INDIGENOUS PEOPLES RIGHTS UNDER INTERNATIONAL LAW AND THE LEGAL IMPEDIMENTS TO THEIR FULL REALISATION IN NIGERIA

Ibe Okegbe Ifeakandu, PhD♣
Ochem Emeka Charles, PhD+

Abstract

The international legal regime concerning the rights and status of indigenous peoples arose in reaction to the rigorous efforts and requests of indigenous groups concerning the existence and the flourishing of their distinctive values. Presently, its major achievement is the 2007 UN Declaration on the Rights of Indigenous Peoples, now enjoying virtually universal support. The paper examined selected decisions of the United Nations human rights treaty-based monitoring bodies The methodology is basically doctrinal, it uses case study methods and it is comparative in its approach to some selected jurisdictions, the paper highlighted the legal framework relating to the enjoyment of rights by indigenous communities across the world, particularly in Nigeria; it

♣ Associate Professor and Deputy Head, PG School, Nigerian Institute of Advanced Legal Studies, Supreme Court Complex, Abuja, FCT, Nigeria. Email: ibybenji@gmail.com; i.ifeakandu@nials.edu.ng

+ Associate Professor, College of Law, Igbinedion University, Okada, Edo State Nigeria and Sub-Dean School of Post Graduate Studies and Research. Emailochem.charles@iuokada.edu.ng, ochemistry2006@gmail.com

emphasizes essentially the legal impediments to the realization of the rights emphasized in the Declaration, including communal rights to self-determination, among others; and it assesses its content within extant laws in Nigeria and Kenya.. It was recommended among other things that Nigeria should embark on constitutional reform by departing from the previous dualist approach to international law and international treaties. This will be achieved by amending section 12(1) of the constitution to make all international human rights treaties signed and ratified by Nigeria part of its laws, without further domestication before they will be applicable.

Keywords: Indigenous Peoples, Indigenous Peoples Rights, International Law, Human Rights, Nigeria, UN Declaration

1. Introduction

Indigenous people are distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced. Under international law, indigenous people have the right to maintain and develop their political, economic and social system or institutions, to be secured in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. By the United Nations General Assembly Resolution of 2007[1], the General Assembly guided by the purpose and principles of the charter of the United Nations, and

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[1] Resolution 107 of 13th September 2007, *United Nations Declaration on the Rights of Indigenous People*. The declaration contains 46 Articles

good faith and in fulfilment of the obligations assumed by states in accordance with the charter affirmed that indigenous people are equal to all other people and also recognised that all people contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind and also that in exercising these rights, indigenous people should be free from discrimination of any kind. However, Indigenous people suffer from several kinds of injustices as a result of their low numerical numbers, political marginalization and low economic power. According to Barnabas[2], it is because of their vulnerability to marginalization and discrimination by other dominant groups and the state that the international community has chosen the instrumentality of international human right law to make them direct subject of International Law. He stated further,[3] that International Law is not easily enforceable within the domestic jurisdiction of some states, making it difficult for subject of International Law to enforce their rights thereunder in the domestic jurisdiction of states where they live. The term “indigenous people” has been used as a generic term to describe a certain category of people over a long period of time.[4] According to United Nations (UN), there is no official definition of “indigenous people” developed by the organization (as the world body) due to the

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[2] Barnabas Sylvanus, ‘The Role of International Law in Protecting Land Rights of Indigenous Peoples in Nigeria and Kenya: A Comparative Perspective’ in Liat Klain –Gabbay (ed*) Indigenous, Aboriginal, Fugitive and Ethinic Groups Around The Globe* https//www.intechhopen.com/chapters/ 67491 accessed on 24/0/2022.

[3] Ibid

[4] Note for example that indigenous people are described by other nomenclature. In Alaska for example, they are called, “Alaska Natives”, aboriginals used in Canada Constitution while in Russia, legislation describe them based on their population size. See

diversity of persons in the category. But the International Labour Organization's (ILO)[5] Convention (No. 169) concerning Indigenous and Tribal Peoples states;

> This Convention applies to […] people 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 legal status, retain some or all of their own social, economic, cultural and political institutions.[6]

However, for a better understanding of issues contained in this definition/description, the UN Permanent Forum on Indigenous Issues[7] highlighted characteristics that qualify people as indigenous to include the following:, Self-identification as indigenous peoples at the individual level and accepted by the community as member. Historical continuity with pre-colonial and/or pre-settler societies, Strong link to territories and surrounding natural resources, Distinct social, economic or political systems , Distinct language, culture

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5 The ILO is the only tripartite UN agency since 1919, the ILO brings together governments, employers and workers of 178 member states to set labour standards, develop policies and devise programmes promoting decent work for all women and men. For more information on ILO, see <www.ilo.org> 12 July 2021

6 See Article 1 (1)(b) of International Labour Organisation's Convention concerning Indigenous and Tribal Peoples (ILO No. 169)

7 UN Permanent Forum on Indigenous Issues, "Who are indigenous peoples" <www.un.org> 10 July 2021

and beliefs, Form non-dominant groups of society and finally Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples.

Generally, the world has an estimated 370 million indigenous people[8] found in over 70 countries;[9] they exhibit distinctive characteristics like practicing distinctive customs, maintaining socio-cultural as well as economic and political features that are different from those of the dominant societies in which they live. Whether this is good or bad for them is debatable but the ILO observed:

> In many cases, the notion of being termed "indigenous" has negative connotations and some people may choose not to reveal or define their origin. Others must respect such choices, while at the same time working against the discrimination of indigenous peoples.[10]

Although this may not be empirically true, it is a fact that countless migrations of communities have taken place historically giving rise to groups of persons identifying themselves as "indigenous".[11] It

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[8] UNESCO, "UN policies on indigenous peoples" <https://en.unesco.org/ indigenous-peoples/un-policies> 12 July 2021

[9] They are said to spread across the entire globe-the descendants of those who inhabited a country when the people of different culture or ethnic origins arrived with the later arrivals becoming dominant through settlement, conquest and occupation etc. They are found in the Americas, Northern Europe, New Zealand, and Australia etc. Nigeria alone is reported to have about 371 indigenous tribes, with millions of people. UNESCO, Ibid

[10] See ILO supra, note 2

[11] See Siefried Wiessner, "The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges" (2011) *European Journal of International Law,* vol. 22, Issue 1, PP. 121-140

appears however, that most controversial and dominant human rights issues that pertains to indigenous people is the challenges they face regarding dispossession of their ancestral land which they often depend upon for their survival recent incident in kenya as indicated the Ogiek peoples of Kenya has shown the need to protect land rights of the indigenous may quite often come into conflict with the interest of the state , particularly in the contest of the powers of the state to manage and control land through national laws. . the essay discussed the significance of international law and the African regional human rights law in protecting land right of the indigenous peoples rights in particular with particular attention with Nigeria and Kenya particularly the decision of the African Commission on Human and People Rights, to demonstrate the relevance of international law in protecting land rights of indigenous people as encapsulated in the *Ogiek case* in Kenya. The paper will be divided into 5 Sections. Section 1, will be introductory. In section 2, the highlights of indigenous people rights in Nigeria and across the world will form the focal point. In section 3, attempt will be made to discussed the legal impediments to the full enjoyment of indigenous peoples rights in Nigeria. Since the Kenya case of Ogiek is a landmark judgment by the African court of people and human right, chapter four will deal with the Ogiek case, this is perhaps the first case on the rights of the indigenous peoples to be decided by a regional court in Africa, the case of *The African Commission on Human and Peoples Rights V The Republic of Kenya*.[12] While section 5 which incidentally the last section will conclude the essay and make some recommendations.

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[12] Hereinafter referred to as the *Ogiek Case*

2. Highlights of Indigenous Peoples Rights in Nigeria and across the World

The 1989 ILO Convention No 169 and 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[13]represents international legal response to the aspirations of indigenous people across the world. For example, Convention 169 embraced rights of groups, especially with respect to resources, guarantees indigenous peoples' control over their legal status, internal structures, and environment, and rights to ownership. The UNDRIP is a global policy seeking to promote cultural diversity, in terms of the protection of threatened heritage, language, rituals, land, etc. significantly, it represents a redefining and adjustment of traditional human rights concepts to consolidate this landmark "response". In that regard, property, which was hitherto, an individual right assumed the status of "cultural heritage"[14] and held in collective stewardship for future generations and thereby emphasizing the rights under UNDRIP as collective rights as against individual rights. It further emphasize the need for states to: (a) "Comply with and effectively implement all their obligations to indigenous peoples under international instruments, in particular

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[13] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly by resolution A/RES/61/295, on Thursday, 13 September 2007, by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine. The document is available at <www.un.org/.../desa/.../declaration-on-the-rights-of-indigenous-peoples.html> 16 July 2021

[14] See UNESCO, "UN Declaration on the Rights of Indigenous People (UNDRIP) relating to cultural and linguistic diversity" at <www.unesco.org/new/en/indigenous-peoples/cultural-and-linguistic-diversity/undrip-clt/> 18 July 2021

those related to human rights, in consultation and cooperation with the peoples concerned",[15] (b) Recognize, respect and promote the inherent rights of indigenous peoples which derive from their political, economic, social structures, cultures, spiritual traditions, histories and philosophies, especially their rights to lands, territories and resources; (c) acknowledge provisions of the Charter of the United Nations,[16] the International Covenant on Economic, Social and Cultural Rights (ICESCR)[17]and International Covenant on Civil and Political Rights (ICCPR)[18] as well as the Vienna Declaration and Programme of Action[19] in relation to rights

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15 See Preamble to the UN Declaration on the Rights of Indigenous Peoples

16 The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter. More information at <www.un.org/en/sections/un-charter/un-charter-full-text/> 11 July 2021

17 International Covenant on Economic, Social and Cultural Rights, was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966. It came into force January 3, 1976, in accordance with article 27

18 The Covenant was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. It entered into force on March 23, 1976, in accordance with Article 49. It is available online at, <www2.ohchr.org/english/law/ccpr.htm> 17 July 2021

19 See the Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, June 14-25, 1993; UN Doc. A/Conf. 157/23 of July 12, 1993, paragraphs 1 and 5; and also Harare Declaration on Human Rights, being the Concluding Statement of the Judicial Colloquium on the Domestic Application of International Human Rights Norms held in Harare, Zimbabwe, April 19-22, 1989. See also, Ikeller, L. M; The Indivisibility of Economic and Political Rights (2001), Human Rights and Human Welfare, Vol. 1, No. 3, p. 13

enjoyment by indigenous people ; and (d) affirm the right to self-determination of all peoples, to enable them to freely determine their political status and freely pursue their economic, social and cultural development.[20]

Generally, the UNDRIP highlights a myriad of rights, which are both encompassing and inclusive. However, actualizing these rights by indigenous people remains a challenge across the world due to a number of factors, including the nature of the Declaration as a non-binding document; and other legal impediments. However, although not legally binding per se, the declaration may become binding if conforming state practice and *opinion juris* backs its provisions to the extent that it reflects existing customary international law. At this point, it would have some subtle binding effect. Some legal impediments are discussed below with particular reference to Nigeria. Nigeria is chosen as a focus due to the fact that what obtains in Nigeria represents a number of African communities.

3. Legal Impediments to the Full Enjoyment of Indigenous Peoples Rights in Nigeria

First it should be noted that citizens are subject to the domestic laws of their country of domicile; and depending on whether the country's legal system is a monist or dualist,[21] provisions of an

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[20] Preamble to UNDRIP, supra, note 11

[21] *Monism* and *dualism* are concepts used to describe two distinct models of how international law interacts with national law. In the former international law provisions, when acceded to, automatically forms part of national law whereas in the latter, international legal provisions must necessarily undergo a system of integration to become applicable. See Antonio Cassese, *International Law in a Divided World* (1992: Clarendon Press: Oxford), pp. 14-16

international treaty may or may not be effective; and as discussed above, where an instrument is a mere Declaration, it can only depend on the goodwill of the state/country to implement.

With specific reference to legal impediments, Nigeria is a dualist state in which case, a treaty must necessarily undergo a process of domestication for it to be applicable.[22] Notably, although the Nigerian constitution as well as other ancillary human rights laws contains provisions embedded in the ICCPR and ICESCR, these two Covenants (recognized in the Declaration) are not enforceable by virtue of their non-domestication. This in itself is a serious challenge. Beyond this, there are several extant legal provisions that pose serious threat to the realization of indigenous peoples rights in Nigeria.

Regarding Articles 3 and 4 on the principle of self-determination for example, Nigeria's position has always been that the 371 indigenous tribes in Nigeria "exercised their right of self-determination on Oct. 1, 1960 when the Federation of Nigeria was granted independence by the colonial power, Great Britain". This is expressed in sections 1 (2) and 2 (1) of the Constitution of the Federal Republic of Nigeria 1999 (CFRN),[23] as amended, which seeks to "protect the political unity and territorial integrity"[24] of the

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[22] See section 12 of CFRN, as amended.

[23] Section 1 (2) provides: "The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution". Section 2 (1) states: Nigeria shall be one indissoluble Sovereign State to be known by the name of the Federal Republic of Nigeria

[24] See African Commission on Human and Peoples' Rights, *United Nations Declaration on the Rights of Indigenous Peoples: Advisory Opinion of the*

country. The standpoint of the country that "no new rights for self-determination are envisaged"[25] are vigorously defended against indigenous peoples in Nigeria when agitations by the indigenous people of Biafra (IPOB)[26]led to the Nigeria-Biafra civil war with Biafra seeking autonomy/secession;[27]and also the Niger-Delta peoples struggles which led to the Adaka Boro uprising.[28] Others include the recent activism for resource-control for which, Ken Saro-Wiwa an Ogoni activist and environmentalist was killed.[29] Very recently, members of IPOB who attempted to declare Biafra a Republic had the group branded a terrorist group by the Nigerian government and military personnel dispatched to Abia State to keep the peace.[30]

African Commission on Human and People's Rights, (2010)adopted by the African Commission on Human and Peoples' Rightsat its 41st Ordinary Session held in May 2007 in Accra. See especially pp. 27-30

[25] M. Barreli, "The Role of Soft International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous People" (2009) *International and Comparative Law Quarterly* vol. 58, Issue 4, pp. 957-983

[26] Lasse Heerten and A. Dirk Moses, "The Nigeria-Biafra War 1967-1970: Postcolonial Conflict and the Question of Genocide" (2014) *Journal of Genocide Research* vol. 16, Issue 2-3

[27] World Indigenous Population Day (Protecting Nigeria's Indigenous Population), Opinion, published in Punch Newspaper, 9 August 2016, <www.punchng.com> 10 July 2021

[28] See This Day, Boro: "A Rebel's Unfinished Business", 31 May 2017 <www.thisdaylive.com> 10 July 2021

[29] See Misty L. Bastian, "Buried Beneath Six Feet of Crude Oil: State Sponsored Death and the Absent Body of Ken Saro-Wiwa"; in Craig W. McLuckie and Aubrey McPhail, *Ken Saro-Wiwa: Writer and Political Activist* (1999: Lynne Rienner Publishers, London), pp. 127-152

[30] See S. K. Usman, "Operation Egwu Eke II (Python Dance) Commences in South East", Nigerian Television Authority (NTA) News, 15 September 2017 <www.nta.ng/news/20170915-operation-egwu-eke-ii-python-dance-commences-in-south-east/> 8 July 2021

The principle of self-determination is in itself, unclear, contentious and shrouded in controversy, especially in relation to its scope and character. For example, while some scholars[31] contend that the right accrues to colonies or areas subject to foreign control only- "external self-determination",[32] others believe that the right to self-determination belongs to all peoples within the country (minorities and indigenous people) -"internal self-determination".[33] Further confusion relate to whether a group of persons have the right to secede or simply select/elect a representative government through a legitimate political or electoral process.[34] Notwithstanding these contentions, the majority adopted the external self-determination standpoint in the Opinion of the ICJ in the East Timor case.[35] Where the ICJ held that in any event, that it has taken note in the judgment that, for the two parties, the territory of East Timor remains a non –self governing territory and its people has the right to self determination.

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31 See Sam Blay, "Self-Determination: A Reassessment in the Post Communist Era"(1994) Denv. J. Int'l L. & Pol'y 275; Gregory H. Fox, "Self-Determination in the Post Cold War Era: A New International Focus?"(1995) 16 Mich. J. Int'l L. 733

32 These scholars argue that external self determination allot to people subject to colonization or foreign occupation the right to govern their own affairs free from outside interference. See for example, Hurst Hannum, Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights 49 (1990).

33 This wider definition of the principle tends to confer minorities and indigenous people with more control over their own destinies. See generally, Edward A. Laing, The Norm of Self-Determination, 1941-1991, 22 Cal. W. Int'l L.J. 209, 248 (1992).

34 Catharine J. Iorns, Indigenous Peoples and Self-Determination: Challenging State Sovereignty, 24 Case W. Res. J. Int'l L. 199, 353 (1993

35 East Timor (Port. v. Austl.), 1995 I.C.J.(holding that the Court could not exercise jurisdiction because in ruling on Portugal's claims, it would have to rule on the lawfulness of Indonesia's conduct in Indonesia's absence)

With regard to UNDRIP, Nigeria has stated that "any attempt aimed at the particular or total disruption of the national unity and territorial integrity of a country is incompatible with the purpose and principles of the Charter of the UN to the effect that “all states shall observe faithfully and strictly the provisions of the Charter of the UN, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity," and thereby invoking the principle of sovereignty.[36]

Article 5of UNDRIP [37]also contradicts the 1999 Constitution of Nigeria. The entire legal provisions in Nigeria provides for political, legal, social and cultural governance, vesting the modus operandi in the government under Chapter II of CFRN, and the Electoral Act,[38] amongst others. This contention also applies to Article 19, which can be interpreted to confer the power of veto over the laws of a democratic legislature on a sub-national group. Section 1(1) of CFRN confers supremacy on the Constitution, which gives power to the Legislature to make laws for the “peace,

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[36] The principle of sovereignty means the possession supreme political authority by an independent state. Generally, it connotes the ultimate control of the constitution and frame of government and its administration, etc. by an independent state. See Black’s Law Dictionary, 9th edition, p. 1524

[37] This Article provides: “indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State”.

[38] See for example the Electoral Act 2010. The Act establishes the Independent Electoral Commission (INEC) and mandates it to “regulate the conduct of elections at federal, state and area councils elections.” See Part 1 (sections 1-7) of the Act.

order and good government of Nigeria…" in section 4. To that extent, no individuals or groups can veto any law validly enacted by the Legislature. On the basis of this, Nigeria alongside other African countries expressed reservations. Formulating issues around four major themes-self-determination, definition of indigenous people, right of indigenous people to land and the right to establish political and economic institutions,[39] Nigeria and other African countries noted that the rights contained in UNDRIP are un-implementable, noting-in relation to Article 9, that the current borders of African countries, including Nigeria were "artificially drawn by the colonial powers"[40] so that implementing this provision becomes difficult since the borders cut across or divided members of the same tribal communities.[41] Therefore there is real danger that this clause can be interpreted to mean that tribal communities can choose to belong to one country, whilst they are inhabitants of another". [42]

Further, challenges impeding the actualization of rights in Article 26[43] are endemic and severe. In accordance with the CFRN, control

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[39] See *supra*, note 20, pp. 28-36

[40] Ibid

[41] Ibid

[42] Ibid

[43] This Article provides: "(1) Indigenous peoples have the right to the lands, territories and resources, which they have traditionally owned, occupied or other- wise used or acquired; (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by rea- son of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired; (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned".

over land and natural resources is vested in the State for the common good of all. This is also true of a number of other laws, including section 1 of the Land Use Act 1978, and the 2007 Nigerian Minerals and Mining Act.[44]

In terms of Article 37,[45] the right of recognition, observance, and enforcement of treaties and agreements is the responsibility of the State as the CFRN vests the National Assembly with the power to enter into treaties and agreements under section 12. For the most part, it is practically impossible for indigenous groups to realise certain rights highlighted in UNDRIP and the ILO Convention No. 169 or even to assert these rights peacefully as a result of the numerous legal provisions that serve as inhibitions. Additionally, even where for example, conditions for internal self determination as stipulated in Article 1 of the Montevideo Convention are met, other legal impediments would pose severe challenges to indigenous peoples' rights enjoyment.

4. The Kenya's *Ogiek case*

Although Ogiek's case, (*The African Commission on Human and Peoples Rights v The Republic of Kenya*) is not a Nigerian case, it presents important lessons for countries in Africa, especially as the

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[44] See sections 1 (1) and 3 (1) which, vests ownership of mineral resources in the state; and expressly precludes the granting of mineral title to include ownership of mineral resource (s)

[45] "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. (2) Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive agreements".

case received a landmark judgment from the African Court of Human and Peoples Rights. This case is of fundamental importance for indigenous people in Africa, and most importantly, in the context of the continent-wide conflicts existing between communities, mostly generated by pressure over land and resources. The Ogieks are reportedly a remnant of the Mau forest-dwelling and largely marginalised indigenous people of Kenya, who are the victims in the case. Numbering about 30, 000, they have lived in the Rift Valley of Kenya from time immemorial according to the Minority Rights Group International.[46]Despite this, the people continue to suffer a series of arbitrary forced evictions from their familial land by Government, without consultation, and certainly without compensation. Associated with this treatment is the damaging impact on their lifestyle-traditional, religious and cultural. Ditto for their access to their land and the natural resources therein. The ripple effect of their lack of access to their land and resources is the lack of access to health services, education, and justice, among others.

In the specific context of this case, in October 2009, the Kenyan Government, issued a 30-day eviction notice to the Ogiek and other settlers of the Mau Forest, through the Kenya Forestry Service. The notice directed them to leave the forest. Recognising as a continuation of the "historical land injustices already suffered and having failed to resolve these injustices through repeated national litigation and advocacy efforts,"[47] the Ogiek people initiated a case

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[46] <https://minorityrights.org/wp-content/uploads/2017/08/MRG_Brief_Ogiek.pdf> accessed 27 April 2022

[47] Lucy Claridge, Litigation as a Tool for Community Empowerment: The Case of Kenya's Ogiek [2018] *Erasmus Law Review,* 1.

against their Government by submitting a Communication[48] to the African Commission on Human and Peoples' Rights (ACHPR),[49] with the help of the Minority Rights Group International (MRG), Ogiek Peoples' Development Programme and Centre for Minority Rights Development (CEMIRIDE).[50] Upon receiving the Communication, the ACHPR embarked on a fact-finding mission to Kenya. During the mission, the Commission was able to authenticate the allegations contained in the Communication, hence the Commission lodged the case before the African Court on Human and Peoples' Rights.[51]

Some of the issues before the court include:

a) Whether the respondent violated the Ogiek's rights to development under Article 22 of the African Charter by evicting them from their ancestral land in the Mau Forest and by failing to consult or seek their consent in accordance with their development of cultural, social, and economic life.

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[48] CEMIRIDE, *Minority Rights Group International and Ogiek Peoples Development Programme (On Behalf of the Ogiek Community) v Republic of Kenya,* Communication 381/09.

[49] More information on the Commission is available at <https://www.achpr.org/aboutus> accessed 28 April 2022

[50] CEMIRIDE and OPDP are both NGOs registered in Kenya; OPDP works specifically to promote and protect Ogiek culture, land, language, environment and human rights.

[51] This court was established by Article 1 of the Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and Peoples Rights. It is the judicial arm of the African Union and one of the three regional human rights courts. Its primary mandate is to protect the human and peoples' rights in African. See more at <https://www.african-court.org/wpafc/basic-information/> accessed 28 April 2022

b) Whether the Ogieks constitute an indigenous population as was defined by international instruments such as work of the commission through its working group on indigenous populations/communities.

c) Whether the failure of the respondent to recognize the Ogieks as an indigenous community denied them the right to communal ownership of land under Article 14 of the African Charter.

d) Whether the Ogiek's forced eviction imperiled their right to life under Article 4 of the African Charter.

On 26 May2017, the Court delivered its judgment in favour of Ogiek people, for consistent violations and denial of their land rights. The court held that Kenyan government had by its actions, violated of seven separate articles of the African Charter on Human and Peoples' Rights,[52] i.e. articles 1, 2, 8, 14, 17(2) and (3), 21 and 22.

Very significantly, apart from the fact that this is one of the African Court's first cases, it is also the first decision to specifically address questions relating to the rights of indigenous peoples; hence it is momentous for indigenous peoples of Africa as much as it is for the Ogiek people. More importantly, the judgment tips governments across Africa to its responsibility to respect, promote and protect human rights of all persons, including the rights of indigenous peoples.

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[52] Adopted 1 June 1981; it entered into force on 21 October 1981; available at <https://au.int/en/treaties/african-charter-human-and-peoples-rights> accessed 28 April 2022

Furthermore, despite the fact that this case relates to indigenous peoples land rights, it also relates to other rights, arising from the principle of interconnectedness and interrelatedness of rights. Therefore, indigenous peoples of Nigeria can also assert their rights-culture, land, lifestyle, etc.

Another significant aspect of this case is the fact that it is one of the first cases brought originally by nongovernmental organisations (NGOs) to have been referred to the African Court by the African Commission, and the first ever in which judgment was delivered following a hearing of on admissibility and the merits”,[53] and thereby enhanced the jurisprudence of the court. By this, NGOs can work to effectively support indigenous peoples in their quest to assert their rights.

5. Conclusion and Recommendations

It is not in doubt that international law has provided rules and arenas to further the interest of indigenous people. There are declarations passed by the United Nations, which often received widespread support that their principles are deemed part of customary international law and or general principles of law. There are also sets of legal principles through which communities can rely on their struggle for equity and justice. Recent development in international human rights law has moved towards granting individuals and some groups of people fundamental rights against the state. Example, the International Covenant on Civil and Political Rights, (1966), the International Covenants on Economic, Social and Cultural Rights (1966), and The African Charter On Human And Peoples Rights (1981), and recently the decision of the African Court in *Ogiek case*, which asserted that nongovernmental

[53] Lucy Claridge, n. 47.

organisations (NGOs) can refer a case to the African Court by the African Commission, in their quest to assert their rights. These treaties and decision, contained provisions, guaranteeing some measures of rights and benefits for the benefit of indigenous people. Further, it imposes obligations on states to protect these rights in favour of the indigenous people.

The notion of "indigenous people" portrays a group of people as vulnerable groups with a common heritage, needing some form of protection. Arising from this notion is the emergence of an international legal regime targeted at protecting the aspirations articulated by this group- different in more ways than one. Also, the Ogiek case has shown that nongovernmental organisations can refer cases to the African Court to enhance the jurisprudence of the court in effectively supporting indigenous peoples in their quest to assert their rights.

The UDRIP, contains a number of important rights of indigenous people but the realization of these rights in the context of Nigeria's legal regime remains challenging; hence the following recommendations are proffered:
That Rather than engage in defending the state against aspirations of indigenous people to self-determine, Nigeria should establish a policy-oriented regime with a focus on ensuring access to and the maximization of national wealth and resources by all.

The International legal provisions seeking to safeguard the rights of indigenous people made important prescriptions. However, the conventional contrast between individual and collective rights needs to be overcome to ensure the survival of indigenous peoples' rights.

That there have been disagreements because of claims by indigenous peoples with regards to land ownership, control of resources, and self-determination. To properly situate these claims, it is important to relate them to their *raison d'être*, and these *raisons* dealt with appropriately.

That Traditional lands are critical to the survival of the cultural heritage of indigenous peoples; so, the legal status of these properties should reflect this reality. Hence the Land Use Act should be re-evaluated to ensure the preservation of national unity in the long run.

It is also recommended that Nigeria should embark on constitutional reform by departing from the previous dualist approach to international law and international treaties. This will be achieved by amending section 12(1) of the constitution to make all international human right treaties signed and ratified by Nigeria part of the laws of Nigeria without further domestication before it will be applicable, this will easily lead to harmonization of Nigeria's domestic laws with the international human right treaties in order to be in compliance with its international human right obligations.

Finally as was decided in Kenya by the *Ogiek case*, African countries, should take a cue from this landmark case and ensure that where municipal Courts are unwilling to assert the rights of the indigenous, people in their home country, the African court can be ready answer to safeguard the rights of the indigenous people.