

AN APPRAISAL OF THE RIGHTS OF THE NIGER-DELTA PEOPLES OVER NATURAL RESOURCES UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS*

Abstract

The people of the Niger-Delta region of Nigeria have persistently demanded for the control of the natural resources being exploited in their territory by oil companies pursuant to the powers granted to them by the federal government of Nigeria. They decry the deleterious impact of resources exploitation on their environment and livelihoods. They decry lack of benefit from the proceeds of exploitation. They have most often founded their demand on the provisions of international and regional human rights legal instruments. This article based on doctrinal research methodology examined the contentions of the Niger-Delta peoples of Nigeria and the relevant provisions of the African Charter on Human and Peoples' Rights, decisions of the African Commission on Human Rights and other relevant materials and concluded that the rights enshrined therein enure to the benefit of the Niger-Delta peoples' of Nigeria. It called on the Nigerian government to fast track legislative and policy reforms aimed at realizing the rights of the Niger-Delta peoples' as guaranteed under the African Charter on Human and Peoples' Rights.

Keywords: “Natural Resources”, “Exploitation”, “Ownership”, “Rights of Peoples”.

1 Introduction

The Federal Government of Nigeria controls exclusively, the management, exploitation, exploration and distribution of every natural resource situated in all her territories whether onshore or offshore. This is captured by section 44(3) of her extant constitution¹ which provides;

Notwithstanding the fore-going 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

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¹ Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended

the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The Nigerian Constitution² further conferred on the National Assembly³; the exclusive jurisdiction to make regulatory enactments and to regulate through legislations; mines, and minerals including oil fields, oil mining, geological surveys and natural gas. Pursuant to these constitutional powers, the National Assembly of Nigeria has made numerous legislative enactments empowering the federal government of Nigeria to take over, and to exercise ownership powers over natural resources and lands harbouring such natural resources in any part of Nigerian territory.⁴ The implication of these enactments is to grant natural resources ownership, control and management on the Federal Government of Nigeria.⁵

These constitutional and numerous federal legislations made the indigenous communities of the Niger-Delta region of Nigeria spectators in their lands while minerals and mineral oil and gas exploitation activities go on in their areas. These have given rise to a phenomenon termed 'resource control' struggle in Nigeria.⁶

In Nigerian parlance, 'resource control' is an expression commonly associated with the demands of the indigenous peoples of the Niger Delta region of Nigeria, made up of the states of the south-south geopolitical zones which principally produce the nation's mineral resources, to have a greater control over the proceeds from oil produced in their area.⁷ While some groups within

² Section 4 (2) and part 1 of the second schedule, *ibid*

³ The legislative arm of the Federal Government of Nigeria

⁴ See 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 (LFN) 2010, etc. See *Attorney General Abia State v. Attorney General Federation*. (no. 1)(2002)11 NWLR (pt. 725)689 SC. Note however that by virtue of section 1(1) of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act,2004, littoral States do have some interests (derivation) in offshore natural resources located within 200 metres water depth isobaths.. In other words, the Act provides that the two hundred metre water depth isobaths contiguous to a state of the Federation shall be deemed to be a part of that state for the purpose of computing the revenue accruing to the Federation Account from the state pursuant to the provision of section 162(2) of the 1999 Constitution.

⁵ For example, section 2 of The Petroleum Industry Law of 2012 states:

"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". However, the federal government has the duty of sharing the income arising from this revenue among the Components States of the federation including the local government councils in accordance with the constitutional formular enshrined in sectioned 162 (2) of her extant Constitution. In fact, it is constitutionally mandatory on the part of the federal executive to distribute the proceeds arising from natural resources management among all the component parts of the country. See section 162(2), (3) CFRN *op. cit.* See also, E. I. Amah, "A Critical Analysis of the Federal and States Taxing Power in Nigeria" *JCCL* Vol. 1, p. 12.

⁶ A Abolurin, *Democratization, Conflict Management and the Amnesty Question in Nigeria*, (Nigeria: Ibadan, J. Archers, 2010) pp. 66-77., R. Ako, 'Resource Control in the Niger Delta: Conceptual Issues and Legal Realities', <https://www.e-ir.info/2012/05/25/resource-control-in-the-niger-delta-conceptual-issues-and-legal-realities/>(accessed 11/03/2020), A Dunin, Battling the 'Resource Curse' in the Niger, 8 Aug 2011, Delta<https://reliefweb.int/report/nigeria/battling-resource-curse-niger-delta>(visited 11/03/2020)

⁷ R Ako *op.cit.*, See also, V Attah 'Understanding Resource Control', being an address presented at lecture organized by the Northern Youths Consultative Forum, in Kaduna, <https://dawodu.com/attah1.htm>(visited 11/03/2020, E U Shebbs, R. 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*

the zone demand for total control and ownership of the oil including the management of same for their benefit, some others demand for larger proportion of revenue from the federation account (derivation), while yet others demand for the community's involvement in the management of the environment and the resources thereof. There are yet other group of agitators who demand to participate in the running or management of the companies engaged in the production and supplies of such resources. These varying demands have given rise to lots of agitations resulting in an increased unrest and sometimes total declaration of war against the federal government by the youths of the region.⁸

Most of these agitators for 'resource control' within the Niger –Delta region of Nigeria, draw support from the growing belief that international and regional legal instruments have made positive provisions conferring rights on individuals and group of individual members living within a political state, with a corresponding obligation on states to ensure their promotion and protections.⁹ Some of these rights include rights over natural resources.¹⁰ We shall herein examine the extent of this struggle and the consequence of state deprivation of natural resources rights on the Niger Delta peoples. Finally, we shall consider the rights of the Niger- Delta peoples over their natural resources within the limits of the provisions of the African Charter on Human and Peoples Rights, a regional instrument that is legally binding on the Nigerian government.¹¹

2 Niger Delta Peoples' and Their Struggle for Natural Resources Rights

The Niger Delta region is a marshy –swampy land surface covering over 70,000 square metres landmass.¹² It is located at the south-south geopolitical region of Nigeria. The present geopolitics of the Niger-delta comprises of 9 states of Nigeria; namely, Akwa-ibom, Bayelsa, Delta,

in Africa (JGGSDA), Vol. 3, No 3, December, 2016. <http://rcmss.com/2017/JGGSDA/Resource-Control-In-Nigeria-Issues-Of-Politics-Conflict-And-Legality-As-Challenge-To-Development-Of-The-Niger-Delta-Region.pdf> (visited 11/03/2020/20)

⁸ A Abolurin *op. cit.*, R. Ako, *op. cit.*

⁹ U O Umzurike, *The African Charter on Human and Peoples Rights* (Hague: Martimus Nijhoff Publishers 1997)p.52, See also R Pereira, O 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* VI 14, 460., See also I Brownlie, *Principles of Public International Law* (Oxford University Press, 7th ed, 2008) 29.

¹⁰ Some of these international legal instruments include; the International Covenant on Civil and Political Rights (ICCPR) adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49; the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27; The UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, Adopted by General Assembly resolution 47/135 of 18 December 1992; 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. On the regional level, we have the African Charter on Human and Peoples Rights 1981(ACHPR)

¹¹ See the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 LFN 2010

¹² S C Izah, Ecosystem of the Niger Delta Region of Nigeria: Potentials and Threats. *Biodiversity Int J.* 2018; 2(4):338-345. DOI: 10.15406/bij.2018.02.00084 (visited 17/04/2020)

Ondo, Edo, Cross River, Imo, Abia and Anambra. However, the principal part of it are Akwa Ibom, Rivers, Cross Rivers, Delta, and Edo states all of which account for over 80% of Nigeria's oil revenue. The Niger-Delta is popular with its richly endowed crude oil and gas deposits reservoir. It is considered as one of the best endowed deltas in natural resources in comparison to other oil producing nations.¹³ In addition to oil and gas, the Niger-Delta contains extensive dense rain forest, with abundant wild life, fertile agricultural lands and swamps, streams, ponds and rivers full of sea foods.¹⁴ 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, ukwanis, abribas, Ibibio, Efik, and other smaller minority groups,¹⁵ as well as some part of Ibo and Yoruba tribes. These different ethnic and linguistic groups are regarded as indigenous peoples.¹⁶

The peoples of the Niger Delta region of Nigeria have over the years expressed their grievances and misgivings over the state's expropriation, ownership and management of the natural resources produced in their traditional lands. They have decried deprivation of their natural resources. They have also decried the devastating effect of oil exploration in their lands; the resultant environmental degradation and denial of compensations. They have also decried loss of livelihoods as a result of the destruction of their habitats.¹⁷ To register their discontent with the status quo, the peoples of the Niger Delta have resorted to various forms of protests –

¹³ Saturday Sun Newspaper, October 24, 2009, p.46.

¹⁴ V A Akujuru and L. Ruddock, 'Incorporation of Socio-Cultural Values in Damage Assessment Valuations of Contaminated Lands in the Niger Delta', 2014, 3(3), 675-692; <https://doi.org/10.3390/land3030675> (accessed 20/04/2020)

¹⁵ See the International Crisis Group, 'The Swamps of Insurgency :Nigeria's Niger Delta Unrest', African Report Number 115-3, August 2006, cited by, H.P. 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, available at <https://martinslibrary.blogspot.com/201503/reconceptualizing-right-of-Niger-Delta...> (accessed 20/04/2020)

¹⁶ See <https://en.wikipedia.org/wiki/category:indigenous-peoples-of-the-Niger-Delta> (accessed 5/02/2020) see also 'the Minority Rights Group International, World Directory of Minorities and Indigenous Peoples-Nigeria: Delta Minority Groups, January 2018 available at <https://www.refworld.org/docid/49cd52d.html> {accessed 5/2/2020}, Compare, S. G. Barnabas, 'Abuja Peoples of Nigeria as Indigenous Peoples in International Law,' *International Journal on Group and Minority Rights*. 2018;**25**:431-457, J. Gitiri, Protection of Cultural Rights of Indigenous Peoples under the ICCPR/ICESCR and the African Charter: a Comparative Study, *being an LLM Short Thesis, at the Central European University*, available at <http://www.etd.ceu.h> Indigenous People.

Indigenous peoples not only possess peculiar identity, but also has attachment to their culture and hold their unique sense of belief, priorities and traditional values that are intrinsically intertwined with their ancestral lands. They are as well politically disadvantaged in comparison to the rest of the state's population and thus are identify with agitation for political emancipation. Indigenous peoples always clamour for the recognition of their political rights, identities, culture, traditional land territory and natural resources.

Indigenous Voices, Factsheets available at <https://www.un.org/esa/socdev/unpfii/documents/5session-factsheet1.pdf>. (accessed 5/2/2020)

J G Bartlett, L Madariaga-Vignudo, (et. al) *Identifying Indigenous Peoples for Health Research in a Global Context: a Review of Perspectives and Challenges*, *International Journal of Circumpolar Health*, 66:4, 287-370, DOI: 10.3402/ijch.v66i4.18270

¹⁷ A Abolurin, *op. cit.*, D. Agbese, (1993). "The Curse of Oil", *Newswatch*, Vol.17, No.4. January 25, p8, *Business day* (April 1, 2004). "Oil Feature: Niger Delta unrest", Dokubo, A.M. (2004). "Niger Delta People in the Nigerian State" *The Argus*, Vol.3, No.61, November 9-11, pp4, E. Osaghae, "The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State", *African Affairs*, Nos. 94 (1995), pp. 32

peaceful and violent alike. These agitations in the Niger Delta have in the last decade degenerated to a point of small scale war between the various militant groups in the Niger Delta region and the security operatives of the Nigerian Armed Forces.¹⁸ The Niger Delta agitation started as soon as crude oil was discovered in commercial quantity in the region in 1956. The first rebellion against the *status quo* was led by Major Isaac Boro, a young Ijaw tribal man in the 1960s. In the 1990s, the protest increased with Ken Saro-Wiwa, a poet and environmentalist bringing the Ogoni struggle to international limelight with the forming of the Movement for the survival of the Ogoni people (MOSOP).¹⁹ He was considered a big threat by the then ruling military junta of Gen. Sanni Abacha and he was consequently executed along with twelve other activists in 1995. The crisis lingered for many years, with several governments proposing and implementing different plans that could bring solution to the area that houses the oil and gas resources of the country which is the main source of revenue. It was the intervention of the government of Yar Adua in 2009 that introduced a period of a ceasefire.²⁰

While the exploitation goes on in the Niger Delta Region, these areas are negatively impacted as they do not benefit or derive satisfaction; neither do they participate in the exploitation process. Their rights over their lands and the oil therein are denied them through state' imposed legislations and military force.²¹ According to Ebeku²² indigenous landowners in the Niger Delta ought to enjoy three levels of compensations traditionally for the use and occupation of their traditional land territory; these are payment of annual rents as the head lords for the intrinsic value of the land, payment of compensations for surface rights in cases of damage to crops and economic trees and payment of compensation for pollutions.²³

These compensations are not made to the people. The U.N.D.P²⁴ traces the acute poverty ravaging the majority population of Niger Delta peoples occasioned by the loss of livelihood, the depreciation of the way of life of the people, environmental degradation, gas flaring and its consequential effect, to federal legislations that disempowered the peoples of the region.

¹⁸ I L Worika, 'A Report on the Investigation of Human Rights violations in the South- South Zone, 1966 1999: Community/Group Deprivations in Rivers State'. *Report of Research Commissioned by the Centre for the Advanced Social Sciences (CASS) for the South South Zone Research*. See also, 'Ogoni – The Struggle Continues' 1996. Geneva: World Council of Churches. December pp. 66-97, E. Osaghae, *op. cit.*

¹⁹ K Saro-wiwa, 'These we Demand': *Newswatch* , 1993, vol.17, No.4, January 25, Pp10-11 . K. Saro-wiwa, 'I am Ashamed that I am a Nigerian'. *Citizen*, 1992, vol.2, No.35, August 31-September 6, Pp12-13.

²⁰ Nigeria begins amnesty for Niger Delta militants, *The Guardian Weekly*, 6th Aug. 2009, available at; <https://www.theguardian.com/world/2009/aug/06/niger-delta-militants-amnesty-launched>, (accessed 20/04/2020)

²¹ K Saro-wiwa, 'The Niger Delta: No Democratic Dividend', *Human Rights Watch* (2005).

²² I L Worika, (2000) A Report on the Investigation of Human Rights violations in the South- South Zone, 1966-1999: Community/Group Deprivations in Rivers State, *Report of Research Commissioned by the Centre for the Advanced Social Sciences (CASS) for the South South Zone Research*.

²³ *Ibid.*

²⁴ The U.N.D.P. Niger Delta Development Report (2012) http://hdr.undp.org/sites/default/files/reports/240/ahdr_2012.pdf (accessed 20/04/2020)

According to the U.N.D.P. report²⁵ the degradation occasioned by acts of oil expropriation impacts negatively on their survival.

Mahler²⁶ traces the feeling of dissatisfaction on the part of the peoples of Niger Delta to the federal legislations on oil, the non-participation of the oil producing communities in the oil extraction Industry and the dwindling fortunes of derivation principle in the Constitution.²⁷ Renner²⁸ on his part associated conflict in the Niger Delta Region with activities of oil companies by way of land confiscation without adequate compensation, environmental poisoning especially pollution of farmlands and rivers and ponds leading to lack of portable water, destruction of forests and shrines, despoliation of hunting and fishing grounds, social disruption and communal tension occasioned by incursion of roads into previously inaccessible area e.g. shrines with its attendant influx of construction workers, miners, loggers and migrant.²⁹

In his survey of the oil producing communities in the Niger Delta, Onyefusi³⁰ discovered that a greater proportion of the people perceived economic marginalization than people from other parts of the Nigerian federation while over 50 percent of all the respondents identified governance as the fundamental enemy working against their opportunity to benefit from oil resources³¹. Another survey³² discovered youth grievance to include unavailability of job opportunities, illiteracy and limited access to academic pursuits.³³

²⁵ *ibid.* It is observed by Amnesty International, that the denial of oil or petroleum rights includes one out of the other numerous problems of the mineral producing communities of the Niger Delta. The second and the most unfortunate fact is the cumulative deleterious effect the exploitation of crude oil has had in the peoples' lives, wealth, economic life and other basic human rights. These peoples have been and are being pushed deeper into poverty and economic deprivation; they are further being fuelled into self-destructive conflict which cumulates into a feeling of total frustration and state of powerlessness. These crises are being supported by the actions of federal security forces, corporate irresponsibility and mal-effective and irresponsible government. Amnesty International, Nigeria: Petroleum Pollution and Poverty in the Niger Delta 2009 p.9

<https://www.amnesty.org/en/documents/AFR44/017/2009/en/>(accessed 20/04/2020)

²⁶ A Mahler, 'Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil Violence Link in the Niger Delta', *GIGA Research Programme (Violence and Security) Working Paper*, No. 120, January 2010 p.16.

²⁷ The derivation formula is the percentage of the proceeds from crude oil accruable to the oil producing states of the Niger Delta Region of Nigeria. Pursuant to section 162(2) of the CFRN 1999. Not less than 13% of the proceeds from natural resources is accruable to the producing states of the federation. See I. E. Sagay, 'The Lakayana Syndrome and the Supreme Court (1&2)', *the Guardian*, Monday and Tuesday, July 23rd and 24th 2002. P.4 & 4 respectively. Mahler noted that while the percentage of oil revenues accruable to the oil producing region of Nigeria was almost 100% between 1953 and 1959 it has continued on a downward slope. By the 1960 Constitution it was fixed at 50% and by 1970 it was further reduced to 30 percent. The Obasanjo military government reduced same to 5 percent, Shagari administration to 20 percent and under the military presidency of General Buhari to 1.5 percent. The I.B.B administration fixed derivation at 1 percent and later to 3 percent, Derivation remained 3 percent until the coming into effect of the 1999 Constitution. From 1999 till date the formula has remained not less than 13 percent. A Mahler *op. cit.*

²⁸ M Renner; "The Anatomy of Resource Wars", *World Watch Papers* No.162, 2002.

²⁹ O Ibeanu; 'Affluence and Affliction, the Niger Delta as a Critique of Political Science,' *an Inaugural Lecture of University of Nigeria*, Nsukka, Nigeria, (February 20, 2008)

³⁰ A Oyefusi, 'Oil and the Propensity for Armed Struggle in the Niger Delta Region of Nigeria', (Wellington DC.) *The World Bank, Post Conflict Transition Papers* No. ,8 WPS 419 2007.

³¹ *ibid.*

³² I Ikelegbe, 'The Economies of Conflict in Oil Rich Niger Delta Region of Nigeria', *African and Asian Studies*, 2006,23-55

³³ *Ibid.*

As stated earlier, the peoples of the Niger Delta have gained impetus with the development of international and regional human rights laws that grant some basic rights to groups especially to minorities and peoples. At various time in the no distance past, the peoples of the Niger Delta region have taken their case to the international human rights commission as well as African human rights commission alleging massive violations of their human rights. We shall herein focus on the provisions of the African Charter on Human and Peoples' Rights, with emphasis on the rights of peoples over their natural resources. What are these rights as provided by the ACHPRs?³⁴ How may the rights over natural resources provided by the ACHPRs avail the Niger Delta peoples in their struggle?

3 Peoples Right over their Natural Resources under the ACHPRS³⁵

The African regional human rights instrument³⁶ provides a set of rights for 'peoples', which include among others:

- i) The right of peoples to existence and self-determination;³⁷
- ii) The right of peoples to freely dispose of their wealth and natural resources;³⁸
- iii) The right of peoples to economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind;³⁹
- iv) The right of peoples to satisfactory environment favourable to their development.⁴⁰

The right to freely dispose of their wealth and natural resources, involves, the states exercise of permanent sovereignty over natural resources in the interest of the 'peoples'.⁴¹ This includes the recognition of the legal rights of the peoples to their lands territory as well as the natural resources located therein, the protection of the peoples' territorial integrity, the protection and preservation of their physical and cultural identities; which includes protection of their ancestral shrines in their land, and the provision of unfettered access to their form and places of worship

³⁴ The African Charter on Human and Peoples Rights, 1981.

³⁵ African Charter on Human and Peoples Rights 1981.

³⁶ *Ibid.*

³⁷ Article 20 *ibid.*

³⁸ Article 21, *ibid.* The proviso to article 21(4) added, 'state parties to the present charter shall undertake to eliminate all forms of foreign exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

³⁹ Article 22 *ibid.*

⁴⁰ Article 24 *ibid.*

⁴¹ See G Jeremie, 'The Right to freely dispose of Natural Resources: Utopia or Forgotten?' *Netherlands Quarterly Human Rights*, 2013, vol. 32/2, 314-341, 2013. Available at <https://repository.uel.ac.uk/download/7092c00f4d614250f9849c..> (visited 6/03/2020)

and the right of free, prior, and informed consent before the commencement of exploitation activities on an indigenous land territory.⁴² It also includes the provision of adequate access to their means of livelihood including food, and an obligation on the government to take actions or measures to prevent deprivation of their normal subsistence.

It is interesting to note that in a complaint lodged before the African Commission on Human and Peoples' rights⁴³ against the Nigerian government over a number of alleged violations of human rights of the 'Ogoni people' of the Niger Delta region of Nigeria,⁴⁴ the Commission found the Nigerian government culpable of violations of Article 21 of the ACHPRs which provides for the rights of peoples to freely dispose of their wealth and natural resources among other violations.

This finding was founded on the fact of damages to the Ogoni farmlands by the activities of oil explorations and by the failure of the Nigerian government to protect the people of Ogoni from the devastating effect of oil exploration in their land.⁴⁵ The African Commission also made the same observation in the case of Endorois Community against the Kenyan Government where the Commission stated that the destruction of people's homes, the burning of crops, and destructions of farm animals, amounted to the denial of the people's right to freely dispose of their natural resources among other violated rights.⁴⁶

The right to existence and self-determination within the context and framework of an independent state connotes the freedom of the people to participate in the government.⁴⁷ This therefore includes the creation of enabling environment and an inclusive political system which allows the autochthonous peoples the opportunity to participate in decision making about their lands, their natural resources, and other matters affecting them and their corresponding relationship with the rest of the state. This right has acquired the status of legal principle under

⁴² In a case involving the Maya community of Belize, the inter-American commission relying on a similar provision in her regional instrument indicted the authorities for violation of the right of the Maya people by allowing the exploitation of timber and oil in Maya ancestral land without the people's informed consent. *Maya Indigenous Community of the Toledo District v. Belize*, *Inter-American Commission on Human Rights case* 12.053 Report no. 40/04 (2004), Doc. OEA/Ser.L/V/II/122 Doc. 5, rev. 1, para 117 (2004) 142.

⁴³ See F Coomans; The Ogoni Case Before the African Commission on Human and Peoples' Rights. *International and Comparative Law Quarterly*, 2003, 52(3), 749-760. doi:10.1093/iclq/52.3. Pp. 749-760.

⁴⁴ The complaint alleged widespread violations of the human rights of Ogoni people through the government overt and covert act in condoning irresponsible oil development practices in the areas which have environmental degradation, resulting in contamination of waters, soil, and health challenges to the people. The destruction of people's homes, the burning of crops, death of farm animals, which included among others the violations of their right to freely dispose of their and natural resources. *Ibid*

⁴⁵ *ibid*

⁴⁶ Centre for Minority Right Development (Kenya) and Minority Right Group International on Behalf of *Endorois Welfare Council v. Kenya*, *communication* 276/2003 (2010) African Commission on Human and Peoples Rights, (hereafter *Endorois case*) this decision was adopted by the Commission in May 2009 and approved by AU in January 2010. See, G Jeremie (2013) *ibid*.

⁴⁷ See N Enochong, Foreign State Assistance in Enforcing the Right to Self Determination under the African Charter: *Gunme & ors v. Nigeria*, *Journal of African Law*, (2002), vol. 46, no. 02, pp246-258 available at <https://research.birmingham.ac.uk/portal/files/2920785/enochong3.pdf> (accessed 01/02/2020). The blockage of people within a state by the government from exercising meaningful right to internal self-determination could give the people right to secession. See D Murswiek 'the Issue of the Right of Secession –Reconsidered' in C. Tomuschat, (ed) *Modern Law of Self-Determination*, Dordrecht 1993, 1, 16, 21, 26. Cited in N. Enochong *ibid*

international law.⁴⁸ The creation of community based natural resources management boards will be a welcome development in this regard.⁴⁹

Further, the right to economic, social and cultural development cannot exist in isolation. The entirety of the economic, social and cultural rights guaranteed by the Charter can only be realised if the state creates available opportunity for the realisation of the other rights not forming part of the ECOSOC rights. Therefore the Commission has held the failure of government to provide safe drinking water, unavailability of electricity and shortage of medicine as amounting to a violation of the right to health under article 16.⁵⁰ In a similar complaint filed against the Sudanese government, the Commission held that cases of massive destruction of livestock and farms, poisoning of wells, denial of access to water sources and so on, against the indigenous black African tribe in Darfur, western Sudan, amounted to a breach of the right to health under the African Charter.⁵¹

On the right to satisfactory environment, it has been argued that the right includes the protection of the ‘people from environmental degradation, pollution, and other depredations as well as the promotion of environmental conservation and sustainable policies.’⁵² Thus the African commission has held⁵³ that the destruction and contamination of food and water sources as a result of exploration activities of oil exploration companies in Ogoniland amounted to breach of this right by the Nigerian government. In a related development, the Kenya High Court⁵⁴ granted an injunction preventing the government from relocating the ‘hirola’, an endangered antelope

⁴⁸ See article 1 and 55 of the UN Charter, UNGA {Resolution 1514, XV} of 1960, see the case of *East timor (Portugal) v. Australia* (ICJ Report, 1995, pp. 90, 102, where the ICJ, stated that the Right of peoples to self-determination has an *erga omnes* character. Cited in N Enochong, *Ibid*.

⁴⁹ See N S Muyinda and L M Habasonda, *Public Participation in Zambia- The Case of Natural Resources Management* (Danish Institute for Human Rights, 2013) p. iii.

⁵⁰ Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine Des Droits Debl’homme, Les Temoins De Jehovah v. Zaire Communication no. 25/89, 47/90, 56/91, 100/93 (1996) 9th activity report. The decision was made at the 18th ordinary session, Praia, Cape Verde, October 1995.

⁵¹ *The Centre on Housing Rights and Evictions vs. the Sudan*. Communication Nos. 279/03 & 296/05 (2009) 28th Activity Report adopted at the 45th Ordinary session, at Banjul, Gambia on 113-27th may 2009.

⁵² This includes freedom from pollution, environmental degradation, and activities that adversely affect the environment or threaten the life, health, livelihood, wellbeing, or sustainable development; protection and preservation of air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems; protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife, or other resources. See H. A Wondalem, ‘The Right to Environment under African Charter on Human and Peoples’ Right’, *International Journal of International Law*: ISSN:2394-2622:VOL.2 ISSUE 1, available at www.ijoil.com/wp-content/uploads/2015/08/9.pdf (accessed 01/02/2020) Protection and sustainability of environment no doubt ensures the enjoyment of other human rights. In fact it is believed to be a condition precedent to the enjoyment of any other human rights. See, D. Shelton, ‘Human Rights, Health & Environmental Protection: Linkages in Law & Practice’, UN Health and Human Rights Working Papers Series No. 1, (2002) p.2 see also UN, GA Resolution, GA Res. 35/48 of 30 October, 1980

⁵³ *Social and Economic Right Action Center (SERAC) and Another v. Nigeria*, (Communication No. 155/96)

⁵⁴ *Abdikadir Sheikh Hassan and 4 Others v. Kenya Wildlife Service*, High Court of Nairobi, Civil Case No. 2059 of 1996.

species as such relocation would adversely affect the socio cultural development of the indigenous community and deprived them of their natural heritage.⁵⁵

It is further to be noted that all human rights are inter related such that a denial or violation of one may amount to a violation of another as a consequence.⁵⁶ In the case concerning the *Gabcikovo –Nagymaros project*,⁵⁷ Judge *Weeremamtry* of the *ICJ* opined that the enjoyment of other globally recognised human rights are dependent on the protection of the environment. This therefore includes promoting legislative and policy framework that supports and advances environment sustainability and respect for and adherence to international conventions and treaties as well as regional instruments for the preservation, protection and sustainability of the environment.

Having examined these rights as guaranteed by the ACHPRs, the question then is, are the indigenous communities of the Niger Delta region entitled to these rights under the African charter?

4 The Niger Delta peoples as subjects of the rights under the ACHPRs

The rights in connection to natural resources under the African Charter is provided for the benefit of peoples. ‘Peoples’ refers to a group of persons who identifies and links themselves to common ancestors.⁵⁸ The meaning of ‘peoples under the African Charter can be better understood through the examination of the characteristic or features of peoples rather than its definition. The UNESCO experts⁵⁹ avoided the dispute⁶⁰ over the definition of ‘peoples’ by rather highlighting the basic characteristics of peoples as a group of humans who commonly share the following features; history and tradition, race or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, and common economic life. ‘Peoples’ include national and ethnic minorities.⁶¹ ‘Peoples’ also include “community”.⁶² Peoples have been used interchangeably with indigenous peoples.⁶³

⁵⁵ Although this decision was based on the failure of the respondent to justify its action based on the constitution of Kenya, nevertheless the decision is justifiable under article 22 and 24 of the ACHPRs.

⁵⁶ See ‘The Nature of the Right to Development’ available at <https://repository.up.ac.za/handle/10210/10210/20/04/2020>

⁵⁷ [1997] I.C.J. Rep. 7, para 91-92) cited in, H A Wondalem *op. cit.*

⁵⁸ *Ibid.*

⁵⁹ 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

⁶⁰ M J Aukerman; ‘Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context’. *Human Rights Quarterly*, (2000), 22(4), 1011-1050. doi:10.1353/hrq.2000.0041.

⁶¹ Some writers have argued in favor of the term ‘marginalized minorities’ in place of ‘indigenous people’. See C Kidd & J. Kenrick (2009) ‘The Forest People of Africa: Land Rights in Context’. In C Valerie & G Jeremie *et.al.* (eds) *Land Rights and the Forest Peoples of Africa Historical, Legal and Anthropological Perspectives.* (UK, Forest People Program, England & Wales, 2009), Cited in J T Omenma *et. al.* ‘Indigenous People and Access to Land in Africa: The Shonga People of Kwara State, Nigeria’, *Ikenga International Journal of Institute of African Studies, UNN*, vol.12, no.1 available at [www.unn.edu.ng/publications/files/11893_indigenous ...](http://www.unn.edu.ng/publications/files/11893_indigenous...) (visited 25/01/2020), U O Umzurike (1997) *op. cit.* see however, Eide and Daes, ‘Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples’, UN Doc. E/CN.4/Sub.2/2000/10 2000; see also B Kingsbury, (1998) ‘Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy’, *92 AJIL 414*, N. KIPURI, ‘The UN Declaration on the Rights of Indigenous

Benedek,⁶⁴ widened the scope of ‘peoples’ in his explanation of the concept of ‘peoples’ under the African Charter to include not only the peoples of the state as a whole, but including different peoples, local communities and intermediary groups within the state. This approach is said to be in conformity with African culture.⁶⁵

The argument that all citizens of African states are possessive of indigenous identities, having all emerged from colonial experience, such that peoples under the African Charter should be restricted to the decolonized states of Africa is no more tenable.⁶⁶ The Report of the international work group for Indigenous Affairs⁶⁷ recognized that part of the consequence of nationalization,

Peoples the African Context’ in C Charters, and R Stavenhagen (eds) *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA, 2009) Cited in G Jeremie *Indigenous Peoples Human Rights in Africa: the Pragmatic Revolution of the African Commission on Human and Peoples Rights*, (Cambridge University Press, 2011) <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/i> (visited 5/03/2020)

(2011) *op. cit.*

⁶² O R Chiriboga, ‘The Right to Cultural Identity of Indigenous Peoples and National Minorities: A Look from the Inter-American System’, *Sur, Rev. int. direitos human.* vol.3 no.5 São Paulo Dec. 2006

<https://doi.org/10.1590/S1806-64452006000200004> (visited 16/04/2020), D Kugelmann, *The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversities*, https://www.mpil.de/files/pdf1/mpunyb_06_kugelmann_11.pdf (visited 16/04/2020)

⁶³ According to the 2003 Report of the African Commission, the expression ‘indigenous people’ refers to those communities in Africa:

- i. 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,
- ii. the survival of their particular way of life depends on access and rights to their traditional lands and natural resources thereon;
- iii. who suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society;
- iv. who live in inaccessible regions, often geographically isolated, and suffer from various form of marginalization, both politically and socially;
- v. 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,
- vi. Who identify themselves as indigenous; <https://www.achpr.org/specialmechanisms/detailmech?id=10>

⁶⁴ K Philip, W Benedek *et. al. Regional Protection of Human Rights by International Law: The Emerging African System.* (Baden-Baden: Nomos Verlagsgesellschaft, 1985), p.70. Cited in, R N Kiwanuka, ‘Human Rights Protection in Africa: the Continuing Debate’, *The Comparative and International Law Journal of Southern Africa* Vol. 21, No. 3 (NOV.1988), pp. 421-431

⁶⁵ See the landmark ruling of the African Union on *Endorois*; Removal of indigenous people from their ancestral land by the government of Kenya, Human Rights Watch, ‘Kenya Landmark Ruling on Indigenous Land Rights’ 4 February 2010, cited in G Jeremie (2011) *Indigenous Peoples Human Rights in Africa: The Pragmatic Revolution of the African Commission on Human and Peoples Rights*, (United Kingdom: Cambridge University Press, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/i> (visited 5/03/2020)

⁶⁶ Enochong, *op. cit.*, G Jeremie, (2013) *op. cit.* pp.317, 318, A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1999)p.59.

⁶⁷ Report of The International Work Group For Indigenous Affairs (IWGIA(2005) available at, http://www.achpr.org/english/info/wgip_others.htm (accessed 20/01/2020)

included the disposition of ancestral lands previously belonging to the indigenous communities. These lands are their primary means of sustenance. These communities are therefore subjects of the people's rights under the ACHPRs.

Expropriation of lands and natural resources belonging or attaching to indigenous communities makes them vulnerable to exploitation. Indigenous peoples are vulnerable to marginalization and poverty as a result of their minority position in comparison with the rest of the state population. Laws and states constitutions that expropriate indigenous communities' lands and natural resources without adequate provisions giving them access to these resources is inconsistent to the spirit and letter of the African Charter on the rights of peoples. Therefore "peoples" under the African Charter could rightly apply to indigenous or ancestral communities of the Niger –Delta of Nigeria who share ancestral ties with their lands in common.⁶⁸

5 Conclusion

Whereas the exercise of ownership and management over natural resources within the territory of Nigeria is part of her sovereign rights as an independent political state.⁶⁹ Nigeria has not exercised her sovereign powers over the State' natural resources in a manner that benefits the local Communities where these resources are produced. The exercise of her sovereign rights over these resources has been to the detriment of the indigenous communities hosting these resources and in vagrant violations of her obligations under the ACHPRs and other international human rights laws. These have given rise to incessant agitations and unrest within the states and communities of the Niger-Delta region.

We have examined the rights provided over natural resources by the ACHPRs, a regional instrument binding on Nigeria and concluded that it enure to the benefit of different indigenous communities of the Niger Delta peoples of Nigeria.

This article calls on the Federal Government of Nigeria to consciously give effect to the rights of peoples over their natural resources to the benefit of the indigenous communities of the Niger Delta.

These will include the abrogation of those legislations and policies that deny the Niger Delta peoples of their rights over the natural resources produced in their land territories. It will also include making statutory guarantee and enforcement of these rights, accruable to the indigenous peoples of the Niger Delta of Nigeria.

Also, it will engender peace and development in this region of Nigeria. A constitutional amendment is also a prerequisite to the actualization of the intendments of the ACPHR in Nigeria bearing in mind that the provisions of the African Charter is domesticated in Nigeria as an Act of the National Assembly which provisions are subservient to those of the Constitution.

⁶⁸ James Crawford, (ed.) 'The Rights of Peoples' or Governments', (Clarendon Press Oxford, London, 1995), 55 at 63.

⁶⁹ UN General Assembly's *Resolution on Permanent Sovereignty over Natural Resources (RPSNR)* (UNGA) 1803 (XVII) of 1962, the UN Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50, see N J Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge: University Press, 1997) pp. 44-46, L F Lee 'Environmental Laws and their Enforcement,' vol. ii, Sovereignty, Ownership of and Access to Natural Resources-(online: <http://www.eolss.net/Eolss-sample.aspx>) accessed 27/08/16.

