aim is to unite African States. The idea of African unity was so entrenched in the minds of the African leaders that events of the Biafran secession attempts would lend credence to this thought for example in a sequel to the Biafran crisis in 1965 Tanzanian President Julius Nyerere upon recognizing the state of Biafra, made a pronouncement that the secession of Biafra was a set back for African unity. The thesis draws strength from the assumption that territorial unity of the

³⁶ Supra note 18 p149

constituent states in Africa is an essential basis for continental unity.³⁷ The Ethiopian President Haile Selassie also supported this belief. As head of the consultative committee on the Nigerian crisis, he observed quite categorically that the national unity of individual African states is an essential ingredient for the realization of the larger and greater objective of African Unity.³⁸ It is the contention of this paper that unity can also be achieved in diversity. There is therefore no point in “forcing a marriage of convenience” on peoples who are clearly distinctive of each other all in the name of African unity/ This relationship is rather oppressive and if pushed too far often results in the opposite effect. Instead of enhancing and promoting unity, the result is bloody conflicts as people would be forced to resort to alternative means to achieve their ideal. This has been the problem being encountered in Southern Sudan. It remains for other states which have been hitherto peaceful like Southern Cameroon to resort to other avenues when peaceful means are being stifled.

The other argument against self-determination in post-colonial Africa is premised on the notion that a successful self-determination claim could have a Domino Theory effect. As already pointed out, Africa is made up of a cluster of ethnic groups that were brought together or divided during the scramble for Africa at the advent of Colonialism. The argument advanced is that in the post-colonial era the unity of groups that was created in a haphazard manner would be a source of instability and self-determination would create problems because once exercised by one ethnic group it would encourage other groups to pursue similar claims. The recognition of self-determination for one group would

³⁷ D.A. Ijalaye, ‘Was Biafra At Any Time A State in International Law’ (1971) *American Journal of International Law* p556

³⁸ Ijalaye, *Ibid* p556

therefore have a 'domino' effect which would lead to dismantling of the state system and provide the oasis for more chaos and instability. The converse of the domino theory is that the non-recognition of post-independence self-determination and the suppression of one case would deter prospective claimants.³⁹

The two issues that advance the position against self-determination do not in fact carry any weight but also lack a sound basis. In the first place the Domino theory itself is based on the assumption that all post-colonial self-determination claims are the same and therefore it follows that one successful claim would lead to a proliferation of claims or literally opening 'a' Pandora's box. The paper will show that while 'people' demand self-determination in one form or another, the internal dynamics of each group differs from the other and the basis of their self-determination may be different as will be shown in the two cases that are the subject of this discourse in South Sudan and South Cameroon. The basis for their claims are distinct as will be shown in chapter two and three of the paper.

THEORIES IN FAVOUR OF SELF-DETERMINATION

Various theories on the concept of self-determination have been advanced by various writers. As a matter of normative political theory, however, there are two situations in which reason for exercising the right to self-determination seems particularly compelling. Firstly, self-determination may be justified in order to undo past injustice when a distinct people has a legitimate claim to territory that was wrongly annexed by another state.⁴⁰

³⁹ Supra note 18 p 155

⁴⁰ Jane E. Stomaseth, 'Self-Determination, Selection and Humanitarian Intervention by the UN', *American Society of International Law* (1992)

The case of Cameroon suggests this state of affairs. Secondly, self-determination may be justified in order to undo present repression when a distinct people or minority is systematically repressed within an existing state and demand equal opportunity to participate in the political process are subjected to on-going gross violation of human rights.⁴¹ This fits perfectly into the South Sudan situation. In Southern Cameroon though the peoples concerned may not be termed as a minority in the normal sense of the word but nevertheless, it will be shown that cases of unequal opportunities in the socio-economic aspects of the state as well as incidents of gross violation though kept under cover, are also evident.

In such instances therefore, remedial self-determination ought to be permissible in cases where governments systematically exclude and abuse groups predominating in a severable territory.⁴² Therefore existence of massive human rights violations gives people the right to seek recourse to the right to self-determination. In addition lack of practical representation and equal rights are perceived to be prerequisites for asserting the right to self-determination.

⁴¹ Jane Stomaseth, *Ibid*, p 155

⁴² Benedict Kingsley, 'Self-Determination and Indigenous Peoples in American Society of International Law' p 383

CHAPTER THREE

Self-determination: The Case of Southern Sudan

In discussing the right to self-determination in the case of Southern Sudan, it is important to state that the right to self-determination is a collective right. It is a continuing right; a right that keeps its validity even after a people have chosen a certain form of government or a certain international status.⁴³ However, in order for this right to be exercised, certain conditions have to exist. These conditions will be laid down in this chapter and tested against what exists in reality in the South Sudan. Before laying down the tests to be applied, it would be necessary to examine the question of Southern Sudan in a historical context. This would involve a discussion of how Southern Sudan became a part of the Sovereign State of Sudan.

Political History of South Sudan

During the scramble for Africa, the British, French and Belgians had a vested interest in South Sudan. The specific French interest was to annex South Sudan to French Sudan which comprised of Mali, Senegal, Niger, Chad and Cameroon in West Africa. The French interest was frustrated when the British established Colonial rule in Sudan. British colonial rule administered Arab and Muslim North and the South separately as a result of acute and irreconcilable geographical, political, cultural distinctions between the two regions of the then Anglo-Egyptian Sudan. For the British per se, the Anglo-Egyptian Sudan was not a colony to say the least as the North and South were administered

⁴³ Antonio Cassese, *Political Self-determination, Old Concepts and New Developments*, Ed., p 138

separately. The North was ruled in the British Colonial policy pattern developed in the Egypt and the Middle East.⁴⁴

The South on the other hand, was under British indirect rule as commonly applied by the British to colonize Africa. To ensure the separate administration of the North and South was done effectively the British Colonial administration enacted the Closed District Ordinance in 1920 and in 1922, the Passport and Permit Ordinance was promulgated.

These ordinances strictly charted the course for complete separate educational, socio-economic, political development as well as requiring strict code on the issue of passports and permits for traveling between the North and South Sudan.⁴⁵ It can thus be seen that North and South Sudan were perceived to be separate entities in the way immigration and education policies were conducted. This went on for sixty years of British Colonial rule. It is therefore ironical that the British adjoined South Sudan and the predominantly Arab and Muslim North Sudan in 1947. It was clear that the South and North are distinct ethnic groups and nationalities with diametrically opposed social cultural linguistics and religious differences and historical circumstances. There was therefore no basis on which the British could have adjoined the two territories. The vastness of the Sudan and the attendant problems created by adjoining the two is a strong point against the idea and also a reason why the South has a valid claim to the right to self-determination. Thus today

⁴⁴ David de Chand, *South Sudan Claims For Right to Self-determination*, www.africa.upenn.edu/Articles 27/07/2006

⁴⁵ David de Chand, *Ibid*, p2

the on-going armed struggle is an alienable democratic, legal and political right to demand the right to self-determination without any questions from North Sudan.⁴⁶

The recognition of the separate existence of the North and South Sudan can be seen from the Sudan Administrative Policy held in Khartoum in 1946 which created the Advisory Council for the North. A resolution was also passed with respect to Southern Sudan which advocated that the South should continue to be colonized for another 10 to 15 years if the North was ready for independence. This conference however did not draw any representatives from the South and all resolutions were passed without the South Sudan presence. This act itself is a violation of the right to self-determination which requires peoples to decide for themselves on issues that affect them. Even the colonial officers from the South were not invited to attend the conference.

The Juba Conference of 1947 was organized where a decision was passed to hand over the South to the leaders of the North which was predominantly Arab and Muslim. What followed was the establishment of the Legislative Assembly (a semblance of today's National Assembly) for the establishment of self-rule in the North. Only thirteen delegates were picked to represent the South in the Assembly.

Finally the British and the Arab and Muslim North political parties represented by Umma Mahdi Sect and the Democratic Unionist Party masqueraded as the legitimate representatives of political parties with support from the Egyptian government decided to grant self-determination to a united Sudan without the participation of South Sudan.⁴⁷The

⁴⁶ Ibid p3

⁴⁷ David de Chand, Ibid, p4

South was left out in the independence talks on the pretext that they had no political parties and organizations which could represent them.

The question that arises from such a scenario is, whether the South Sudan which is advocating self-determination came under the control or became part of the United Sudan through some unjustifiable historical event. This would quite clearly be answered in the affirmation in the case of South Sudan as the catalogue of events has shown.

Therefore from a historical perspective, the act of colonization itself has shown that the South was and should have been allowed to exercise the right of self-determination in accordance with the 1960 Declaration of the UN which obliges colonizing states to grant independence to its colonial territories. Even though Sudan became part of the North as a historical accident, it is the contention of this paper that if there was equality in the areas of development, governance, administration and human rights observance, the peoples of the South would have seen no need to advocate for self-determination. The advocacy of this right only comes about when certain conditions are not right. The paper will attempt to show the contemporary conditions existing in the Sudan as regards the North-South divide.

It is evident in modern day Sudan that there is a monopoly of political and economic power, religious extremism and intolerance, forced Arabization and Islamization of non-Muslim populations and political repression.

The act of Independence for Sudan in 1956 was not received well by the South. The Southern Corps mutinied in Torit on August 15, 1955 in protest at the illegal unification of the North and South without the consent of its inhabitants, the order of transferring the corps to the North and to be replaced by the Arab and Muslim North troops in the South. The British role in the Southern rebellion was significant. The Royal Air force planes transported more than 8000 Arab troops to the South to quell the rebellion. Thus the 1955 Torit mutiny marked the beginning of the 17 year old bush war that was ended by the defunct Addis Ababa Agreement of 1972.⁴⁸

The right to self-determination was being advocated by the South. In this whole arrangement, the South was turned over to a Sudanese government which was unfamiliar with its needs and problems and looked to a Sudanization which in fact was Arabization. This consideration of political and military authority in the hands of the Muslim Northerners with Khartoum as the capital was regarded in the South as the imposition of an alien and hostile regime, all the more resented because of the surviving memories of Arab slave traders who had haunted their victims in the South.⁴⁹ However in the Sudan, the OAU did not condemn the South Sudanese claims to self-determination as such but member states offered no support. In the end however, the OAU supervised the settlement negotiated between the Niemery government and the representatives of the South.⁵⁰ This failure by African governments to take a position only suggests that they were in fact in support of the stand taken by the South. This was more so because, African states were ready to condemn events in Biafra and Katanga. The Biafran and

⁴⁸ David de Chand, www.africa.upenn.edu/articles, 27/07/2006, Ibid p5

⁴⁹ David de Chand, www.africa.upenn.edu/articles, 27/07/2006,

⁵⁰ S. Kwaw Nyameke Blay, *In Journal of African Law*, Vol 29, No2 pp 152 - 153

Katangese events were an early test to gauge how African states perceived the whole idea of self-determination. Their action would in a sense be regarded as done out of fear that groups within their territories would start making similar claims. But as it will be shown this fear was unfounded as to date there are very few claims on the right to self-determination on the African continent.

The civil war in Sudan has ravaged the country for a long time. The only time Sudan has had peace in relation to the question of South Sudan was after the signing of the Addis Ababa Agreement. The agreement provided for a fairly comprehensive self-government for the South Sudan and during the first term of the operation of the agreement there were attempts to redress the underdevelopment of the Sudan.⁵¹ However, it has been shown that the whole agreement was done for political expediency by the Central Government of Niemery to hold on to political survival. Though initially the Niemery government tried to implement the provisions of the agreement it slowly started to make inroads into the agreement and finally abrogated it in June 1983, and among other things imposed Sharia law contrary to the 1973 constitution which recognized Islam Christianity and traditional religions although none of them was allowed to compromise through constitutional and legal means, the political and civil rights of any citizens. The abrogation of the agreement led to the formation of the Sudan Peoples Liberation Movement (SPLM) and the Sudan Peoples Liberation Army (SPLA) under John Garang.

⁵¹ Issa G. Shivji, *The Concept of Human Rights in Africa* (1984) Codesria Book Series p75

The deliberate injection by the state of religion in the mainstream of socio-economic and socio-political phenomenon is a sensitive issue which has drawn the lines of separate development in the country. The concept of forced Islamization and Arabization of Christians and religious groups is an ambitious and unjustifiable paradigm that has created a backlash which spells doom and unattainable social construction.⁵² This in itself violates the fundamental rights and freedoms of peoples, namely the right to freedom of association and assembly.

The government of Sudan has abrogated the 1972 Addis Ababa Agreement which could have helped tackle the current problems in Sudan. There are also no democratic values and the regime in place in Sudan is repressive and authoritarian. Justice for all is not guaranteed as Sharia Law does not recognize this and ultimately one group of peoples is being subjugated and forced to accept things that they do not subscribe to. This in itself has wiped out the institutional base that would guarantee constitutionalism and good governance and therefore the concept of unity in diversity cannot hold in Sudan. The cosmic politicalised environment does not support the existence of a united North and South.

Human Rights violations are rampant and genocide has been committed with impunity. Between 1983 to 1995 it is believed more than 1.6 million people in South Sudan were exterminated and in addition more than 5 million are internally displaced and others are refugees in neighboring countries and beyond.⁵³ Crimes of rape and slavery are being committed against the women but in all this the UN and the world community seem to

⁵² David de Chand, www.africa.upenn.edu/articles, 27/07/2006,

⁵³ David de Chand, www.africa.upenn.edu/articles, 27/07/2006,

have turned a blind eye. There is clear evidence of crimes against humanity but no official from Sudan is being accused of having committed this crime.

In the area of governance, there has been an imbalance in representation between the North and South starting from Independence. During the period of Sudanization from 1953-55 the Arab and Muslim North cheated the South in the process. For instance, only six posts were allocated to the South and as a result created serious animosity. South Sudan leaders perceived the denial of equal representation in the political economy of the administration of the country as concrete evidence of the Arab and Muslim North deliberate recolonisation of the South.⁵⁴ This lack of equal representation and hence the right to determine their own destiny as part of the unitary state of Sudan is a negation to self-determination. This, it should be remembered gives a people the right to participate in the governance of their countries and gave Africans the impetus to fight for self-determination which entailed independence from colonial rule. Therefore the mere change in the actors from one oppressor to another on a given peoples should not deter the claim for the right to self-determination.

A national identity problem between the North and South Sudan remains contentious. The Arab and Muslim North contend that Sudan is an Arab country and its development should follow the Arab-Islamic path. On the other hand, the South asserts that Sudan is an African country and should be developed on Euro-African traditions. This issue should not even be debatable because clearly, Sudan is an African country and not Arab

⁵⁴ David de Chand, Ibid

as claimed by the Arab North. In actual fact, over 62% of its population is of African stock, 34% of mulattoes Arabs and 4% of conspicuous classification and origin.⁵⁵

Deliberate government policy is therefore responsible for this quest to erroneously claim that Sudan is an Arab country. To justify their claim the Sudanese leader, General Gaffar Niemeieri superimposed Islamic law (Sharia) to be the law of the land and thus the non Muslim like Christians in the South were relegated to second class citizens in their own land. This is a violation of human rights in particular the freedom of association.

In the area of development the South is grossly underdeveloped despite its fertile land, strategic mineral resources including oil. This lop-sided development pattern between the North and South is deliberate in order to keep the South undeveloped. An example of this skewed development pattern can be seen in the fact that government decided not to position the oil refinery in Bentiu in South Sudan where oil was discovered. Instead it was decided to build the refinery in Kotsi which lies more than 600 miles from the source. This does not make good economic sense but the decision was made to ensure the North benefited more from the investment than the south. This was not however carried out but on more outrageous decision was made to shift the refinery to the Red Sea Port of Sudan which is almost 3500 miles from the oil belt in Bentiu.

The taxation policy has been devised to impose high taxes on the Nuer and Dinka districts. The South has also been denied infrastructure development and access to education. The right to development is one of the fundamental human rights as espoused

⁵⁵ David de Chand, www.africa.upenn.edu/articles, 27/07/2006, Ibid p8

by the conference on development⁵⁶ which obliges states to take development to all parts of the country without discrimination.

The Question of Self-Determination for South Sudan

South Sudan has been a victim of Islamic fundamentalism for close to 200 years. Thus, the objective of the war in South Sudan is the right to self-determination meaning, complete separation of the country into two independent and sovereign states juxtaposition with Egypt and North Sudan along the Nile Valley.⁵⁷

The right to self-determination of the South has been endorsed in a number of international fora. The opposition parties of the North like National Democratic Alliance (NDA) and the Democratic Unionist Party (DUP) spells some hope for the South should these parties get into power. However, the pronouncements and putting into effect these undertakings would remain to be seen whether they are genuine or mere political rhetoric.

From the analysis of the Sudanese question it is clear that for generations it has been impossible for the North and South to co-exist as one heterogeneous state because of the difference in ethnic, historical and religious factors. The animosity between the two areas has been exacerbated by genocidal killings, slavery and imposition of Islam in the political arena of the state; these factors have led the South to fight for a political existence of their own. In actual fact, it would make more sense to separate the two areas in Sudan.

⁵⁶ David de Chand, www.africa.upenn.edu/articles, 27/07/2006, Ibid

⁵⁷ Ibid

The people of South Sudan have a strong belief that partition between North and South is a fait accompli and that Africa and the world community should understand the situation. Failure to partition the two would see a continuation in the hostilities. Thus the establishment of a new nation state is a sine qua non to peace and security in the Sudan.

It would be worth mentioning that the peace plan brokered by the UN between the North and the South brought some degree of peace. The rebel leader of Sudanese Peoples Liberation Movement/Army (SPLM/A), John Garang entered into a peace agreement and agreed to form a government of national unity with him holding a position of Vice President. Garang died before he could take his position and his assistant has taken up the position. As the situation stands temporary peace seems to have been achieved. However, the atrocities perpetrated by the Sudanese have continued in the Darfur region. There is therefore no guarantee that the peace in Southern Sudan will be sustained.

It is the contention of this paper that what is obtaining in Sudan now is only a temporary measure. Sooner or later government will be seen to start abrogating the agreement. The massacre and blatant human rights violation being reported in Darfur shows how repressive and brutal the Sudanese government is. Can we therefore trust such a regime to lead a government that is democratic and respect human rights and have a government that represents the will of the peoples of both the North and South Sudan?

The right of self-determination is a principle which is inalienable to a peoples which guarantees them the right to freely determine their political status and freely pursue their social, economic and cultural development. The right is recognized by the UN Charter,

the AU Charter and the Banjul Charter as stated in the preceding chapter. This position is non-negotiable. In addition, the Human Rights Committee of the UN has stated that, the right of self-determination is an inalienable right. It is of particular importance because its realization is an essential condition for the effective guarantee and observance of human individual rights and for the promotion and strengthening of those rights.⁵⁸

The problem of Sudan was a creation of the British which is typical of British colonialism. The British should be held accountable for the mishandling of their decolonization process in most African states. For example, it would require an explanation from Britain why they decided to annex the South Sudan when they had failed to administer the North and South as one country during their colonization. Sudan is such a vast country, the largest in Africa with approximately 1 million square miles and the administration of such a large country poses a lot of challenges to a unitary government. The British should have anticipated the problem they were creating, other factors notwithstanding.

The world community led by Britain should come out clearly and support the right to self-determination for South Sudan. The events of the USSR and the former Yugoslavia should serve as a starting point. In Europe this right was exercised without undue hindrances. What is required in Sudan is the holding of a referendum to determine the will of the people who should decide whether the South wants to remain part of the unitary Sudan, or want to have an independent existence.

⁵⁸ Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, (2000), Cambridge University Press, P223

From the foregoing discussion, the question to be determined is whether the people of South Sudan are a people within the meaning of international law and therefore are eligible to claim their right to self-determination, when considerations of ethnic, culture and political distinctiveness are taken into account. The argument is that the inhabitants of South Sudan are a people, whether collectively or as separate groups. In this sense they should be able to decide freely their own political status.⁵⁹ The people of South Sudan have a strong belief in their right to self-determination. Therefore no amount of killings, repression and other human rights violations can kill their resolve to achieve this. No matter how long it takes, one day they will realize this ideal because no man can oppress others for ever as events in other parts of the world have shown. The case of South Sudan is no different.

⁵⁹ S. Kulusika, *South Sudan Right to Self-determination*, ibid p40

CHAPTER FOUR

Self-Determination : The Case Of Southern Cameroon

Political History.

In discussing the question of Southern Cameroon, an outline of the historical background from the time of its colonization during the scramble for Africa up to independence when it was annexed to French Cameroon. It should be noted that the current state of Cameroon is made up of two countries, which were separate entities during colonization. The paper will endeavour to show the catalogue of events.

The first question worth consideration is whether Southern Cameroonians can be called 'a people' within the meaning of international law. It is the contention of this paper that and deriving from historical factors of Southern Cameroon, it had a political identity of its own, a distinct population and a defined territory and therefore constitutes a 'self' for purposes of self-determination. As discussed in the preceding chapters, the right to self-determination can only be exercised by a group which can be distinguished as a people.

In analyzing the situation of Southern Cameroon it is important to distinguish it from other areas in Africa like Biafra, Western Sahara and Katanga. None of these areas involved federation or association with another state. Thus the case of Cameroon would not fit into the proposition that peoples in Africa can secede from existing independent states in pursuit of their right to self-determination. One could argue that Cameroon is a case of *sui generis* that does not contradict, the OAU's long held position on the maintenance of colonial boundaries or territorial integrity.

This principle was in fact upheld in the case concerning the Frontier Dispute (**Burkina Faso v. Mali**)⁶⁰ when it stated that the maintenance of the territorial status quo in Africa is often seen as the wisest course to present what has been achieved by peoples who have struggled for their independence. This would also avoid a disruption which could deprive the continent of the gains achieved by much sacrifice and induced African States to give recognizance to the need to maintain colonial boundaries in their principle of self-determination of peoples.

Applying this situation to Southern Cameroon it is the contention of this paper that in fact what happened in Southern Cameroon was not in line with the principle of maintenance of colonial boundaries and territorial integrity. What happened was therefore a violation of the very principles which the OAU put in place to govern the existence of the newly independent states based on what was left by the colonial states.

Historically, during the Scramble for Africa, Southern Cameroon was a German colony. After the First World War the defeated forces lost their territories. The two territories which now form the Republic of Cameroon became two separate mandated territories. After the Second World War the two territories became UN Trust Territories of British Cameroon and French Cameroon. They were governed by different administering authorities and distinct Trusteeship Agreements which were different treaties.

The British Cameroons administered as part of Nigeria for convenience did not lose its *distinct political and cultural identity and responding to UN Resolution 224 (3) of 1948*, Nigeria never attempted to annex, assimilate and integrate the trust to become an integral

⁶⁰ (1986) ICJ Report 554

part of Nigeria. In 1954 the British Cameroons gained its autonomy. Through democratic elections it had a premier as head of the executive and a House of Assembly.⁶¹ In 1957 a new constitution was passed and British Cameroon had a House of Chiefs created to supplement the existing House of Assembly.

It should be noted that French Cameroon only had self-government in 1957. In 1958 the British Permanent Representative to the UN stated the position that the trust territory was on the same level of development as Nigeria and was therefore ready for independence just like Nigeria. And as Nigeria was being led to independence the distinct status of British Cameroon was recognized and in 1959 Southern Cameroons was separated from Nigeria and that marked the end to the joint administration of Nigeria and Cameroons. Southern Cameroon thus reverted to its status as a distinct territory, apart from its neighbors Nigeria and French Cameroon.

French Cameroon was granted independence in January 1960 and became La Republique du Cameroon. On October 1, 1960 the British Southern Cameroon's Constitution Order in Council of 1960, a statutory instrument No. 1654 was adopted by Parliament⁶². This was widely seen as the constitution that would lead the trust territory to sovereign independence according to Article 76(b) of the UN Charter which gave Her Majesty's government a duty to prepare the British Southern Cameroons for independence.

Article 76(b) states that in the progressive development of trust territories towards self-government and independence, account should be taken of the freely expressed will of

⁶¹ Legima Doh, <http://us.f325.mail.com/ym>

⁶² Ibid, Legima Doh, <http://us-f325.mail.com/ym>, 20/5/2006

the peoples concerned. The will of the people is the necessary basis of governments' authority. Article 77(a) provides that the Trusteeship system shall apply to territories detached from enemy states as a result of the Second World War. UN practice has however, not been consistent in following the will of the people in accordance with 76(b). "Rwanda Urundu acceded to independence as two separate states but the UN acquiesced in the British decision to divide British Cameroons for the purpose conducting referenda in the Northern and Southern Regions and in the subsequence accession of the Northern Region to Nigeria and the Southern Region to the independent state of Cameroon."⁶³

UN practice on the issue of free exercise of the populations right to self-determination with independence as an option has been distinctly selective rather than a general practice. Thus in British Togoland the voters were asked to decide between incorporation with the Gold Coast and maintenance of the status quo, and the choice in the plebiscites held in Southern British Cameroons was between joining Nigeria and the Republic of Cameroon.⁶⁴ Clearly the options should have been open to the people by giving them a choice of integration, independence and association.

In Southern Cameroon the people were not well informed and aware of the implications of the two options that they were given. The British argued that British Southern Cameroons was too poor to be an economically viable sovereign state. However, it was stated in the Western Sahara cases⁶⁵ that inadequacies of political, economic, social or

⁶³ Michla Pomerance, *Self-Determination in Law and Practice* (1982) Martinus Nijhoff Publishers, The Hague, p19

⁶⁴ Legima Doh, <http://us.mail.yahoo.com/ym> 20/5/2006

⁶⁵ (1975) ICJ Report

educational preparedness should never serve as pretext for delaying independence⁶⁶. This argument was in violation of UN Resolution 1514 of 1960 on the granting of independence to all colonial and trust territories but their people were compelled to enjoy independence either with Nigeria or LRC. Though both Nigeria and LRC promised a Federal Union, LRC agreed on a Federal Union with Southern Cameroons as two equal states of the federation. LRC promised never to use its larger population to annex the Southern Cameroons.⁶⁷ On February 11, 1960 the majority of Southern Cameroons voted for the formation of a federation union of two equal states.

One of the provisions of the two alternatives listed eight subjects reserved for the federal government. While the rest were to be handled by the states of the union what was formed was therefore a loose federation which also involved an inter-parliamentary union that gave each state the right to retain its inherited colonial system and territory.

On adoption of the plebiscite result, the fourth committee of the UN General Assembly overwhelmingly voted for the independence of the Southern Cameroons set for October, 1961. Following this vote the UN (GA) passed resolution 1608 approving a Post-Plebiscite Conference to be convened for the three countries, that is, governments of the LRC, Southern Cameroons and the UK as the administrative authority to draw the modalities for the formation of the federal union of the two states. It was clearly stated that the Post Plebiscite Conference was to be held before October 1, 1961 the day on

⁶⁶ Nihal, Jav awickrama, *ibid*, p222

⁶⁷ Legima Doh, *Ibid*.

which the Federal Union was to come into effect. Regrettably, the UN took no steps to see the implementation of this resolution 1608.⁶⁸

This failure to implement the resolution coupled with Britain's sudden withdrawal of its troops and departure of its civil servants gave LRC an opportunity to invade Southern Cameroons and impose itself as the government for the two states. The LRC constitution of 1960 was unilaterally amended and French was made the national language. The President of LRC Ahmadon Ahidjo became leader of the federation and when Britain withdrew all its troops on September 30, Ahidjo the LRC forces took over in the Southern Cameroon's. The federation was eventually abolished in 1972 and Southern Cameroons was annexed and turned into two provinces of the LRC. Southern Cameroon was split into two and a francophone system of administration installed.

Independence by joining through the 1961 union agreement has been labeled an imperfect decolonization process and sovereign independence for the territory formerly under British rule. In sponsoring a federal union, the UN adopted a resolution prescribing a post plebiscite conference to work out actualization of the UN experiment. Regrettably, they did not implement this resolution and no such conference took place.⁶⁹

Britain's good faith in the manner it handled the decolonization of Southern Cameroon is therefore questionable. The principle of good faith is a fundamental principle of customary and conventional international law enshrined in article 2 (2) of the UN Charter.

⁶⁸ Legima Doh, <http://us.mail.yahoo.com/ym> 20/5/2006

⁶⁹ Commission on Human Rights, *The Right People To Self-Determination To People Under Colonial or Foreign Occupation*. <http://www.unpo.org.article>

Question of Self-determination For Southern Cameroon

As a result of mishandling the whole decolonization process by Britain, a people who in 1945 had their own autonomous existence experienced an undermining of their British legacy in areas of administration, legal system and education.

The French North started subjugating the south and this has continued to date. There have been gross violations of human rights and low level of representation in running the affairs of administration and governance. There is domination and the ruling regime in Cameroon is very repressive such that most human rights issues cannot be freely expressed. Any attempt is met with severe repression. There is evidence of torture, maiming and disappearances of people who try to express their will. The government does not condone opposition parties and freedom of expression is undermined. All these have been done silently without the world raising issues with the government of the LRC. The Human Rights Committee of the UN has not actively made the government of Cameroon accountable for the gross violations of human rights against the people of Southern Cameroon.

The government of LRC has abrogated the federal arrangement and has not engaged the people of Southern Cameroon meaningfully to make them feel as equal citizens of the republic. For this reason the government of LRC has lost its legitimacy to have the Southern Cameroon as part of the republic. There have been calls on the Commission on Human Rights to investigate incidents of torture, arbitrary detentions and other human rights violations in Southern Cameroon.

The discovery of an oil rich area in Southern Cameroon has made the government to fail to cede Cameroon so that it reverts to its own independence existence. The economic question is now pivotal in the whole arrangement and the government is not ready to let go. It wants to continue to control the wealth in Southern Cameroon but people there also have a right to control their natural resources as enshrined in the UN Charter as well as the right to self-determination. LRC is a signatory of the UN Charter, the UDHR and the African Charter. These impose an obligation on the LRC to honour its obligations. The right to self-determination is a legitimate claim for the people of Southern Cameroon and it should be exercised through the expressed will of the people. No one can stop the exercise of that right for as long as the preconditions for the exercise of the right to self-determination have been met.

Internal rights to self-determination is non-existent in Cameroon. The internal rights of self-determination provide for a people to have a full voice within the legal system of the nation state, control over its natural resources, appropriate ways of preserving and protecting culture and generally to be a partner or participating with equal powers within the overall national polity.⁷⁰

The right to self-determination is not being respected in Cameroon. There is a violation of the fundamental rights and people are denied equal participation in the governance of their country and access to the nation's wealth.

⁷⁰ Benedict Kingsbury, 'Self-Determination And Indigenous Peoples', *American Society of International Law*, 1992, p383.

Some scholars have argued that the people of Southern Cameroon through a UN Conducted plebiscite freely expressed the will to be federated with French Kamerun. Accordingly, the option once exercised through a referendum, it cannot be changed. This can be challenged on the ground there. In Cameroon this was restrictively applied as only two options were given. They have a genuine claim to the third option which would have entailed the emergence of a separate independent state. The UN violated its own principle by restricting the options available to only two. It is on the premise of this action that the people of South Cameroon can claim the right to self-determination based on the third option.

CHAPTER FIVE

Conclusion and Recommendations

From the foregoing discussion it is clear that both Southern Cameroon and Southern Sudan have an indisputable right to self-determination. Their peoples have been subjugated in violation of international law and therefore they have a right to regain their freedom and constitute themselves as independent sovereign states.

It should be noted that people do not claim the right to self-determination just for the sake of establishing a separate state where this has been done as shown in the case of Southern Cameroon and Southern Sudan it is in the face of numerous problems. The people in question feel marginalized in what is supposed to be their own states. They are consistently and systematically subjected to discrimination, exclusion from equal participation in the economic life of the state and human right abuses.

In the case of Southern Cameroon, the people were made to voter in a plebiscite to exercise between two options and they chose to be federated with the Republic of Cameroon and conditions for the federation were agreed between the parties. As the paper has shown the government of the North abrogated its obligations under the federation and this should have resulted in the dissolution of the federation. A comparison of situations where federations were established and failed has shown that the next option is to dissolve the federation if it fails to meet the aspirations of the people reflecting on the federation between the two Rhodesias and Nyasaland, it lasted for ten years but because the people in Malawi and Northern Rhodesia (Zambia) did not realize

equitable benefits with Southern Rhodesia, they opposed the continued membership in the federation and it had to be dissolved.

In Southern Cameroon, the people have a right to demand a separate existence because when the federation failed the two states should have reverted to their original status.

To buttress this point, it is the essence of federalism, which is a voluntary union that, two or more units choosing to federate retain the right to withdraw from the federation in accordance with agreed constitutional processes.⁷¹

When dealing with the issue of Southern Cameroon, the Western Sahara case comes to mind. In that case, the ICJ in its advisory opinion concluded that the ties that existed between Western Sahara and Morocco and the Mauritania entity did not amount to ties of sovereignty and could not override the right of the Saharawis to self-determination.⁷²

This situation also applies to Southern Cameroon. The ICJ placed particular emphasis on the right to self-determination through free and genuine expression of the people preferably through a plebiscite, which was not the case in Southern Cameroon.

Since human rights are a continuing right, the people's choice may be expressed from time to time. Self-determination is therefore not one single event. The right is not exhausted upon its first exercise⁷³. If the people wish to alter their status like the people of Cameroon, they should not be deterred from doing so.

⁷¹ Gino, J. Naldi, UN Buries Head In the Desert Sands: The Saga of the Western Sahara, *African Journal of International and Comparative Law* (1994) Vol 6, p4

⁷² Ibid, p231

⁷³ Nikal Jayawickrama p 231

It is clear that states are under an obligation to permit the free exercise of the right to self-determination, and denial of that right amounts, as the ICJ has determined, to a use of force, in *Nicaragua v USA*⁷⁴ (Military and Paramilitary Activity in and Against Nicaragua).

The government of the Republic of Cameroon had no legal or moral right to forcefully annex the South under a new arrangement of a unitary state. The ideal thing would have been to renegotiate the deal and if they had failed to agree on equitable terms, each state should have maintained its separate existence.

The government of the Republic of Cameroon is therefore guilty of violating its obligations in international and human rights law. They are a party to various human rights and international law instruments which recognize the right to self-determination. Therefore, given the proof as elaborated in this paper, Cameroon Republic has an obligation to honor their obligations under international and human rights norms.

In the given circumstances Cameroon has a right to espouse a claim before the African Commission and the ICJ based on the facts of their colonization, annexation and the present status of the peoples of Southern Cameroon and the British should be answerable for the whole problem since this was clear mishandling of a decolonization process. If you consider the case of Namibia which was also a mandated state, the UN and other world nations were actively involved in pressuring South Africa to honour its obligation

⁷⁴ (1986) ICJ Reports

under the mandate. The case of Namibia shows the inconsistency in UN practice in handling issues based on similar facts.

In the case of Namibia, South Africa which had illegally annexed South West Africa as part of its provinces was under constant pressure to let go of South West Africa. UN involvement made other nations aware of the problem of South Africa is illegal occupation. In this way the international community and human right groups constantly sounded Namibia's right to self-determination.

Sadly, the people of Southern Cameroon have been left to fight their own battle. The AU's has deafening silence calls to question the sincerity of the AU. It is a known fact that through out its history the OAU (now AU) was very condemnatory of the South African government on its human rights violations against the other black people of South Africa and its continued illegal occupation of Namibia. One would argue that the AU is quick to condemn others like the Israeli occupation of Palestine but problems within their organization are ignored. The AU should take the challenge and tackle issues of self-determination where they have occurred. Where it is clear like in the case of Southern Cameroon the people have a right to self-determination and therefore their involvement should be visible.

In the case of Southern Sudan, the central problem and causes of the present war have been well summed up as, the domination of one nationality over others, the sectarian and religious bigotry that has dominated the Sudanese political scene since independence and the unequal development. The Sudanese government signed an agreement with South

Sudan and it provided for a fairly comprehensive self-government for South Sudan. This agreement was abrogated and this caused a lot of dissatisfaction leading to the formation of the Sudan Peoples Liberation Army which has been waging a war against the government of Sudanese.

A lot of lives have been lost in Sudan as a result of this war. The government is unwilling to give up South Sudan because of the wealth that is there. The unequal development pattern between North and South has caused a lot of despondency and people have continued to die. The people of South Sudan are fighting a lone battle without help from the international community. Even in this case just like South Cameroon there has been no strong condemnation of the Sudanese government by the AU. The AU has not taken up the issue to make the Sudanese government accountable. Gross violation of human rights have been perpetuated and the world including the AU have kept quiet no one has stood up to speak for the people of Southern Sudan.

The problem is that the world community including the AU and UN do not seem to have interest in events occurring in Africa. People have been maimed, disappeared or killed in order for the government to suppress people who have been agitating for self-determination in Southern Sudan. The government of Southern Sudan does not therefore have a legitimate right to continue having Southern Sudan as part of its territory.

RECOMMENDATIONS

1. The AU member states should as a matter of urgency domesticate the various Human Rights Instruments on Self-determination to which they are party to.
2. The AU should immediately place the plight of the peoples in the two countries on a priority agenda in order to find a durable and lasting solution.
3. The UN should be urged to reactivate its interest in the plight of the 'subject peoples' with the same zeal and seriousness as has characterized its action on similar problems in Eastern Europe.
4. The UN needs to be more objective in dealing with the principle since it has been recognized as an international as well as human rights issue. This would require investigation in arrears where there are calls for self-determination and where the right is justified the matter can be dealt with by the ICJ or Human Rights Committee or the UN.
5. The findings of the Human Rights Committee and the judgment of the ICJ should be legally binding on states. Failure to honor obligations should invite sanctions.

6. The AU which has hitherto been passive on issues of self-determination should be more assertive and adopt self-determination as a key concept in the agenda of the African body. An equitable and just solution to the problems in the two countries which should entail the granting of self-determination.
7. The governments of the Cameroon Republic and Sudan have lost the legitimacy over their continued governance of Southern Cameroon and Southern Sudan respectively. They should be compelled to honor their obligations under the AU Charter which they have ratified.
8. Human rights and international legal minds should increase awareness of the concept by promoting it in the UN body as well as regional bodies like the AU, Council for Europe, OAS, etc. This will enable countries render support to this claim.

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