A Rights-Based Approach to Indigenous Minorities: Focus on the Urhobo and Ogoni Peoples of the Niger Delta in Nigeria

Submitted in partial fulfilment of the requirements of the Master of Laws degree (LLM, Human Rights and Democratization in Africa)

by

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25 October 2008
Declaration

I Avwomakpa Tareri declare that the dissertation, ‘A Rights-Based Approach to Indigenous Minorities: Focus on the Urhobo and Ogoni Peoples of the Niger Delta in Nigeria’ is my work. I declare that it has not been submitted for any degree or examination in any other university. All the sources used or quoted have been duly acknowledged.

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Date: 25 October 2008

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Dedication

This dissertation is dedicated firstly to God, who has blessed and favoured me; secondly, to my father, Avwomakpa Solomon Japheth, who has continued to show great love, care, and dedication to me and the other members of our family from 1992 when my mother died; thirdly, to the unforgettable memories of my mother, Felicia Avwomakpa, who gave me a most appreciated upbringing amidst love, hard work, and care; fourthly to that lady who will be my lovely wife; and lastly to Kenule Saro Wiwa, Isaac Adaka Boro and all the current activists who have genuinely kept up the struggle for the emancipation of ethnic minorities of the Niger Delta in Nigeria.
Acknowledgment

A number of persons and organizations certainly deserve special acknowledgment for their encouragement in making this programme a success.

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<td>APRM</td>
<td>African Peer Review Mechanism</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<td>CERD</td>
<td>Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>FEPA</td>
<td>Federal Environmental Protection Agency</td>
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<td>IACHR</td>
<td>Inter-American Commission of Human Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>IM</td>
<td>Indigenous minorities</td>
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<td>IP</td>
<td>Indigenous peoples</td>
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<td>MOSOP</td>
<td>Movement for the Survival of the Ogoni Peoples</td>
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<td>NDDB</td>
<td>Niger Delta Development Board</td>
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<td>NDDC</td>
<td>Niger Delta Development Commission</td>
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<td>OMPADEC</td>
<td>Oil Mineral Producing Area Development Commission</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations Organisation</td>
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Chapter 1: Introduction

‘A country should be judged on the basis of how it treats its minorities’.¹

1.1 Background to the research

The African Union (AU) has refused to recognise indigenous peoples (or IP) in Africa in the sense contemplated by the UN Declaration on the Rights of Indigenous Peoples (UN DRIP)² and other global human rights instruments. This position of the AU has worsened the difficulties faced by IP in Africa. According to their testimonies before the 29th Ordinary Session of the African Commission on Human and Peoples’ Rights, they are subjected to dispossession of their lands and the destruction of all their means of livelihood.³ They experience extreme poverty, environmental degradation, discrimination, damage to sacred sites, loss of culture and identity, political marginalisation, and defenceless economic rape in the hands of the states which masquerades the numerically dominant ethnic majority.⁴ Among other treaty monitoring bodies, the Committee on Racial Discrimination has also expressed concerns about the challenges faced by IP.⁵ These challenges are reflected in S Saugestad’s concise submission that ‘The relationship between a state and an indigenous minority is one of unequal distribution of power’.⁶

The Urhobo⁷ and Ogoni⁸ peoples of the Niger Delta in Nigeria have remained victims of foregoing testimonies. These peoples, taken as case studies for other aboriginal minorities of the Niger Delta, have resorted to hostile resistance to the presence of the federal

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⁶ S Saugestad ‘The Indigenous Peoples of Southern Africa: an Overview’ in Hitchcock & Vinding (n 2 above) 35.
⁷ This is an ethnic minority group in the western region of Delta State, Nigeria. Traditionally hunters and fisherment, they worshiped the gods and forefathers before advent of Christianity in 20th Century which is now dominant. It has 22 clans all speaking Urhobo. See ‘Urhobo Information’ http://www.uiowa.edu/~africart/toc/people/Urhobo.html (accessed 2 November 2008).
⁸ The Ogoni clan consists of six kingdoms with a population of about 500,000. They currently live within the creeks of Rivers State of Nigeria. See UNPO ‘Ogoni’ http://www.unpo.org/content/view/7901/134/ (accessed 21 September, 2008).
government and multinational oil companies. The effects of these reactions and counter reactions have been loss of lives and property, reduction in national earnings and failure of democratic institutionalisation in Nigeria.

It is conceived that the easiest solution to the problems of IP in Africa is to consider IP as indigenous minorities (or IM), thereby giving dominant ethnic majorities a place in the ‘indigeneity’ of the entire country. Therefore, a rights-based approach to the Urhobo and Ogoni peoples as IM will enhance their protection as minorities and IP.

No doubt, the violation of IPs’ rights is exacerbated by the majoritarian philosophy of the modern state which has little or no regard for national minorities. Like IP, national minorities are not usually given a pride of place in the developmental programmes of governments.

The unavoidable outcome of neglect and marginalisation of national minorities and IP by the majority ruling ethnic groups is violent resistance and ethnic conflicts. This also constitutes a challenge to democratisation in Africa.

Ill-treatment of minorities and IP of the Niger Delta has been the practice in Nigeria before 1960 when the country gained political independence from Great Britain. The neglect and need special for special attention for the Niger Delta was first acknowledged in 1957 by the Henry Willink-led Minority Rights Commission Report. It states thus:

This is a matter which requires special effort, and the co-operation of the Federal, Eastern and Western Government; it does not concern the Region only. Not only because the area involves two Regions; but because it is poor, backward and neglected, the whole of Nigeria is concerned, we suggest that there should be a Federal Board appointed to consider the problems of the Area of the Niger Delta.

The Henry Willink Minority Commission was set up during the negotiation for Nigeria’s political independence to investigate complaints by minority ethnic groups that the majority ethnic groups would dominate them in an independent Nigeria. As C Obiagwu and CA Odinkalu rightly observes, the recommendations of this commission marked the origin of

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11 This is to assuage the fears of dominant majorities who think that recognising indigenous peoples means denying themselves the dominant share in the ownership of the entire country.
13 See D Geldenhuys & J Rossouw *The International Protection of Minority Rights* (2001) 5. See also Fernand (n 1 above) 2.
14 Cited in Odje (n 10 above) 412.
human rights provisions in the 1960 Independence Constitution of Nigeria. Like the 1960 constitution, the Constitution of the Federal Republic of Nigeria 1999 (the Constitution) provides for a bill of rights which contains safeguards for the rights of national minorities. Although a substantial part of the bill of rights is deviated from the original purpose it intended to serve, the bill of rights remains a fertile ground for advancing the rights of IM in Nigeria.

The Niger Delta is home to substantial oil and gas deposits with about 2.6 million bpd output. It accounts for over 90% of Nigeria’s foreign exchange earnings. Unfortunately, the region is riddled with poverty, disease, environmental degradation, and the lack of infrastructure for habitation. The minority ethnic nationalities of the oil-rich delta have been critical of the major ethnic nationalities (Yoruba, Igbo and Hausa-Fulani) that control political power and resources at the federal level to their disadvantage. The oil bearing communities of the delta have articulated and protested in various forms over the years; including the halting of oil production, prevention of construction work, damage to property, hostage taking and the Ogele procession.

The Ogoni and Urhobo peoples of the troubled Niger Delta are among the most marginalised and economically raped tribal minorities in Nigeria. Like other minor tribes in the Niger Delta, these people do not only suffer from the failure of the Government of the Federal Republic of Nigeria (the government) to meet the general standard determined by international human rights law for the protection minorities and IP. The wealth from the natural resources in the lands historically occupied by these people constitutes the mainstay of the Nigerian economy. Moreover, the government has been found guilty of conniving with

17 Chapter IV of the Constitution contains a bill of rights. Relevant provisions include sections 33, 38, 40, 42, and 43. These provide for the rights to life; freedom of thought, conscience and religion, peaceful assembly and association; freedom from discrimination; and the right to acquire and own immovable property respectively.
18 First discovered in commercial quantity in Olibiri (in Bayelsa State) in 1956.
21 See Tebekaemi T (ed) The Twelve Day Revolution (1982) 2. The Ogele procession is a peaceful traditional procession by women and the youth across major streets accompanied by drums and cultural satires against perceived injustice by the government.
third parties to further aggravate human rights violations in the region. This decision remains unimplemented by the government.

IP and minorities have been faced with similar problems (but in different degrees) in Europe, the Americas and Asia. The problems experienced by minorities and IP are not new to the international community. This is substantiated by the various efforts that have been made under the umbrella of the United Nations Organisation (UN) to recognise and protect minorities and IP.

The AU defines IP in a perception different from the standards maintained by the UN. National minorities in African states have been faced with a lot of problems from national majorities who occupy positions of power. Although the AU lags behind in the promotion and protection of the rights of national minorities, it does not mount a strong resistance against the UN framework on the protection of national minorities.

In the majority of cases, IP are national minorities. Indigenous peoples can therefore benefit from their status as IP and as national minorities under national and international human rights law. Assuming, but not conceding, that the AU is justified in its failure to recognise IP in accordance with the United Nations standards, it is submitted that IP in Africa can enjoy legal protection of their status as national minorities. This research is therefore informed by the quest for the realisation of this approach.

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27 Fully discussed in chapter 3 below.
28 See African Union, Assembly, Decision on the United Nations Declaration on the Rights of Indigenous Peoples (Assembly/AU/9 (VIII) Add.6 (December 2006), 8, AU Doc. Assembly/AU/Dec.141, (VIII)). However, the active support of African states in adopting the UN DRIP shows a growing consensus among African state in contradiction with the AU policy. See n 2 above.
31 See Geldenhuys & Rossouw (n 13 above) 8.
1.2 Statement of research problem

The AU’s position contradicts the standard raised by the UN on IP in which they are identified by specific criteria\(^{32}\) and are granted special protection. While the problem of defining IP persists, the UN has consistently used certain criteria to grant the status of indigeneity to a people. Peoples who come within the umbrella of the UN are entitled to benefit from the protective shade under the UN instruments on the rights of IP.

The government of Nigeria, like those of many states in Africa, takes advantage of the non-recognition of IP by the AU; thereby depriving these peoples their legal entitlements under norms of general international human rights instruments. The government of Nigeria has been dominated by the three ‘major’ tribes (Hausas, Yorubas, and the Ibos),\(^{33}\) It takes advantage of the vulnerable situation of the numerically insignificant ethnic groups of the Niger Delta. The affected ethnic groups are the peoples of Ogoni, Urhobo, Itsekiri, Ijaw, Ibibio, Kalabari, llaje, and Isoko.\(^{34}\) Being that these ethnic groups experience similar problems, this study intends to adopt the situation among the Ogoni and Urhobo as case study. Because of the failure of the government to recognise these peoples as ‘indigenous peoples’, the problem arises as to how to find an alternative international human rights legal framework under which these peoples can protected. Additionally, there is the challenge of how these peoples can effectively utilise the existing international legal framework to escape the burdens created by the national government.

1.3 Research questions

Indigenous people and minorities have similar problems of political, economic, and social marginalisation. The government (hiding behind the veil of the AU) does not recognise the indigenous status of deserving ethnic groups. This has left IM unprotected. Considering the situation in Africa generally, and in Nigeria specifically, this research work is aimed at answering the following questions:

(a) Will the protection and promotion of the rights of IP in Africa not be effective if they are considered as IM; thereby giving the dominant majority a place in the ‘indigeneity’ of the country?

(b) How can the IP of the minority tribes in the Niger Delta be entitled to legal protection from non-recognition of their status by the government?

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(c) Assuming, but not conceding, that everyone in Nigeria is indigenous to the country and to every region of the country, does this deprive IM in an age-long marginalised region a special attention by means of affirmative action?
(d) What legal protection is accorded to minorities among IP?
(e) Are there negative implications for ethnic minorities in the different regions of a country by the blanket recognition of all natives of that country as IP?
(f) How can the available legal framework under the UN and the AU for the protection of IP and minorities be effectively utilised to the advantage of IP despite the current position of the AU on IP?

This work proceeds from the assumption that the plights of IP in Africa is worse because of the refusal of the AU to grant them the status that they deserve under the UN system. It moves on the hypotheses that these peoples can be better protected if they are given the additional status of ‘minorities’, thereby giving the dominant and resisting majority a place in the indigeneity of the country. Arguably, their rights will be guaranteed, whether or not the AU maintains its current position.

1.4 Aims and objectives of the research

Based on the refusal of the AU to recognise IP in the conception of the UN, IP (in the UN conception) in African countries have either by commission or omission, been subjected to economic marginalisation and lack of infrastructures. They are political outsiders. Studies have shown that these peoples are most often in the minority many countries. These peoples seem to have been strip nicked of every legal protection. This is the position of the government vis a vis the minority ethnic groups of the Niger Delta. It is in view of the current situation that this research is conceived:

1. To expose the similarities between IP, minorities, and IM. In view of this, it aims at indicating what rights are available to IP and how such rights can be advanced.
2. To expose how governments of African states generally, and the government of Nigeria in particular, take advantage of the AU’s refusal to recognise IP; thereby shirking their national and international human rights obligations to IP.

3. To expose the failure of the government to afford special protection to the Urhobos and Ogonis like all other minority ethnic groups in the Niger Delta; a situation which has left the entire region volatile and hostile to the presence of the Federal government and multinational oil companies.

4. To refute the argument that all Nigerian citizens are indigenous to Nigeria and to every nook and cranny of Nigeria, thereby denying the obligation to give special consideration deserving group.

5. To assert the existence of available international norms and jurisprudence for the protection of minorities, IP, and IM.

6. To highlight the steps to be taken to achieve the rights of IP in Nigeria.

1.5 Significance of the research

This work unveils the distinction and relationship between IP, minorities, indigenous majority and IM. It bypasses the denial by governments of African states to recognise and afford the universally mandated duties towards IP. Therefore, it is submitted that even if such people are not to be protected as IP, they should be protected as IM. This is how it adopts a rights-based approach to the relationship between the government of Nigeria and the peoples of the Niger Delta.

1.6 Limitations of the research

This research is based on the somewhat academically and statutorily unexplored idea of applying the concept of ‘indigenous minorities’ to bypass the refusal of African and non-African states to afford special recognition to IP as conceived under the UN DRIP. By the fact that it is a relatively new conception, it occasions the scarcity of literatures specifically directed in this area of study. Considering the given volume, this work will not exhaustively explore the existing legal framework and how these can be effectively utilised to solve the challenges faced by IP.

1.7 Research Methodology

This research takes the approach of literature survey and other library sources. Besides oral interviews, it also uses the internet and other electronic sources. As will be noted in the course of this work, a sample survey of the problems currently faced by the eight ethnic

groups in the Niger Delta shows that they all face similar challenges. On this basis, this writer has selected the Urhobo and Ogoni peoples as case studies in the issues raised in this work.

1.8 Literature survey

Research during the course of this work reveals that there already exists a substantial number of academic works on the status and rights of IP and minorities. Worth mentioning in the ocean of authorities on IP include the works of P Thornberry,\(^\text{38}\) Erica-Irene Daes,\(^\text{39}\) M Scheinin,\(^\text{40}\) Saugestad,\(^\text{41}\) R Channels and Aymone de Toit,\(^\text{42}\) J Akpan et al,\(^\text{43}\) and F Viljoen.\(^\text{44}\) Surveyed authorities on minority rights include Adbjorn Eide,\(^\text{45}\) JJ Preece,\(^\text{46}\) and the works of Geldenbuys and Rossouw. \(^\text{47}\) Mudiaga Odje’s book has a comprehensive coverage of the challenges faced by the ethnic minorities of the Niger Delta.\(^\text{48}\)

Except for the works of Daes, Saugestad, Thornberry, and Viljoen, all the other works have paid little attention to the issues of minorities and IP in Africa. All these writers have worked extensively on the promotion and protection of the rights of IP and minorities. Only on few instances has there been a deliberate attempt to place IP on the vehicle of minorities,\(^\text{49}\) thereby calling them IM and advocating their entitlement to legal protection under all the existing international human rights norms.

In view of the foregoing, this work cannot boast of pioneering the idea of advancing the rights of IP as minorities. However, this contribution is unique in that, it is specifically directed at IP in Africa, and it aims at bypassing the AU’s current position on IP in Africa. It exposes how the government takes advantage of the AU’s position at the detriment of the IP of the Niger Delta.\(^\text{50}\) This work is directed at advancing the promotion and protection of the rights of IP of the Nigeria’s Niger Delta in their status as minorities.

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\(^\text{39}\) ‘Indigenous Peoples’ Rights to Land and Natural Resources’ in Ghanea & Xanthaki (n 28 above)


\(^\text{41}\) N 6 above.

\(^\text{42}\) ‘The Rights of Indigenous Peoples in South Africa’ in Hitchcock & Vinding (n 2 above).


\(^\text{44}\) N 13 above


\(^\text{46}\) *Minority Rights: Between Diversity and Community* (2005)

\(^\text{47}\) N 14 above.

\(^\text{48}\) Odje n 10 above.

\(^\text{49}\) N 41, 42, and 45 above.

1.9 Overview of chapters

This entire work will be divided into five chapters. In these, chapter one covers the introduction to the study. It includes the background to the study, statement of research, objectives and significance, research methodology, literature survey and the overview of chapters.

Chapter two embraces the analyses of concepts such as IP, minorities, IM and rights-based approach in the context of this work. In drawing the differences and similarities between IP and minorities, this chapter highlights the problems faced by the ethnic groups in the Niger Delta which have become the causes of agitations in the area. It also considers their implications on human rights.

Chapter three contains a survey of international norms and jurisprudence directed at the promotion and protection of the rights of minorities and IP.

Chapter four contains an application of the laws discussed in chapter three above to the current state of the Urhobo and Ogoni peoples of the Niger Delta region of Nigeria. It analyses the legal entitlements of these peoples from a rights-based approach.

Finally, chapter five covers this writer’s conclusion and recommendations.
Chapter two: Conceptual framework, situation of the Urhobo and Ogoni peoples, and the implications on human rights

2.1 Introduction

An attempt to define IP, minorities, IM, and a rights-based approach will enhance a better understanding of the goal which this work is set to achieve. Besides the analyses of these basic concepts, this writer intends to highlight the current situation of the Urhobo and Ogoni peoples and the implications on rights of the peoples. This forms the core of this chapter.

2.2 Indigenous peoples, indigenous minorities, and indigenous majorities

It is important to start with the observation that there has not been any universally accepted definition of IP as a concept. However, the dictionary definition of the word shows its origin from two Latin words to wit, indi, meaning ‘within’ and gen or genere meaning ‘root’. This is very similar to the French and Portuguese interpretation of the word as ‘autochtone’ and ‘nativo’ respectively. Summarily, all these definitions tend to assert aboriginality for IP, thereby implying that other ethnic groups within the affected area or state are immigrants. Neither the UN DRIP nor the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No.169) (ILO Convention 169) has statutorily defined IP. This raises the problem of how to identify the peoples whose rights we advocate. In view of the complications involved in the bid to define IP, the African Commission’s Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa (African Commission’s Working Group) resolved that the focus should be on criteria for identifying IP. This constitutes the contemporary internationally recognised approach African Commission and the UN.

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51 Considering the expansive uses to which ‘peoples’ can be subjected under the African Charter, this writer intends to use the concept as used by the African Commission, referring to individuals in these two communities as well as the communities as a whole. See SERAC Case 1, 67, 69. See also F Ouguergouz, The African Charter on Human and Peoples’ Rights: a Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa (2003) 211.
52 Preece 46 above 9.
53 See Kamu (n 35 above).
58 N 2 above 9.
Several distinct characteristics of IP can be distilled from the UN DRIP and the ILO Convention 169.\(^59\) From the preambles to the UN DRIP and the African Commission’s work on IP in Africa, these characteristics include distinctiveness, marginalisation, discrimination, cultural difference, self identification, dispossession of land and cultural attachment to the land.\(^60\) In analysing the UN DRIP, M Scheinin\(^61\) writes that distinctiveness relates to the peoples’ sense of being different and the group’s self-identification as indigenous. On dispossession, this author posits that the declaration refers to dispossession of lands, territories and resources through colonialism or other comparable events which have currently occasioned a denial of these peoples’ human rights and other forms of injustice which remain unaddressed. On the issue of land, Scheinin finally writes that the peoples’ geographical area of settlement constitutes their identity and culture and that their traditional economic activities are inherently dependent on the natural resources specific to the area in question.\(^62\)

Besides the above characteristics of IP, Scheinin has added two other conditions which he considers indispensable to the definition of IP namely, first settlement\(^63\) in the geographical area and lack of political control\(^64\) in the area which is internationally recognised as the modern state. These attributes of IP are also reflected in the ILO Convention 169 which provides that the convention applies to:

\begin{quote}
Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.\(^65\)
\end{quote}

All the foregoing attributes of IP have been components of the working definition of IP which has been consistently adopted within the UN framework. The UN working definition was formulated J.R.Martinez Cobo, the Special Rapporteur of the Sub-Commission. According to him,

\begin{quote}
Indigenous communities, peoples and nations are those which, having a historical continuity with pre-inversion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the society now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and determined to preserve,
\end{quote}

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\(^{59}\) These common criteria are also recounted by KH Robert and V Diana ‘Indigenous Peoples Rights in Southern Africa: An Introduction’ (citing Saugestad) (n 6 above) 8.


\(^{61}\) ‘What are Indigenous Peoples’ in Ghanea & Xanthaki (n 30 above) 3.

\(^{62}\) Similar finding was made by the European Commission on Human Rights (ECHR) in G. and E. v Norway Nos.9278/81, DR 35 (1983) 32-33, when the Saami community sued the Norwegian government concerning the construction of dam and hydroelectric plant in the Alta Valley.

\(^{63}\) As contained in art 27of the Declaration

\(^{64}\) As reflected in arts 37 and 39 of the Declaration.

\(^{65}\) Art 1(a) thereof.
develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.\footnote{66}

While the UN working definition fully covers the people it seeks to protect, it is this writer’s observation that the definition contradicts itself as it does not take into account peoples who meet all the criteria of first settlement, distinctiveness, inherent identity to land etc, but now form dominant majorities in the modern state. Colonialist were first in contact with these peoples who yielded early enough to Western civilisation. It is perceived that the refusal to cover these majorities with the umbrella of indigenousness is one of the reasons for the continued absence of a generally accepted definition of IP. Further, this minority-perception of IP constitutes the reason why governments of African states via the AU, have perceived the UN conception as foreign and inimical to Africa.\footnote{67}

The AU’s position stands against accepting the UN DRIP. This is reflected from its January 2007 resolution in which it ordered the deferral of discussion on the UN DRIP and mandated the African Group at the UN to guard Africa’s interest and concern about the ‘political, economic, social, and constitutional implications’ of the Declaration.\footnote{68} Besides the destabilising effect on national territories, the AU’s areas of concern over accepting the UN DRIP include the definition of IP, self-determination, ownership of land and resources, and the establishment of distinct political and economic institutions.\footnote{69}

In a working definition which embraces all the foregoing arguments and also fits the context of this contribution, this writer will define IP as a group of individuals within a territory who, in relation to that territory, have the characteristics of first settlement, cultural distinctiveness, self-identification, and are in a vulnerable position of marginalisation, subjugation and dispossession from the influence of a numerically dominant ethnic majority which may have migrated to the territory that was historically occupied by the peoples in question or are indigenous to a nearby territory all of which have been forced into what is recognised as the modern state.

Importantly, this definition embraces the concept on IP who are numerically superior (indigenous majorities)\footnote{70} and those who suffer marginalisation, dispossession and all forms

\footnote{66}{See UN Doc. E/CN.4/Sub.2/1986/7/Add.4 para 379.}
\footnote{67}{See for instance Viljoen (n 13 above) 180-181 and footnote 353&354.}
\footnote{68}{See Viljoen (n 12 above). See also AU Doc Assembly/AU/Dec.141 (VIII), para 3.}
\footnote{69}{AU Doc Assembly/AU/Dec.141 (VIII), para 6. See also the fears expresses by Akindele, the Nigerian representative, for his refusal to vote in support of the Declaration on Indigenous Peoples http://www.un.org/News/Press/docs/2007/ga10612.doc.htm (accessed 21 September 2008).}
\footnote{70}{See E Asbjorn ‘Minority Protection and World Order: Towards a Framework for Law and Policy’ in Phillips & Rosas (n 46 above) 97. This perception of indigenous majority is also asserted by Viljoen where the learned writer observed that}
of exploitation as a result of their numerical inferiority (indigenous minorities)\textsuperscript{71} to the dominant group(s) with which they jointly constitute a state.\textsuperscript{72} It also acknowledges the idea of indigenousness to a particular territory of original occupation and not necessarily indigenousness to a country and to every region therein. This definition represents the sense in which the idea of indigenous majority\textsuperscript{73} and IM will be used where appropriate in the context of this work. This definition fits the current circumstances of the Urhobo and Ogoni peoples of the Niger Delta who now suffer at the verge of total extinction from the predatory influences of the numerically dominant Hausa peoples (of the Northern region of Nigeria), Yoruba peoples (of the Western region of Nigeria), Ibo peoples (of the Eastern region of Nigeria) and other dominant ethnic groups in Nigeria.

The Ogonis are a recognised IP to the area called Ogoniland.\textsuperscript{74} They meet the necessary criteria.\textsuperscript{75} They occupy a section of the area which constitutes the present Rivers State of Nigeria. Similarly, the indigeneity of the Urhobo people to the western region of Delta state of Nigeria stands true. Like the Ogonis, these people have accomplished all the universally recognised characteristics of IP.\textsuperscript{76}

\section*{2.3 Minorities}

Neither the UN nor any regional organisation has given an authoritative, generally accepted definition of minorities. This informs the reference to ‘objective criteria’ for existence by the Human Rights Committee.\textsuperscript{77} The commonly used definition by the UN is that which was formulated by F Capotorti, the former Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1979. In analysing the principles of law underlying article 27 of the ICCPR, he defined minorities as:

\begin{quote}
A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.\textsuperscript{78}
\end{quote}

\textsuperscript{71}See E Asbjorn supra. See also Geldenhuys & Rossouw (n 14 above) 8. See also n 2 above 18.
\textsuperscript{72}Ibid.
\textsuperscript{73}See the use of this concept by Scheinin (n 40 above) 13.
This definition was also adopted by the European Commission for Democracy through Law and the Parliamentary Assembly of the Council of Europe in 1993 in their definition of minorities (or national minorities). This definition meets the target of this work (ethnic minority groups) as it does not focus on classifications of race, sex, religion etc.\textsuperscript{79}

Besides numerical inferiority, the qualification for being minorities has shifted in recent times with the additional attributes of economic and political marginalisation.\textsuperscript{80} But it is argued that this does not preclude a numerically inferior, but dominant group (which is always an exception) from being qualified as minorities. Any such exclusion will lead to greater confusion in the use of the term.

According to Geldenhuys and Rossouw, Capotori's definition of minorities embraces three distinct groups of people to which minority rights could be applicable.\textsuperscript{81} These are national or ethnic minorities,\textsuperscript{82} ethno-cultural minorities,\textsuperscript{83} and lastly, IP.\textsuperscript{84}

Although the foregoing three classifications of minorities look convincing, this writer intends to question the last classification of minorities as IP who were the first inhabitants of their countries. This is because, this classification may not actually fit into a country like Nigeria which has a land mass of 923 768 square kilometres (356 669 square miles) and is inhabited by over 300 ethnic groups with different cultures and traditions.\textsuperscript{85} From where and at what time did the other ethnic groups migrate into the territory which is now called Nigeria? The third classification of Geldenhuy and Rossouw is also questionable because Nigeria like other African states is a creation of colonial powers who found their ways into vast territories occupied by different peoples and forced the entire territories into what they called the Nigeria.\textsuperscript{86} In view of this anomalies foreseen in the last classification, this writer submits that IP (as a category of minorities) were original settlers of only a particular region (and in some cases the entire region) of what now constitutes the modern state.


\textsuperscript{80} See Minority Rights Group International website www.mrg.org, (accessed 28 September 2008). See also Kamu (n 35 above).

\textsuperscript{81} N 14 above 7-8. See also Caporoti (N 77 above).

\textsuperscript{82} With distinct culture and language like Africanas in South Africa.

\textsuperscript{83} Often settled immigrants and refugees eg Turks in Germany. R Colier, ‘Germany copes with integrating Turkish minority Immigration reform on agenda after decades of separate, unequal treatment’http://www.sfgate.com/cgi-bin/article.cgi?file=chronicle/archive/2005/11/13/MNG1AFNKRG1.DTL, (accessed 21 September 2008).

\textsuperscript{84} To these writers IPs share all traits of national minorities in addition to being first settlers.

\textsuperscript{85} F Onuora ‘Poverty, pipeline vandalization/explosion and human security: Integrating disaster management into poverty reduction in Nigeria’ (2007) 16 no 2 African Security Journal 98. Also, this kind of interpretation is one of the reasons for the AU’s resistance to the application of the concept in Africa.

Although no universally accepted definition has been adopted, the AU has not mounted a firm resistance to the concept of national minorities as has been the case for IP.  

2.4 Minorities, indigenous peoples, and indigenous minorities

From the foregoing definition of minorities and IP, there appear certain similarities and dissimilarities. As Thornberry has observed, participants of the 2000 Arusha resolution unanimously agreed that IP and minorities are disadvantaged, marginalised, and discriminated against in Africa. There were also perceptions that these groups are generally backward. IP and minorities usually have specific identities and cultures. They are non-dominant and vulnerable. Another similarity between minorities and IP is that the both terms are complex and often misunderstood. The state often perceives these groups as threats to its integrity.

The common problems experienced by IP and minorities give a convincing basis for the overlap in the degree of rights and available measures. It view of noticeable similarities, I Brownie concludes that the issues of IP and minorities are the same and that any attempt to segregate them will be an impediment to fruitful work.

As different from minorities, the claims of IP are generally collective in nature and are mostly linked to spiritual ties and dependence on their lands. According to Viljoen, the claims of minorities ‘…are rooted in extreme forms of marginalisation and subjugation that go beyond “mere non-dominance’. Claims on the bases of these grounds also ground their usual claims for internal self-determination.

Additionally, G Alfredson has noted that IP are distinct for their quest for equal rights, non-discrimination, possession of land, and special measures to benefit from the natural resources accruing from their land.

87 It is also true that the AU and its member states have not done very well in the protection of minorities. See M Timothy ‘The African Union and the Prospects for Minority Protection’ in Ghana & Xanthaki (n 27 above) 299. Considering also the current crisis in Darfur, Sudan- http://www.savedarfur.org/pages/background (accessed 13 September, 2008).
89 Ibid at 263.
90 See A Dudmundur ‘Minorities, Indigenous and Tribal Peoples and Peoples: Definition of Terms as a Matter of International Law’ in Ghana & Xanthaki. (n 30 above) 169
92 N 12 above 281.
93 G Alfredson ‘Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law’ in Ghana & Xanthaki (n 30 above) 169.
In view of the foregoing, Geldenhuys and Rossouw could not have been wrong in classifying IP as a category of minorities.\(^9^4\) Having considered the definitions, similarities, and dissimilarities between minorities and IP, it stands true that the Urhobo and Ogoni peoples are minorities in Nigeria and are indigenous to their area of occupation in the Niger Delta in Nigeria. This informs their classification as IM as against the dominant tribes who now have a chance to qualify as indigenous majorities if their indigeneity is proved.\(^9^5\) In this way, this writer conceives IM as numerically inferior and non-dominant indigenous peoples in a state where there are other numerically superior and dominant ethnic groups (who qualify as indigenous majorities). Having established this point, this work now proceeds to drawing a distinction between IM and indigenous majorities.

The AU holds its position that the UN conception of indigenous peoples is alien to Africa.\(^9^6\) It argues (though unconvincingly and baselessly) that everyone in Africa is indigenous to the African continent and that every citizen of a country is indigenous to that country.\(^9^7\) Some governments argue that there are no indigenous groups in their countries.\(^9^8\)

Assuming, but not conceding to AU’s argument, it is this writer’s reasoned submission that ethnic minorities in Africa should be accorded the special protection contemplated by the UN DRIP, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (UN Minority Declaration),\(^9^9\) African Charter on Human and Peoples’ Rights (Charter), and other relevant instruments. Thus while the AU maintains its addiction to *uti posidetis*, continental and national indigeneity, its commitment to the rights of ‘indigenous peoples’ should be accessed by its willingness (via the member states) to protect the special interests of ‘indigenous minorities’.

### 2.5 A rights-based approach

In a simplistic understanding, a rights-based approach is an approach which is based on human rights.\(^1^0^0\) There is no single, universally agreed rights-based approach, although there may be an emerging consensus on the basic constituent elements.\(^1^0^1\) A rights-based approach is a conceptual framework for the application of human rights that is normatively

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\(^9^4\) See n 13 above 8.
\(^9^5\) See also this classification in Scheinin (n 40 above) 13
\(^9^8\) Hitchock & Vinding (n 2 above) 8.
\(^1^0^1\) See UNHCHR http://www.unhchr.ch/development/approaches.html (accessed 18 September 2008).
based on international human rights standards and operationally directed to promoting and protecting human rights. The applicable norms and standards are those contained in international human rights laws and declarations. In applying a rights-based approach, it is argued that our laws, principles, programmes, strategies, policies, and action plans have to be mainstreamed on the rights. The embodiments of a rights-based approach inform its relevance to the challenges facing the Urhobo and Ogoni peoples from the government.

2.6 Challenges faced by the Urhobo and Ogoni Peoples and their implications on human rights

The challenges faced by the Urhobo and Ogoni peoples (like other IM of the Niger Delta) from the acts of the government include loss of lands, loss of recourses, environmental degradation, poverty, loss of culture and identity, marginalization, destruction of means of livelihood, destruction of sacred sites and discrimination. One notable weapon in the hands of the government is the law. Therefore, both regulatory and non-regulatory challenges will be considered. In view of the limited volume of this work, this writer will briefly analyse some of these challenges.

2.6.1 Expropriatory laws and impacts on the Urhobo and Ogoni peoples

As noted above, law constitutes the most outstanding instrument with which the government justify and/or vindicate its inhumanity to the Urhobo and Ogoni peoples as well as other ethnic minorities of the Niger Delta. These laws include section 44(3) of the Constitution, the Petroleum Act, the Oil Pipelines Act, the Minerals and Mines Act, the Territorial Watters Act, the Exclusive Economic Zones Act, the Land Use Act, the Interpretation Act 1964, and the National Inland Waterways Authority Act.

2.6.1.1 Section 44(3) of the Nigerian constitution and human rights

Section 44(3) of the constitution unconditionally vests the entire property in, and control of all minerals, mineral oils, and natural gas on the federal government. According to AO Odje (and correctly too), this section is the hallmark of all expropriatory laws that took away the traditional and internationally protected right of the Urhobo and Ogoni peoples of the Niger Delta.

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102 Ibid
105 Cap 338 LFN 1990.
106 No 34 of 1999.
110 Of 24/1/64, Cap 192 LFN 1990.
This section, read together with the supremacy clause of the constitution, has been repeatedly paraded by the Nigerian presidency in response to request for infrastructural development from leaders of the Niger Delta. This law infringes on the rights of the Urhobo and Ogoni peoples to property, the right to productive resources, and their right to freely dispose their resources.113

2.6.1.2 The Territorial Waters Act and human rights
The Territorial Waters Act114 provides for federal government’s sovereignty over all matters and laws related to the territorial waters around the coast of Nigeria. This Act targets the territorial waters of Nigeria. In this way, it vests all resources within the 12 nautical miles in the exclusive possession of the federal government; thereby depriving the Niger Delta coastal state the right to claims derivation benefits from such resources.115 Contrary to strict rules of international law, the federal government now claims full ownership of these territories from its self-imposed sovereignty over same.116 This law dispossesses the peoples of their precious resource.

2.6.1.3 The Exclusive Economic Zones Act and human rights
The Exclusive Economic Zones Act provides that:

Without prejudice to the Territorial Waters Act, the Petroleum Act or the Sea Fisheries Act, sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the seabed, subsoil and superjacent waters of the Exclusive Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercised by the Federal Government....

This omnibus provision vests exclusive rights of exploitation and exploration of resources of the sub-sea, subsoil and superjacent waters in the Exclusive Economic Zone in the government. This act has fuelled the agitation against the onshore and offshore dichotomy principle which has frustrated the Urhobo and Ogoni peoples by its cut down on the constitutionally provided 13% derivation measure. Like section 44 of the Constitution, this law implicates a violation of the right to property and to free disposal of resources. It is discriminatory in substance117

2.6.1.4 The Land Use Act and human rights

112 Odje (n 10 above) 389.
113 See chapters 3 & 4 below.
114 See 1(1)(2).
115 A case in view is Cross Rivers state which is purely archipelagic.
116 See Odje (n 10 above) 387.
117 See chapter 3 and 4 below.
The Land Use Act vests all lands comprised in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the state. It declares the governor a trustee who shall also be responsible for the allocation of land. Besides this wholesale expropriation of lands, section 14 of the Act provides another injustice to the Urhobo and Ogoni peoples. It provides that

Subject to the other provisions of this Act, and of any laws relating to way leaves to prospecting for minerals or mineral oil or to mining or to oil pipeline and subject to the terms and conditions of any contract made section 8 of this Act, the occupier shall have exclusive right to the land the subject of the statutory right of occupancy against all persons other than the governor

The negative effects of this expropriatory law on the Urhobo and Ogoni peoples cannot be overemphasised. From the human rights perspective, it denies the Urhobo and Ogoni peoples their traditional right and access to their ancestral lands. They are denied not just their radical customary title to the land, but the rights of their ancestors and their unborn children. The clan heads of these peoples are denied their ancestry rights to allocate communal lands to their subjects. With the Land Use Act in place, the government has unrestrained access into land for oil exploration, the laying of oil and gas pipelines, company premises, or for any purpose it consider incidental to its goals. Coupled with oil spillage from company activities, this law currently occasions land scarcity for farming and residential purposes. According to Odje, ‘This Act subjects the exclusive right of the occupier to the right of the Federal Government…’ The people only have a right of occupancy (or leasehold) but not a freehold title. The government awards contracts to multinational oil companies and timber companies without consulting the peoples. Attempts by the local peoples to restrain or seek explanations from some of these extraction companies have been met with the mass killing of youth and women protesters. In 1993 for instance, about 3000 Ogonis were killed, 50 houses destroyed, and 80,000 displaced. This figures were arrived at from a single incidence in which Shell security guards (actively supported by the Nigerian military), reacted to the Ogoni peoples’ insistence that their consent must be gained before pipelines are laid

118 Preamble and sec 1 of the Act. 
119 Also with spiritual attachment reminiscent of the San in Botswana. See Hithcock & Vinding (n 2 above) 11
120 See generally TO Elias Nigerian Land Law (1971); JF Fekumo Principles of Nigerian Customary Land Law. (2002). See also Mayagna (Sumo) Awas TINGNI Community v Nicaragua 79 IACHR (Ser C) (2001). 
124 Courson (n 20 above). As Courson rightly noted, there are always human casualties anytime the Nigerian Army is drafted to handle protest (whether peaceful or violent) among these indigenous minorities.
125 Wikipedia ‘Ogoni People’ http://en.wikipedia.org/wiki/Ogoni_people (accessed 21 September 2008). See also the video report of Major Okuntimo, the Head of the Rivers State Internal Security Task Force where he confirms this assertion in one his memo with officials of Shell Petroleum Development Company (SPDC) recounting the ‘success’ of his operation. See SERAC case (n17 above) 8.
across their community. Now, they are left with nothing but a right of occupancy. The
government can take possession of their occupied lands for anything it considers to be of
‘national interest’.126

This Act occasions a clear violation of the rights to land and the right of access to
land. It violates the peoples’ right to have their customary land tenure system recognised and
to have that right not subject to any other state law. The right to dignity and the right to life
are affected. The rights of the Urhobo and Ogoni peoples to be consulted and to freely give
consent to the use of their lands are infringed.127

2.6.1.5 The Oil Pipeline Act and human rights
The preamble to the Oil Pipeline Act provides that the Act aims at providing for licence to be
granted for establishment and maintenance of pipelines matters incidental and
supplementary to oilfields, oil mining and for other purposes ancillary to such pipelines. This
Act permits the licence holder and his officers to enter any area of the Urhoboland and
Ogoniland with any equipment they consider necessary.128 The licence holder is permitted to
enter lands to survey and take levels of land;129 to dig and bore into the soil and subsoil;130 to
cut and remove all trees and vegetation as may impede their purposes;131 and
do all other acts as may be necessary to ascertain the suitability of the land for establishment
of an oil pipeline or ancillary installations, and shall entitle the holder, with such persons,
equipment or vehicles as aforesaid to pass over land adjacent to such route to the extent that
such may be necessary or convenient for the purpose of obtaining access to land upon the rout
specified.132

The sad effect of this Act is seen in how it legalises what ordinarily ought to qualify as
trespass to land. The licensee is only required to give a 14-day notice to the occupier of such
land before it takes its measure.133 The 14-day notice is not to obtain the free consent of the
affected peoples; it is merely to notify the occupier. With this Act, homes and farmlands have
been destroyed amidst resistance and without compensation.134 Besides the despicable
provisions of the Act, the licensed multinational oil companies have frequently refused to pay

126 Onuora (n 85 above) 105.
127 See chapters 3 & 4 above.
129 Ibid at 5(1)(a)
130 Ibid at 5(1)(b)
131 Ibid at 5(1)(c)
132 Ibid at 5(d)
133 Sec 6 thereof.
134 ‘ANEEJ’Poverty of Oil in Niger Delta’
compensation for injuries caused. In rare instances where they have paid, the amounts have been far less than the market value of the affected products. This Act with its effects is an infringement on the right to justice and the right to an environment that is favourable for living. The peoples’ right to their culture and traditions is affected.

2.6.1.6 The Minerals and Mines Act and human rights
Besides the sad effects of the Oil Pipeline Act, the Urhobo and Ogoni peoples are aggrieved over the entire provisions of the Minerals and Mines Act. Like the other Acts which focus on specific areas of interest of the Niger Delta peoples, this Act provides that the government shall have ownership and control over the entire property in minerals under or upon lands, streams and watercourses etc. Moreover, it provides that all lands in which minerals have been found in commercial quantity shall be acquired by the government. It empowers the Minister to designate such lands as ‘security lands’. The intendment of this Act is obvious from the provision of section 1(2) thereof. It formally expropriates title to and /or possessory rights of all lands in which mineral have been found. The Act also reinforces the government’s claim to ownership and control of all minerals and lands under section 44(3) of the Constitution and section 1(1)(2)(b) of the Petroleum Act. The rights to property and free disposal of property are affected. Traditional right of ownership is denied. The peoples are denied the right to be consulted and to give their consent to concessions over their resources.

2.6.1.7 The National Inland Waterway Authority Act and human rights
Besides the Minerals and Mines Act, the National Inland Waterway Authority Act constitutes unqualified injustice to the Urhobo and Ogoni peoples as well as the other ethnic minorities of the Niger Delta. This Act declares that the main internal waterways are federal navigable waters. It provides further that these water bodies shall be under the management and control of the National Inland Waterway Authority established by the Federal government. This Act takes away the powers of the Niger Delta peoples and the states government over the control and freedom to fish in their historically occupied rivers. This police power is to further complement the denial of the peoples’ rights to minerals and mineral oils in the internal waterways. One of the obvious effects of this law is that it takes away the peoples’ very means of livelihood and puts same in the hands of ethnic trio in Abuja. It compels the local farmers and fishermen to go over to the federal government in Abuja and seek

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135 Odje (n 10 above) 395. See also sec 36 of the first schedule to the Oil Exploration Licenses (Cap. 350 LFN 1990) which provides for compensation for surface rights.
136 See chapter 3 & 4 below.
137 See 1(1).
138 Sec 1(2).
139 Substantive rights discussed in chapters 3 & 4 above.
140 Sec 1
141 ibid
142 Abuja is the seat of the federal government of Nigeria.
permission before fishing activities can be carried out. Coupled with the fact Abuja is thousands of miles away from the Urhobo and Ogoni peoples, this Act has made life extremely difficult by taking away their very means of existence (which is food). There is an infringement on the right to existence. Besides other rights, the customary and internationally protected right to property is implicated.\footnote{143}{Discussed in the last two chapters.}

### 2.6.1.8 The Petroleum Act and human rights

Inequity in the Nigerian resource legal regime is climaxed in the provisions of the Petroleum Act. The preamble to the Act reads that the Act aims at providing for the exploration of petroleum from the territorial waters and continental shelf of every part of the territory which constitutes Nigeria. It reads further that the Act is to vest ‘ownership of, and all onshore and offshore revenue from petroleum resources derived therefrom in the Federal Government and/or all other matter incidental thereto’. Section 1(1) of the Act vests the ownership and control of all petroleum in, under or upon any lands in Nigeria of the federal government.

The foregoing legal instruments confirm this writer’s assertion that law has been a very useful instrument in the hands of the government. However, law ought to be fair, just, and human to every group in a society. An unjust law has been considered a derogation of law which must be resisted. This assertion is also the fundamental principle behind what CH Heyns calls the ‘struggle approach’.\footnote{144}{CH Heyns ‘A “Struggle Approach” to Human Rights’ Concepts and Language of Human Rights and Related Ideas 15. Being a handout from CH Heyns to the 2008 LLM class in University on Pretoria.}

This approach dictates that human rights and legitimate struggle are best understood as two sides of the same coin. Oppressive laws are a true recipe for violent resistance.

The Urhobo and Ogoni peoples are not only aggrieved by the unjust contents of these Acts, they are also concerned that these Acts were decrees enacted by the erstwhile military regime of Gen. S Abacha and others of its kind. These regimes were ruled by dictators from the so-called major tribes (Hausa, Yoruba, and Igbo). These laws are undemocratic;\footnote{145}{JO Akande Introduction to the Constitution of the Federal Republic of Nigeria 1999 (2000) 444. Defined in sec 315(4)(b) of the Constitution.} they are only converted as existing laws\footnote{146}{Sec 315 ibid} and legalised by the Constitution\footnote{147}{Sec 315 ibid} which was itself imposed on Nigerians by the Gen. A Abubarkir regime. The foregoing expropriatory and military-imposed laws do not have any of their kinds concerning other regions of Nigeria.
2.6.2 Resource disposition and discrimination
The impact of the Nigerian resource legislations on the Urhobo and Ogoni peoples is the dispossession of their resources.\footnote{148} The resources in question include lands, minerals, mineral mines, natural gas, and their means of livelihood.

The Urhobo and Ogoni peoples as well as the other ethnic minorities of the Niger Delta are aggrieved that millet, palm nut and cocoa, which were the mainstay of the Nigerian economy before the discovery of oil in commercial quantity, have stopped all forms of contribution to the federal purse. While the constitution is completely silent about these cocoa, palm nut, millets and all other agricultural products of the North, East and the West, it provides for exclusive federal government’s ownership and control of all minerals, mineral mines, and natural gas.\footnote{149} The people have now resolved to clamour for 50% and not the entire bulk of resources accruing from their areas to the federal government.\footnote{150}

The clamour against the economic rape on the Niger Delta peoples started in the 1970s with IA Boro.\footnote{151} Considering the oppression he foresaw from the growing practices among the dominant powers, he declared the Niger Delta Republic.\footnote{152} Although Boro acted ahead of his time, Wittgenstein’s observation stands unqualified today where said that ‘…if someone is ahead of his time, it will surely catch him up one day’.\footnote{153} This sounds true with the current momentum at which the crisis in the Niger Delta is growing. The inordinate dedication of the government also came to play when Ken Saro Wiwa, the president of the Movement for the Survival of the Ogoni People (MOSOP) was convicted and hanged after a kangaroo trial by the Abacha-led government of Nigeria. When asked to make his plea before the tribunal, Wiwa simply reflected on the need for justice for the oppressed minorities of the Niger Delta. According to the writer and environmental rights activist:

*I predict that a denouement of the riddle of the Niger Delta will soon come. Whether the peaceful ways favoured will prevail depends on what the oppressor decides, what signals it sends out to the waiting public… I call on the Ogoni people, the peoples of the Niger Delta, and the oppressed minorities of Nigeria to stand up now and fight fearlessly and peacefully for their right.*\footnote{154}

\footnote{148} African Commission’s decision on basis of art 21 of the African Charter. See SERAC case (n 18 above) 70-71.
\footnote{149} Sec 44 of the Constitution.
\footnote{150} The 1960 and 1963 constitutions provided for 50% to the region from which a resource comes. At this time, regions were also in full control of their resources. They only pay taxes to the federal government.
\footnote{151} As F Varennes correctly observes, inequitable management of resources at the detriment of minorities and indigenous peoples has been a potential source of conflicts. See Varennes (n 1 above) 12. this position depreciated under successive military regimes in Nigeria.
\footnote{152} This lasted for 12 days before his 59-man squard was overpowered. This became popularly known as ‘The 12 Day Revolution ‘which became the title of a book containing the account of Boro. See Tebekaemi (ed) (n 15 above).
2.6.3 Development and human rights

By challenge of development, this writer means the challenges faced by the Urhobo and Ogoni peoples as well as the other indigenous tribes of the Niger Delta from the absence of economic, political and social attention from the federal government which have negatively affected their well-being.\textsuperscript{155} Infrastructural and institutional developments are more in focus. Despite the huge contribution of the Niger Delta to the Nigerian economy, the Urhobo and Ogoni peoples have the least level of infrastructural and institutional development in Nigeria.\textsuperscript{156} For instance, there are no good roads, drinkable water and electricity in the majority of the towns surrounding the major cities of Port Harcourt, Warri, and Yenagoa.\textsuperscript{157} This extends the blame to the Niger Delta states government that have failed to make judicious use of monthly federal grants to the states.

On education, the situation is not different. Besides the University of Port Harcourt, there is no other federal institution in the states of Delta, Bayelsa, and Rivers.\textsuperscript{158} Abuja, Lagos and Ibadan are the headquarters of all federal institutions. The areas of the Urhobo and Ogoni peoples are hosts to any single federal institution.

They are treated as camps where resources are processed and transported to the cities. This is the system which the Shell, Chevron, Texaco, AGIP and the other multinational oil companies have adopted in their dealings with the peoples. For instance, a look at Shell’s premises at Warri and Eleme is extremely pleasant. Another look behind the fences of Shell premises reveals an environment that is polluted, lacks infrastructural development, and all basic amenities for a healthy leaving. Abject poverty, stack illiteracy, and man’s inhumanity to man pervades the surroundings. There is a wholesale violation of the right to development. The right to life is at stake.\textsuperscript{159}

From the recommendation of the Willink Minority Commission,\textsuperscript{160} the federal government had set up the Niger Delta Development Board (NDDB).\textsuperscript{161} The Oil Mineral Producing Area Development Commission (OMPADEC) was subsequently established.\textsuperscript{162}

\textsuperscript{155} See preamble to the Declaration on the Rights to Development (DRD).
\textsuperscript{157} This attack takes into account the discriminatory developmental policies in which our local politicians focus attention on the cities while the villages from where the resources are sapped are neglected. It also takes into account the corrupt practices of local politicians which connive with federal politicians.
\textsuperscript{158} This is different from what obtains in the North, West, and East where there are two or more federal institutions on education. In states like Oyo and Lagos there are more than four universities in each
\textsuperscript{159} Rights fully discussed in chapters 3 & 4.
\textsuperscript{160} N 14 above.
\textsuperscript{161} By the Niger Delta Development Board Act 1961 and pursuant to section 14 of 1960 Nigerian Independence Constitution
\textsuperscript{162} By the OMPADEC Decree 1989. It set 3% of extracted revenue for the development of the Niger Delta.
The OMPADEC was also a failure as it was crippled by lack of funding, corruption, nepotism and maladministration.\textsuperscript{163}

During his presidential campaign, Chief OA Obasanjo regretted the injustice that the Niger Delta has suffered from the failures of the government. He promised to take effective steps to redress the injustice if elected to power. On ascension to office amidst a highly fraudulent electoral poll, Obasanjo established the Niger Delta Development Commission (NDDC).\textsuperscript{164} Today the NDDC has recorded a higher failure than its predecessors\textsuperscript{165} and the rate of agitations in the Niger Delta has skyrocketed. All these institutions have failed for lack of sincerity and true dedication to the problems confronting the ethnic minorities of the Niger Delta. The Obasanjo-led government of Nigeria, like its predecessors, merely established the NDDC so as to deceive the local people and the international community that the problems of the Urhobo and Ogoni peoples are being alleviated. The NDDC is paralysed with lack of funding among other constraints.

With the high rate of the recent attack on oil facilities by angered youth, Nigeria’s earnings from oil has drastically dropped. This has also affected oil prices in the world oil market.\textsuperscript{166} The government has just decided to set up a ministry for the Niger Delta (Ministry of Niger Delta). Whether this measure will solve the problem of poverty, pollution, infrastructural marginalisation, environmental degradation, loss of life, political marginalization, loss of resources, and the escalated youth resistance to unwholesome laws leaves much to be desired.

\textbf{2.6.4 Environmental degradation, the ecosystem and human rights}

The lack of development, the activities of multinational oil companies have caused serious environmental damage to the lands, the environments and the entire ecosystem of the Urhobo and Ogoni peoples of Nigeria’s Niger Delta.\textsuperscript{167} These oil majors get full cooperation in form of military suppression, propaganda etc from the government. In view of the prevailing circumstances, they owe allegiance to the government alone and no other person. As WS Olwabukeruyele rightly observes, this situation accounts for the reckless activities and less concern for the environment where they work.\textsuperscript{168}

\begin{flushright}
\textsuperscript{163} Odje (n 10 above) 402.  \\
\textsuperscript{164} Act 2000.  \\
\textsuperscript{165} The Editorial ‘Amendment of the NDDC Act’ The Vanguard Newspaper, 12 September 2001, 12. See also Maj. Gen. DA Ejoor (rd) ‘Government is playing with the N.D.D.C’ Punch Newspaper 23 July 2008 3.  \\
\textsuperscript{166} CNN report, 3\textsuperscript{rd} August, 2008.  \\
\end{flushright}
Lands, vegetations, and rivers are seriously damaged by pollution from pipeline explosion, pipeline vandalization and indiscriminate dumping of oil remains. The air is heavily polluted by gas flaring from oil and gas companies. The government lacks any substantive legislation on gas flaring which has been enforced. The Federal Environmental Protection Agency Act (FEPA Act), and the Harmful Waste Act have never been implemented to hold any multinational oil company liable for environmental crimes in the Niger Delta. Its policy to stop gas flaring by 2004 was never implemented. Like the complete silence after the recent concerns expressed by Colonel B Mande, the Nigerian Minister of Environment, the government has been criticized for paying lips services to the environmental challenges of the Niger Delta. J Bisinia notes that the government has been consistently blamed for the crisis in the Niger Delta for its failure to take appropriate measures to control environmental degradation in the area.

The activities of acts of the government and its oil allies have occasioned the absence of wildlife in the region in question. This has denied the Urhobo and Ogoni peoples their cultures of hunting, fishing, and farming for a living. The impacts of oil pollution and gas flaring cannot be over-estimated.

Besides the impact on wildlife, the acts of the government and the uncontrolled exploratory activities of the multinational oil companies have negatively impacted on aquatic life. Fishes and other aquatic lives die from contaminated waters in the Niger Delta. Being that the people are poor, they eat the dead fishes and they themselves fall sick resulting to death. Their fishing occupation is hindered. The people are deprived of their right to food and humanity itself.

2.6.5 Deforestation and human rights
Another effect of government’s expropriatory laws on the Urhobo and Ogoni peoples is an unprecedented and uncontrolled cutting down of forests. The exploratory activities of

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1701988 Cap. 131 LFN 1990.
171Cap 165 LFN 1990 Vol. IX
172See also Ibe (n 24 above) 245-246, 288.
175Onuora (n 85above) 105.
176Ibid at 102.
178See ANEEJ (n 134 above)
179The African Commission called this an ‘implied right’ in the SERAC case (n 18 above) 64-65. Also upheld in Peoples Union for Civil Liberties (PUCL) V Union of India and Others WP (Civil) No 196/2001. Cited in Ibe (n 24 above) 234.
government’s-licensed companies have also driven a substantial percentage of wildlife in the region into extinction.

Historically, the peoples make their houses from their locally made forest products such as timbers and tree leaves.\(^{181}\) Their house-hold furniture is their timber product which they manually process in traditional styles. As the tradition of the Urhobo people demands, cloths are made from forest leaves and animal skin.\(^{182}\) Hides and skin and forest leaves used to constitute the dignified modes of dressing.\(^{183}\) From the 1960s when the majority-led federal government directed its expropriatory laws at the Niger Delta, the peoples have been subjected to loss of valuable sources of life, clothing and shelter.\(^{184}\) There are complex human rights implications of these acts of the government in collaboration with its licensed companies.\(^{185}\) In one fell swoop, the people are deprived of their shelter, culture, and existence.

### 2.6.6 Culture, religion, and human rights

No tree stands the way of Shell, AGIP, and the other multinational oil companies; no matter the designation of that tree. True to the report of Cobo, the Urhobo and Ogoni peoples have spiritual attachment to their lands and the forests thereon.\(^{186}\) Historic forest areas where the peoples worship their gods have been destroyed.\(^{187}\) This infringes on the rights of IP to religion and culture.\(^{188}\) In some cases, these gods have been exposed into extinction. Sacred sites are all cut down and sacrilegiously invaded.\(^{189}\) Worshipers no more receive replies from Ajour (god of war and defence), Ideki (god of peace and justice), Uvvie (god of fertility) and Ukpe (god of abundance).\(^{190}\) In other cases, some of the gods have launched immediate resistance against the attempts of SPDC explorers to cut down their designated forests. The

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\(^{182}\) Ibid

\(^{183}\) With the uncontrolled felling to forests, the extinction of wildlife, and the influence of Western civilization/Christianity, this mode of dressing is now used only during festivals and special traditional ceremonies.

\(^{184}\) To Brownlie, this violates the basis of the ILO Convention 169. See FM Brookfield (ed) Treaties and Indigenous Peoples (1992) 66.

\(^{185}\) For instance, the Mopan and Ke’chi people sued the government of Belize before the Inter-American Court of Human Rights (IACTHR) for the customary legality of the logging and oil. Concession granted by the government in the Toledo district. Cited from Thornberry (n 38 above) 279.


\(^{187}\) See Okonta & Douglas (n. 154 above) 71-73.

\(^{188}\) Art 4(a) of Convention No. 107 concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries (Convention 107).

\(^{189}\) With the express permission of the Oil Pipelines Act.

\(^{190}\) This violates arts XVII (1)&(2) of the Revised African Nature Convention. These gods used to be dignified in Oginibo town in Delta State of Nigeria.
gods have resisted by appearing in the form of pitons to swallow up oil workers. They have also appeared in the form of bees to massively sting workers.\textsuperscript{191}

2.7 Conclusion

In conclusion, this chapter has analysed concepts such as IP, minorities, IM, and a rights-based approach. The simple inference is that the Urhobo and Ogoni peoples are IM. This is reached from their combined statuses as IP and as minorities in Nigeria. Further, the highlight of current situation of these peoples shows a gloomy society. The existence of minerals in the region occupied by the Urhobo and Ogoni peoples has become a huge burden for them. On this note, this work proceeds to the next chapter which is focussed on discussing the existing human rights framework on IP and minorities.

\textsuperscript{191} This writer personally witnessed these events during entry into the Ajor and Ideki forests with colleagues as SPDC local employee from Oginibo village in Delta State, Nigeria. November 5 1999. Unreported.
Chapter three: Human rights framework on indigenous minorities

3.1 Introduction

At the level of the international community, legal regimes which specifically safeguard the interest of IM include conventions, agreements, and declarations. These include the UN DRIP, the ILO Convention 169, the ICCPR, the UN Minority Declaration, the 1966 Covenant on Elimination of All Forms of Racial Discrimination (CERD), the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the Convention on Biological Diversity, the Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Charter, and other AU instruments. The remaining paragraphs in this chapter are devoted to brief analyses of the most paramount of these regimes and the available case law. Deliberate effort is made here to limit the instruments in view to global instruments and African-related ones.

3.2 The UN Declaration on the Rights of Indigenous Peoples

The UN DRIP represents a significant step of the UN in its protracted aspiration to safeguard the interest of IP. In line with the general opinion on declarations, Plant contends that the UN DRIP is not legally binding. However, it has been successfully contended that the principles contained in the declaration are general principles of international human rights law. This assertion was adopted by the Inter-American Commission of Human Rights (IACHR) in the case of Mary and Carrie Dann v United States. The IACHR stated that the general international law principles in the context of indigenous human rights include their right to ownership, use, and control of their territory; recognition of their property and ownership rights; and fair compensation when such property is irrevocably lost. The principles are universal and have the status of a jus cogens. This informs Anaya’s submission that they are principles of customary international law. These points influenced AO Conteh CJ in 2007 when he applied the UN DRIP in the case of Maya Village of Conejo v...
In this way, states are substantially obliged to abide by the provisions of the UN DRIP, the UDHR and other such declarations whether such state voted in support of the declaration or not.

The UN DRIP provides for the rights of IP to traditionally occupied lands and the resources therein, non-discrimination, internal self-determination, participation in decision-making, respect for spiritual ties to land, water and other resources, environmental protection, freedom from military suppression, and the right to restitution or fair, just, and equitable compensation when they are disposed of their resources.

Considering the research questions which partly informed this study, these rights are available to IM.

3.3 Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries

On 27th June 1989, the General Conference of the International Labour Organization adopted the ILO Convention 169 to overhaul and replace the ILO Convention 107 which had been the main multilateral convention for the protection of the rights of IP. However, the ILO Convention is remarkably different from its predecessor because it provides for collective rights of IP and departs from the old philosophy of assimilating IP into dominant societies.

This instrument requires state parties (with full participation of IP) to develop programmes to protect the rights of IP and to guarantee respect for their integrity. Governments must afford equal rights and opportunity to IP and all other peoples without discrimination. The state owes a duty to protect the culture, environment, institutions, and persons of the peoples concerned through special measures. Government’s laws which affect them must conform to their culture and tradition. Indigenous peoples have the right

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200 Attorney-General of Belize. In this way, states are substantially obliged to abide by the provisions of the UN DRIP, the UDHR and other such declarations whether such state voted in support of the declaration or not.

201 Nigeria, Kenya, and Burundi are African states among 11 states that abstained from voting during the UN General Assembly resolution to adopt the UN DRIP. 143 states voted in favour against 4 states. See n 64 above.

202 Arts 8, 26 & 27.

203 Art 2.

204 Art 3.

205 Arts 11, 12, 15, 18 & 19.

206 Art 25.

207 Art 29.

208 Art 7 & 30.

209 Art 28.


212 Art 2 (1)&(2), 6,7.

213 Art 3.

214 Arts 4, 5, & 7.

215 Art 8
to meaningfully participate in decision-making public institutions which oversees them directly or indirectly.\textsuperscript{216}

Further, the Convention provides for the recognition of the rights of ownership and possession of IP over their traditionally occupied lands and the resources in those lands.\textsuperscript{217} Even in cases where the state retains ownership of minerals and subsurface resources, their special interest and benefits must be safeguarded.\textsuperscript{218} Their right to radical title in customary land ownership is protected.\textsuperscript{219} These are safeguards for IM. Considering that this Convention resonates with general principles of international law regarding IP, Conteh CJ applied its principles in the \textit{Maya Village of Conejo v Attorney General of Belize} case.\textsuperscript{220}

3.4 International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child

Article 27 of the ICCPR represents the most outstanding law of the UN for the protection of national minorities.\textsuperscript{221} This is a far advancement from the recommendation of the 1954 UN Sub-commission on Prevention of Discrimination and Protection of Minority Rights.\textsuperscript{222} Article 27 of the ICCPR provides that ethnic, religious, and linguistic national minorities shall not be ‘denied rights in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language’. While this law protects the group as a people, its primary focus is on the individual belonging to the group which share a common culture, religious and/or language. In this vain, Phillips and Rosas submit that states are prohibited from complete individualization of the right in the article.\textsuperscript{223} Like article 27 of the ICCPR, article 30 of the CRC provides that the children of IM shall not be denied the right to culture, religion, and language with members of the group. Article 27 of the ICCPR serves to protect IP and minorities separately and jointly too.\textsuperscript{224} It protects the rights of these peoples to internal self-determination.\textsuperscript{225}

\textsuperscript{216} Art 6.
\textsuperscript{217} Art 13 & 15. See also Chaskason CJ in \textit{Alexkor Ltd. v Richtersveld Community} (2003) 12 BCLR 130.
\textsuperscript{218} Ibid
\textsuperscript{219} Art 14
\textsuperscript{220} N 25 above at 130
\textsuperscript{221} The ICCPR was adopted in 1966 and entered into force in 1976. Nigeria acceded to it on 29 July 1993. See \url{http://www2.ohchr.org/english/bodies/ratification/4.htm} (accessed 3 October 2008).
\textsuperscript{222} Basically, it provides for right of national minorities to establish schools with an education which impart and promote their values.
\textsuperscript{223} N 45 above 23.
\textsuperscript{224} Ghana & Xanthaki (n 31 above) 6.
This right of peoples is also protected under common article 1 of the ICCPR and the ICESCR. Tacit mention must be made also about articles 1 and 15 of the ICESCR which provide for peoples’ right collectively and individually to self-determination, free disposal of resources and the right to culture.

According to the Human Rights Committee, which gives authoritative interpretation to the ICCPR, the individuals protected under the article have a, …right to enjoy a particular culture which may consist in a way of life which is closely associated with territories and use of its resources. This may particularly be true of members of indigenous communities constituting minorities.

This interpretation of the Committee is an express reference to the article’s protection of the rights of IM to culture and resources. Thus, the state owes a duty to promote and protect the culture when it is associated with the use of lands and resources in the form of hunting and fishing.

In the negative construction of this law, it requires the state to ensure that the existence and exercise of these rights are jealously protected against any form of violation or denial by third parties or the state itself. According to the Human Rights Committee, this requires positive measures of protection from the state to fulfil its obligation. In reading article 2(1) of the ICCPR together with article 26 thereof, the Committee observes that article 27 guarantees the right to affirmative actions by way of legitimate differentiation; provided that such differentiation is based on reasonable and objective criteria. Affirmative actions must be active and sustained. It must go beyond mere constitutional or legislative enactment.

3.5 The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The UN Minority Declaration represents a prominent step by the UN in the internationalization of minority rights. It was inspired by the provisions of article 27 of the

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227 General Comment No. 23: Rights of Minorities 1994 (n 5 above) 198.
229 See the SERAC case (n 21 above). A positive right for minorities was first provided for by the 1975 Helsinki Final Act of the Organization for Security and Cooperation in Europe.
230 N 227 above 199
232 Human Rights Committee, General Comment 3 1981 (n 5 above) 164.
ICCPR.\(^{234}\) It requires the state to protect the existence and identity (cultural and religious) of national minorities and the rights of persons belonging to the group.\(^{235}\) States' legislations and programmes must be appropriate with due regards to the rights of national minorities.\(^{236}\) They have equal rights without discrimination and to equality before the law.\(^{237}\) The Declaration also grants minorities the rights to effective participation in national decisions.\(^{238}\)

One justification for the special protection on national minorities in multi-ethnic democratic states is that elections are perceived as contest for ownership of the state.\(^{239}\) As Geldenbuys and J Rossouw have rightly observed, minorities tend to equate democracy with the structured dominance of the adversarial majorities; rather than with freedom of participation.\(^{240}\) Further, A Akermark submits that peace, human dignity, and culture are three other justificatory grounds for the protection of minorities under international human rights law.\(^{241}\) These writers seem to be correct in their submissions.

### 3.6 Universal Declaration of Human Rights

Like the UN DRIP, the UDHR is a declaration. Adopted in 1948, the UDHR represents the universal declaration of the rights of all every person and peoples. This brings its application to IM. Drawing inspiration from the this writer’s argument on the UN DRIP above, the principles of law in he UDHR have gained universal and common standards from which no state should deviate.\(^{242}\) The bindingness of this declaration was upheld by the International Court of Justice (ICJ) in the *United States Diplomatic and Consular Staff in Tehran* case.\(^ {243}\) The UDHR prohibits discrimination on the bases of territory, language, property or any other status.\(^ {244}\) It protects the rights of IM to own property and prohibits all forms of arbitrary deprivation of their property.\(^ {245}\) On principles of common law and African customary land law, Viscount Halden has established in *Amodu Tijani v The Secretary of Southern Nigeria*\(^ {246}\) that customary right to land ownership exists in Southern Nigeria.

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\(^{234}\) Preamble to the Declaration.

\(^{235}\) Art 1

\(^{236}\) Art 5

\(^{237}\) Art 4

\(^{238}\) Art 2


\(^{240}\) N 13 above 9.

\(^{241}\) Ibid at 10.

\(^{242}\) See preamble to the UDHR. See also Lord Denning on compensation for acquired land in *Adeyinka Oyekan and others v Musendika Adele* (1957) 1 WLR 876 at 880.

\(^{243}\) (USA V Iran) (1980) ICJ Rep. 3, 42.

\(^{244}\) Art 2.

\(^{245}\) Art 17.

\(^{246}\) N 120 above at 402–404.
3.7 Convention on the Elimination of All Forms of Racial Discrimination (CERD)

True to article 1 of the CERD, the Committee on the Elimination of Racial Discrimination (CERD Committee) has unequivocally acknowledged that the protection afforded by the CERD is available to IP. Pursuant to article 2 of this Convention, the state owes a non-derogable duty to eliminate all legal or institutional mechanisms which reflect racial discrimination. This prevents the state from applying laws which expropriate the property of IP. It requires states to ensure the return of such property to the peoples where they have been deprived of them or to ensure that a fair, just, and prompt compensation is paid. It also asserts that the CERD prohibits state’s expropriation of IPs’ resources on discriminatory grounds.

3.8 African Charter on Human and Peoples’ Rights and other AU instruments

The Charter is the major human rights instrument of the AU. In the French conception of the Charter, it uniquely and undeniably affirms the rights of individuals as well as groups. At the surface level, IM are protected under the Charter as ‘peoples’. It guarantees the right to property and prevents the domination of a people by another. It guarantees a people’s right to free disposal of their wealth and natural resources. In case of spoliation, the Charter guarantees the right to adequate compensation. Article 22 of the Charter provides that:

All peoples shall have the right to their economic, social and cultural development with regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

The words of this article clearly show their relevance to the problems of the Urhobo and Ogoni peoples.

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248 General Recommendation XXIII 1997. See n 3 above 255 para 2
250 CERD Committee, ibid para 5.
251 Ibid para 3.
254 Art 14.
255 Art 19.
256 Art 21(1).
257 Art 21(2). To Hansungule paras 1-4 of art 21 apply between the state and its citizens. Only para 5 thereof applies to the state’s relationship with foreigners (n 181 above)
Article 60 of the Charter also empowers the African Commission to be ‘inspired’ by principles of international human rights law. Arguably, this is a fertile ground for the advancement of the rights of IM in Africa. It empowers the Commission to apply the principles in the ILO Convention 169, the ICCPR, the Declarations, the case laws, and all other instruments related to IM whether the state ratifies the instrument or not.

Besides the Charter, other AU instruments which can be useful for advancing the rights of IM include the 1999 Cultural Charter, the 2003 African Convention on the Conservation of Natural Resources, the 2004 Pretoria Declaration on Economic, Social and Cultural Rights in Africa, article 3 of the African Charter on the Rights and Welfare of the Child, and the 9th objective of the African Peer Review Mechanism (APRM). For instance, the Cultural Charter obliges states to develop national languages as well as cultural diversity. In prevents states from subjecting the cultures of national minorities to dominant cultures under the guise of national identity. According to Viljoen the provisions of this Charter are fully available for the protection of IM.

3.9 Conclusion

This chapter has considered the available legal framework which can be used to advance the rights of the Urhobo and Ogoni peoples as minorities and as IP. The next chapter covers a brief assessment of the relevance of the foregoing laws to the peoples in question.

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258 Under art 45 of the African Charter, the Commission is mandated to protect and promote human and peoples’ rights in line with the Charter.
259 See the African Commission’s Work on Indigenous Peoples in Africa (n 3 above) 21.
260 For instance art 3.
262 Arts 3, 5,6(1)(a) & 9.
263 Viljoen (n.12 above 285.)
Chapter four: The application of human rights to the Urhobo and Ogoni peoples

4.1 Introduction

Considering the human rights legal framework discussed in the preceding chapter, this chapter will focus on assessing the situation of the Urhobo and Ogoni peoples in relation to the law. A conclusion is reached based on the assessments made.

4.2 Applying human rights laws to the Urhobo and Ogoni peoples

The legal instruments discussed above comprehensively show the extent at which rights are available to IM. In applying these laws against the Nigerian resource legislations, it is important to note that the government cannot defend the violation of its international human rights obligation on the bases of its internal laws.264

The Nigerian resource laws vest the ownership and control of lands, minerals, mines, mineral oil, and natural gas on the government. Most prominent among these laws is the Constitution.265 As discussed in chapter two above, these laws deprive the Urhobo and Ogoni peoples all their radical customary titles and rights of ownership over the affected property.

The international human rights laws discussed above unequivocally provide for the rights of IM to retain the full ownership and control of the resources within the territories where they have historically lived. The laws expressly prohibit the state from expropriating the lands and resources of IM. In cases where property had been expropriating or where there is spoliation, the state owes an obligation to restore property or to ensure that fair compensation is paid.

When international human rights laws are contrasted with the Nigerian resource regime, it stands from the foregoing that the government is in violation of its international obligations. The government exploits the vulnerable situation of the Urhobo and Ogoni peoples and continues to violate their rights. In the face of the protected rights and freedoms, the government continues to implement its expropriatory laws.

265 See chapter two above.
Besides the failure of the Nigerian resource regime in the face of international human rights law, the peoples’ rights to development and a safe environment are guaranteed. They have a right to an environment that is conducive for living. They are protected from deforestation. Indigenous minorities have a right to non-discrimination. The government is required to promote and protect their rights to culture and religion. The laws require the government to protect the guaranteed rights of IP from being violated by third parties. Moreover, the laws require government to adopt a rights-based approach to the Urhobo and Ogoni peoples. They have a right to affirmative action with the sincerity it deserves.

Again, the practice of the government in relation to the Urhobo and Ogoni peoples clearly contradicts the principles of international human rights law. By the activities of the government and its multinational oil allies, the peoples are subjected to environmental degradation, prohibitive deforestation, discrimination, and underdevelopment. There lacks adequate national safeguards for their rights to culture and religion.

The deplorable situation of the ethnic minorities of the oil-rich Niger Delta has continued for decades. An end to it is currently not feasible. As a last resort, the oppressed minorities have resorted to violent resistance to government-backed operations of oil companies. The government has responded by excessive militarization and brutality. In the violent clashes between community youth and government forces, people are killed and communities destroyed. Government forces rape villagers. This contradicts the right to be free from rape and excessive militarization. The government must take responsibility for this.

4.3 Conclusion

The clear conclusion reached from the foregoing assessment is that the government violates the rights of the ethnic minorities of the Niger Delta by its laws and activities in the oil-rich region. A similar conclusion was earlier reached by Wiwa during the 1993 Ogoni Day he said, ‘The UN recognises the rights of the world’s indigenous people. Indigenous people have been cheated by laws such as we have in Nigeria today. We shall demand our rights peacefully, non-violently and we shall win’. Additionally, the assessment shows that the

266 See generally EM Lassen ‘Religion and Human Rights: a vibrant and challenging marriage’ in Isa & Feyter (n 211 above).
government violates its international human rights obligations with impunity. It reveals an environment in which ethnic minorities are violated in every ramification.

According to Human Rights Watch reports, the situation grows worse for the peoples of the Niger Delta. The destabilization of the oil-rich region has also affected the economic interest of the government. Finding solutions to these problems informs the next chapter of this work.

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270 N 267 above.
Chapter five: Conclusion and Recommendations

5.1 Introduction

The foregoing chapter has shown that the resource legislation in Nigeria and other policies of the government in relation to the Urhobo and Ogoni peoples contravene the government’s human rights obligations under international law. This part of the work comes to the conclusion that the Urhobo and Ogoni peoples can claim their rights (and should be protected) as IM under the available legal framework. Most workable solutions to the noted challenges are suggested.

5.2 Conclusion

The ethnic minorities of the oil-rich Niger Delta in Nigeria have long suffered hardship from the ethnic dominance of the Hausa, Yoruba and the Ibos. Previous chapters of this work have reflected how the government takes advantage of the fast weakening AU position which advocates the non-recognition of IP. The outcome in Nigeria is political, social, and economic marginalization of the Urhobo and Ogoni peoples. While the UN (with the active support of some member states of the AU) has taken a decisive step in 2007 by adopting the UN DRIP, Nigeria continues to advocate a firm grip to increasingly unpopular position on the AU. As this paper reflects, the activities of the government in the territories of the Urhobo and Ogoni peoples and its resource legal framework explain the reasons behind its position.

The international human rights framework discussed in this work and their assessment in the Nigerian situation show a failure on the part of the government to comply with its obligations under international law. Besides failing to meet its international legal and moral obligations, the activities of the government violate the rights of the Urhobo and Ogoni peoples.

Further, this contribution has shown that the acts of the government fuels crisis and ethnic conflict in the Niger Delta. While Nigeria secures its interest under the AU’s policy, this work submits that the Urhobo and Ogoni peoples should be protected as IM in Nigeria. Protecting them as IM entitles them to benefit from their statuses as IP and as minorities. These benefits arise from their entitlement to the rights provided under the human rights instruments discussed in chapter three of this work. These instruments place corresponding obligations on the government.
Finally, this work has advocated the recognition of the Urhobo and Ogoni peoples (as well as the other ethnic minorities) of the Niger Delta as IM. This status entitles them to rights as minorities and/or IP. This measure remains relevant in a multicultural society like Nigeria even after the AU adjusts its position in favour of the UN standard. In these ways, this work achieves its originally set targets.

The Challenges faced by the Urhobo and Ogoni peoples as well as the government are common among Africa states. Finding solutions to these challenges forms the remaining part of this work.

5.3 Recommendations

5.3.1 Advancing rights under the Nigerian constitution and the African Charter

The Urhobo and Ogoni peoples as well as other ethnic minorities of Nigeria’s Niger Delta have the fruitful possibility of advancing their rights as IM under chapter IV of the constitution and under the Charter. Chapter IV of the constitution provides for the rights to life; freedom of thought, conscience and religion; peaceful assembly and association; freedom from discrimination; and the right to acquire and own immovable property respectively.

Additionally, the Charter has been incorporated as part and parcel of Nigerian law. The provisions of the Charter as well as mandate to draw inspiration from relevant international human rights instruments under articles 60 and 61 of the Charter are efficient bases to advance the rights of IM within and outside Nigeria. Beneficiaries of human rights standards themselves must advance the responsibility which primarily falls on them to protect their own rights from violators. The Urhobo and Ogoni peoples have the potential of success if the available human rights framework is explored.

5.3.2 Changing the AU position in favour of the UN position

Besides human rights activism under the Constitution and the Charter, the AU should change its policy on IP in favour of the UN standard. African states’ progressive acceptance of the UN position on IP shows a growing consensus among member states of the AU to recognize

271 Sec 33
272 Sec 38
273 Sec 40
274 Sec 42
275 Sec 43
276 See African Charter (Ratification and Enforcement) Act LFN Cap 10. See also, Abacha v Fawehinmi (2000) 6 NWLR (Pt 600) 228.
277 Arts 1, 19, 21 22, & 24.
IP in the universal conception. The AU should change its policy to conform to the contemporary position of member states. This will prevent a state like Nigeria from capitalizing on non-definition of IP.

It is contended that colonialism is no more in question and that the principle of respect for existing borders at the time of independence is secured by the UN DRIP. Being that the UN DRIP and other UN instruments have secured the same interest which the AU tries to secure by holding its position on IP, there are now good reasons for the AU to change that position in favour of the UN position.

### 5.3.3 Uniformity in human rights standards

Further, adopting the UN standard will enhance uniformity in human rights standards between the AU and the UN. This will eventually lead to a future in which the AU as well as the UN will adopt binding instruments on the rights of IP. As An-Naim correctly observes, interdependence, interrelatedness, universal validity, and legal bindingness are the added values of international human rights standards.

### 5.3.4 Abrogation of expropriatory laws in Nigeria

Beside uniformity in human rights standards, the government should abrogate its expropriatory resource laws which contradict international human rights standards. The African Commission has found the government in violation of its international obligation by the use of the laws in question. These laws are defective in substance and in form. Since they have attracted both domestic and international criticism, it is submitted that the laws should be abrogated. The Restitution of Land Rights Act and the prevalence of aboriginal title in South Africa should be emulated as best practice. Abrogating these laws will create room for enduring peace in the Niger Delta. This will encourage economic stability in Nigeria.

### 5.3.5 Enforcement of pollution laws

While the expropriatory laws are being abrogated, the government should enforce Nigeria’s environmental pollution laws. These include the Mineral Oil (Safety) Regulations, the FEPA Act, the Associated Gas Re-injection Act, Oil in Navigable Waters Act, and the

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279 Besides some African states’ acceptance of the UN DRIP, the growing concensus is also a reality by the fact that ambassadors from sixteen states participated at the October 9-11 Addis Ababa conference on IP, organised by the African Commission.

280 Ibid at 1.

281 Vienna Declaration on Human Rights para 5.


283 1969. It provides for safe discharge of noxious or inflammable gases and penalties for non-compliance.

284 N.170 above. It creates a Federal Environmental Protection Agency to ensure the safety of Nigerian air, land, and water. It provides penalty for any contravention.
Petroleum Drilling and Production Regulation. While these laws regulate pollution activities of oil companies, it is sad that these laws have never been enforced by the appropriate authorities. According to Odje, 'The usual nonchalance of the Government of the Federation has made these laws to be obeyed more in the breach than observation'. The peoples of the Niger Delta have been very critical of the federal government inaction. On this basis, the government has been criticised for encouraging environmental degradation in the Niger Delta while they enjoy the oil wealth in the North, East, and West. Enforcing these laws will keep the ecosystem safe and the government will be seen as complying with its human rights obligations.

5.3.6 True and targeted affirmative action
Besides the enforcement of pollution laws, the government should embark on true and targeted affirmative actions. As noted above, affirmative action is a right to maltreated IP as well as it is an obligation on the state. The establishment of the NDDC and the Ministry of Niger Delta are positive developments forwards alleviating the plights of the age-long neglected and marginalised peoples. Like the Committee on Economic, Social and Cultural Rights rightly observes, states have the 'obligation of conduct and obligation of result'.

However, history has shown that developmental bodies such as the NDDC have never achieved their goals. The government should overhaul the body to enhance its efficacy. This NDDC and the newly established Ministry of Niger Delta should be adequately funded. They should be rid of tribalism, nepotism, favouritism, corruption and other such vices which have occasioned failures of previous efforts.

Further, the government should embark of direct development projects in the territories of the Urhobo and Ogoni peoples. This should be done through the Ministry to compliment the efforts of the NDDC.

Summarily, the ways out of the legal and regulatory challenges faced by the Urhobo and Ogoni peoples (as well as other IM) of the Niger Delta include a change of the AU’s position in favour of the UN standard; the abrogation of Nigerian expropriatory laws; the

285 LFN 1990 Cap 26 Vol 1. This discourages gas flaring. It provides for re-injection of associated and non-utilised gas in industrial projects. It also provides penalties for contravention.
286 LFN 1990 Cap 337 Vol 19. It prohibits discharge of oil or mixtures which contain oil into the territorial or navigable waters.
287 1969. It requires licence holders to take precaution, including the use of approved up-to-date equipment to prevent pollution of the territorial waters, river water courses, and the inland waters by oil or other substances.
288 Odje N10 above 413
290 General Comment No. 3 UN Doc. E/1991/23 para 1.

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enforcement of Nigerian pollution laws; affirmative action; and advancement of rights under the Constitution and the Charter. No doubt, peace and justice will be attained for the IM of the Niger Delta if the foregoing recommendations are taken into consideration.

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