

The Right of the Indigenous People over Their Natural Resources: The Nigeria Situation

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ABSTRACT

One burning issue in Nigeria today especially around the oil producing areas is that of the absolute ownership and control of the natural resources (oil) that God has endowed the people with. In the last thirty years if not more, the agitation has become more fierce from demand for self-determination, in the 60s to Kiyama declaration in the 70s and recently to resource control. Every successive government in the country has come out with policies to calm the situation and even to ameliorate the hardship suffered by the people due to the negative effects of the exploitation of the oil mineral and other natural resources. Despite the above, the agitations are still on going. These come with various conferences, workshops, seminars symposia and radio and television talks on this issue by many stakeholders in Nigeria. Some of these agitations have become violent and various other crimes in the country. The various agitations are predicated on the right of the people to own and control (their) natural resources. The question then is, who are these indigenous people? What are their rights over the natural resources in their domain? What does Nigerian legislation say about the natural resources found beneath the earth in the country? And what will be the way forward?

Keywords: Indigenous people; Natural Resources; Nigeria.

INTRODUCTION

The right of indigenous people to own and control their natural resources in Nigeria has been one serious issue to be dealt with in the country today. This has undoubtedly provoked numerous and varied opinions among eminent scholars, politicians, opinion holders, jurists, traditional rulers etc (Archibong et al., 2016). This brings us to the question such as the meaning of indigenous people, natural resources by the indigenous people vis-à-vis the Nigerian Legislation on the subject matter. Therefore if indigenous peoples are said to be “peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world... (Fernández 2017, p. 121), and natural resources are any naturally occurring substances or materials that can be

used for economic gains (Archibong 2016, p. 333). Then who are the indigenous peoples of Nigeria, which are the natural resources and what is the right over the natural resources? Are there any impediments from the way and manner the Nigerian laws are couched? What is the way forward? These are what this work seeks to address.

THE MEANING INDIGENOUS PEOPLES

The word indigenous peoples has often times been misplaced. Many people believe that the word mean same and the something as minority people. For the purpose of this work, the controversy as regards the difference will not play a key role. The understanding is to albeit briefly know what is meant by indigenous peoples and who are actually the indigenous peoples. According to the working definition furnished by Special Rapporteur Martinez-Cobo in his report submitted to the UN sub-commission on Prevention of Discrimination and Protection of Minorities.

Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic arrived there from other parts of the world, overcome them and by conquest, settlement or other means reduced them to a non-dominant colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, mainly the national, social and cultural characteristics of other sections of the populations which are predominant (Das 2001, p. 23).

Furthermore, the author clarifies the definition from the International point of view, thus:

Indigenous communities, people and nations are those which having a historical continuity with pre-invasion societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (Nayak & Selbin 2013, p. 31).

Today, the most popular and perhaps the most acceptable definition of indigenous peoples is the one contained in the indigenous and tribal people's convention of the International Labour Organization (ILO) convention 169 Article 10 of the Convention defines indigenous peoples as :

(a) 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 (World Wide Fund for Nature 1996, p. 2).

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country or a geographical region to which the country belongs at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their status, retain some or all of their own social, economic, cultural and political institutions (Nayak & Selbin 2013, p. 32).

INDIGENOUS PEOPLE OF NIGERIA

Going by the definitions as preferred above by individuals, and statutes/conventions, are there indigenous people of Nigeria? Generally in Nigeria the various ethnic groups tend to believe they come from somewhere else. For instance, the Yorubas say they come through Oduduwa who descended from heaven, the Igbos say they came from Israel, the Hausas from Sudan. Even the other ethnic groups tend to come to settle in Nigeria from somewhere else. Despite this, there are various arguments either in support of non-indigenes of any Nigeria or against that. The erudite scholar Yinka Omorogbe, has this to say:

Some minorities, particularly in the Niger Delta might feel they fall within the definition of tribal people. This could be a plausible interpretation... (Omorogbe 2001, p. 148).

On the part of Ebeku, he has this to say:

The above statements suggest that the Niger Delta people were existing nations prior to colonialism, therefore indigenous people of the area (Omorogbe 2001, p. 61).

He went further,

Contrary to the belief that there are no indigenous people in Black Africa, our research has shown that the fate of such groups as...ogoni in Nigeria (is) in essence, no different from those of the aborigines of Australia, the Maori of New Zealand and the Indians of North and South America. Their common history is of the usurpation of their land and resources... It is this regard that we have undertaken to publicise the fate of the agoni people in Nigeria (Chari 2017, p. 162).

He went further,

Until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria, there existed at various times various sovereign states known as emirates, kingdoms and empires made up of ethnic groups in Nigeria. Each which is independent of the other with its mode of government indigenous to it... In the Niger Delta Area, for instance, there were the Okrikas, the Ijaws the Kalabaris, the Efiks, the Ibibios, the Urhorobos, the Itekiris etc (Ebeku 2006, p. 62).

Ebeku asserted further that, the Niger Delta peoples satisfy the requirements for recognition as indigenous people under the ILO definition. Going by the historical antecedents of the people and their declarations of rights, he affirmed the proposition.

THE RIGHT OF THE INDIGENOUS PEOPLE OVER NATURAL RESOURCES

Many international instruments confer on the people the right over their natural resources. Among these are:

(i) Africa Charter on Human and Peoples' Right and Indigenous Rights:

Article 21(1) of this Charter provides that 'all peoples shall freely dispose of their wealth and natural resources'. It further provides that 'this right shall be exercised in exclusive interest of the people' and in no case shall a people be deprived of it' (Kiwanka 1988). To buttress this, in communication 155/96 the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights/Nigeria, the African Commission on Human and Peoples' Rights held that the ogoni ethnic group of the Niger Delta region of Nigeria constitutes 'people' within the contemplation of the African Charter on Human and Peoples' Rights, and therefore entitled to the protection and enjoyment of rights in their customary land and natural resources as provided under Article 21 of the Africa Charter (Kiwanka 1988; Musa 2014).

(ii) Declaration of the World Conference to combat Racism and Racial Discrimination 1983:

Notably, the second world conference to combat Racism and Racial Discrimination was held in 1983. The conference issued a Declaration which has been described as an official document. The preamble and the operative part of the document in its paragraph 22 express the concern with the rights of indigenous people. It state:

The right of indigenous populations to maintain their traditional economic, social and cultural structures, to pursue their own economic, social and cultural development and to use and further develop their own language, their special relationship to their land and its natural resources should not be taken away from them... (Ebeku 2006, p. 99).

(iii) United and Natural Resources -

United Nations has also come out with resolutions on the people and the control of their natural resources. Among these are:

- a. Resolution 1803 (xvii) of 19th December, 1962 – the resolution declares among other things the following:
 - i. The right of people and nations to permanent-sovereignty over their natural wealth and resources must be exercised in the interest of the national development and the well-being of the people concerned (Adoga-Ikong 2019).

1. THE NIGERIA SITUATION

a. Ownership of Land

It is true that mineral resources are endorsed in the land. The acquisition of land is therefore a necessary precondition for mineral operations. Although the Nigerian law specifically excludes minerals from the meaning of land (Edu 2011). Also in Nigeria before 1978, there was no uniform land tenure system, thus, in the Northern part, there was a system of public ownership while in the South was a dual system of land tenure namely: customary land tenure and statutory land tenure system.

The principle of this customary land tenure was enunciated by a witness before the West African Lands Committee. Here it was stated; 'I conceive land belongs to a vast family of which many are dead, few are living and countless numbers are still unborn' (Coker 1966, p. 379).

As regards the operation of natural resources (mineral) although the right of ownership of mineral according to Nigeria law is vested in the government in which the land owning villagers/communities do not participate in granting concession to the operators, the operators can enter upon the land to extract the minerals only after reaching an agreement with the land owning communities on the amount of compensation to be paid for the use of the land.

Another situation of customary land tenure relates to the native conception of ownership of natural resources enclose in the land (Ebeku 2006). Land is essentially concerned to include minerals trapped in it. This may raise the issue of whether the English principle of *quic quid plantatur solo solocedit* meaning (whatever is affixed to the land belongs to the land) is part of native/customary land tenure system. Under this principle therefore, it can be agreed that minerals, buildings, trees and other fixtures on the land form part of the land and belongs to the owner of the land (Achu 2017).

b. The Nigeria statutes

Despite the argument on the land tenure system above, there are contrary arguments in regards to Nigeria statutes and opinions on who are really the indigenous people of Nigeria and the ownership of natural resources especially (oil mineral) in Nigeria (Adoga-Ikong & Inyang 2017; Inyang & Adoga-Ikong 2017; Adoga-Ikong & Takim Otu 2020).

i. The Mineral Ordinance 1916 – Section 3(1) provides:

The entire property in and control of all mineral oils in, under or upon any land in Nigeria, and of all rivers, streams and water courses throughout Nigeria is and shall be vested in the crown... (Elias 1963, p. 330)

ii. The 1979 constitution of the Federal Republic of Nigeria in Section 40(3) provides for the ownership and control of mineral resources in the Federal Government (Elias 1963).

iii. The 1999 constitution of the Federal Republic of Nigeria (as amended) – Section 43(3) provides:

The entire property in, and the control of minerals, mineral oils and natural gas in water or upon the terrestrial waters and the exclusive economic zone of Nigeria shall vest in the government of the Federation... (Aguda 2000, p. 379).

iv. Petroleum Act section 1 provides:

The entire ownership and control of all petroleum, under or upon any land to which this section applies shall be vested in the state (Nigeria. Presidential Commission on Revenue Allocation 1980).

v. Exclusive Economic Zone Act

This legislation just like its sister legislation, the Petroleum Act vested in the federal government of Nigeria exclusive rights with regards to exploration and exploitation of natural resources (oil inclusive) in respect to seabed, the subsoil and superjacent waters of the Exclusive Economic Zone (EEZ) (Ololade & Laws 2016, p. 64).

Apart from the above statutory provisions conferring the ownership and control of natural resources in the Federal Government of Nigeria, the decision in the case of *Attorney-General of the Federation v Attorney-General of Abia State & 35ors* has buttressed the above ownership position of the Federal Government of Nigeria (Obutte & Idiaghe (2018). Following protests by the states within the federation of Nigeria in respect of what has become known as resources control, the Federal Government of Nigeria in February 2001 filed a suite at the Supreme Court against the 36 states of the Federation in which it sought an interpretation of the 'Seaward Boundary' of littoral states within the Federal Republic of Nigeria for the purposes of calculating the amount of Revenue accruing to the Federation Accounts directly from any natural resources. In a counter-move, the states had argued that the Federal Government disbursement from the Federal Accounts amounted to a violation of the principle of Fiscal Federalism.

The Supreme Court thus affirmed the Federal Government's ownership and control of all natural resources within its territory. And also confirmed that the Littoral States have no title to offshore resources (Suberu 2008).

Having put two opinions on the scale namely, the indigenous people of Nigeria and the rights over natural resources and the government ownership of natural resources as provided for in our laws, what then is our best bate in Nigeria; particularly to resolve the lingering crisis over agitation for the control of natural resources? Before coming to conclusion, let us ask these pertinent questions; one, are they in real sense indigenous people in Nigeria? Two, do we have to go by the opinion of the various writers and opinion holders, various treaties and international law that confer ownership of natural resources in the federal government of Nigeria? To answer the first question above, Omorogbe (2001, pp.46-48) has this to say:

Some communities in the Niger Delta (Nigeria) have attempted to assert rights over the natural resources under their land, notwithstanding the fact that section 44(3) of the 1999 Constitution and Section 1 of the Petroleum Act 1969, clearly vest ownership in the Federal Government.

It must be said that there are indigenous people's rights under International law and some feel that the oil communities are indigenous people and therefore that rights of such people belong to them

She went further,

However, a dictionary meaning of a word must be distinguished from its legal meaning. In a dictionary sense, indigenous people are those who can claim to be the original land owners, who have been living on and claiming ownership of the land in question, since time immemorial. The legal concept of indigenous people is defined in the International Labour Organization Convention concerning Indigenous and Tribal peoples in independent countries 1989.

Some minorities, particularly in the Nigeria Delta might feel they fall within the definition of tribal people. This could be a plausible interpretation, as the convention does not distinguish minorities from indigenous and tribal people.

The second issue which bothers on the opinion of writers, as well as the international law is that, certain international instruments such as the African Charter on Human and Peoples' Rights, Declaration of the World Conference to combat Racism and Racial Discrimination 1983, United Nations and Natural Resources etc. confer the right of ownership of natural resources on the people. But then, two situation arise here, one, who are actually the indigenous people of Nigeria for that purpose? Apart from the decision by the African commission on Ogoni people, there is no where the issue of a community in Nigeria being regarded as indigenous people. Two, even if the letters of various international instruments have to be followed, in the case of any violation, is there any sanction? The answer is no. These International Instruments have no binding effect therefore the violation of their principles have no penal sanctions.

The third issue in our conclusion is that, what happen to the various Nigeria laws conferring ownership of natural resources in the federal government such as the Constitution, the Petroleum Act, the Minerals and Mining Act, etc? The Constitution of Nigeria, the Petroleum Act, Exclusive Economic Zone Act, the Pre-Independence Ordinances as well as the Nigeria Supreme Court decision in *Attorney-General of the Federation v Attorney-General of Abia State & 35 Ors* all confer the ownership of natural resources (oil especially). If this is so, will it not be 'a wild goose chase' for any person to claim ownership and control in the name of the indigenous peoples?

A lesson from the United States of America

In the United State of America, ownership and control of natural resources (oil & gas) is that of: **Absolute ownership theory** – this theory is well recognized and practiced in the states of Texas, Pennsylvania, Arkansas. The theory states that oil and gas is capable of being owned in fee simple (Fraley 2012). The owner of a piece of land is regarded as the owner of the petroleum product lying underneath the lands (Holderness 2009). He is not a co-owner even when the oil reservoir straddles lands,

each owned by a different person (Holderness 2009). Thus in the United States, the above theory which is one of the theories of ownership of oil and gas work perfectly without any hitches.

CONCLUSION

Our conclusion should therefore be that in Nigeria, we should adopt the absolute theory practiced in the United States of America. Probably, this will bring to rest all the agitations for the ownership and control of natural resources especially oil and gas instead of the present situation where ownership and control is in the hand of the Federal Government. This will go immediately with the move to amend the constitution particularly the section that confer ownership on the government and also other legislations in the oil and gas sector.

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