

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 4 | Issue 1**

**2021**

---

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Permanent Sovereignty over Natural Resources: An Analysis

---

ADITI GARG<sup>1</sup>

## ABSTRACT

*The principle of Permanent Sovereignty over Natural Resources (“PSNR”) ensures that a state has ultimate control over its own natural wealth and resources and the development, utilization, and exploitation of such resources shall be subject to the state’s national laws. The development of this principle can be attributed to the newly independent states in the early 1950s who sought to gain control over their resources after decades of exploitation by their colonizers. The first resolution on PSNR was the United Nations General Assembly Resolution 626 (VII) which recognized that countries have the right to freely use and exploit their natural resources for their economic development and progress. The most important instrument on PSNR came in the form of resolution 1803 (XVII) which guaranteed the right of PSNR to states and peoples. In 2007, with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations (“UN”) also recognized the right of indigenous people over their traditionally owned or occupied land. However, despite these legal instruments, there is still debate on if this right accrues to the people as well. This paper examines the concept, history, and instruments on PSNR and ultimately answers this question in the affirmative.*

**Keywords:** *natural resources, sovereignty, permanent sovereignty over natural resources, international law, United Nations, right to development*

## I. INTRODUCTION

To understand the principle of Permanent Sovereignty over Natural Resources, it is first imperative to discuss the meaning of sovereignty. Though there is no precise or universal definition of the term, sovereignty can be identified by using four characteristics:

1. The state has the power to exercise supreme authority over all persons and things within its territory.
2. The state is capable to regulate movement across its borders.

---

<sup>1</sup> Author is a LLM student at Gujarat National Law University, Gandhinagar, India.

3. The state has a legal identity in international law, an equal status with other states, and is the sole official agent acting in international relations on behalf of a society.
4. The state is free to make its foreign policy choices.<sup>2</sup>

The concept of Permanent Sovereignty over Natural Resources (“PSNR”) implies that a state and its people exercise ultimate control over the natural resources in the state’s territory and their development, use, and exploitation are subject to the state’s domestic laws. The principle has been debated and discussed multiple times at the international level but the main instrument or document on this principle is the Resolution 1803 (XVII) entitled ‘Permanent Sovereignty over Natural Resources’ adopted by the UN General Assembly in 1962 which guarantees this right to peoples and nations. This paper examines the history and basis of this principle and its relevance in today’s times.

## II. HISTORY AND ORIGIN

During the colonial era, the colonies rarely had any control over their natural resources. The control was instead exercised by the colonizer and the will of the people was ignored. In the early 1950s, when the number of newly independent States started to grow, these States asserted the need for this principle in order to safeguard their right over their own natural resources once and for all. The idea was to put to rest the older arrangements that gave this right to their colonizers instead. Additionally, these States wanted to secure this right for other states which were still colonized to ensure that they reap the benefits of their own natural resources.<sup>3</sup> Thus, the decolonization period worked as a catalyst for these States to challenge the agreements that they were forced to enter into by their colonizers.<sup>4</sup>

Thus, the principle of PSNR has its roots in the struggle of colonized States to reclaim control over their own territories and natural resources. Further, it also represents the clash between *pacta sunt servanda* (i.e., agreements have to be observed) and the principles of self-determination, right to development, etc.<sup>5</sup>

All these efforts finally culminated in the first official mention of PSNR in the United Nations General Assembly Resolution 626 (VII).<sup>6</sup> As is evident by the text of this Resolution,

---

<sup>2</sup> Jackson, *Sovereignty – modern: a new approach to an outdated concept* 97 AM. J. INT’L L. 782, 786 (2003).

<sup>3</sup> SP SUBEDI, INTERNATIONAL ECONOMIC LAW 23 (2006).

<sup>4</sup> Ricardo Pereira & Orla Gough, *Permanent Sovereignty Over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples Under International Law*, 14 MELB. J. INT’L L. 451, 455 (2013); M. SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT (4 ED. 2017).

<sup>5</sup> UNITED NATIONS, REALIZING THE RIGHT TO DEVELOPMENT: ESSAYS IN COMMEMORATION OF 25 YEARS OF THE UNITED NATIONS DECLARATION ON THE RIGHT TO DEVELOPMENT 96 (2013).

<sup>6</sup> JN Hyde, *Permanent sovereignty over natural wealth and resources*, 50 AM. J. INT’L L. 854, 855 (1956).

it was driven by the efforts of the underdeveloped and newly independent countries. Thus, it was recognized that countries have the right to freely use and exploit their natural resources for their economic development and progress. Further, in the same year, Chile put forth a draft resolution proposing that the right to self-determination should also include the right to permanent sovereignty over natural resources.<sup>7</sup> This was accepted by the United Nations Commission on Human Rights (UNCHR). In pursuance of this, the General Assembly requested UNCHR to review the international importance of this right.<sup>8</sup> In its reply, the Commission recommended that a specialized commission be established to conduct a comprehensive study on PSNR and the right to development.<sup>9</sup> In accordance with this recommendation, the Commission on Permanent Sovereignty over Natural Resources was set up to conduct this study. This Commission consisted of Afghanistan, Chile, Guatemala, Netherlands, Sweden, Philippines, USA, USSR, and United Arab Republic.<sup>10</sup> A draft resolution was adopted by this Commission in 1961<sup>11</sup> which led to the adoption of resolution 1803 (XVII) by the General Assembly. This resolution is the main international instrument on PSNR and is the guiding force for various subsequent instruments on human rights.

In 1966, Resolution 2158 was adopted by the UN General Assembly which emphasized the right of Nations to use and develop their natural resources themselves.<sup>12</sup> This signified the UN's stance against concession agreements of the past and affirmed permanent sovereignty as a means of increasing the economic and technological advancement of developing states.<sup>13</sup>

In December 1966, two of the most significant international covenants were adopted. These were the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) and the International Covenant on Civil and Political Rights (**ICCPR**). While neither of these covenants expressly mention PSNR, they provide that people may freely dispose of their natural resources for their own benefit.<sup>14</sup>

---

<sup>7</sup> Draft Resolution (E/CN.4/L.24).

<sup>8</sup> The rights of peoples and nations to self-determination, UN GA Res 637 C (VII).

<sup>9</sup> Economic and Social Council, *Commission On Human Rights Report Of The Tenth Session* (United Nations 1954).

<sup>10</sup> Recommendation concerning international respect for the right of peoples and nations to self-determination, UN GA Res 1314 (XIII).

<sup>11</sup> *Introductory Note, Permanent Sovereignty over Natural Resources*, UNITED NATIONS, [https://legal.un.org/av/ha/ga\\_1803/ga\\_1803.html](https://legal.un.org/av/ha/ga_1803/ga_1803.html)

<sup>12</sup> Permanent Sovereignty Over Natural Resources, UN GA Res 2158 (XXI).

<sup>13</sup> N. Kofele-Kale, *Patrimonicide: the international economic crime of indigenous spoliation*, 28 *Vanderbilt J. Transant'l L* 45 (1995); Yolanda T Chekera & Vincent O Nmehielle, 'The International Law Principle of Permanent Sovereignty over Natural Resources as an Instrument for Development: The Case of Zimbabwean Diamonds' 6 *AFR. J. LEG. STUD.* 69, 75 (2013).

<sup>14</sup> *see*, International Covenant on Economic, Social and Cultural Rights, art 1; International Covenant on Civil and Political Rights, art 2.

Since then, the UN has time and again emphasized and reaffirmed the principle of PSNR.<sup>15</sup> In 1974, the Charter of Economic Rights and Duties of States (CERDS) was adopted to establish universal norms for governing international economic relations.<sup>16</sup> Emphasizing the principle of PSNR, CERDS lays down that every state has the right to freely dispose of or use its natural wealth and resources.<sup>17</sup> However, unlike the 1962 Resolution, CERDS gave weightage to the laws and jurisdiction of the courts of the host state for the settlement of investment disputes.<sup>18</sup>

In 1974, the New International Economic Order (NIEO) was adopted by the UN General Assembly. The NIEO represented and took into consideration the demands of developing countries to change the international economic system and to replace the principles that were unjustly tipped in the favour of developed countries. This included the substitution of the Bretton Woods system which defined all currencies in the world in relation to dollars. This system largely benefited the states that had created it and in particular, the United States.<sup>19</sup> The NIEO also included the principle of PSNR.

### III. INTERNATIONAL INSTRUMENTS ON PSNR

#### 1. *Declaration on Permanent Sovereignty over Natural Resources*

The Declaration on Permanent Sovereignty over Natural Resources was adopted in 1962 by the United Nations by the General Assembly resolution 1803 (XVIII). The Declaration is comprised of eight paragraphs and lays down the basic principles that are to govern PSNR. The Declaration has been based on the previous resolutions of the UN on PSNR.<sup>20</sup> The Declaration received 87 votes in its favour and only 2 (South Africa and France) against it. The Declaration is now widely accepted and is seen as a good balance between the right to PSNR and the international duties of states. It also balances the rights and interests of capital importing and capital exporting states.<sup>21</sup> It has gained a lot of significance in the past few years and various authors believe it to be the economic equivalent of Declaration on the Granting of Independence to All Colonial Countries and Territories.<sup>22</sup>

---

<sup>15</sup> *see* International Development Strategy for the Second United Nations Development Decade, UN GA Res 2626 (XXV); Permanent Sovereignty over Natural Resources, UN GA Res 3171 (XXVIII).

<sup>16</sup> Charter of Economic Rights and Duties of States, UN GA Res 3281 (XXIX).

<sup>17</sup> Charter of Economic Rights and Duties of States, art 2.

<sup>18</sup> Pereira, *supra* note 3, at 456.

<sup>19</sup> *New International Economic Order*, UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA, <https://www.unescwa.org/new-international-economic-order>

<sup>20</sup> Integrated Economic Development and Commercial Agreements, UN GA Res 523 (VI); Right to exploit freely natural wealth and resources, UN GA Res 626 (VII).

<sup>21</sup> UNITED NATIONS, *supra* note 4, at 97.

<sup>22</sup> Declaration on the Granting of Independence to All Colonial Countries and Territories, UN GA Res 1514

From the preamble of the Declaration, it can be inferred that it has been adopted to promote international cooperation in the interest of economic development of developing countries and to ensure that economic agreements entered into between developed and developing countries are based on principles of equality and self-determination.

The first paragraph of the declaration grants this right of PSNR to both peoples and nations and further imposes a duty on them to exercise this right in the interest of the nation's development and peoples' wellbeing. Further, the nations and peoples shall lay down the rules for the exploration, disposition, and development of the natural resources and import of foreign capital for such purposes.

When foreign capital is imported, it shall be governed by the domestic as well as international law, and the profits derived shall be divided proportionally between the nation and investors, whilst having due regard to the principle of PSNR. Paragraph 4 deals with the highly debated issue of nationalization, expropriation, or requisition. It provides that such taking of property may be done on the grounds of national interest, public utility, and security. These grounds shall override all private interests. However, the owner of the property must be paid appropriate compensation, and in case of dispute over the same, national laws shall be resorted to. It further provides for international adjudication and arbitration upon agreement by the "Calvo doctrine", advocated by the developing countries, with the international minimum standard supported by the industrialized countries.<sup>23</sup> Paragraph 5 of the Declaration calls for mutual respect between states based on their sovereign equality.

Any international cooperation with developing countries in the form of exchange of goods and services, capital investments, etc. should be in furtherance of the development of such developing countries and must be based on respect for their sovereignty over natural resources. Further, any foreign investment agreement between nations must be in good faith, and states as well as international organizations shall respect the right of PSNR.

Any violation of the principle of PSNR as contained in this Declaration will be contrary to the principles of the UN Charter and will hinder international cooperation and peace. This Declaration is the evidence of the efforts made by developing nations to gain independence and assert their sovereignty.<sup>24</sup>

---

(XV).

<sup>23</sup> DR SHEA, *THE CALVO CLAUSE: A PROBLEM OF INTER-AMERICAN AND INTERNATIONAL LAW AND DIPLOMACY* (1955).

<sup>24</sup> Parvez Hassan, *Role of the South in the Development of International Environmental Law*, 1 *CHINESE J ENVTL. L.* 133, 140 (2017).

## **2. *The United Nations Declaration on the Rights of Indigenous Peoples***

Historically, a lot of wrongs have been meted out against indigenous people. Not only did they suffer during the colonial era, but the creation of new States after independence brought them no respite.<sup>25</sup> Their voices have only recently been heard. In 2007, after years of negotiation, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”). The UN through UNDRIP finally has recognized the historical injustices suffered by indigenous people because of colonization and dispossession of their lands and resources. UNDRIP has been adopted to ensure equality to indigenous peoples and for the recognition and protection of their rights. The rights addressed in UNDRIP include the right to non-discrimination, right to life, right to self-determination, etc. Further, it ensures that indigenous peoples are involved in decision making in resource management. Article 3 guarantees the right to self-determination to indigenous peoples. Further, the forcible removal or relocation of indigenous peoples from their own lands is strictly prohibited under Article 10. For relocation, prior informed consent of indigenous peoples is required. Further, just and fair compensation must be paid. In line with this, Article 28 lays down that indigenous peoples have the right to redress for forcible confiscation, occupation, or use of their traditionally owned or occupied land or territory. This redressal may include restitution or just and fair compensation. The compensation shall include equivalent size, quality, and status of land/resources or monetary compensation.

Article 25 determines that indigenous people have the right to maintain their relationship with their traditionally owned or occupied lands, water, territories, and coastal seas. In furtherance of this, Article 26 provides for the right of indigenous peoples to their traditionally owner/occupied/used/acquired lands, resources, and territories. Indigenous peoples have the right to own, use, develop and control these resources and States in turn, shall give legal recognition and protection to them with due respect to the culture, traditions and systems of the indigenous people.

Further, the Declaration also ensures decision making rights to indigenous peoples. According to Article 32, States have to consult them and obtain their free and informed consent before undertaking any development, exploitation, or utilization of their lands or resources.

---

<sup>25</sup> Maria Augusta León Moreta, ‘Analysing Benefit Sharing Scheme as Compensation for Damages Caused by Resource Extraction in Indigenous Territory’ 8 INT. HUM. RIGHTS L. REV. 89, 91 (2019).

#### IV. REGIONAL INSTRUMENTS ON PSNR

Even though there are various regional treaties on human rights (for instance, European Human Right Convention), there are only three treaties which mention the right to PSNR. These have been discussed below:

##### *1. The African Charter of Human and People's Rights*

The African Charter on Human and Peoples Rights, also known as the Banjul Charter, was adopted by the Organization of African Unity (OAU)<sup>26</sup> in 1981 and was brought into force in 1986. All the 53 states under OAU are State Parties to this Charter. The Charter and its Protocol establishes a Commission to examine complaints from individuals, NGOs, etc.<sup>27</sup> The Commission has also been tasked with the duty to examine the reports and information presented by the State parties. This has been utilized by minority groups to file complaints and the Commission has itself also inquired into the treatment of minorities.<sup>28</sup> At the time of its adoption, the Charter was different than most international human rights treaties adopted till then in one significant way- it integrates the concept of “peoples” into the international human rights theory.<sup>29</sup>

Article 19 of the Charter guarantees that all people shall be equal and shall enjoy the same rights. Article 20 further provides for the right to self-determination of people. Moreover, people who are colonized or oppressed have the right to free themselves in any way and State Parties to the Charter have the duty to assist them in this struggle against foreign domination.

All people, under Article 21, have been given the right to freely dispose of their natural resources and wealth. This right has to be exercised as per the interests of the people and in case of dispossession of people, they shall have a right to lawful recovery and adequate compensation. This right has to be exercised without prejudice to the duty to promote international economic cooperation based on principles of international law and mutual respect. The State Parties to the Charter have also been given the right to freely dispose of their natural resources and wealth and are under an obligation to work towards the elimination of foreign exploitation. The Charter aims to balance this right with international

---

<sup>26</sup> The OAU was established as a political institution in 1963. Its main objective was to completely rid Africa of colonization and apartheid and to safeguard the sovereignty of the member States. However, in 2002, the African Union was launched to replace the OAU. *see, About the African Union*, AFRICAN UNION, <https://au.int/en/overview>

<sup>27</sup> Makau Mutua, *The African Human Rights Court: A Two Legged Stool?*, 21 HUM. RTS. Q. 342 (1999).

<sup>28</sup> Rachel Murray & Steven Wheatley, *Groups and the African Charter on Human and Peoples' Rights*, 25 HUM. RTS. Q. 213 (2003).

<sup>29</sup> Richard N. Kiwanuka, *The Meaning of "People" in the African Charter on Human and Peoples' Rights*, 82 AM. J. INT'L L. 80 (1988).

obligations. This indicates that the right shouldn't be recklessly used to disrupt international trade.<sup>30</sup> Article 22 provides for the right of people to their development – social, economic, and cultural- with due regard to their freedom to dispose of natural resources. Thus, this Article guarantees the right to development of peoples and imposes a duty on the States to safeguard this right.

The Convention has also been interpreted to include the rights of indigenous people. In 2001, the African Commission on Human and Peoples' Rights appealed to the Government of Nigeria to ensure the protection of the Ogoni people and their human rights especially with respect to their land and natural resources.<sup>31</sup> The Commission found violations on the basis of Articles 4, 16, and 25 of the Charter. Further, the Commission in the case of Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya<sup>32</sup>, reiterated the Convention's emphasis on peoples' rights.

## **2. The Helsinki Final Act**

In 1973, negotiations commenced between Europe, US, and USSR to promote security and international cooperation in Europe. These negotiations lasted two years and came to be known as the Helsinki process. The Helsinki Final Act of 1975 was the product of these negotiations and had a huge effect on the Cold War. It established the Conference on the Security and Cooperation in Europe (CSCE).<sup>33</sup> Chapter VIII of the Final Act makes it obligatory on the States to respect the right to self-determination of peoples and to act in conformity with the UN Charter and international law. The people have the right and freedom to decide their political status without any interference and to pursue their political, economic, social, and cultural development.

## **3. The American Human Rights Convention**

This Convention is based on the human rights treaties adopted by the UN and the European Convention.<sup>34</sup> While it doesn't explicitly mention PSNR, it guarantees the right to private

---

<sup>30</sup> A. Bolaji Akinyemi, *The African Charter on Human And Peoples' Rights : An Overview*, 46 IJPS 207 (1985).

<sup>31</sup> *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria* Communication No.155/96

<sup>32</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, Communication No. 276/2003 (Africa).

<sup>33</sup> *The Organization for Security and Co-operation in Europe (OSCE)*, EUROPEAN PARLIAMENT, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628219/EPRS\\_BRI\(2018\)628219\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628219/EPRS_BRI(2018)628219_EN.pdf)

<sup>34</sup> Rodolfo Piza, *Coordination of the Mechanisms for the Protection of Human Rights in the American Convention with Those Established by the United Nations*, 30 AM. U. L. REV. 167 (1980); Jo M. Pasqualucci, *The Inter-American Human Rights System: Establishing Precedents and Procedure in Human Rights Law*, 26 U. MIAMI INTER-AM. L. REV. 297 (1994).

property. This right, however, may be made subject to social interest.<sup>35</sup> In *Mayagna (Sumo) Awas Tingni Community v Nicaragua* case<sup>36</sup>, the Inter-American Court of Human Rights recognized that the Convention includes within its purview the right of indigenous peoples' over their communal land. This was again confirmed in the case of *Moiwana Community v Suriname and Saramaka People v Suriname*.<sup>37</sup>

## V. ANALYSIS AND CONCLUSION

Soon after the conception of the United Nations, the right to sovereignty over natural resources and right to self-determination became some of the most significant developments in the international arena. While they were both regarded as important development instruments, the focus was on the basic resources of newly independent states. In 1964 however, developing countries formed the Group of Seventy-Seven (G77) to promote their economic interests and strengthen their negotiating power.<sup>38</sup> Through the G77, these states sought to strengthen their right to PSNR by widening its scope. However, most western and developed states strongly opposed this action.<sup>39</sup> Nevertheless, over time a balance has been created between the rights and duties of states under PSNR. After delving into the relevant instruments, the following principles can be established with respect to PSNR:

- i. A State has permanent sovereignty over its resources but the same should be employed in consonance with the interests and development of the nation and its people;
- ii. Further, the natural resources should be used and managed sustainably;
- iii. The right of indigenous peoples to their land and resources is an important part of PSNR and must be protected;
- iv. Nationalization and other policies should be enforced in accordance with international law;
- v. The states must endeavor to promote international economic development and cooperation.

While the above principles are now established, one highly debated issue still remains: who is the beneficiary of the principle of PSNR? Since the principle came into existence because of

---

<sup>35</sup> The American Human Rights Convention, art 21.

<sup>36</sup> *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Inter-American Court of Human Rights, judgement of 31 August 2001.

<sup>37</sup> *Saramaka People v Suriname*, Inter-American Court of Human Rights, judgement of 28 November 2007.

<sup>38</sup> *About the Group of 77*, GROUP OF 77 AT THE UNITED NATIONS, <https://www.g77.org/doc/>

<sup>39</sup> UNITED NATIONS, *supra* note 4, at 101.

the efforts of the newly independent and developing countries, only such countries were referred to by most resolutions.<sup>40</sup> However, there was no consistency between the resolutions. While some resolutions granted the right to both peoples and states<sup>41</sup>, other resolutions only attribute it to the states. This has led to different interpretations.<sup>42</sup>

As per the first and the traditional interpretation, the right to PSNR vests solely with the states. This is in line with the traditional view that only states are subject to international economic law. This view is supported by CERDS which only mentions states when granting this right. This interpretation comes from the struggle of developing nations in protecting their natural resources from developed nations and multinational corporations.<sup>43</sup>

The second view, on the other hand, postulates that the right to PSNR is vested in both the state and its people. This can be seen in Resolution 1803<sup>44</sup> wherein the right is given to peoples and states. While it is true that in the international arena, as understood traditionally, the peoples' rights and interests are represented by the state, and thus, the distinction is redundant, the vesting of the right on both becomes pertinent when the state's interests are different than the interests of its peoples. In case of conflict, as per the first interpretation, people would have no safeguard in international law. However, as per the second view, the state is merely a representative of the peoples, and the right truly vests in the people and thus, they must have certain safeguards against the state's exploitation.

According to the third interpretation, the right vests solely in the people. Support for this can be gathered from the Covenant of Economic, Social and Cultural Rights and the Covenant of Civil and Political Rights wherein the right of peoples over PSNR was only discussed.<sup>45</sup>

The ongoing struggles of peoples across the world against their state's ruthless exploitation of natural resources clearly exhibit that the second interpretation should be adopted universally and the right to permanent sovereignty over natural resources should accrue to not only the state but also the peoples. The two examples below illustrate this reasoning:

***Exploitation in the Arctic:*** Since time immemorial, indigenous people have been living in the Arctic region peacefully and sustainably but since the 16<sup>th</sup> century, newcomers have encroached the land in search of oil, gas, and minerals in the region. Further, the Arctic States

---

<sup>40</sup> N. SCHRIJVER, SOVEREIGNTY OVER NATURAL RESOURCES: BALANCING RIGHTS AND DUTIES (1997).

<sup>41</sup> *see*, Permanent Sovereignty over Natural Resources, UN GA Res 1803 (XVII).

<sup>42</sup> E Duruigbo, *Permanent sovereignty over natural resources and people's ownership of natural resources in international law*, 38 GEO. WASH. INT'L L. REV 33, 37 (2006).

<sup>43</sup> Kofele-Kale, *supra* note 12.

<sup>44</sup> Permanent Sovereignty over Natural Resources, UN GA Res 1803 (XVII).

<sup>45</sup> J. Crawford, *The rights of peoples: "peoples" or "governments"?*, 9 Bulletin of the Australian Society of Legal Philosophy 136 (1985).

have implemented a policy of indigenous peoples in the region, starting with the Saami territory.<sup>46</sup> This has resulted in State ownership of the majority of the Saami territory which is now divided into Norway, Sweden, Finland, and Russia. To address the concerns of exploitation in the region, the Arctic Council was set up. This Council is unique as it provides indigenous peoples an opportunity to influence the decision making but at the same time, the representation of indigenous peoples in this Council is absent. While they are consulted during decision making, indigenous peoples have no voting rights. Thus, there is a need to inculcate more representation of the Saami people in order to make the decision making more fair, just, and equitable.<sup>47</sup>

**Zimbabwe Diamonds:** Zimbabwe has an extensive mineral wealth and in recent years, has been discovered to be rich in diamonds. While originally, the Marange diamonds fields in the country were mined by a government owned enterprise, soon joint ventures with private companies increased the exploitation in the fields. The mining activities have led to the forcible relocation of Marange people who were in no way consulted before this relocation. The potential of the fields in contributing to the country's economy has been overshadowed by the gross mismanagement and corruption in the area.<sup>48</sup> Further, the mining law in the country was enacted in the colonial era and provides no safeguards to the people.<sup>49</sup> The land is owned by the state and only usufructuary rights are granted to people.<sup>50</sup> The people thus have no way to challenge such relocations, exploitation of land, etc.<sup>51</sup>

As per the 1962 Declaration on permanent sovereignty over natural resources, the right must be exercised with due regard to the development of the peoples. It is imperative that this is followed in spirit by the States. Most often PSNR is viewed as a right accruing to states but this interpretation neglects the fact that ultimately it is the people whom the states represent and thus, the people are the beneficiaries of the right. Thus, for a fair and equitable application of PSNR, it must be developed from the human rights perspective to prevent illegal or unjust exploitation of resources by the states.

\*\*\*\*\*

---

<sup>46</sup> Else Grete Broderstad, *Political Systems*, 85 AHDR 86 (2004).

<sup>47</sup> Dorothee Cambou & Stefaan Smis, *Permanent Sovereignty Over Natural Resources from a Human Rights Perspective: Natural Resources Exploitation and Indigenous Peoples' Rights in the Arctic*, 22 MICH. ST. INT'L L. REV. 347, 369 (2013).

<sup>48</sup> Chekera, *supra* note 12, at 92.

<sup>49</sup> Mines and Minerals Act of 1961.

<sup>50</sup> Communal Lands Act (Chapter 20:04).

<sup>51</sup> S. MTISI ET. AL., *EXTRACTIVE INDUSTRIES POLICY AND LEGAL HANDBOOK* 38 (2011).