

INDIGENOUS PEOPLES' RIGHTS OVER NATURAL RESOURCES: AN ANALYSIS OF HOST COMMUNITIES' RIGHTS IN NIGERIA

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Article Info	Abstract
<p>Keywords: Natural Resources, Ownership, International Law, Indigenous Peoples.</p> <p>DOI: 10.25041/lajil.v3i2.2402</p>	<p><i>This paper examines the escalating crises over natural resources within several states, highlighted by disputes over the rightful authority to govern these resources. Focusing on Nigeria, the study explores the intense struggle to control natural resources, which has sparked militancy and insurgencies against the federal government and multinational corporations. The discourse surrounding the governance and stewardship of Nigeria's natural oil resources is analyzed at three levels: local communities, state governments, and the federal government. Through the lens of international law, this paper investigates the varied claims of these disputes. It employs a doctrinal approach, delving into international human rights documents alongside other legal and non-legal frameworks to derive results and forge compelling conclusions. The findings affirm that while international law endorses the sovereignty of states over their natural resources, it also protects the rights of indigenous peoples and communities to manage resources within their ancestral territories for economic and social progress. Specifically, the indigenous peoples and oil-producing communities of the Niger Delta are recognized as having the right to oversee and engage in the exploitation processes of their natural resources. The study concludes by urging the Nigerian government to accelerate legal and policy reforms concerning the resource rights of indigenous communities hosting natural resources in Nigeria.</i></p>

A. Introduction

International law refers to the sets of principles and conventions regulating the conduct of nations among themselves, some of which are enforceable while others are persuasive. These enforceable international legal instruments do not bind only States but may be extended to specific regional and international agencies, associations, and even individuals.¹ Numerous conventions and treaties confer rights on individual members of the human community regardless of the state in which they are residing. Recent developments in international law on human rights have moved toward granting individuals and some groups of people fundamental rights against the state, such as the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social, and Cultural Rights 1966 (ICESCR) and the African Charter on Human and Peoples Rights 1981 (ACHPR).² The abovementioned regulations stipulate the provisions and measure of rights to indigenous communities over natural resources in their lands. Other regulations added to the list, including the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities; the UN General Assembly Resolution (UNGA) 1803 of 1962; the UN Resolution 3281 (XXIV) of 1974 the Indigenous and Tribal Population Convention 1957 (Convention 107) of the ILO; the Indigenous and Tribal Peoples Convention of 1989 (Convention 169) of the ILO and the UN Declaration on the Rights of Indigenous Peoples 2007.

The Nigerian Federation's ownership and management of natural resources are governed by its Constitution, which holds the right of ownership and control of every natural resource located in any sovereign territory of Nigeria and is held by the central government, referred to as the Federal Government.³ This scheme is called the resource control agitation⁴ and raises the

¹ ICJ, *Mavrommatis Palestine Concessions* (1924); ICJ, *Advisory Opinion: Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* (1980).

² The International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the African Charter on Human and Peoples Rights 1981 Respectively.

³ For example, section 44 (3) of the 1999 Constitution provides: "Notwithstanding the preceding provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone for Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly"; Section 4 (2) and part 1 of the Second Schedule to the CFRN, the Petroleum Act 1969 cap. P.10 Laws of the Federation of Nigeria 2010, S. 3(1) Mineral Act Cap.M12, Laws of the Federation of Nigeria, 2010, section 2 of The Petroleum Industry Law of 2012 provides: "The entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters or which forms part of its continental shelf and the Exclusive Economic Zone, is vested in the government of the Federation"; Supreme Court, *Attorney General Abia State v. Attorney-General Federation* (2002); Emmanuel Ibiam Amah, "An Appraisal of the Rights of the Niger-Delta Peoples over Natural Resources under the African Charter on Human and Peoples' Rights," *African Journal Online (AJOL)* 11, no. 2 (2020), <https://www.ajol.info/index.php/naujilj/article/view/200378>; An Appraisal of the Rights of the Niger-Delta Peoples over Natural Resources under the African Charter on Human and Peoples' Rights (NAUJILJ) 11 (2), 84. It is worth mentioning that this has not been the state of affairs before the enactment of petroleum. The 1963 Republican Constitution entrusted exclusive legislative competence over mineral resources to the federal government but did not vest ownership in them on her; consequently, the Federal Government was required by section 140 (1) of the 1963 Constitution to pay to each Region; (a) sum equal to 50 per cent of proceeds of any royalty received by the federation in respect of any minerals extracted from that Region and, (b) any mining rents derived by the federation during that year from that Region; Amah Emmanuel Ibiam, "An Examination of the Contradictions in the Ownership of Land and Natural Resources in Nigerian Federation," *Journal of Law, Policy and Globalization* 63 (2017), <https://www.iiste.org/Journals/index.php/JLPG/article/view/38051>; It has been opined that the vesting of petroleum in the Federal Government was a tactical means of thwarting the designs of the secessionist Eastern Region of Nigeria; Amechi Okolo, "The Political Economy of the Nigeria Oil Sector and the Civil War," *Quarterly Journal of Administration* 15, no. 1-2 (1981): 107-26.

⁴ John Adewale Abolurin, *Democratisation, Conflict Management and the Amnesty Question in Nigeria* (Ibadan: John Archers, 2010); Rhuks Ako, "Resource Control in the Niger Delta: Conceptual Issues and Legal Realities," *E-International Relations*, 2012, <https://www.e-ir.info/2012/05/25/resource-control-in-the-niger-delta-conceptual-issues-and-legal-realities/>; Anna Dunin, "Battling the 'Resource Curse' in the Niger-Delta" (Nigeria, 2011),

community's objections.⁵ Heated debates, suspicion, and militancy were directed to the agitation, where people made attempts to destroy oil facilities, abducted and kidnapped expatriate oil workers, and continued unrest and retaliation by military troops of the federal government. The community living in oil-producing areas claims that resources are exploited from their land without commensurate compensation for the environmental consequences of the exploration and exploitation. They also claim loss of livelihood from the destruction of their farmlands and fishing games due to oil spillage, negative impacts on the local economy, and the increasing rate of poverty. They believe that the agitation contributes to the high unemployment rate and political alienation towards minority groups. These claims have been widely discussed.⁶

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⁵ Victor Attah, "Understanding Resource Control" (Kaduna, 2004), <https://dawodu.com/attah1.htm>; Emmanuel Shebbs and Ray Njoku, "Resource Control in Nigeria - Issues of Politics, Conflict and Legality as Challenge to Development of the Niger Delta Region," *Journal of Good Governance and Sustainable Development in Africa (JGGSDA)* 3, no. 3 (2016), <http://rcmss.com/2017/JGGSDA/Resource-Control-In-NigeriaIssues-Of-Politics-Conflict-And-Legality-As-Challenge-To-Development-Of-The-Niger-Delta-Region.pdf>.

⁶ Sylvester Chibueze Izah, "Ecosystem of the Niger Delta Region of Nigeria: Potentials and Threats," *Biodiversity International Journal* 2, no. 4 (2018): 338–45, <https://doi.org/10.15406/bij.2018.02.00084>; Victor A. Akujuru and Les Ruddock, "Incorporation of Socio-Cultural Values in Damage Assessment Valuations of Contaminated Lands in the Niger Delta," *Land* 3, no. 3 (2014): 675–92, <https://doi.org/10.3390/land3030675>; Amah, "An Appraisal of the Rights of the Niger-Delta Peoples over Natural Resources under the African Charter on Human and Peoples' Rights"; Abolurin, *Democratisation, Conflict Management and the Amnesty Question in Nigeria*; Ako, "Resource Control in the Niger Delta: Conceptual Issues and Legal Realities"; Oludotun Adetunberu and Akeem O. Bello, "Agitations in the Niger Delta Region, Oil Politics and the Clamours for Restructuring in Nigeria," *International Journal of Peace and Conflict Studies (IJPCS)* 5, no. 1 (2018): 115–25, <http://www.rcmss.com/index.php/ijpcs>; www.academix.ng; Dunin, "Battling the 'Resource Curse' in the Niger-Delta."

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¹⁴ Sylvester Chibueze Izah, "Ecosystem of the Niger Delta Region of Nigeria: Potentials and Threats," *Biodiversity International Journal* 2, no. 4 (2018): 338-45, <https://doi.org/10.15406/bij.2018.02.00084>; Victor A. Akujuru and Les Ruddock, "Incorporation of Socio-Cultural Values in Damage Assessment Valuations of Contaminated Lands in the Niger Delta," *Land* 3, no. 3 (2014): 675-92, <https://doi.org/10.3390/land3030675>; Amah, "An Appraisal of the Rights of the Niger-Delta Peoples over Natural Resources under the African Charter on Human and Peoples' Rights"; Abolurin, *Democratisation, Conflict Management and the Amnesty Question in Nigeria*; Ako, "Resource Control in the Niger Delta: Conceptual Issues and Legal Realities"; Oludotun Adetunberu and Akeem O. Bello,

B. Discussion

1. International Legal Regime and Natural Resources Ownership

Ownership of resources has been internationally recognized in a vast set of international legal regimes. One notable international legal instrument on natural resources ownership is the United Nations General Assembly (UNGA) Resolution 1803 of 1962 Resolution on Permanent Sovereignty over Natural Resources (RPSNR)¹⁵, which supports states' rights to nationalize foreign-owned oil industries as a means of asserting control over their natural resources.¹⁶

The resolution affirmed the sovereignty of newly decolonized and less-developed nations over their natural resources. This focused on ensuring that non-self-governing and Third World countries could benefit from their inherent natural resources. The RPSNR acknowledges the right of a host state to nationalize and expropriate assets from foreign investor companies, contingent upon the provision of appropriate compensation. It underscores each nation's autonomy in selecting its economic framework and asserting control over its natural resources. It is widely regarded that the principle of permanent sovereignty has evolved into a peremptory norm, thereby making it a mandatory principle applicable to all states.¹⁷

Rio Declaration on Environment and Development of 1992 also recognizes nationalization as an integral part of the sovereignty of states. It is further recognized in Article 2 that states have the right to exploit their resources following their environmental and developmental policies. It acknowledges that the Charter of the United Nations recognizes these rights and

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¹⁵ The United Nations General Assembly (UNGA) Resolution 1803 of 1962 in Article 1 provides that; “The right of the peoples and nations to the permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the wellbeing of the people of the state concerned”; UN, “United Nations Emergency Force,” UN Resolution, 1962, <http://www.geocities.ws/savepalestinenow/unresolutions/studyguide/sgunresgasum1960.html>.

¹⁶ The struggle for sovereignty over natural resources arguably began in the 19th century when political independence started to develop in some regions, including Latin America. Following World War II in 1945, the movement gained impetus as postcolonial developing country regimes, particularly in Africa and Asia started to claim the right to sovereignty over natural resources. The period was a catalyst for many developing countries (particularly those in Latin America) to contest the validity of concession agreements that their governments had entered into with foreign investors or were imposed during colonial times for exploration and exploitation of natural resources. One of the significant points of contention was that these concession agreements tended to be largely one-sided, and they strongly favored the interests of foreign investors; Mats Ingulstad and Lucas Lixinski, “Raw Materials, Race, and Legal Regimes: The Development of the Principle of Permanent Sovereignty over Natural Resources in the Americas,” *World History Bulletin* 29, no. 1 (2013): 34; Ricardo Pereira, “The Exploration and Exploitation of Energy Resources in International Law,” in *Environmental and Energy Law*, ed. Karen Makuch and Ricardo Pereira (London: Wiley-Blackwell, 2012), 199–224; Yinka Omorogbe and Peter Oniemola, “Property Rights in Oil and Gas under Domanial Regimes,” in *Property and the Law in Energy and Natural Resources*, ed. Aileen McHarg et al. (Oxford: Oxford University Press, 2010), <https://doi.org/10.1093/acprof:oso/9780199579853.003.0006>.

¹⁷ Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge: Cambridge University Press, 1997), <https://doi.org/10.1017/CBO9780511560118>; Article 53 of the Vienna Convention on the Law of Treaties contains the following definition of the concept of peremptory norms: “For the present *Convention*, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”; Vienna Convention on the Law of Treaties, opened for signature May 23 1969, 115 UNTS 331 (entered into force January 27 1980); Kamal Hossain and Subrata Roy Chowdhury, *Permanent Sovereignty over Natural Resources in International Law: Principle and Practice* (London: Francis Pinter, 1984); Ian Brownlie, *Principles of Public International Law*, 7th ed. (Oxford: Oxford University Press, 2008); Leo-Felix Lee, “Sovereignty Over, Ownership of and Access to Natural Resources,” *Environmental Laws and Their Enforcement* 2 (2009), <https://www.eolss.net/sample-chapters/C04/E4-21-05.pdf>.

constitutes core principles of international law. Other conventions on human rights on natural resources include the ICCPR and ICESCR,¹⁸ which provide for the right of self-determination¹⁹ and the rights of peoples over their natural resources to achieve an adequate standard of living, food, clothing, housing, and continuous improvement of their living conditions,²⁰ the right to environmental and industrial hygiene,²¹ and the right to utilize their natural wealth and resources.²² A further guarantee of enforceable rights is found in the two ILO Conventions.²³ Even though the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007 is not legally binding, it explains indigenous peoples' right to self-determination upon natural resources.²⁴

The proponents of state ownership and management of natural resources and those for the host indigenous community's ownership and management of natural resources rely on these varying provisions of international law in their respective claims over natural resources. For example, proponents of state ownership and management of natural resources based their claim on state sovereignty, a principle that has become a peremptory norm of international law²⁵ in which they argue that the principle of state sovereignty inures to the state citizens is against the state. They also grounded their argument on various human rights frameworks that grant indigenous communities, which host these resources, rights over natural resources. This paper considers the provisions of international law in handling the conflicting and opposing claims related to natural resource ownership and management.

2. State Sovereignty Versus the Right of People over Natural Resources

Sovereignty refers to the ability of a state to decide for itself without external intervention, including the management of its resources.²⁶ The unreserved legal right and authority to own and control the management and development of indigenous people's natural resources can be

¹⁸ Article 2 of the Rio Declaration provides inter-alia; "States have...the sovereign right to exploit their resources according to their own environmental and developmental policies..."; UNEP, "Rio Declaration on Environment and Development" (Rio de Janeiro, 1992), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

¹⁹ E.g. Article 1(2) of the ICESCR states, "All *peoples* may, for their ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a *people* be deprived of its means of subsistence".

²⁰ Article 11 of the ICESCR

²¹ Article 12 of the ICESCR

²² Article 25. In the *Fisheries Jurisdiction Cases* (1974), the ICJ recognizes that under customary international law, as it had crystallized after the 1958 and 1960 Conferences on the Law of the Sea, a coastal State has the right to establish a 12-mile exclusive fishery zone and preferential rights of fishing in adjacent waters 'to the extent of the particular dependence of its people upon the fisheries in the seas around its coasts for their livelihood and economic development; ICJ, *Fisheries Jurisdiction (United Kingdom v. Iceland)* (1974).

²³ The Indigenous and Tribal Population Convention 1957 (No. 107) of the International Labour Organization (ILO) and The Indigenous and Tribal Peoples Convention 1989 (Convention 169) of the International Labour Organization (ILO); The Indigenous and Tribal Population Convention 1957 (No. 107) of the International Labour Organization (ILO) applies to the 'indigenous population'. The rights guaranteed are; protection and systematic integration with the dominant political population, protection of the institutions, property, and means of livelihood of the population, guarantee of the rights of this population to their traditional lands and even provisions of additional land territories where their traditional lands are not sufficient for them.

²⁴ Dorothee Cambou, "The UNDRIP and the Legal Significance of The Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with a Multidimensional Perspective," *The International Journal of Human Rights* 23, no. 1–2 (2019): 34–50, <https://doi.org/10.1080/13642987.2019.1585345>.

²⁵ Ibiyam, "An Examination of the Contradictions in the Ownership of Land and Natural Resources in Nigerian Federation."

²⁶ Lee, "Sovereignty Over, Ownership of and Access to Natural Resources."

inferred from Customary International Law, Declarations, and Treaties. Therefore, the trend has shifted away from investor authority over resources to the authority of the host state.

Before the 1960s, it was common for foreign investors to partake in petroleum extraction with little restriction in host countries, assuming they held ownership rights over the resources. This trend shifted significantly with the wave of decolonization and the emergence of politically independent nations. These new states began to assert their rights to economic independence and sovereignty, leading to the involvement of the United Nations.²⁷ Consequently, on December 14, 1962, the UN General Assembly adopted Resolution 1803, the "Permanent Sovereignty over Natural Resources" (RPSNR).²⁸ This landmark resolution recognized the sovereign right of states to own and control their natural resources. It affirmed the authority of host states to manage these resources as they see fit in a manner that serves the best interests of their citizens. It stated that the host state's laws should govern any compensation for foreign investors.²⁹ With this resolution, newly independent states achieved a significant political triumph, securing control and ownership over their natural resources under the principle of state sovereignty.³⁰

Recent debates challenge the traditional view that the state holds exclusive rights over natural resources within its territories, raising the question of whether communities possess rights that surpass those of the state. Historically, permanent sovereignty over natural resources was seen as the state's domain, concerning internal governance and denying local communities legal rights to demand additional benefits from their land's resources.³¹ This perspective, however, has been rigorously questioned, leading to a broader interpretation that recognizes the sovereignty rights of "peoples" or "indigenous communities."³² This evolved understanding clarifies that state sovereignty over natural resources does not exempt the state from international obligations or from adhering to human rights norms and conventions related to natural resources.³³ Human rights conventions, such as Article 1 of both the International

²⁷ Latin America made initial attempts to change the international legal status quo. This was through the insertion of clauses that placed the contracts within the ambit of national and not international law. This came to be known as "*Calvo Clause*" after the jurist who was its prominent exponent; Richard Kiy and Anne McEnany, "Housing and Real Estate Trends among Americans Retiring in Mexico's Coastal Communities," 2010, https://icfdn.org/wp-content/uploads/2015/11/Retiring_Responsibly_Housing_English.pdf.

²⁸ UN, "Permanent Sovereignty over Natural Resources General Assembly Resolution 1803 (XVII)" (New York, 1962), https://legal.un.org/avl/ha/ga_1803/ga_1803.html.

²⁹ UN, "Permanent Sovereignty over Natural Resources General Assembly Resolution 1803 (XVII)" (New York, 1962), https://legal.un.org/avl/ha/ga_1803/ga_1803.html.

³⁰ On December 12, 1974, the General Assembly adopted resolution No 3281 (XXIV) entitled "Charter of Economic Rights and Duties of State". This resolution which inter-alia stated; (a) Every state shall freely exercise full permanent sovereignty including possession, use and dispose over all of its wealth, natural resources and economic activities; (b) Each state has the right to nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation shall be paid by the state adopting such measure taking into account any relevant laws and regulations and all circumstances that the state considers pertinent. In any case, where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing states and by its tribunals, unless it is freely and mutually agreed by all states concerned that other peaceful means be sought based on the sovereignty of states and following the principle of the choice of means.

³¹ Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*; Anita Rønne, "Public and Private Rights to Natural Resources and Differences in Their Protection?," in *Property and the Law in Energy and Natural Resources*, ed. Aileen McHarg et al. (Oxford: Oxford University Press, 2010), <https://doi.org/10.1093/acprof:oso/9780199579853.003.0003>; Lila Barrera-Hernández, "Sovereignty over Natural Resources under Examination: The Inter-American System for Human Rights and National Resources Allocation," *Annual Survey of International & Comparative Law* 12, no. 1 (2006): 43, <https://core.ac.uk/download/pdf/233103609.pdf>.

³² RPSNR, UN Doc. A/RES/3281 (XXIX) annex at 2(1); article 1 of the ICCPR and Article 1 of the ICESCR, which recognizes the peoples' right to self-determination.

³³ Protocol to the Convention for the Protection of HRs and Fundamental Freedom, ETS NO. 9, as amended by Protocol no. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS no. 155,

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), affirm the fundamental rights of citizens and communities regarding natural resources, highlighting that the principle of mutual benefit and respect for international law should guide the disposal of natural wealth and resources, ensuring no one is deprived of their means of subsistence.³⁴

The recognition of permanent sovereignty over natural resources as a right of the people within a state could potentially challenge government decisions that allow multinational companies to operate in the natural resource sector, especially if such operations go against the wishes of the citizens or, specifically, the host community of those resources. Furthermore, it obligates governments to use natural resources for the benefit of their entire population, adding a contemporary layer of relevance to the concept of the "Right to Permanent Sovereignty over Natural Resources" (RPSNR) in the post-colonial context. This directs sovereign states towards leveraging their resources for the welfare of their people.³⁵

The principle of permanent sovereignty has evolved into a peremptory norm of international law, akin in status to the prohibition of the use of force.³⁶ Consequently, any violation of this principle by a state could be deemed illegal under international law.

a. Indigenous People's Right to Natural Resources under International Conventions

Numerous international conventions and treaties affirm and protect the rights of indigenous peoples and communities, underscoring the principle that international law supports the premise of peoples' ownership and management of natural resources within their territories. The international protection for indigenous peoples is encapsulated within three pivotal documents:

- 1) The Indigenous and Tribal Population Convention 1957 (Convention 107) of the International Labor Organization.
- 2) The Indigenous and Tribal Peoples Convention 1989 (Convention 169) of the International Labor Organization (ILO)
- 3) The United Nations Declaration on the Rights of Indigenous People.

Martinez Cobo made the most acceptable definition of indigenous peoples. Cobo states,³⁷ "Indigenous communities, people, and nations have a historical continuity with pre-invasion

November 1 1998) article 1 herein recognize the right to property as a fundamental human right; "Every natural or legal person is entitled to the peaceful enjoyment of their (or their) possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the condition provided for by the law and by the general principles of international law"; UN, "Permanent Sovereignty over Natural Resources General Assembly Resolution 1803 (XVII)."

³⁴ This recognizes the right of people to self-determination. (ICESCR, opened for signature December 16 1966, 993 UNTS 3 (entered into force)

³⁵ Jane A. Hofbauer, "The Principle of Permanent Sovereignty over Natural Resources and Its Modern Implications" (University of Iceland, 2009), https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf; Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*; Rønne, "Public and Private Rights to Natural Resources and Differences in Their Protection?"

³⁶ Article 53 of the *Vienna Convention on the Law of Treaties* contains the following definition of the concept of peremptory norms: "For the present *Convention*, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character"; *Vienna Convention on the Law of Treaties*, opened for signature May 23 1969, 115 UNTS 331 (entered into force January 27 1980); Ricardo Pereira and Orla Gough, "Permanent Sovereignty over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law," *Melbourne Journal of International Law* 14, no. 2 (2013): 451–95; Hossain and Chowdhury, *Permanent Sovereignty over Natural Resources in International Law: Principle and Practice*; Brownlie, *Principles of Public International Law*.

³⁷ Martínez Cobo, "Study on the Problem of Discrimination against Indigenous Populations," 1983, http://www.un.org/esa/socdev/unpfii/documents/MCS_xxi_xxii_e.pdf.

and pre-colonial societies that developed on their territories or parts of them. They form as present non-dominant sectors of society. They are determined to preserve, develop, and transmit to future generations their ancestral territories and their ethnic identity as the basis of their continued existence as peoples, following their cultural pattern, social institutions, and legal systems.”

According to the 2003 Report of the African Commission’s Working Group of Experts on Indigenous Population/Communities,³⁸ the expression “indigenous people” refers to those communities in Africa:

- 1) Whose cultures and ways of life differ considerably from the dominant society and whose cultures are under threat, in some cases to the point of extinction;
- 2) The survival of their particular way of life depends on access and rights to their traditional lands and natural resources thereon;
- 3) who suffer from discrimination as they are regarded as less developed and less advanced than other, more dominant sectors of society;
- 4) who live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially;
- 5) who are subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority; and,
- 6) who identify themselves as indigenous

Hence, “indigenous people” and “people” could also be “minorities.”³⁹ The UN Declaration guarantees that “indigenous people” or indigenous communities will maintain their unique cultures and traditions. It further guarantees the right of indigenous peoples to freely determine their political status and the right to just and fair compensations in cases of expropriation of their lands.

Indigenous people have been referred to as tribes, aborigines, first people, first nations, ethnic groups, Adivasi, Janajati, etc,⁴⁰ which terms are also commonly used to refer to occupational groups with ancestral ties such as hunter-gatherers, nomads, peasants, hill people, etc.⁴¹ Therefore “people” or indigenous peoples or tribal peoples under the UNDRIP, the ILO Conventions and other international legal instruments could rightly apply to indigenous or ancestral communities of the Niger-Delta of Nigeria who share common ancestral ties with their traditional lands.⁴²

³⁸ IWGIA, “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities” (Copenhagen, 2005), https://www.iwgia.org/images/publications/African_Commission_book.pdf.

³⁹ Oswaldo Ruiz Chiriboga, “The Right to Cultural Identity of Indigenous Peoples and National Minorities: A Look from the Inter-American System,” *SUR: Revista Internacional de Derechos Humanos* 3, no. 5 (2006), <https://doi.org/10.1590/S1806-64452006000200004>; Dieter Kugelmann, “The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversities,” *Max Planck Yearbook of United Nations Law* 11, no. 1 (2007), <https://doi.org/10.1163/18757413-90000007>.

⁴⁰ Bayo Oluphunda, “Protecting Nigeria’s Indigenous Population,” PUNCH, 2016, <https://punchng.com/protecting-nigerias-indigenous-population/>.

⁴¹ Erica-Irene A. Daes, “Some Considerations on the Rights of Indigenous Peoples to Self Determination,” *Transnational Law and Contemporary Problems* 3, no. 1 (1993).

⁴² Jennifer Gitiri, “Protection of Cultural Rights of Indigenous Peoples under the ICCPR/ICESCR and the African Charter: A Comparative Study” (Central European University, 2015), http://www.etd.ceu.hu/2015/gitiri_jennifer.pdf; Indigenous peoples have been used to refer to tribes, aborigines, first people, first nations, ethnic groups, Adivasi, janajati etc. It has also been used to refer to occupational groups with ancestral ties like hunter-gatherers, nomads, peasants, hill people, etc. Therefore “people” under the African Charter could rightly apply to indigenous or ancestral communities of the Niger-Delta of Nigeria who share common ancestral ties with their traditional lands; Oluphunda, “Protecting Nigeria’s Indigenous Population”; Amah, “An Appraisal of the Rights of the Niger-Delta Peoples over Natural Resources under the African Charter

The indigenous peoples of the Niger Delta of Nigeria face the same threats as other indigenous peoples in the world.⁴³ They have been deprived of their ancestral lands and deprived of their sources of economic livelihood. Their territory is constantly under military occupation, deprived not only of their territorial but also economic and political self-determination.⁴⁴ Their ancestral ties, traditional lifestyles, values and customs, and cultural heritage face extinction. Such treatment also applies to their identity, pride, and traditional practices. The Nigerian state has violated its collective rights to self-development, its economic, social, and cultural rights, and its right to dispose of natural resources freely.⁴⁵ It is worth reiterating that by 1996, the Human Rights Council had directed the Nigerian government to immediately carry out legal reforms to guarantee human rights protection in line with the provisions of the ICCPR and, in particular, to take appropriate legislative and policy steps to secure the rights of indigenous peoples and indigenous minorities in Nigeria.⁴⁶ The Nigerian government has not implemented these recommendations to date. The rights over natural resources provided in favor of indigenous peoples inure to the Niger Delta of Nigeria.

b. Rights to Natural Resources and the Principle of Self-Determination

The right to self-determination is a fundamental principle of human rights as it entails a people's individual and collective right to freely determine and pursue their political, economic, social, and cultural development and status.⁴⁷ This right is linked with decolonization, especially in indigenous peoples, such as in Australia and the USA. The International Court of Justice (ICJ) states that this is a right held by the people rather than the government alone and that it is a norm of *jus cogens*, which is the highest rule of international law and must be obeyed.⁴⁸ It is arguable that since self-determination is a right that attaches to "all peoples," the rights are also accruable to indigenous peoples of a state. This perspective is supported by a precedent set by the Constitutional Court of South Africa, which has recognized the rights of

on Human and Peoples' Rights"; an International meeting of experts on further study of the concept of the rights of peoples, convened by UNESCO held in Paris on 27-30 November 1989, SHS-89/VCONF.602/7, para.23; Miriam J. Aukerman, "Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context," *Human Rights Quarterly* 22, no. 4 (2000): 1011-1050, <https://doi.org/10.1353/hrq.2000.0041>; The Niger Delta houses a large number of different ethnic and linguistic groups, which includes Andoni, Brass, Dioubu, Etche, Ijaw, Kalabari, Nembe, Ogoni, Okirika, Ikwerres, Orons, Itsekiris, Ukwani, Bribes, Ibibio, Efik, and other smaller minority groups, as well as some part of Ibo and Yoruba tribes. These different ethnic and linguistic groups are regarded as indigenous peoples; International Crisis Group, "The Swamps of Insurgency: Nigeria's Niger Delta Unrest" (Brussels, 2006); Hemen Philip Faga, "Re-Conceptualizing the Right of the Niger Delta Peoples to Self-Determination as Indigenous Peoples and National Minorities in International Law: Exploring New Horizon and Research Potentials," Martins Library, 2020, <https://martinslibrary.blogspot.com/2015/03/review-of-re-conceptualizing-right-of.html>; Wikipedia, "Indigenous Peoples of the Niger-Delta," n.d.; Alan Phillips, "The World Directory of Minorities and Indigenous Peoples-Nigeria" (London, 2018), <https://www.refworld.org/docid/4954ce6719.html>.

⁴³ Olupohunda, "Protecting Nigeria's Indigenous Population."

⁴⁴ Daes, "Some Considerations on the Rights of Indigenous Peoples to Self Determination."

⁴⁵ Tim Elombah, "Indigenous Peoples Of Niger Delta Commence Earnest Self-Determin," Elombah, 2017, <https://elombah.com/indigenous-peoples-of-niger-delta-commence-earnest-self-determination/>.

⁴⁶ Human Rights Council, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee" (Geneva, 1996), CCPR/C/79/Add.65.

⁴⁷ Nadesan Satyendra, "Self Determination: Principle and the Law," Tamilnation, accessed December 31, 2016, <http://www.tamilnation.org/selfdetermination/>.

⁴⁸ ICJ, Case Concerning East Timor (Portugal v. Australia) (1995); Matthew Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?," *Human Rights Law Review* 11, no. 4 (2011): 609-10, <https://doi.org/10.1093/hrlr/ngr025>.

indigenous peoples to ownership of subsoil minerals based on their historical occupation and usage.⁴⁹

This principle is adopted in the International Labor Organization (ILO) Convention 169 on the indigenous and tribal peoples in independent countries, consisting of two vital attributes:

- 1) The right of individuals to participate in the use, management, and conservation of natural resources derived from their lands.
- 2) The government's consultation with the people to establish or ascertain to what degree the people's interest would be prejudiced.

Those attributes are also stated in the *Aarhus Convention on the Access to Environmental Information and Public Participation in Environmental Decision-Making*.⁵⁰ Self-determination enables people to determine their internal political status without being subjected to external or outside interference.⁵¹ The right to political self-determination will not be sustainable without the correlative right of the beneficiaries to use and manage their natural resources. Thus, Articles 3 and 26 of the United Nations Declaration on the Rights of Indigenous Peoples provided for the right of self-determination of Indigenous peoples and, more specifically, indigenous peoples' right to lands, territories, and resources they have traditionally occupied.⁵² Indigenous peoples should be able to exercise control over their lands, including the right to partition, own, develop, utilize, and decision-making on issues concerning the land.⁵³ Therefore, indigenous peoples' land rights shall include preserving their ancestral shrines and subsistence living. The state is obliged not only to respect these rights but also to protect them. The right to self-determination of indigenous peoples provides the basis within which the political, economic, and social rights of indigenous peoples can be realized within the framework of a sovereign state. While the right could not form the basis for the secession of indigenous peoples living within an independent state, it guarantees self-government in the form of autonomy in matters affecting them locally. The "PSNR" principles are not legally binding, yet they are essential elements of the right of self-determination, which has attained the status of customary international law.⁵⁴ Further, the "PSNR" principles have been widely accepted and incorporated into many legally binding treaty laws, such as ICCPR, ICESCR, ILO Conventions, and even the African Charter on Human and Peoples Rights.

"PSNR" might not transfer the "sovereign" rights to peoples as against the state's government since the right accruable to indigenous peoples under the Declaration is a "participatory right." Consequently, indigenous peoples cannot be alienated in matters related to their lands. Article 4 implies that the autonomy or self-government of indigenous peoples relates to their internal or local affairs. On the contrary, Article 46 (1) prohibits any interpretation of the Declaration that suggests supporting the right to secession. The ICJ has defined the self-determination principle as the "need to pay regard to the freely expressed will

⁴⁹ Constitutional Court of South Africa, *Alexkor Ltd v. Richterrald Community* (2005); Pereira and Gough, "Permanent Sovereignty over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law."

⁵⁰ UNECE, "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" (1998), <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

⁵¹ Kalana Senaratne, "Internal Self-Determination in International Law: Critical Third World Perspective," *African Journal of International Law* 3, no. 2 (2013): 305–39, <https://doi.org/10.1017/s2044251313000209>.

⁵² Frank Dietrich, "Natural Resources, Collective Self-Determination, and Secession," *Law, Ethics and Philosophy* 6 (2018): 36, <https://doi.org/10.31009/LEAP.2018.V6.02>.

⁵³ Erica-Irene A. Daes, "Human Rights of Indigenous Peoples: Second Progress Report of the Special Rapporteur" (Geneva, 1999), E/CN.4/Sub.2/1999/18.

⁵⁴ Pereira and Gough, "Permanent Sovereignty over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law"; Hossain and Chowdhury, *Permanent Sovereignty over Natural Resources in International Law: Principle and Practice*; Brownlie, *Principles of Public International Law*.

of the people...in matters concerning their condition”.⁵⁵ In the case of *East Timor*,⁵⁶ the Court acknowledged the principle of self-determination as one of the "essential principles of international law" and a right with "erga omnes character." Also, in the *Endorois case*,⁵⁷ the African Commission acknowledged the right of self-determination as available for a community of people living in an independent state.

Further, the African Commission advisory's view on UNDRIP reaffirms indigenous peoples' right to internal autonomy.⁵⁸ The right to internal autonomy can only be meaningfully exercised by the indigenous communities when they are allowed to participate in decisions that affect their lands, which UNDRIP defines as the right of free, prior, and informed consent.⁵⁹ The Inter-American Court of Human Rights (IACHR) has promoted and applied these rights in several cases that involved indigenous peoples and their state governments.⁶⁰ At the regional level, the African Commission of Human Rights has recognized internal self-determination as available to communities in African states. The Commission was founded to protect the land rights of the Ogiek peoples of Kenya.⁶¹ The Commission has also made findings in favor of the mineral resources hosting the peoples of Ogoni located in the Niger Delta area of Nigeria. The communication called upon the Nigerian government to implement essential actions to enhance the protection of human rights for the Ogoni people, alongside measures designed to promote their rights to a healthy environment, health, land, and access to natural resources.⁶²

Therefore, the natural resources hosting communities of the Niger Delta areas of Nigeria⁶³ are at the beginning of applying the self-determination principles in the Constitution. Shortly, these people will gain the control over the resources of their lands. The Niger Delta region of Nigeria has been under perpetual tension for over three decades due to non-inclusion in

⁵⁵ ICJ, *Western Sahara: Advisory Opinion* (1975).

⁵⁶ ICJ, *Case Concerning East Timor (Portugal v. Australia)*, 84.

⁵⁷ HRW, "Kenya: Landmark Ruling on Indigenous Land Rights" (New York, 2010), <https://www.hrw.org/news/2010/02/04/kenya-landmark-ruling-indigenous-land-rights>.

⁵⁸ Shawkat Alam and Abdullah Al-Faruque, "From Sovereignty to Self-Determination: Emergence of Collective Rights of Indigenous Peoples in Natural Resources," *Georgetown Environmental Law Review* 32, no. 1 (2020), <https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2020/01/GT-GELR190045.pdf>.

⁵⁹ Lorenza B. Fontana and Jean Grugel, "The Politics of Indigenous Participation through 'Free Prior Informed Consent: Reflections from the Bolivian Case,'" *World Development* 77 (2016): 249–61, <https://doi.org/10.1016/j.worlddev.2015.08.023>.

⁶⁰ Inter-American Court, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), The Court held that the community's right to its property prevented the Nicaraguan government from unilaterally exploiting its natural resources and fulfilling its obligations under the Inter-American Convention on Human Rights. Furthermore, the Commission found that Nicaragua was required to officially delimit, demarcate, and title the lands belonging to the Awas Tingni community with the community's full participation and consideration of customary law, values, usage, and customs. The Court concluded that demarcation could proceed only with the participation of the Awas Tingni community, which meant that they must give consent to such distinction; Inter-American Court, *Mary and Carrie Dann v. United States* (2002), The Commission held that the provisions in the American Declaration on Rights and Duties of Man on fair trial and property require that any determination of indigenous land rights be based on the fully informed consent of the whole community, meaning that all members must be fully and accurately informed and have the chance to participate; Inter-American Court, *Maya Indigenous Communities v. Belize* (2004), The Commission held that "the duty to consult is a fundamental component of the State's obligations in giving effect to the communal property right of the Maya people in the lands that they have traditionally used and occupied".

⁶¹ African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya* (2017).

⁶² African Commission on Human and People's Rights, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* (2002).

⁶³ Wikipedia, "Indigenous Peoples of the Niger-Delta."

decision-making and non-benefit of the indigenous inhabitants from the proceeds of hydrocarbon and other hydrocarbon resources exploited on their lands.⁶⁴

C. Conclusion

International law offers a framework of legal principles that support communities in their quest for equity and justice concerning the allocation of natural resources. It establishes fundamental rights for the benefit of indigenous and tribal peoples and mandates states to uphold these rights, particularly for their indigenous populations. These rights encompass the meaningful participation in the governance of natural resources and the equitable sharing of benefits derived from exploiting these resources, catering to indigenous communities' economic, social, and cultural requirements. Additionally, the right to self-determination affords "peoples" or "indigenous peoples" control over their lands and natural resources, a principle directly applicable to the host indigenous communities in Nigeria's resource-rich areas.

In the Niger Delta, the extraction of oil has had devastating effects on the local population, including widespread oil spills, destruction of arable land, ecosystem degradation, and community disempowerment. Despite the substantial oil revenue generated, the indigenous communities in the region continue to live in dire poverty, lacking basic social infrastructure, means of livelihood, and empowerment.

A comprehensive overhaul of Nigeria's legal framework governing natural resources is recommended to address these issues, granting hosting communities greater ownership and control over resource exploitation in their territories. The introduction of legislative measures that extend decision-making rights over these resources to indigenous communities is crucial. Additionally, the Nigerian government must accelerate constitutional and policy reforms to secure and protect the rights of the country's indigenous communities to the natural resources found on their lands. These recommendations will promote peace and development, enhancing the nation's federal practices.

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⁶⁴ Terry Mission Bagia and Samuel Chisa Dike, "The Principle of Permanent Sovereignty over Natural Resources (PSNR) How Far with Nigeria's Petroleum Industry?," *The Journal of Jurisprudence, International Law and Contemporary Issues* 14, no. 1 (2020), <https://ssrn.com/abstract=3767653>.

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