THE CONCEPT OF FREE, PRIOR, INFORMED CONSENT AS A MECHANISM FOR THE RIGHT OF VETO: IS THERE A REALISTIC APPEAL FOR RIGHT OF VETO IN THE NIGER DELTA?

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ABSTRACT: *The rights of Indigenous Peoples around the world, especially in resource rich communities have become a centrepiece of both political and legislative policies in the agenda of decision makers, as well as judicial and jurist interpretations. Prominent amongst their rights is the right of veto. The nature of this right as one which enables them to reject any legislation or grant of access to carry out extractive operations in their region makes it a controversial one. The status of the people of the Niger Delta in Nigeria as indigenous peoples who in their struggle for sustainability seek to exercise the Right of Veto is more controversial as they have not been officially declared 'indigenous peoples' even though their characteristics and historical build up may suggest that they are. The case involving the plight of the Niger Delta Peoples is a notorious one. Their relationship with oil companies and the Nigerian government is, in all fairness, a complicated one. It is characterised by environmental agitations and operational disapprovals, which escalates into acute regional violence. Their acclaimed right to veto oil operations has become the subject of recent debates. This paper seeks to ascertain the practicability of this right in the face of adverse national legislations. The approach shall be an analytical study of judicial interpretations on the status of indigenous peoples in jurisdictions such as Australia and Canada as models for the Niger Delta situation. The study shows that until constitutionality is given to their status, the right of veto may only exist in abeyance, even though their struggle cannot be dismissed.*

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LIST OF ABBREVIATIONS

CAR	Council for Aboriginal Reconciliation
FPIC	Free Prior Informed Consent
GDP	Gross Domestic Product
IBA	Impact and Benefit Agreements
ILO	International Labour Organisation
IPCs	International Petroleum Companies
IPs	Indigenous Peoples
MOSOP	Movement for the Survival of Ogoni People
NDPVF	Niger Delta People Volunteer Force
NDR	Niger Delta Region
NGO	Non Governmental Organisation
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WGIP	World Group on Indigenous Peoples

1. INTRODUCTION

> *"...the power to say no is the most important bargaining chip that an Aboriginal group has. If you don't have that fundamental power then the terms and conditions of any agreement you get are likely to be considerably less."*[1]

This assertion gives credence to the agitations of indigenous peoples (IPs) of oil rich communities around the world over certain conceived rights which they seek to exercise. This situation is heightened by their vulnerability to land and air pollution, and displacement by International Petroleum Companies (IPCs). By the 1970s through the 1990s, IPs in jurisdictions like United States, Australia, Canada, and New Zealand experienced a paradigm shift towards recognition of self-determination of the IP by virtue of their ancestry. They are now considered key stakeholders in policy-making surrounding resource management when policy rights are involved; a phenomenon that is significant for global economy[2]. Hence the WGIP sponsored UN Declaration of the Rights of IPs is relevant. IPs are regarded as the **Aboriginals** of resource producing communities, i.e., "first on the land."[3] The UN projects IPs to be 300 to 500 million in over 70 countries around the world with over 5,000 language and cultural variation.[4]

Nevertheless, the case involving the Niger Delta region (NDR) of Nigeria is unique. The NDR is the home of petroleum resources in Nigeria, which is also the 8th largest producer of petroleum in the world. Though it accounts for 10% of Nigeria's GDP, oil extraction from the NDR alone account for 85% of the federal reserves and more than 90% of the country's export earnings since 1975; the 'oil boom' season. This season has categorically witnessed the downturn of the environmental life of the NDR. As a

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[1] McGill Stuart, *Indigenous Resource Rights,* Aboriginal Law Bulletin. http://www.austlii.edu.au/au/journals/AboriginalLB/1986/37.html (Last visited 10 July, 2008)
[2] McHugh, P.G., Aboriginal Societies and the Common Law: A history of sovereignty, Status, and Self-Determination (England: Oxford; Oxford University Press, 2004) generally, pp 317-365
[3] Indigenous Rights, Indigenous wrongs: Risks for the resource sectors. At http://www.eiris.org/files/research%20publications/seeriskindigenouspeoples.pdf
[4] UN Permanent Forum on Indigenous Issues, *Indigenous Peoples, Indigenous Voices,* http://www.un.org/esa/socdev/unpfii/documents/unpfiibrochure_en07.pdf

result, controversies surrounding the relationship among stakeholders of the region, *to wit,* the IPs, the government, IPCs and NGOs are issues relating to land ownership rights, resource control, compensation and self determination. To this end, the issue of their acclaimed right to veto extractive operations in the region is rife. This paper is important as it attempts to first ascertain the status of the Niger Delta communities worthy of them exercising the enormous power of veto as well as ascertain how realistic this power actually is in the Niger Delta arising from their surface right, especially where the Federal Government's constitutional right of ownership and usage of sub surface resources exists. Russel Barsh in 'The World's Indigenous Peoples' classified Indigenous Peoples as "kinship-based, non-industrialized societies that have traditionally relied on hunting, fishing, gathering, herding or gardening for their food, fuel and materials", he goes further to note that "Some survive as "minorities" which are identifiable or self-identified as culturally- distinct groups…It is not always clear whether a particular group is a minority or an indigenous people". This latter assertion typifies the Niger Delta. Until clarity of interests and powers is achieved, IPCs, even after legally obtaining government approval, will remain at the receiving end of public disapproval.

ARGUMENTS

The following arguments resonate in the course of the paper;

(a) The right of veto is hinged on right to native title

(b) Right to native title accords the right to participation in decision making

(c) Right to participation does not necessarily mean right to veto operations

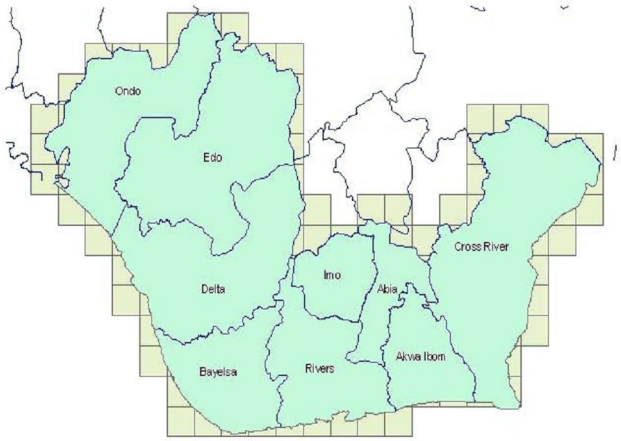
(d) The right to veto is peculiar to different jurisdictions, and so, is not universal

Sequel to this introduction, chapter two gives a historical perspective of the structure of the Niger Delta people as a globally unique group. Chapter three highlights the various recognition and interpretations of the concepts of FPIC and the right of veto using case law, jurisdictions such as Australia and Canada, as well jurists' opinions, and international instruments. Chapter four examines the propriety of the power of veto in the NDR.

2. THE NIGER DELTA COMMUNITY IN NIGERIA: A HISTORICAL PERSPECTIVE

The NDR traverses nine states as shown in fig.1. Notable as Africa's largest delta, it covers an area of about 112,000 sq km and contains the largest mangrove forest in the world (5,400-6,000 km2), consisting of swamp forests, ridges and creeks.[5] Hence, fishing and farming are the major source of livelihood in the villages of the NDR.

Figure 1. The Niger Delta Region



Source: African Development Fund, 2004

[5] Shell People and Environment Report 2004, p. 3 at http://www.shell.com/static/nigeria/downloads/pdfs/2004_rpt.pdf

The population of the NDR is estimated to be about 31 million people with more than 40 ethnic groups and about 250 dialects.[6] Each have their historical identity tied to long established trade and migration as far back as 1444, when Portuguese adventurer, Lancarote d'Freitas, traded in slaves with indigenes of the West African Coast. Upon British colonisation of Nigeria, the NDR was their first region of control by trade in products and slaves with the monarchies of the coasts through the Delta Ports up till the 19th Century prior to independence. The most prominent tribe is the Ijaw nation; basically in all the nine states. Others include, the Ogoni people of Rivers State, which is the most agitated following the execution of Dr. Saro Wiwa, an activist leader of the MOSOP movement, and 14 others in 1994 by the General Abacha military regime on grounds of treason; the Ikwerre and Etche (Rivers State); the Urhobo, Isekiri and Isoko (Delta State), the Efik and Ibibio (Cross Rivers State), and the Akwa Ibom People. The Ijaw leaders still claim that prior to independence, the agreements between their ancestors and their colonial masters never elapsed.[7] There have therefore, been pursuit of geopolitical ambition with attempts at self determination as a separate state by the creation of the **Kaiama Declaration of 1994.**[8] The *Raison d'état* for this clamour has been rooted in their plight as victims of degradation and human rights abuses arising from extractive activities in the region. Where such attempts have failed so far, they seek the right to veto these operations; a position the government seem to reject on the basis of constitutional sanctity. The constitution or any Nigerian legislation has not officially recognised the Niger Delta communities as a community of indigenous people, even though events in the region have over the years, have given them a distinctive status both by the Nigerian

[6] CRS Report for Congress, '*Nigeria: Current Issues'*. Updated January 30, 2008. p. 15
[7] Ike, O., *et al.,* Where Vultures feast: Shell, Human Rights, And Oil in the Niger Delta(London: Verso, 2003, 2nd ed.,) pp 5-30
[8] Resolution 1

Government and the international community. While the debate has lingered, militia groups such as the NDPVF have resorted to self help by continuously unleashing violent disapproval of oil projects.

3. THE RIGHT OF VETO AND THE CONCEPT OF FREE, PRIOR AND INFORMED CONSENT

The right of veto is the power to reject legislation or actions proposed by others.[9] Several case law[10] revitalised the concept of the right of veto, since there cannot be such right without a preceding right of ownership. To ensure that the right of ownership of native title does not exist in abeyance, the concept of FPIC was recognized by the ***UN Declaration on the Rights of Indigenous Peoples.*** It provides thus, *"Indigenous people shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned..."*[11] The effect of this provision is that the consent of the IPs is a precondition to any meaningful operation on their lands. This consent must be freely given without coercion; it must be sought and given prior to the operation; and it must have been given after access to information on the nature, duration, impact and personnel have been provided by way of public participation.[12] Such consent would be in respect of the following;

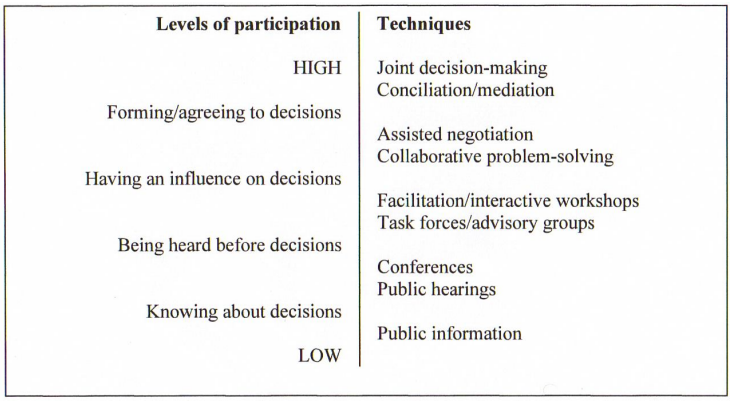
- pre-feasibility studies
- resettlement and compensation plans
- development plans
- allocation of benefits

[9] http://www.thefreedictionary.com/veto
[10] *Infra*
[11] Article 10
[12] *Indigenous rights, indigenous wrongs: risk for the resource sector,* Centre for Australian Ethical Research, October, 2007. p.3

- means of seeking complaints [13]

Figure 2 illustrates the levels and techniques of participatory consent throughout the life of a project.

Figure 2. Levels/Techniques of FPIC



Culled from: Operationalisation of Free Prior Informed Consent. Contributing Paper to the World Commission on Dams

3.1 THE AUSTRALIAN EXPERIENCE:

The Australian model on the nature of the right of IPs is exemplary for the Niger Delta situation as addressed in Ch.4. Between the 1980s and 1990s, Australia witnessed a turbulent era of debates over legislation and public opinion *vis a vis* corporate positions over the fate of the indigenous people of Australia (*Commonly referred to as Aboriginals)*. Prior to 1992, Aboriginal identity in Australia was denied on the basis of *terra nullius,* i.e., land belonging to no one.[14] The notion of indigenous people in Australia was vague as there were no established systems of land titles property right and Anti-Aboriginal racism of *terra nullius* was significant in Australian Law through the colonial era.[15] Nevertheless, today, Australia stands have shifted positively for IPs

[13] *Operationalisation of Free Prior Informed Consent*. Contributing Paper to the World Commission on Dams. p.4 See http://www.dams.org
[14] *Supra* note 3
[15] *Ibid,* at 205

as notable IPs representatives such as the Social Justice Commission for the Aboriginal and Torres Strait Islander Commission (ATSIC) fought for international human rights law such i.e., ILO Convention No. 169 to be ratified and inculcated in the Australian domestic law. The indigenous controlled Land Council under the Aboriginal Land Rights (Northern Territory) Act 1976 have been their vehicle in this regard. Case law reflects such situations.

3.1.1 The Mabo Judgment

The decision in *Mabo & Others v. The State of Queensland* [16] marked a new era in Australian Common Law *vis-a-vis* Aboriginal land rights. It was for a declaration of ownership of native land. The claimants having suffered all kinds of *terra nullius* based racism and degradation, sought a declaration for land ownership. They argued that despite Queensland possession of native lands, their history should be traced to the ownership of the lands and waters as the recognized Aboriginals. Justice Brennan in acknowledging the historical significance of the Torres Straight Islander people held *inter alia, "...the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands."* Justices Deane and Gaudron concurred with some harsh words describing the dispossession, degradation and devastation of the Aboriginal peoples as *"...a national legacy of unutterable shame...the nation as a whole must remain diminished unless and until there is an acknowledgment of, and retreat from , those injurious past."* [17] However, the decision still acknowledges that sovereign legislative Acts could extinguish this title. But then, this is most likely as it would give rise to the issue of morality and insensitivity to the cultural heritage of the IPs.

[16] [1992] 175 CLR 1
[17] See generally for judges' declarations, http://www.nlc.org.au/html/land_native.html (Last visited 12 July, 2008)

3.2 THE CANADIAN EXPERIENCE

The Canada experience also has a global dimension to the issue of right of veto. The IPs of Canada got their Aboriginal rights enshrined in the Supreme Law of Canada in the 1970s through the Aboriginal and Treaty Rights of the First Peoples and the Government.[18] Prior to colonisation, the First Nations people existed as a single entity until they were coexisted by the Europeans. They sought that medieval freedom in the Indian Act, but the Act was criticized for its inequality as it tends to seclude and preserve the identity of the First People as Aboriginals. Hence, that identity was rejected until the 1970s and supported by case law in 2004.[19] Although one distinguishes the other on technical grounds.

3.2.1 The Haida TFL 39 Case

The landmark judgment in the Canadian case of *Haida Nation v. British Columbia and Weyerhaeuser*[20] on November 18, 2004 is also instructive. Here, a purported issue of Tree Farm License (T.F.L 39) by the Province of British Columbia to Weyerhaeuser Co. to harvest trees in Haida Gwaii was challenged by Haida on the grounds that such issue was in violation of s. 35 of the *Constitution Act, 1982.* This instrument guaranteed the Aboriginal Rights, and required the Crown to recognize them based on a fiduciary duty on behalf of the Haida People by way of prior consultation and accommodating the Haiti people.

[18] Frawley-Henry, M., *'Rights of the Indigenous Peoples: The Experience of Canada's First Nations.'* 24 June, 2003. p.4
[19] *Ibid*, at 7
[20] [2004] SCC 73

The Chambers Judge ruled that such duty was a moral, and not a legal one. Upon appeal, the Court of Appeal overruled the decision. Upon appeal to the S.C, the court, in confirming the Court of Appeal's decision held thus, *"...the government has a legal duty to consult with the Haida people about the harvest of timber.... Good faith consultation may in turn lead to an obligation to accommodate Haida concerns, although...cannot at this time be ascertained"*[21] In answering whether the Crown's sovereignty overrides the Aboriginal interests, it held thus, *"...The Crown is not rendered impotent. It may continue to manage the resources in question pending claims resolution. But, depending on the circumstances...the honour of the Crown may require it to consult with and reasonably accommodate Aboriginal interests..."*[22] Suffice to say, the effect of this position seemed to have been weakened by its following position thus, *"To unilaterally exploit a claimed resource...is not honourable."* Thereby, making it seem more of a moral than a legal requirement. Nonetheless, the underlying duty to protect Aboriginal interest, and the existence of their seeming right of veto is evident in Canada. In ***Delgamuukw v. British Columbia,*** the court suggested that in the circumstance where deeper rather than mere consultation is required, as in relation to title to land and resources, full consent of the aboriginal nation must be effected. [23]

3.2.2 The Taku Case

Similarly, in ***Taku River Tlingit First Nation (TRTFN) v. British Columbia***[24]**,** a mining company sought permission from the British Columbia government to re-open an old mine. The TRTFN was consulted, and participated in the environmental assessment process under the *Environmental Assessment Act,* but objected to the

[21] See Judgment of Chief Justice Coram. Para. 10
[22] Para 27
[23] [1997] 3 S.C.R. 1010. Para. 168
[24] [2004] 3 S.C.R. 550, 2004 SCC 74

company's plan to build a road through a portion of the TRTFN's traditional territory. The Province granted the project approval certificate in 1998. In bringing a petition, the TRTFN argued that although it participated in the assessment process, the rapid conclusion of it towards granting the license denied it meaningful consultation. The Supreme Court of Canada confirmed that Aboriginal right requires full consent, and must be given full effect.

However, in distinguishing this case from the Haida case, it held *inter alia, "...In Haida, the Province argued that although no consultation occurred at all at the disputed, "strategic" stage, opportunities existed for Haida input at a future "operational" level. That can be distinguished from the situation in this case, in which the TRTFN was consulted throughout the certification process and its concerns accommodated*." [25] The implication of this distinction is that where right to participate has been fully recognized and exercised, the government is not in breach; irrespective of whether they adhered to the community's rejection of projects or not. In ***R v. Nikal,*** Cory J. wrote: "*So long as every reasonable effort is made to inform and to consult, such efforts would suffice to meet the justification requirement."*[26] But like the Mabo Decision, reconciliatory measures are necessary. Therefore, schemes like the Impact and Benefit Agreements (IBA) in Canada aimed at mitigating the effect of operations' impact on the people and eventual peaceful coexistence of all parties is laudable.

3.3 JUDICIAL LIMITATIONS ON THE RIGHT OF VETO

These decisions still limits such rights. The Mabo Judgment particularly acknowledged sovereign power of governments to acquire such native rights within the ambits of the

[25] Para. 45
[26] [1996] 1 S.C.R. 1013, Para. 110

Racial Discriminatory Act No. 52 of 1975.[27] The decision was consolidated by the ***Council for Aboriginal Reconciliation (CAR) of 1993*** to the effect that reconciliation, in the absence of such rights, is necessary for peaceful coexistence among stakeholders. Although native title right was recognized, mineral ownership and accompanying rights of veto was still subject to litigation and legislation.[28] Although this right was not automatically guaranteed, but the platform on which to crave such right was created. Nevertheless, the Mabo Judgment recognised the absolute right of veto over religious and sacred lands in the region.[29] From the general decisions in these cases, significant points can be deciphered, thus:

- Right of native title is not akin to ownership right of natural resources
- Right of veto is not automatic, but subject to judicial interpretation
- In conflicts between title granted by the crown and native title, the former prevails

3.4 THE ILO CONVENTION NO. 169 IN RETROSPECT

The ILO Convention[30] recognizes the general rights of IPs around the world to ownership of the lands they occupy. Notwithstanding the general application, articles 6, 7 and 15 are instructive with regards to discrepancies over IPs right of veto.

Article 6 generally requires government to establish means that ensures full participation of the IP in decision making at all levels.[31] But then, does the phrase, *all levels of decision making"* include deciding whether the project will commence?

[27] Particularly, Section 10(3)
[28] The High Court Recognition of native Title. At http://home.vicnet.net.au/~aar/aarmabo.htm (Last visited 15 July, 2008)
[29] *Ibid*
[30] Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. Adopted on 27 June 1989 and entered into force 5 September 1991 (hereinafter called 'The Convention')
[31] Particularly (a) and (b)

Article 7 provides that they *"...shall have the right to decide their own priorities for the purpose of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development..."* From this provision, The Convention gives them the power to collectively determine their future as a peculiar minority. However, the phrase, *'to the extent possible'* suggests a limitation on this control in situations where it involves external activities for national benefit, especially the extraction of minerals; it provides that *"...In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly"*. Does this really suggest an overall right of veto?

Article 15 expands on the limitation on control anticipated by article 7. It provides thus, *"In cases in which the State retains the ownership of mineral, or sub-surface resources or rights to other resources pertaining to the lands, governments shall establish or maintain procedures through which they shall consult these peoples..."* Therefore, though rights of IPs arise from their ownership to land, ownership of sub-surface resources remains with the government. But they must exercise that ownership in good faith.

3.4.1 Interpretations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

Several interpretations by the CEACR lend themselves to the controversy. Where Articles 7 &14 recognizes their right to ownership and usage of land, the implication of Article 15 is that where IPCs and governments follow due process in public participation, the issue of right of veto does not arise in law. What the law would be

concerned with is the existence of actual consultation, as shown in the Taku Case, rather than the existence of the refusal to allow operations. Hence, the perceived power of the IPs is not to veto projects, but to determine and demand the respect of their environment, adequate compensation, remediation, and/or suitable relocation. As such "...a right of participation is, on the one hand, different from the right of veto."[32]

Again, the Committee opined that by virtue of article 6 of The Convention, an opportunity to participate does not require that a consensus be reached in the consultation process.[33] This position is reflected in the Taku Judgment. The general attitude interpretation to ILO provisions is that they should not insinuate them to be akin to the right of veto. They should rather be given literal interpretations.[34]

4. PRACTICABILITY OF THE RIGHT OF VETO: THE NIGERIAN PERSPECTIVE

The UN Charter and the Human Rights Covenants 28 declared self-determination and certain human rights to be universal, but most governments have interpreted them as not applying to IPs.[35] Rather, they hold that this right is accorded the state as sovereign entities**.** While the Nigerian government holds this view, the acclaimed IPs of the NDR hold an adverse view. What is the position of the Nigerian laws on these issues, and what lessons can be learnt from the Australia and Canada situations?

[32] Ulfstein, G., '*Indigenous Peoples' Right to Land'* Max Planck UNYB 8 (2004) p.11
[33] *Ibid, at* 15
[34] Barsh, R., '*An Advocates's Guide to the Convention on Indigenous and Tribal Peoples',* Oklahoma City University Law Review 15 (1990), p. 219
[35] *Supra* note 18, at 6

4.1 THE LAW OF OWNERSHIP AND RIGHT OF VETO IN NIGERIA

The controversy over the right of veto in the Niger Delta draws source from the controversy over the right of ownership of land property. Parliamentary legislations have their provisions in this regards.

4.1.1 Constitution of the Federal Republic of Nigeria, 1999

It provides thus, '*...the entire property in 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 Zone 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.*'[36] The effect is that where national interest is involved, the Federal Government has the constitutional right to grant exploration license for operations in these areas.

4.1.2 Land Use Act, 1978

This Act, by its nature is a subject of controversy in Nigeria. It vests in the Governor of a state, all lands in that state to hold in trust and administered for the use and common benefit of all Nigerians.[37] The S.C in *Nkwocha v. Governor of Anambra State*[38] gave judicial backing to this provision. While Omotola argued that trusteeship does not vest legal title in the Governor,[39] Umezulike[40] posited that that was the intended meaning of Section 1.

[36] Section 44 (3). See Similar provision in Section 1 of the Minerals and Mining act, No. 34, Laws of the Federation of Nigeria, 1999.
[37] Section 1
[38] [1984] 6 SC 362
[39] Omotola, J., *Case Notes* 1 & 2 J.P.P.L. 102 (1984)
[40] Umozulike, *Does the Land Use Act Expropriate? Another View" 5 J.P.P.L* 61 (1986)

In Nigeria, a 13% revenue sharing formula from the national budget is accruable to these oil producing states; thereby, leaving out any recourse to the people of the NDR. So, the pertinent question is, 'where does the supposed IPs of the Niger Delta's right of veto draw inspiration from?' No doubt, they have made recourse to the UN Declaration on the Rights of Indigenous peoples and the ILO Convention. Some have even evolved their own legislative creation; for instance, the **Kaiama Declaration of 1998,**[41] even though the constitution remains the supreme law of the land. But do these international instruments override national legislations, more importantly, the federal constitution? Probably not! It has been noted that "The right to self determination does not give indigenous peoples the right of veto..." but rather their freedom to "...determine their political status and freely pursue their economic, political and cultural development."[42] Hence, it's more of a respect for human rights issue.

The implication of these national laws is that they give the IPs right to surface land as indigenous inhabitants, but gives subsurface right to the government as sovereign. The purport is to exercise their internationally acclaimed and ordained Permanent Sovereignty over Natural Resources (PSONR).[43] This is why IPCs pay compensation for land acquisition and relocation to the communities, while they pay tax and royalties for exploration to the federal government. Hence, it seems that the right to self determination needs a redefining as it means different things to both parties.

4.2 GENERAL PROVISIONS

Nigerian Legal system has no official recognition of IPs' right of veto. Rather, the government takes a conservative approach as is typical of some other countries. For

[41] *Supra* note, 8
[42] *Supra* note 13
[43] General Assembly Resolution 1803 (XVII), 17 U.N. GAOR Supp. (No.17) at 15, U.N Doc. A/5217 (1962)

instance, in **New Zealand,** the *1840 Treaty of Waitangi* is being implemented by a special national tribunal; hence, it is not automatic, though recognizable. Also, **United States courts** recognize the power of Congress to unilaterally council treaties they deem disadvantageous,[44] as a government cannot by legislation bind itself.[45] Hence any treaty completely recognizing IPs right of veto may be legally abrogated. Such treaties include those claimed by IPs, which were made by European Colonial powers with their ancestors in the 17th to 19th century to expand their empires by securing trade monopolies as proof of ancestral rights to land and autonomy, especially in Latin America, south Asia, and the Pacific.[46] Conversely, in the Philippines for instance, by virtue of ***The Indigenous Peoples' Rights Act,*** the IPs'

right to veto projects and research activities in their ancestral territories exists in law.[47]

5. CONCLUSION

The right of indigenous peoples' right of veto is increasingly becoming controversial, as concepts like 'title' and 'ownership', are still debatable. Hence, proof of Aboriginal title, the concept on which the right of veto is premised, is becoming increasingly difficult. Such right is perceived differently in different countries. Although countries like Australia, Canada and New Zealand have made significant shift from their initial policies not to accede to the UNDRIP as touching self determination, land and resource rights, the sensitive nature of the NDR and its complex ethnicity accounts for the Nigerian government's conservative attitude to the issue of IPs' right to self determination and veto, which could connote the right to take independent political actions.

[44] Barsh, R., "*The World's Indigenous Peoples*" Paper submitted to Calvert Group by First Nations Development Institute. p. 11
[45] *Czamikov v. Rolimpex* [1977] 3 W.L.R. 686
[46] *Supra* note 44
[47] Section 35. See also, Costa Rica Biodiversity Law, 1998.

Therefore, in Nigeria, such right of veto is more of an ethnic struggle rather than a legal position. Where constitutionalisation of IPs rights has been possible in Australia, Canada and New Zealand, it may be a far cry in the NDR as complications in the NDR, ranging from identity to legislation are incomparably endemic. Therefore, giving their struggle some constitutional teeth may ultimately cripple the government's position. Therefore, all stakeholders must look beyond the right of veto towards establishing initiatives like the IBA in Canada, and the CAR in Australia, that seeks to address their social, economic, and environmental needs in spite of oil operations towards peaceful co-existence in the region. With the sensitive nature of the NDR, the right of veto is a far cry from reality. Dedicating attention to such other initiatives seems a more realistic step.

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