



THE RIGHT TO NATURAL RESOURCES IN NIGERIA

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Abstract

The right to natural resources is the acknowledgment and existence of essential opportunities for Nigerians. Within the Nigerian lifestyle there has now not been a lot of internal attention on what are known as human rights. The country has been focused for a while on infringement of the welfare and political rights from one angle to another. Problems pertaining to poverty, inequality, and deprivation—are the main problems of Nigeria despite its natural resource endowments. The curse on Nigeria may be explained to the abundance of oil and gas resources in Nigeria which exacerbates the risk of insecurity and conflict. The methodology for this paper is the doctrinal approach, as it derived its data from case-law, statutes and other legal sources. The focus of this paper is to explore international law, regional law and domestic law in ascertaining protection for natural resource as a human right. The paper also examines the rights of citizens to participate in the exploitation of natural resources in their country. Furthermore this paper centres on the potential justiciability of natural resources as a human right.

Keywords: *Human rights, Natural resources, Exploitation, Self-determination, Economic Development*

Introduction

In order to understand the concept of ‘the right to natural resources’ it is important to understand the concept of ‘Third Generation Rights’ in relation to Human Rights. Third Generation Rights is not acknowledged by law and politics, they reflect claims of individuals or people against the

state and ought to be subject to scrutiny.¹ Third-generation, “collective-developmental” rights of groups of people held against their individual states adjusts with the last precept of “fraternity.” They make up a wide scope of rights that have picked up approval in global comprehension and resolutions but are more challenged than the going before sorts. They have been explained to a great measure in reports promoting optimistic “soft law,” such as the 1992 Rio Announcement on Environment and Improvement, and the 1994 Draft Statement of Inborn Peoples’ Rights. Third Generation Rights can be divided into two: - The Self-Determination of People/Groups (such as economic development) and Enjoyment of Specific Rights of Ethnic and Religious Minorities.² At the 1992 Rio Conference on Environment and Development, participating states adopted the Rio Declaration, Principle 3 of which declared: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”³

Permanent Sovereignty over Natural Resource

The right to permanent sovereignty over natural resources is a strong component of both the right of self-determination and the principle of state sovereignty. The Oxford Law Dictionary defines self-determination as:

The right of a people living within a non-self-governing territory to choose for themselves the political and legal status of that territory. They may choose independence and formation of a separate state, integration into another state, integration into another state or association with an independent state, with autonomy in its internal affairs.

According to Marc Weller (2008: 20–23) the right to self-determination could be defined and understood from five different perspectives namely:

(i) an individual right, potentially coextensive with some form of democratic governance; (ii) a right appertaining to members of groups and

¹ Globalization101org, 'Three Generation of Human Rights' (Globalization101org, 2017) <<http://www.globalization101.org/three-generations-of-rights/>> accessed 14 February 2018

² Ibid

³ HRBA Portal, 'How do human rights help with situation analysis?', <http://hrbaportal.org/faq/how-do-human-rights-help-with-situation-analysis>, accessed 16 February, 2018

perhaps groups themselves, often framed as the minority rights of national, religious, ethnic or linguistic groups; (iii) a right with particular meaning in the context of indigenous groups, potentially extending to unique forms of political and territorial autonomy; (iv) a right associated with limited territorial change, often associated with historical agreements (such as the handover of Hong Kong); and (v) a right to external determination of peoples, which implies a right to unilateral secession (Weller, 2008) According to Umozurike (2008: 51-55) the right to self-determination can be defined as the idea that “people should be ruled by their own consent, should play commensurate roles in government, should have a government of their choice and should determine their political, economic and social future.” The concept of self-determination in this regard is a comprehensive doctrine encompassing economic, social and cultural factors (Nawaz 1965).

Self-determination is the right of all peoples to take charge of their political, economic and cultural future. It is of two types namely internal and external. Internally, self-determination entails the right of peoples to develop its economic, cultural and social institutions within the framework of an existing state. It consists of the right to decide its political status, the system of government and the kind of relationship it should have with the parent state such as the level of autonomy it may enjoy within the existing framework. In this regard self-determination ensures the participation of minority groups in governance within their existing states and protects the existing states from being dismembered.

Further evidence of international law recognizing the sovereign rights of peoples is found in Article 1 of the International Covenant on Civil and Political Rights (‘ICCPR’) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’), which recognizes the right of peoples to self-determination. It is important to note that the dissenting opinions of the judgment in *East Timor case*⁴ incorporated the view that permanent sovereignty is one of the essential principles of contemporary international law which has the character of *erga omnes*.

⁴ East Timor (Portugal v Australia) (Judgment) [1995] ICJ Rep 90.

Self-determination is “a right with a historic pedigree, having roots that go back at least as far as the French and American Revolutions” (Brilmayer, 1991:179). Furthermore, Pegg (1998:137) notes that self-determinations “intellectual roots go back to such things as the Hebrew exodus from Egypt, the Greek city-states, the American Declaration of Independence, the French Declaration of the Rights of Man and of the Citizen, and Napoleon III. Since the end of the World War II, self-determination has been included in numerous international instruments, including the U.N. Charter, U.N. General Assembly resolutions, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. It therefore occupies a strategic position in modern international law warranting its description as “one of the essential principles of contemporary international law” [*Case Concerning East Timor (Portugal v Australia)*].⁵ Karen Parker (2000) states that it is “a fundamental principle of human rights law, is an individual and collective right to freely determine ... political status and to freely pursue . . . economic, social and cultural development.”

The significance of self-determination in international law cannot be overemphasized. Hence, the declaration by the International Court of Justice (ICJ) it is an “essential principles of contemporary international law” [*Case Concerning East Timor (Portugal v Australia)*]. It revolves around ‘the relationship between people, territories, and sovereignty’ Berg(1991) and has redefined the internal and external legal order of world politics by making international law to pay attention to the internal structure of a state which was previously within the exclusive preserve of the states since the emergence of the Westphalia system. It maintains the sovereignty and independence of states with regard to creation of state contexts, provides conditions for the resolution of disputes and also secures the permanent sovereignty of states over natural resources within their territory. It is for aspiring states according to Cassese (1995) as the mechanism for attaining sought-after club of statehood and for existing States.,

⁵ Merits, Judgment, ICJ Reports 1995 4 at 102, para.29

It is also a vital component of democracy and helps to liberate people under oppressed people or people under foreign domination from such predicament. Thus, Cassese (1995:71) describes it as “one of the most important driving forces in the new international community. It has set in motion a restructuring and redefinition of the world community’s basic rules of the game.”

Notwithstanding the strategic importance of self-determination in international law, it has generated a lot of controversy. According to Dinah Shelton (2011: 60) “the right to self-determination has long been celebrated for bringing independence and self-government to oppressed groups, yet it remains a highly controversial norm of international law.” Saul (2011) on the other hand concurs with Cass in witnesses that it is one of the most unsettled norms in international law. Its scope and extent of application is still characterized by uncertainty despite that it has been a present for a pretty long time. Its outcome often leads to dismembering of an existing territory, thus it has been rightly asserted that “the defining issue in international law for the 21st century is finding the compromise between the principles of self-determination and sanctity of borders” (Graham, 2000:456).

International Protection

As earlier discussed a Right to natural resources is a ‘Third Generation Right’ since the right lacks little or no explicit political/ legal recognition. Nevertheless from the phraseologies of certain pertinent International Statutes/ International Human Rights Law there is a possible justification for the right to economic development.

International Covenant on Civil and Political Rights (ICCPR) (1966)

The Covenant does not have an express provision for the right to economic development, it however provides for the right to self-determination. The right to economic development can be deduced from the right to self-determination which is basically the right of individual living inside a non-self-governing region to select for themselves the political and legitimate status of that domain. Basically the impression should be government on basis of their consent, that persons should perform equal roles within the

government of their own choosing. The Covenant in its Article 1 affords for the right of self-determination. A rephrasing of the dictions of the Covenant provides as follows:- Every individual has a right to self-determination which affords them with the opportunity to choose the political standing and at the same time pursue with an intent to enforce their economic, social and cultural advancement. It should also be noted that Article 47 of ICCPR states that: "Nothing in the [present] Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources." All state parties to the Covenant are also afforded with the entitlement to marshal their nation's wealth and resources without any bias to duties that emerge from the international economic cooperation which is predicated on the principle of mutual benefit (a form of collaboration that results into "win-win" outcome, that is, a situation whereby all state parties actively gain from the interaction). The Covenant also in its Article 1 further State parties under the obligation to cheer the right to self-determination in line with the stipulations of the Charter of the United Nations.⁶

International Covenant on Economic Social and Cultural Rights (ICESCR) (1966)

The Covenant just like the ICCPR characterizes Self-Determination and the obligation of state parties to guarantee its advancement and assurance in a comparable content. It does not expressly provide for the right to economic development but the right is nonetheless inferred from its provision of the right to self-determination. The diction of the Covenant in relation to its provision on self-determination in Article 1(1): *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."* Thus, all state parties to the Covenant are also afforded with the entitlement to marshal their nation's wealth and resources without any bias to duties that emerge from the international economic cooperation which is predicated on the principle of mutual benefit (a form of collaboration that results into "win-win" outcome, that

⁶ International Covenant on Civil and Political Rights (ICCPR), (1976), Article 1

is, a situation whereby all state parties actively gain from the interaction). The Covenant also in its Article 1 further State parties under the obligation to cheer the right to self-determination in line with the stipulations of the Charter of the United Nations.⁷

Article 2, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights precisely refers to the responsibility to take steps, comprising international assistance and cooperation, to realize the rights preserved in the Covenant. It thus clearly affirms an obligation to engage in the realization of economic development of social, economic and cultural rights.' It should be noted that Article 25 of the ICESCR that: "Nothing in the [present] Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources."

The UN Resolution (1803)

Permanent sovereignty over natural resources is a fundamental principle in international law, allowing postcolonial states to assert full sovereignty or 'sovereign rights' over natural resources found within the limits of their boundary and jurisdiction. The principle of permanent sovereignty emerged from a resolution of UN Resolution 1803 (1962):

...the right of peoples and nations to permanent sovereignty must be exercised in the interest of their national development and of the well-being of the people of the State concerned".... "The exploration, development and disposition of such resources as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable"; "inherent and overriding right of a state to control the exploitation and the use of its natural resources.

The United Nations General Assembly espoused the United Nations Resolution in line with its desire to indorse and support fiscally the economic development and access to its natural resources. The Resolution

⁷ International Covenant on Economic Social and Cultural Rights (ICESCR), (1976), Article 1

was championed in light of the right to self-determination as it is assured under the International Covenant on Civil and Political Rights (Kilangi, 1962). A rearticulating of the dictions of the United Nations Resolution provides that: Where persons and states are indeed eligible to the right to permanent sovereignty such right must be exercised with regard to the advancement of the nation as well as the general welfare of persons within the state in question. The foreign capital as well as the resources needed in the advancement of such national development must nevertheless be in tandem with the guidelines and circumstances of general acceptance by the people and nations, that is, that which they perceives as indispensable and also required.⁸It is important to note that Resolution (1803) declared in part that:

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with, the rules in force in the-State taking such measures in the exercise of its sovereignty and in accordance with international law....

.....

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

An interpretation of the provisions of the Resolution shows an implied cognizance of the Right to Economic Development of State Parties within the application of the Resolution. Permanent Sovereignty infers the right of persons and states to exercise ownership, control and management over their natural resources for the purpose of development of such nation as well as an advancement of the well-being of the persons within the state.

⁸ The United Nations Resolution (1803)

The General Assembly Resolution 1803 (XVII) was predicated on previous UN Resolutions which was inclusive of the Resolution 1314 (XIII). The Resolution 1314 (XIII) perceived the formation of the Commission and its position on the resources and assets of State parties as being a pertinent integral of the right to self-determination. In the drafting of the Resolution there indeed emerged certain deliberations, some of these deliberations are stated below.

1. Resolution 1515 (XV). This particular Resolution promoted a universal aid in the economic development of unindustrialized nations.
2. A valid proposition of the respect of the right of each state party to marshal its resources and assets.
3. A recognition and acceptance of the inalienable entitlement of each State to voluntarily marshal its natural assets in tandem with its national concerns as well the economic independence of nations.
4. A demand to enhance the general collaboration of state parties in lieu of the advancement of the economy of emerging nations and also a uniformity of the fiscal contracts involving emerging and already emerged nation states.
5. A precise importance to the preferment of economic development of state parties and also the provision of fortifying their economic development

Charter of Economic Rights and Duties of States (1974)

In 1974 the passing of the **Charter of Economic Rights and Duties of States ('Charter of Economic Rights and Duties') Resolution /29/3281** was adopted by the UNGA (December 1974), the Charter of Economic Rights and Duties reinforced the essential elements of the right to permanent sovereignty as agreed in 1962. Article 2 (1) states: Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities. These two UNGA permanent sovereignty resolutions (1962 & 1974) are fundamental customary international rules— often regarded as the principles of international environmental law. The Second Article of the Charter highlights what exactly the right to permanent

sovereignty entails. A rephrasing of the article provides that: “Each state possesses essentially the right to the management, control and ownership over its assets, natural resources and its fiscal doings inclusive.”⁹ An understanding of the wordings of the Charter also infers a right to economic development under the cloak of permanent sovereignty of the nation states.

The promulgation of the Charter was predicated with the attainment of definite intentions in sight. The preamble of the Charter borders on some of these intentions.

1. The acquisition of a broader scope of affluence among all countries as well as an advanced criterion of living for all persons.
2. An overpowering of significant hurdles in the path of economic development of developing nation states.
3. A fastening of the economic advancement of emerging nation states with the intent of spanning the economic spacing between emerging and already emerged nation states.
4. Solidification of the fiscal independence of emerging nation states.
5. Advancement of communal economic safekeeping for growth, in particular of the unindustrialized countries.¹⁰

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Rights under the Principle

1. to dispose freely of the natural resource
2. to freely explore and exploit natural resources
3. to regain effective control and to compensation for damage

⁹ Charter of Economic Rights and Duties of States (1974), Article 2(1)

¹⁰ Charter of Economic Rights and Duties of States (1974), *Preamble*

¹¹ Charter of Economic Rights and Duties of States (1974), Article 2(1)

4. to use natural resources for national development
5. to manage natural resources pursuant to national environmental policy
6. to an equitable share in benefits of transboundary natural resources
7. to regulate foreign investment
8. to expropriate or nationalize foreign investment (right to determine the conditions of nationalization and the amount of compensation)

Duties under the Principle

- i. Exercise permanent sovereignty over natural resources for national development and the well-being of the people (UN Res. 1803/XVII, 1962);
- ii. Respect the rights and interests of indigenous people;
- iii. Co-operate for international development;
- iv. Equitable sharing of transboundary natural resources;
- v. Fair treatment of foreign investors;
- vi. Conservation and Sustainable Use of natural resources.

United Nations Declaration on the Rights of Indigenous Peoples (2007)

Both ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'),¹² GA Res 61/295, adopted by the UNGA on 13 September 2007., incorporate specific provisions on the protection of the environment of indigenous territories. The UNDRIP specifically states that:

[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

The United Nations Declaration on the Rights of Indigenous People provides that all indigenous people are entitled to the enjoyment of the human rights without any form of discrimination which have also been

¹² United Nations Declaration on the Rights of Indigenous Peoples, Article 29; ILO Convention No. 169, Arts 4.1, 7.3-7.4

stipulated under International Human Rights Laws. The declaration also provides for the recognition of the communal rights and welfare of the indigenous people which has been in existence from time immemorial. There is an understanding that the Declaration presupposes a reality where indigenous persons have begun to establish for their communal benefit institutions of political, financial, social and economic growth to aid in the halting of forms of discrimination and abuse wherever they may arise.

The Declaration also gives a relevant opinion that indigenous people will protect and preserve their rights, obligations and duties and development and growth in the societies, if they are been given a permanent sovereignty, such sovereignty will speedily help the development and growth of the society.¹³ The Declaration identifies the entitlement of right to self-determination and right to independence/self-government of Indigenous persons in relation to issues that border on their economic resources.¹⁴

The United Nations Declaration on the Rights of Indigenous People provides that all indigenous people are entitled to the enjoyment of the human rights without any form of discrimination which have also been stipulated under International Human Rights Laws. The declaration also provides for the recognition of the communal rights and welfare of the indigenous people which has been in existence from time immemorial.

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The Declaration identifies the entitlement of right to self-determination and right to independence/ self-government of Indigenous persons in relation to issues that border on their inner and home-grown dealings as well as the manner in which the finance their self-governing roles.¹⁶

¹³ United Nations Declaration on the Rights of Indigenous People (2007)

¹⁴ Ibid

¹⁵ United Nations Declaration on the Rights of Indigenous People (2007)

¹⁶ Ibid

Declaration on the Right to Development A/RES/41/128, 1986

The United Nations Declaration on the Right to Development clearly establishes development as a human right and puts people at the center of the socio-economic development processes. Under article 2:

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Under Article 3, “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.” According to the high-level task force on the implementation of the right to development:

The responsibility for the creation of this enabling environment encompasses three main levels: (a) States acting collectively in global and regional partnerships (second preambular paragraph and Article 3); (b) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction (Article 4); and (c) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction (Article 2)¹⁷

Furthermore, the Maastricht Principles also request that States take measures by international cooperation in order to protect the economic, social and cultural rights of people within and beyond their territory.

Regional Protection

Regional protection of economic rights is predicated on the African Charter on Human and Peoples’ Rights (otherwise called the African or Banjul Charter) which came into force on the 21st of October 1986 and pulled its creativeness from the Organisation of African Unity (OAU) (Olomjobi, 2016:345).

The Charter recognizes that economic development originates from the point that human beings are inclined towards development and that this should assure its protection and provision especially in Africa. It considers

¹⁷ See Twenty-fifth session Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 7 March 2014

economic rights addressed by international legislations with the intention to Africanize them¹⁸ by considering the unique nature of the African region. In this vein, there is a balance between the international and regional models. The Charter has three parts and sixty-eight Articles. There are several Articles in the Charter that assure protection of economic development. The African Charter is intended to protect human rights in the African continent. Article 1 provides that member states shall acknowledge the rights, obligations and freedoms enshrined in the Charter and shall agree to adopt law-making or other measures to give effect to them.

Article 20(1) provides for freedom of economic development by permitting countries to pursue their economic development according to the policy they elect themselves. This freedom is further reinforced by the fact that the preamble to the charter makes it essential for African countries to pay special attention to economic development as it is a guarantee for the enjoyment of civil and political rights.

Economic development is considered a common character of mankind by virtue of Article 22 of the Charter. As a result, every state must ensure the enjoyment of this right. Economic development includes the free disposition of wealth and natural resources and in the exclusive case of ruination, the people who have had their property taken from them shall have legal recovery of such property and sufficient relief.¹⁹ Article 21 provides that the free disposal of wealth and natural resources shall be exercised without an unreasonable dislike of the purpose of exercising international economic co-operation based on mutual respect, fair exchange and tenets of international law.

Regional Protection: the African Charter on Human & Peoples Rights, 1986

African Charter on Human and Peoples' Rights 1986 showcases that corruption is not only an impediment to the realization of the right to economic development, but a violation of human rights. There are several Articles in the Charter that declare protection of economic development and to protect human rights in the African continent.

Article 1 provides that member states shall acknowledge the rights, obligations and freedoms enshrined in the Charter and shall agree to adopt law-making or other measures to give effect to them. Article 13 of the African Charter of Human and People's Rights provides for the freedom of

¹⁸ The Banjul Charter and Universal Human Rights: A Comparative Analysis www.jurisafrica.org accessed 26 February 2018.

¹⁹ Article 21 of the African Charter.

every citizen to participate directly or through representatives, in the government of his country, in accordance with the provisions of the law. It also guarantees the right to equal access to public service within his country.

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Economic development is considered a common character of mankind by virtue of Article 22 of the Charter. As a result, every state must ensure the enjoyment of this right. Economic development includes the free disposition of wealth and natural resources and in the exclusive case of ruination; the people who have had their property taken from them shall have legal recovery of such property and sufficient relief.²⁰ This gives support to the quest for the return of Nigeria's stolen assets which is associated with the legal recovery of Nigeria's property. Article 21 provides that the free disposal of wealth and natural resources shall be exercised without an unreasonable dislike of the purpose of exercising international economic co-operation based on mutual respect, fair exchange and tenets of international law.

Recent Illustration of the right to Natural Resources: Sahrawi Arab Democratic Republic & Ors (Plaintiff) v. NM Shipping SA & Ors (Defendant)²¹

Sahrawi Arab Democratic Republic (SADR) is a partly recognized as state that controls a thin strip of area in the Western Sahara region. SADR claims sovereignty over the entire territory of Western Sahara (a former Spanish colony and later jurisdiction). SADR was proclaimed by the Polisario Front on February 27, 1976.

The SADR government controls about 20–25% of the region it claims. It calls the territories under its control the Liberated Territories or the Free Zone. Morocco on the other hand controls and administers the rest of the disputed territory and calls these lands its Southern Provinces. However, the SADR views the Moroccan-held territory to be illegally occupied zone. Morocco on the other hand considers the SADR-held territory to be a

²⁰ Article 21 of the African Charter

²¹ Eastern Cape Local Division, Port Elizabeth Case No 1487/2017

demilitarized zones. The Sahrawi Republic maintains diplomatic relations with 40 UN states, and is a full member of the African Union.

Background Facts

On 1 May 2017, the bulk carrier *NM Cherry Blossom* was detained at Port Elizabeth, in South Africa. On board the vessel was 55,000 tonnes of phosphate rock from occupied Western Sahara. The phosphate rock was sold by the Moroccan state-Owned Phosphate Company (OCP) and subsidiary Phosboucraa to a New Zealand based farmers' cooperative called the 'Ballance Agri-Nutrients'. The exiled Government of the SADR in combination with the Saharawi people's organisation Polisario had obtained the court order for the detention of the cargo.

The Judgment

The High Court of South Africa gave judgment in favor of the SADR (the owner of the cargo of phosphate rock) aboard the detained vessel, *NM Cherry Blossom*, as opposed to Morocco's state-owned phosphate company. The court held specifically that:

1. The Saharawi Arab Democratic Republic is the owner of the whole cargo of phosphate presently laden on the motor vessel "NM Cherry Blossom"; and
2. Ownership in the phosphate has never lawfully vested in OCP SA or Phosphates de Boucraa SA, and they were, and are, not entitled to sell the phosphate to Ballance Agri-Nutrients Limited.

Significance of the Judgment

The court recognized the international right of the Saharawi people over their natural resources. The right to permanent sovereignty over natural resources is a strong component of both the right of self-determination and the principle of state sovereignty. Permanent sovereignty over natural resources is a fundamental principle in international law, allowing postcolonial states to assert full sovereignty or 'sovereign rights' over natural resources found within the limits of their boundary and jurisdiction.

Justiciability of the Right to Natural Resources in Nigeria

The Constitution states that it is the duty of people and authorities exercising judicial powers to conform to, observe and apply the provisions of Chapter but the same constitution also ousts the jurisdiction of national courts from adjudicating on any issue or question relating to whether or

not any person or authority has conformed to, observed or applied the provisions of the directive principles stated in Chapter 2 in section 6(6)(c): *The judicial powers conferred in accordance with the foregoing provisions of this section*

(c) shall not except as otherwise provided by in this Constitution, extend to any issue or question as to whether any act of omission by any authority or person as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter two of this Constitution.²²

It is then clear that socio-economic rights are matters exclusive to the executive and the legislative arm of the government and recognizing judicial authority in interpreting the Constitution. The provisions of Chapter II of the Constitution, by virtue of s.6 (6)(6) makes the whole chapter non-justiciable.

The directive principles in respect of economic principles are noted in section 16(2) of the 1999 Constitution (as amended):

The State shall direct its policy towards ensuring: (a) the promotion of a planned and balanced economic development; (b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good; (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and (d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

The above section cannot be read in isolation. Section 17(2)(a) of the Nigerian constitution of 1999 as amended states that ²³*“every citizen shall have equality of rights, obligations and opportunities before the law”* opportunities and the Nigerian economy from my perspective are to vastly opposite words, with the current status of the Nigerian economy it is a very hard thing for anyone to be opportuned to create wealth without such a person having a friend, uncle, aunty, cousin in high places and willing to make that opportunity a reality and that’s just straight against the rights of

²² Constitution of the Federal Republic of Nigeria 1999 (as amended), s6(6)(c)

²³ The Nigerian constitution of 1999 as amended, section 17(2)(a)

the Nigerian citizenry because its discriminating on the people who do not have uncles or aunties or friends in places to give them such opportunity, so the Nigeria government has not justified its intentions in the constitution as stated in section 17(2)(a).

Section 17(2)(d) states that ²⁴ “*exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented...*” this section puts a duty on the Nigerian government to ensure that natural resources are not exploited but the case in reality is different as we see ministers exploiting what sector of the Nigerian resources that they are in charge of, we see them making wealth from such sectors for their welfare and not for the welfare of the Nigerian citizenry nor economy.

It is significant to note that Section 13 of the 1999 Constitution (as amended): is the foundation for the provision and it states:

*It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.*²⁵

In *Archbishop Anthony Olubunmi Okogie [Trustee of Roman-Catholic School] v. Attorney-General of Lagos State*, ²⁶ the court held that the fundamental objectives and directive principles of state policy are non-justiciable thus Nigerian courts lack jurisdiction to adjudicate on them. The fundamental objectives and directive principles of state policy enshrined in the Nigerian 1999 Constitution (as amended) are thus excluded from fundamental rights according to the Nigerian Constitution and the Courts. Notwithstanding, the executive, legislative and judicial arms of government are under a constitutional requirement to enforce socio-economic rights. The Court of Appeal further held that:

Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realize the national ideals. While section 13 of the constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of Chapter II, Section 6(6)(c) of the same Constitution makes it clear that no court has jurisdiction to

²⁴ The Nigerian constitution of 1999 as amended, section 17(2)(d)

²⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 13

²⁶[1981] 1 NCL R 218.

pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore! that Section 13 has not made Chapter II of the Constitution justiciable.²⁷

However, by virtue of Section 12 of the Nigerian Constitution, international treaties shall have the force of law when enacted into law by the National Assembly. Given the fact that civil and political rights are deemed justiciable by the Nigerian Constitution, the African Charter on Human and People' Rights⁵ (ACHPR) (hereafter African Charter) expressly provided that socio-economic rights are justiciable. Providentially, social and economic rights are incorporated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004 which are enforceable in Nigerian courts (Fawehinmi v. Abacha).²⁸ The preamble of the Charter affirms that:

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights...

This reasoning in the above case was applied in the case of **Gani Fawehinmi v. General Abacha**.²⁹ The Nigerian economy is currently a paradox at both national and international levels, low standard of living is the order of the day, and this perhaps explains the high level of crime and insecurity in the polity.

Natural Resources as a Stratagem for Economic Development

Economic development is aimed at enhancing the growth of the economy, better standards of living for the people; economic growth is a phenomenon of market productivity and rise in GDP. The essence of economic development is to make improvements to the rates of literacy in the country, life expectancy and improvements to the poverty rates in the country.

²⁷ Ibid at 350

²⁸ [2001] 51 WRN 29

²⁹ 10 (1996) 5 NWLR (PT 487) 198 at 202-203

In Nigeria there have been several efforts to develop the economy of the country, however, the development of the economy of the country has been hindered by the constant exploitation of our natural resources. In earlier times the agricultural sector was the spear head in the sword of economic development due to the need of food and other agricultural produce, it affected the economic growth greatly rating up to 55 to the GDP. Growth to the economy of the country however did remain static there, due to the influence the oil sector had when it emerged. Although with the impacts of these two sectors the Nigerian economy has yet to reach its full potential due to the bulk of natural resources we are yet to look seriously into,

A major factor that is of great hindrance to the Nigerian economy is the political instability we constantly encounter after every election year, that alone is not the only hindrance others include lack of focus from the government, lack of visionary leaders, mismanagement of the Nigerian economy, military rule hindrance to democracy and greatly corruption.

Nigeria past and present is dependent on exportation of crude oil to sustain its economy, but the question is for how long are we going to be able to do that? Currently the media has been flooded with fact and fiction of the crude oil we have in Nigeria running dry, aside from that bad news I would say other countries are constantly emerging with production of crude oil in different areas of their countries, this alone has added to the falling of Nigerian economy.

The bulk of the blame is not only on the dependent on crude oil to sustain our economy, another great influence on the diminishing status of the Nigerian economy is the scourge of corruption, although Nigeria over the years has made a bulk of money from the exportation of crude oil the question on everyone's lips where did all that money go?

Conclusion

In developing a country and also its economy energy is of great an importance, and as we know Nigeria past and present has not put much focus to developing the status of electricity production and this also has constrained the development of the Nigerian economy. Aspects Nigerian government needs to put more focus to develop its economy would be listed below;³⁰

1. Agriculture: The agricultural sector in this country has suffered over the years due to lack of proper management, poor government policies and also lack of infrastructures ;

³⁰ Nigeriafinder.com, economic development in Nigeria: an overview, 2018

2. Transport: the transportation infrastructures of this country has been in bad shape for a very long time even with the increase of population over the years, and even the little we have set up are suffering from suffering from below average standards of facilities and staff;
3. Tourism: Nigeria has developed little in terms of tourism, the only aspect that helps the tourism sector of the country is the Nigerian culture, music and just for sight-seeing and not because Nigeria is a place that would wow the minds of foreigners;
4. Mining: Nigeria's mining sector has been on the fall ever since 2012 and is yet to recover from this underdevelopment. One of the solutions to this is the encouragement of the interests of the private sector;
5. Electricity: as mentioned above much effort needs to be put in the Nigerian electricity problems as this would development its economy.

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