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IMPACTS OF THE PETROLEUM INDUSTRY ACT 2021 ON LAND AND MINERAL RESOURCES RIGHTS OF INDIGENOUS PEOPLES IN NIGERIA

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Abstract

Government's expropriation of petroleum under Nigeria's Petroleum Industry Act 2021 (PIA) and the claims of indigenous peoples in whose historical settlements petroleum is discovered in Nigeria have been subjects of controversy over the years. This controversy formed the basis for litigations, agitations, destruction of oil facilities leading to drop in the oil production quota of Nigeria, kidnapping of oil workers, and acts of sabotage. This paper was therefore designed to examine section 1 of the PIA which vest ownership and control of petroleum in the Government of the Federation of Nigeria against the background of the status of indigenous peoples. The research adopted the doctrinal research methodology using statutes, regulations, journals, declarations, case laws, and textbooks to evaluate legal doctrines on the subject. This research reached findings that the Nigerian Government acts in breach of its domestic and international legal obligations on the subject. It also found the Government in breach of the rights of indigenous peoples in Nigeria. It proposed the need for amendment of the PIA, the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other relevant laws on the ownership and control of petroleum in order to conform with the domanial cum private ownership theory which was agreed upon during the constitutional conferences leading to Nigeria's independence in 1960. This is the way to go in order to attain sustainable peace in the relationship between indigenous oil-bearing communities and the Government of the Federal Republic of Nigeria.

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1. Introduction

The introduction of the Petroleum Act 1969 and subsequent amendment of the 1960 and 1963 Constitutions of the Federal Republic of Nigeria nationalized the ownership and control of petroleum. Although the General Yakubu Gowon administration justified these radical changes from the agreed principle of the Independence and Republican Constitutions as being necessitated by the prosecution of the Nigerian Civil War of 1967 to 1970, yet the Government failed to revert to the original constitutional provision on ownership and control of petroleum which vest a minimum of 50% as derivation to the state from which petroleum was produced. The recent after a long clamour for a change, the Petroleum Industry Act, 2021 was drafted. Unfortunately, it also failed to meet the yearnings and aspirations of indigenous peoples and ethnic minorities because of the foundation of majority supremacy on which the Nigerian National Assembly makes legislations.

The ownership of petroleum resources together with the impacts of its exploration have been contentious to indigenous peoples and oil-bearing communities, thus forming the bases for litigations, agitations, kidnappings, drop in oil production quota of Nigeria, and lately award of bogus pipeline surveillance contracts to placate repentant militants and warlords in the Niger Delta. In view of the existing challenges, this paper desires to examine the Petroleum Industry Act 2021 (PIA) in relation to the rights of indigenous peoples in Nigeria and under international law. In order to accomplish the aim of this article, it will further examine the principle of state sovereignty over natural resources (petroleum), in relation to the claims and agitations of indigenous peoples in Nigeria. To put this paper into proper perspective, it now opens by examining the concept of

indigenous peoples.

2. Indigenous People and Ethnic Minorities in Nigeria

The question of indigenous peoples is not new to the United Nations Organization. In construing the principle underlying article 27 of the International Covenant on Civil and Political Rights (ICCPR), F. Capotori, the Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1979 defined minorities as,

> 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.[1]

In examining Capotori's definition of minorities, Geldenhuys and Rossouw[2] submitted that the definition embraces three distinct groups of people to which minority rights could be applicable, namely, national or ethnic minorities, ethno-cultural minorities, and indigenous peoples.[3] This is the most acceptable definition of minorities under the UN framework.

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[1] See F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, (New York, 1991) 568. See a similar definition by J Deschenes, "Proposal Concerning a Definition of the Term 'Minority", UN Doc. E/CN.4/Sub.2/1985/31.

[2] See D Geldenhuys & J Rossouw, *The International Protection of Minority Rights* (2001) 5.

[3] See also General Comment No. 23(1994); *Ballantyne, Davidson and Mclntyre v Canada* Report of the Human Rights Committee, Part II UN Doc. A/48/40 1 November 1993) 91-110.

The idea of indigenous minorities was used by Martin Scheinin[4] who expressed the view in examining the ICCPR and ICESCR that 'Indigenous groups that are in a minority situation, i.e., subject to a greater or lesser degree of dispossession or subordination by another now dominant group, are entitled to protection as minorities under ICCPR Article 27'.[5]

These are peoples who 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.[6]
In attempting to examine the ethnic minorities of the Niger Delta region in the context of indigenous peoples, Y. Omorogbe maintained the view that, some minorities, particularly in the Niger Delta might feel they fall within the definition of tribal people. This could be a plausible interpretation.[7] K. S. Ebeku further complemented the view of Y. Omorogbe when he stated with reference to Omorogbe's views that,

> The above statements suggest that the Niger Delta people

[4] 'What are indigenous peoples?' in Nazila Ghanea & Alexandra Xanthaki (Eds) Minorities, Peoples and Self-Determination: Essays in Honour of Patrick Thornberry, (Martin Nijhoff Publishers 2005) 13.
[5] Ibid. 6.
[6] D. M Nayak & E. Selbin, Decentering international relations (Zed Books Ltd, 2013) 31; Report of the residential Commission on Revenue Allocation (Federal Government Press, 1980) (Vol. 1). Cited in Adams Adoga-Ikong, 2Patience Tah Besong, 'The Right of the Indigenous People over Their Natural Resources: The Nigeria Situation' Predestinasi Volume 14, No. 1, Juni 2021, Hal. 62- 71 ISSN (Print):1978-9351. <file:///C:/Users/BARRISTER/Downloads/21855-53543-2-PB.pdf> accessed 13 June 2023.
[7] Y. Omorogbe, *Oil & Gas Law in Nigeria*, (Malthouse Press Limited 2001) 148.

> were existing nations prior to colonialism, therefore indigenous people of the area … 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.

These peoples have a common history of the usurpation of their land and resources. It is in this perception that Ebeku drew inference to some ethnic groups which are aborigines of their present settlements thus,

> 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'.[8]

The theoretical explanation for the protection of indigenous peoples is founded on the liberal minority rights theory. From the perspective of Will Kymlicka, a political philosopher,

> …the unified frame proposed is that of the liberal state, a single political entity capable of attending to multiple cultures within its bounds by recognizing the need of individuals to forge their choices from within a distinctive cultural orientation. Provided that its citizens all share the

[8] K. S Ebeku, *Oil and the Niger Delta people in international law: resource rights, environmental and equity issues*. (Koln, publishers 2006) 62.

> larger goal of enabling choices that do not harm others' capacity for choice, the unity of the state as the guarantor of such choice can be maintained.[9]

3. Indigenous Peoples' Rights under the United Nations and African Union

By 1989, the United Nations provided for the protection of human and peoples' rights of indigenous peoples under articles 17, 29, and 30 of the Convention in the Rights of the Child which the General Assembly adopted by 1989.[10] In order to reinforce its position, the United Nations further adopted the Convention on Biodiversity in 1992 which provides for the rights of indigenous peoples.[11] The subject further gained recognition under the United Nations Declaration on the Rights of Indigenous Peoples and other global legal instruments.[12]

The position in Africa is no less different as the African Union legal framework also addressed the question of indigenous peoples and national ethnic and linguistic minorities in Africa.[13] The experiences of indigenous peoples in Africa was aptly reflected in their testimonies before the 29th Ordinary Session of the African Commission on Human and Peoples'

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[9] Will Kymlicka, 'Multicultural Citizenship: A Liberal Theory of Minority Rights' Oxford University Press, 1995. Pp. vii, 280, cited in Lawrence Rosen, 'The Right to be Different: Indigenous Peoples and the Quest for a Unified Theory' <https://core.ac.uk/download/pdf/160555031.pdf> accessed 23 September 2024.

[10] G. A Res 44/25, 44 U.N. GAOA Supp. (No. 49) at 165, U.N Doc A/44736 (1998). Article 30 specifically provides for the protection of the rights of indigenous children and same was further protected under sections 17 and 29 of the Treaty.

[11] Section 8 (j) of the United Nations Convention on Biological Biodiversity, Na. 92 7807, 5 June 1992.

[12] UN Doc A/C.3/61/1.18/Rev.1. See also http://www.un.org/News/Press/docs/2007/ga10612.doc.htm (accessed 21 August 2022).

[13] See *Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's work on indigenous peoples in Africa.* Published by the ACHPR and the International Work Group for Indigenous Affairs (2006) 8.

Rights where they reported that they are subjected to dispossession of their lands and the destruction of their means of livelihood by ethnic majorities hiding under the instrumentality of the state. Although the African Union has been reluctant in addressing the question of indigenous peoples and national minorities,[14] it does not have any opposing regime to the global standards of protection of indigenous. Reports of indigenous peoples from the global level as well as the African Union levels reveal similar experiences as the people are subject to expropriation of mineral resources, extreme poverty, pollution, environmental degradation, discrimination, damage to sacred sites, loss of culture and identity, loss of lands and other means of livelihood, and political marginalization by the numerically dominant ethnic groups. Among other treaty monitoring bodies, the Committee on Racial Discrimination has also expressed concerns about the challenges faced by Indigenous Peoples.[15]

4. Government's Justification for Expropriation of Petroleum Resources in Nigeria

The Nigerian government, by legislative fiat enacted in section 44 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) that,

> …the entire property in and control of all minerals, mineral oils, and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zones of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly'.

[14] T Murithi 'The African Union and the Prospect for Minority Protection' in N Ghanea and A Xanthaki (eds) *Minorities, Peoples and Self-Determination* (Martin Nijhoff Publishers 2005) 299.

[15] General Recommendation XXIII 1997 in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies HRI/GEN/Rev.8 8 May 2006. 255.

The Government justifies its ownership of petroleum in situ on the above provision read together with the supremacy clause under section 1[16] of the 1999 Constitution.

Nigeria, amidst other nations has also justified its claim of ownership of oil mineral resource in the lands of the peoples within their territory on the bases of resolutions of multilateral organizations such as the United Nation, African Union, Organization of Petroleum Exporting Countries (OPEC)[17], etc. The United Nations General Assembly Resolution No. 626 (VII), which was adopted in 1952, states with respect to oil mineral resources that "the right of people freely to use and exploit their natural resources is inherent in their sovereignty." Again, the United Nations in 1962 through the General Assembly adopted Resolution 1803 (XVII) (Permanent Sovereignty over Natural Resources), which provides for inter alia:

> the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and of the well-being of the people of the state concerned.

In a more recent move, the General Assembly of the United Nations adopted Resolution No. 3281 (XXIX). Article 2 of the said Resolution states that "every state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over its wealth, natural resources and economic activities".[18]

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[16] States that 'This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria'.

[17] OPEC for instance in its Resolution XVI entitled, 'Declaratory Statement of Petroleum Policy in Member Countries,' recommended that members should take active participation in and control over the oil and gas operations in their countries. This Resolution was obviously targeted at taking over the powers to influence the oil market from multinational oil giants such as Shell BP, Texaco, etc.

[18] Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX), art. 2, U.N. Doc. A/RES/3281 (XXIX) (Dec. 12, 1974).

Although the foregoing resolutions appear to corroborate the above position, it is significant to observe that these United Nations General Assembly Resolutions were reached at an era when the United Nations was taking every possible step to eradicate all forms of colonialism, neocolonialism, foreign domination, and mineral resource exploitation by foreign states.[19] The Resolutions of the United Nations must be contextualized in the mischief of the era which they were designed to address. This view has also got the approval of Rhuks Ako, who advanced same to contradict the approval of Omorogbe and Enemola that states possess ownership rights over oil mineral resources on the grounds of permanent sovereignty. Ako argued that,

> ownership and control of natural resources under the Resolution on Permanent Sovereignty over Natural Resources is a provision that guarantees a Nation's right to exclusive control over its natural resources against another State and not one that deals with intra-national ownership and control interests.[20]

To Yemi Oke, 'The concept of permanent sovereignty over natural wealth and resources is intended to unjustly deprive the resources bearing communities of the means of livelihood'.[21] The writer added that oil bearing communities rightly believe that natural resources found thereat belong to them and full benefit therefrom ought to be deployed for their communal

[19] The apartheid regime in the South Africa, illegal foreign mining in other parts of the continents were of grave concern to the United Nations at the time.
[20] *Resource Control or Revenue Allocation: The Path to Sustainable Peace in Nigeria's Oil-Producing Communities*, Paper Presented at the Nigerian Society of International Law 35th Annual Conference 4 (June 2005).
[21] Yemi Oke, *Nigerian Energy Resources Law and Practices: Oil and Gas Law (Practice, Cases & Theories)* (Princeton & Associates Publishing Co. Ltd, 2019)424; U. Udok & E.B. Akpan, 'Gas Flaring in Nigeria: Problems and Prospects (Global Journal of Politics and Law Research, European Centre for Research, Training and Development, U.K) March, 2017. p 20.

development and not to be carted away to a faraway national capital for its development and dissipation through sharing across the nation.

Therefore, the UN General Assembly Resolutions on sovereignty of states over oil mineral resource are not good grounds for states to expropriate private and communal oil mineral resources and deny these people whose ownership predates the state, their resources, the very essence of their existence. Also significant is the fact as noted by Ekhator Eghosa Osa, that the provisions of Constitution and the Petroleum Industry Act vesting of ownership and control of oil mineral resources on the government of the Federal Republic of Nigeria have done so to the detriment of the state government, local government, communities, associations and private individual land owners wherein these minerals are located.[22]

The Nigerian government again justified its nationalization of oil mineral resources on the basis of general public good.[23] However, the position of the government has been criticized as being unjust and inequitable. For Itse Sagay,

> Regarding the danger of private ownership of oil creating enormous wealth for a few people who would then misuse these funds, the question may be asked: Has central ownership and control prevented the emergence of a class of enormously wealthy individuals in Nigeria? Have the proceeds of oil been prudently and patriotically put to use? Regarding the country's extra sales of crude oil during the Gulf War alone, the Okigbo Panel noted that some US$ 12.4 billion is yet to be properly accounted for.

[22] Ekhator, Eghosa Osa (2016) "Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation," Annual Survey of International & Comparative Law: Vol. 21: Iss. 1, Article 6. Available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol21/iss1/6> Accessed 22 September 2024.
[23] See Wilson Akpan, *Oil, People and the Environment: Understanding Land-Related Controversies in Nigeria's Oil Region*, (2010), 5.

In view of the foregoing arguments, it is our view that the ownership theory based on the United Nations resolutions of sovereignty of states over natural resources in their territory is not a good basis to justify the state expropriation of oil mineral resources from ethnic and indigenous minorities in Nigeria.

5. Indigenous Peoples and Vesting of Petroleum under the Petroleum Industry Act 2021

The question of indigenous peoples from the perspective of the right to ownership and control of mineral resources has been a topical issue in Nigeria. In identifying the question, Nayak and Selbin stated that,

> 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.[24]

The Petroleum Industry Act 2021 vests ownership and control of petroleum on the Government of the Federal Republic of Nigeria in its opening section thus, 'The property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.'[25] The Minister is empowered under section 310, 211, 317 of the PIA to grant licenses for petroleum exploration, petroleum prospecting, and mining. Section 176 of the PIA gives right of way relating to midstream and downstream oil liquids operations without recourse the affected communities. Government justified its actions by virtue of the Land Use Act 1978 which abrogated all pre-existing radical titles to lands in favour of government thus,

[24] Ibid.
[25] Section 1 PIA

> 1. The governor of each State in the Federation hereby receives ownership of all the land that is part of its territory, subject to this Act's rules. This land shall be held in trust and managed for the use and in conformity with the guidelines of this Act, to the mutual benefit of all Nigerians'.

In listing stakeholders to be consulted in case of any regulation affecting lands and mineral exploration, section 216 (2) of the PIA clearly excludes indigenous communities who are host to the petroleum companies. Currently, the government has the authority to seize land and community settlements for whatever reason it deems to be in the "national interest."[26] This Act flagrantly violates the rights to land and the right of access to land. It is against the people's right to have their traditional land tenure system recognized and unhindered by other state legislation. Article 8(2) of the 2007-approved United Nations Declaration on the Rights of Indigenous People imposed obligations on nations,

> States must set up efficient procedures for the avoidance and treatment of:
> (a) Committing any act that deprives them of their integrity as distinctive peoples, their cultural values, or their ethnic identities.
> (b) Anything that has the intent to take their lands, territories, or resources away or has the same impact;
> (c) Any forced population transfer that violates or jeopardizes any of their rights is prohibited ….

The government's actions have a detrimental effect on the rights to life and dignity of indigenous peoples. The right to control traditional areas is defined as a property right in ILO Convention 169. According to Article 14

[26] F Onuora 'Poverty, pipeline explosions and vandalism, and human security: Managing disasters while reducing poverty in Nigeria, 16 no. 2 African Security Journal, 2007, p. 105.

of the Convention "the rights of the affected peoples to own and occupy the lands they usually occupy must be protected". The rights of indigenous peoples to the natural resources of their ancestral lands are also specifically protected under the Convention's article 15.

For instance, the Inter-American Commission ruled in a significant judgement in 1987 that *Carlos Martinez Riguero v. Nicaragua* that Nicaragua had broken a number of the American Convention's article 21-guaranteed rights to property. The Commission agreed that the government's obligations under international law are not invalidated by the application of domestic law. Article 26(1)(2)(3) of the United Nations Declaration on the Rights of Indigenous People, mandates states to preserve indigenous people's rights over property and also protects same.

1. The lands, territories, and resources that indigenous peoples have historically owned, occupied, or otherwise used or obtained are their property.
2. Indigenous peoples are entitled to the ownership, use, development, and management of all lands, territories, and resources, whether they have come into their possession through traditional ownership, other traditional occupations, or other means.
3. These lands, regions, and resources must get legal acknowledgment and protection from the state. The customs, traditions, and land tenure systems of the indigenous peoples must be respected in this acknowledgement.

6. Institutional Framework for Environmental Justice

Being that the legal framework regulating environmental safety in oil exploration process are weak and ineffective, indigenous inhabitants of oil-bearing communities resorted to exploring various options for environmental safety. One early option available to the people was litigation for pollution by oil exploration activities and the demand for compensation for the loss occasioned by the pollution. This also

incorporated the use of non-statutory options such as common law torts of nuisance,[27] negligence,[28] and the rule in *Ryland v Fletcher*[29] in striving to get justice against multinational oil giants from the Nigerian courts. These options were applied jointly and severally in cases such as *Nwadiaro v Shell Petroleum Development Company, Nigeria Ltd*;[30] *Shell Petroleum Development Company, Nigeria Ltd v Farah*;[31] *Shell Petroleum Development Company, Nigeria Ltd v Isaiah;*[32] *Shell Petroleum Development Company, Nigeria Ltd v Tiebo VII & Others*,[33] and several other cases for which the parties in some instances appealed up to the Supreme Court of Nigeria in the pursuit of justice against multinational oil giants.

Spills from oil exploration constitute harm to farmlands, crops, economic trees, lakes, streams, creeks, fish ponds and even residential premises.

[27] In *Nwadiaro v Shell Petroleum Development Co. Nigeria Ltd*. (1990) 5 N.W.L.R. (Part 150) 322 the Court of Appeal upheld a claim which was founded on nuisance. The plaintiffs had alleged that the defendant's oil operations led to a blockade of their creeks, ponds and lakes. In *Tebite V Nigerian Maritime Trading Co. Ltd*. (1974), a claim for damages arising from nuisance caused by loud and excessive noise as well as emission of noxious fumes from machines operated by the defendant company succeeded.

[28] See *Shell Petroleum Development Company v Ambah* (1999) 3 NWLR (Part 593) 1 and the case of *Elf Nigeria Limited V Opere Sillo* (1994) 6 N.W.L.R. (Part 350) 258 in which the Plaintiff/Respondent's family claimed compensation for loss of fishing rights as a result of the oil operations of the Appellant company. The court held that they were so entitled.

[29] In *Umudge V Shell B.P. Nig Ltd* (1975) 11 S.C. 155, the plaintiff succeeded in establishing a claim based on this rule, when crude oil and other chemicals damaged his fish pond. Also, in *Sam Ikpede V Shell B.P. (Nig) Ltd* (Supra) the plaintiff who suffered damages as a result of the escape of crude oil and other chemicals from pipelines belonging to the defendant's company, relied on the rule and claimed damages. It was held, per OVIE WHISKEY; that it is a non-natural use of land to lay pipes through forests and swamps for the carriage of crude

[30] (1990) 5 N.W.L.R. (Part 150) 322.

[31] (1995) 3 N.W.L.R. (Part 382) 148.

[32] (2001) 11 N.W.L.R. (Part 723) 168.

[33] (2005) 3-4 S.C.

Sometimes as was the situation in the celebrated case of *Elf Nigeria v Sillo*,[34] spills may not necessarily be from crude oil, but mud or silt deposited on adjoining land or stream during initial stages of exploration activities. The consequence of such spillages and mudslides is that large portions of land, particularly farmlands, are left with either little or no economic value or permanently destroyed. In addition, fishing rights or access to same are equally destroyed, either partially or permanently as rivers are left polluted or rendered stagnant.

For aboriginal inhabitants of these areas whose way of life depends on the environment, it has become one huge case of environmental nightmare.[35] Associated gas is flared by oil companies operating in oil-bearing communities in Nigeria. Gas flaring occurs when oil is pumped out of the ground and the gas produced is separated and, as is the case in Nigeria, most of this gas is burnt as waste in massive flares.[36] Thus, in the process of refining the mineral oil, the natural gas, otherwise known as associated gas is removed from the crude.[37] Gas flaring is condoned by the Nigerian Government through its weak legislative framework on the subject and the lack of political will to stop gas flaring like the case of oil exploration-related pollution in our villages. Sadly, this brings to mind the government's use of the 'race to the bottom theory'.

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[34] (1994) 6 N.W.L.R. (Part 350) 258.

[35] Gerald M. Nwagbogu, Lecture on Oil and Gas Law, National Open University, Nigeria, <file:///C:/Users/BARRISTER/Desktop/LAW%20412%20OIL%20AND%20GAS%20II.pdf> accessed 12 July 2021.

[36] See Amnesty Int'l, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta, 42 (2009), <http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf>. 18.

[37] See Michiko Ishisone, Gas Flaring in the Niger Delta: The Potential Benefits of Its Reduction on the Local Economy and Environment, (2004), http://nature.berkeley.edu/classes/es196/ projects/2004final/Ishone.pdf accessed 12th August, 2022.

7. **Race to The Bottom' Theory**.

The 'race to the bottom' theory is said to be in operation when "a country lowers its standards in order to gain competitive advantage over a foreign exporter".[38] The 'race to the bottom' syndrome also occurs when a developing country (as is often the case in Africa) intentionally adopts a weak regulatory regime in controlling foreign direct investment or the activities of multinational oil corporations, thereby permitting the continuation of poor labour standards in the country on grounds of national interest, amongst other considerations. Considering the regulations and policies of the Nigerian government in relation to the oil and gas sector, it is correct to assert that Nigeria exemplifies a country that has adopted the 'race to the bottom' theory to attract Foreign Direct Investment, in the sector. It has been contended in the case of Nigeria that by having a weak regulatory regime in the oil and gas sector, the government is attracting foreign direct investment through the instrumentality of the foreign oil multinational corporations (MNCs) that operate in the sector. This is detrimental to indigenous peoples as well as tribal peoples in whose land petroleum is found.

Gas flaring constitutes real and inherent threat to the environment and human lives of inhabitants of indigenous oil-bearing communities in the Niger Delta. When gas is flared, it emits a combination of benzene and other toxic substances that are harmful to the human health and the environment. Gas flaring also causes acid rain, which results in lakes, rivers and streams being acidified. It also strongly damages the vegetation.

[38] See Access to Justice: Human Rights Abuse involving Corporations in Nigeria, International Commission of Jurists, 1-3 (2012), http://documents.icj.org/Nigeria.pdf (arguing that due to successive governments' economic policies in Nigeria which promoted FDI by foreign MNCs has led to the permissive nature of the oil and gas industry in Nigeria where some MNCs commit human rights abuse and environmental abuses during the course of their operations) [hereinafter International Commission of Jurists]. Also see MUTHUCUMARASWAMY SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT 53-55 (Cambridge Univ. Press 3d ed. 2010).

The consequential impacts of oil exploration activities on indigenous peoples as seen in the Ogoni situation and other aboriginal inhabitants of the Niger Delta area include loss of means of livelihood, loss of future earnings, poverty, sicknesses, deaths, loss of spiritual interconnectedness with deities, ethnocide,[39] psychological trauma of continuous feeling of neglect and dehumanization, feeling of resentment, etc.

8. The Petroleum Industry Act and some Lingering Questions

In line with the recent innovations in the oil and gas sector in Nigeria, the oil and gas industry is now dominantly regulated by the Petroleum Industry Act 2021 (PIA) which is the principal legislation in the oil and gas sector in Nigeria. The PIA was signed by President Mohammadu Buhari on 16th September, 2021. The opening section of the PIA reproduces the age-long problem of mineral resource ownership as it states that,

> The property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.[40]

On the whole, the PIA presumably 'seeks to provide Legal, Governance, Regulatory and Fiscal framework for the Nigerian Petroleum Industry and Development of Host communities".[41] Prio to 2021 when the PIA became

[39] Article 3 of the U.N Declaration on the Rights of Indigenous Peoples defines ethnocide as, 'any action which the aim or effect of depriving (indigenous peoples) of their integrity as distinct peoples… of dispossessing them of their lands, territories or resources'. See Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Ea/CN.4/Sub.2/1993, Annex 1, draft Declaration as agreed upon by members of the Working Group at its Eleventh Session.
[40] Section 1 PIA.
[41] *Oil and Gas Laws Compendium: Petroleum Industry Act,* (City Way Publications, 2021) iii.

effective, there had been the Nigerian Constitution,[42] Petroleum Act,[43] Petroleum Profit Tax Act,[44] Deep Offshore and Inland Basin Production Sharing Contracts Act,[45] Nigerian National Petroleum Corporation Act,[46] Environmental Impact Assessment Act (EIAA),[47] Nigerian Oil and Gas Industry Content Development Act,[48] National Oil Spill Detection and Response Agency (Establishment) Act,[49] the Land Use Act[50] which in the view of Fekumo, became a threat to ownership of land by individuals, communities, and families[51] and other legislation governing and regulating the oil & gas sector in Nigeria. These legislations put together, have thus become the bases upon which the oil mineral expropriation and the environmentally unfriendly exploration practices are carried out. The existing oil mineral exploration practices have given rise to environmental degradation, inter-communal conflicts, pollution, poverty, land expropriation, forced displacement, weak regulatory regime, violent agitations, and all the vices that characterize the Nigerian oil and gas

[42] Section 44(3) thereof.
[43] Abrogated by section 311 (1)(2) of PIA upon termination and expiration of existing oil prospecting licenses and oil mining leases.
[44] Now repealed by section 92 PIA upon completion of the conversion process.
[45] This Act has also been repealed under section 310 (1) (h), PIA after completion of the conversion process under section 92 of the PIA.
[46] 1977 No. 33 Cap N123, LFN (as amended). Now abolished under sections 53(3) and 310 of PIA.
[47] 2004, Cap E 12, LFN.
[48] Of 2010.
[49] The NOSDRA was first established as an agency under the Federal Ministry of Environment and the NOSCP was approved by the Federal Executive Council of the Federal Government.
[50] Cap 202, LFN.
[51] J. F. Fekumo, *Principles of Nigerian Customary Land Law*, (F & F Publishers, 2002) 51.

industry. Researchers such as Emeribe[52], Allen[53], and Ibaba[54] have demonstrated from their works that there is a symbolic relationship between man and his natural environment. These writers further showed that the land, water, air and other components of the natural environment can become adversely affected when they are not properly and systematically managed.

Assuming that the laws which existed in the oil and gas sector before 2021 failed to yield the desired result in relation to wellbeing of indigenous peoples of the Niger Delta in Nigeria, does the enactment of the PIA bring about the desired changes for the indigenous inhabitants of environments where oil exploration activities take place among the Ogoni people of the Niger Delta? Has the Petroleum Industry Act, by its expropriatory provision, not aggravated the already tensed situation of the Niger Delta which is like a time bomb waiting to explode? Has the introduction of the Petroleum Industry Act 2021 brought the solution to the devastating impact of oil and gas exploration to indigenous peoples on whose lands oil and gas exploration are carried out? Will the introduction of the Host Communities Development Trust Funds under Chapter 3 of the PIA[55] addressed the age-long problems of economic rape on the peoples? What affirmative action does the Act introduce to address the problems of underdevelopment and extreme poverty of indigenous communities caused by incidents of oil and gas exploration in the Niger Delta region of Nigeria? These questions

[52] 'Environmental Management and protection in Budgeting and Planning in Nigeria: Issues, Problems and Strategies in National Development', in Aja, A.A. and Emeribe A.C (eds) *Policy and Contending Issues in Nigeria National Development Strategy* (2000, John Jacobs Classic Publishers Ltd, 208).
[53] *Implementation of Oil-Related Environmental Policy in Nigeria: Government Inertia and Conflict in the Niger Delta*, being a PhD Dissertation submitted to the School of Politics, (University of Kwazulu-Natal Piertetmaritzburg, Republic of South Africa, 1-18)
[54] *The Environment and Sustainable Development in the Niger Delta: The Bayelsa State Experience*, being a PhD Dissertation submitted to the Department of Political/Administrative Studies, (Faculty of Social Science, Uniport, Port Harcourt 1-5)
[55] Ss 234-257 of the PIA.

deserve further attention for proper inquiry into this subject which forms the bases for further researches.

9. Conclusion

On the whole, this paper examined the ideas of indigenous peoples in relation to relevant provisions of the Petroleum Industry Act 2021. Besides examining national enactments on the subject, the paper also considered the nation's reliance on principles of international law as justifications for expropriating lands and petroleum resources which are fundamental to the traditions and livelihoods of the Ogonis and other indigenous peoples in the Niger Delta region of Nigeria. It considered the United Nations principle of state sovereignty over natural resource and the Nigerian Constitution as inappropriate justifications for Government's ownership of the petroleum in Nigeria. The paper considers the rights of indigenous peoples under international law and how these rights were implicated by the PIA. It finds the Nigerian Government in breach of its domestic and international legal obligations on the subject. It also finds the Nigerian Government in breach of the rights of the Ogoni and other indigenous peoples in the Niger Delta region of Nigeria. It therefore proposes the need for amendment of the existing laws to conform with the domanial cum private ownership theory which was applied in pre-independent era and agreed upon during the constitutional conferences which pre-dated the declaration of Nigeria's independence in 1960.