

TOWARDS A MEANINGFUL REBIRTH OF ECONOMIC SELF-DETERMINATION: HUMAN RIGHTS REALIZATION IN RESOURCE-RICH COUNTRIES

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I. INTRODUCTION

Economic self-determination—a people’s capacity to dispose freely of natural resources in accordance with democratically-taken decisions—has fallen out of favor in the post-Cold War era.¹ And yet, it is deeply relevant to human rights realization in resource-rich developing countries today. Resource discovery—whether of oil, gold, diamonds, or even bauxite—promises to provide streams of funding for economic and social rights such as education and health care in countries that desperately need aid. But all too often the resource curse²

1. See J. Oloka-Onyango, *Heretical Reflections on the Right to Self-Determination: Prospects and Problems for a Democratic Global Future in the New Millennium*, 15 AM. U. INT’L L. REV. 151, 169-73 (1999) (arguing that economic self-determination was seen as a “socialist” form of self-determination and as such fell in popularity after the perceived socialist loss at the end of the Cold War); see also Philip Alston, *Peoples’ Rights: Their Rise and Fall*, in PEOPLES’ RIGHTS 259, 270-71 (Philip Alston ed., 2001) (arguing that self-determination has declined considerably in the post-Cold War era); MICHAEL IGNATIEFF, BLOOD AND BELONGING: JOURNEYS INTO THE NEW NATIONALISM 12-13 (1995) (arguing that the Cold War regulated the proliferation of nation-states, just as other systems of superpowers had in previous eras).

2. See, e.g., TERRY LYNN KARL, THE PARADOX OF PLENTY 16 (1997) (defining the “resource curse” as a pattern in which mineral-rich states construct their economies around a single commodity, neglecting to develop other industries and leaving the economy vulnerable to booms and busts); OPEN SOCIETY JUSTICE INITIATIVE, LEGAL REMEDIES FOR THE RESOURCE CURSE: A DIGEST OF EXPERIENCE IN USING LAW TO COMBAT NATURAL RESOURCE CORRUPTION 9 (2005) (stating that the “resource curse” describes a paradox: “the richer the country in terms of natural resources, the slower its economic growth,” and arguing that it is particularly a problem in resource-rich Afri-

strikes, and peoples in these countries find themselves victims of rollercoaster economies, mired in poverty and distanced from the new-found sources of wealth.³ As resource discovery and exploitation is increasingly seen as a primary means of reinvigorating economies of poor states, economic self-determination must be reincorporated into the mainstream human rights dialogue.

Economic self-determination gives peoples the ability to take control over their mineral resources and use those resources for their own ends. It is a fundamental norm on which broader rights realization is based. For decades, however, this fundamental peoples' right has been overshadowed by other forms of self-determination. Three of the key human rights treaties written after World War II—the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, and the African Charter on Human and Peoples' Rights—articulate in no uncertain terms peoples' right to economic self-determination.⁴ However, current human rights movements have largely failed to capitalize on this clear language, and have not incorporated the concept into advocacy strategies. It is now time for human rights advocates to put that language to use, by bringing economic self-determination out of the shadows and employing it as a powerful tool for human rights advocacy related to the distribution of wealth from mineral resources.

can countries which rely on primary commodities and have not been as successful as Latin American and Southeast Asian countries in diversifying their export bases).

3. See, e.g., KARL, *supra* note 2, at 16 (discussing Venezuela's oil discovery and resulting economy); HUMAN RIGHTS WATCH, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights* 16 (HUM. RTS. WATCH 1 (2004) (discussing the extreme dependence on oil in the Angolan economy and examining the oil-related corruption in the Angolan government)).

4. See International Covenant on Economic, Social, and Cultural Rights, art. 1(2), Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; International Covenant on Civil and Political Rights, art. 1(2), Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR] (featuring identical articles that state "all peoples may, for their own ends, freely dispose of their natural wealth and resources. . ."); African Charter on Human and Peoples' Rights, arts. 20-21, June 27, 1981, 21 I.L.M. 59 (1981) (entered into force Oct. 21, 1986) [hereinafter Banjul Charter].

A reinvigorated notion of economic self-determination is an essential tool for human rights realization in mineral-rich countries. It allows peoples to assert control over their own natural resources. It encourages democratic participation in order to determine the best use of those resources. And it provides human rights advocates with a foundation for arguing that those resources should be used for the realization of human rights, particularly those rights such as health, housing, and education that rely on substantial and continuing allocation of public resources.⁵ Economic self-determination is also a natural ally of current discourses on economic liberalism, democratization, and anti-colonialism.⁶ Now is the time for economic self-determination's rebirth.

Some have declared self-determination a dying concept with little applicability to the formation of new states.⁷ Others have argued that self-determination is fundamentally compromised by the difficulty of defining which groups constitute a "people."⁸ For the purposes of this Note, however, a "people"

5. See, e.g., *Government of Republic of South Africa v. Grootboom* 2000 (11) BCLR 1169 (CC) (seeking to implement guarantees of housing rights in the South African constitution); *Minister of Health v. Treatment Action Campaign (TAC)* (2002) 5 SA 721 (CC) (seeking to implement the right to health).

6. See *infra*, Part IV.B. See generally Strobe Talbott, *Self-Determination in an Interdependent World*, 118 FOREIGN POL'Y 152 (2000) (arguing that there is virtue in "porous borders and intertwined economies"); Alston, *supra* note 1, at 289 (discussing the manner in which self-determination is linked to current debates on civil and political rights); Oloka-Onyango, *supra* note 1 (discussing new aspects of the ongoing anti-colonial struggle in sub-Saharan Africa).

7. Alston, *supra* note 1, at 270–73 (discussing the difficulty of framing new claims for self-determination). This paper does not address arguments for use of secession with a high burden of proof, a debate which is thoroughly reviewed in Alston's article.

8. According to the ICJ, a people may be formed through "1. A common history; 2. racial or ethnic ties; 3. cultural or linguistic ties; 4 religious or ideological ties; 5. a common territory or geographical location; 6. a common economic base; and 7. a sufficient number of people." INTERNATIONAL COMMISSION OF JURISTS, THE EVENTS IN EAST PAKISTAN 70 (1972). See also Alston, *supra* note 1, at 271 (reviewing arguments in which many of those who declare self-determination dead do so with regard to *new* claims for self-determination, emphasizing how hard it is to define which groups constitute a "people" for the purposes of self-determination). This paper does not discuss ways in which to define a "people" but rather examines the tension

is broadly defined to constitute *all* persons within a state.⁹ Thus, this Note addresses self-determination claims within currently-existing states, by examining peoples' claims to control and benefit from natural resources. The central thesis of this Note is that economic self-determination is a crucial tool with which to assert a people's interests above those of the State.

The first part of this Note gives an overview of the historical—and mainstream—interpretation of economic self-determination in the decades following World War II. During this period, economic self-determination was an appendage to political self-determination for all practical purposes; it was merely a method of providing newly independent states with control over resources previously held by colonial interests. I argue that the legal definitions of self-determination that emerged during this period, however, gave economic self-determination far more force. Economic self-determination is a distinct concept that can operate independently of secessionary movements. It refers to the existing conversation between a government and its peoples; it makes no effort to define a new “people” or polity. Consequently, despite critiques of self-determination which label secessionary forms of self-determination as dying concepts,¹⁰ economic self-determination remains deeply relevant today.

The second part of this Note argues that a rebirth of economic self-determination is profoundly important for human rights advocacy in mineral-rich countries. I draw a parallel to internal self-determination, demonstrating that non-secessionary forms of self-determination are gradually finding acceptance, and that economic self-determination can build from this success. Unlike many other forms of self-determination, economic self-determination does not necessarily trigger fears

between a people, as defined as *all* persons within a State, and that State's government.

9. See Richard N. Kiwanuka, *The Meaning of “People” in the African Charter on Human and Peoples' Rights*, 82 AM. J. INT'L L. 80, 99 (1988) (arguing that a people, defined as *all* persons within a State, has a collective right to “uninterrupted enjoyment of the right to self-determination, which should protect the people against oppression and exploitation”). I acknowledge that a people, defined as *all* persons within a State, may encompass many smaller peoples, including minority groups or distinct ethnic groups.

10. See, e.g. Alston, *supra* note 1 (discussing the difficulty of applying self-determination in secessionary movements today).

of fragmentary secession, because it is best realized through internal democratic participation as opposed to the creation of a new state.¹¹ I examine the competition between peoples and the state for the exercise of self-determination and argue that a greater incorporation of economic self-determination in human rights dialogue would help return natural resources to the peoples who are the legal holders of the right to self-determination. I place economic self-determination in the context of economic liberalism, democratization, and anti-colonialism in order to demonstrate its relevance to current discourses on human rights realization.¹²

In the third section of this Note, I use the recent discovery of oil in Equatorial Guinea to demonstrate how economic self-determination can and should be a powerful tool for human rights advocacy. Equatorial Guinea, a tiny island nation in West Africa, has recently discovered more than 1.1 billion barrels of offshore oil. The country's new situation provides a snapshot of the complex issues surrounding mineral exploitation. For instance, the mineral extraction has had scant impact on access to health or education for the vast majority of the Equatoguinean population, and the bulk of the oil wealth is concentrated in the hands of the elite. I argue that economic self-determination demands greater democratic participation in this situation, which in turn provides a foundation for further human rights realization. In other words, economic self-determination allows human rights advocates in Equatorial Guinea to press for the use of oil resources for economic and social rights realization. With the example of Equatorial Guinea in mind, I conclude that economic self-determination's rebirth is of crucial importance to human rights realization in many mineral-rich developing countries.

11. MORTON H. HALPERIN, DAVID J. SCHEFFER & PATRICIA L. SMALL, SELF-DETERMINATION IN THE NEW WORLD ORDER 52 (1992) ("A goal of better representation can underpin self-determination claims of all types.")

12. See Oloka-Onyango, *supra* note 1, at n. 20 (arguing that traditional notions of self-determination imply that economic and social rights are less important than civil and political rights, that self-determination originates from Euro-American norms, and that gender and class are irrelevant).

II. PRINCIPLES OF ECONOMIC SELF-DETERMINATION

A. *Economic Self-Determination's Emergence from the Shadows of Secessionary Self-Determination*

In the context of the current debate on allocation of mineral resources, economic self-determination can be very useful if it emerges from the shadows of secessionary self-determination. Secessionary self-determination—or, in other words, the use of self-determination to establish self-governed nations¹³—dominated discussion during the decades following World War II, in part because self-determination was primarily conceived as a tool for the liberation of territories held by colonial powers.¹⁴ For practical purposes, economic self-determination was seen as a corollary, a mere accompanying tool for ensuring economic independence for the newly independent states, rather than an independent and distinct right.¹⁵ As a “poor second cousin” to secessionary self-determination, economic self-determination was not widely considered an independent tool for redressing the effects of colonialism.¹⁶ But economic self-determination is applicable far beyond the establishment of statehood, because it helps human rights advocates define the conversation between a government and its peoples with regard to resource discovery and exploitation.¹⁷ Economic self-determination should emerge from the shadows of its early association with secessionary self-determination and take on a new role in the emerging debate on resource discovery.

13. See ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 93-94 (1995) (discussing the application of self-determination in the post-World War II era to territories that had not yet attained political independence, but also to those of independent and sovereign states).

14. *Id.* at 93-99.

15. Oloka-Onyango, *supra* note 1, at 169-70 (discussing the conceptual fixation on political self-determination and civil and political rights at the expense of economic and social rights).

16. *Id.* at 169-72 (discussing the lingering effects of colonialism on the economic structures of newly independent African states, and arguing that this economic aspect of colonialism was all but ignored during the debates on self-determination in the 1960s and 1970s).

17. See James E. Falkowski, *Secessionary Self-Determination: A Jeffersonian Perspective*, 9 B.U. INT'L L.J. 209, 235 (1991) (arguing that it is time for a reconceptualization of self-determination).

As self-determination took on a decidedly legal—as opposed to political—character in the post-World War II era,¹⁸ the resulting language laid the groundwork for economic self-determination's independence from secessionary self-determination. The anti-colonial movements in Africa and Asia provided much of the impetus for the emerging legal character of self-determination during this period.¹⁹ During the early years of the United Nations, the general principle that one *nation* should not exercise control over the wealth of another arose as a corollary to the notion of self-government.²⁰ However, the United Nations Charter refers to the “self-determination of peoples,” establishing self-determination as a principle for *peoples*, not nations.²¹ This language, while deeply rooted in state sovereignty, provides the foundation for self-determination as a peoples' right.

The Universal Declaration of Human Rights (UDHR) demonstrates that the economic self-determination has life outside of secessionary self-determination. Without specifically articulating a right to self-determination, the UDHR establishes both economic and internal self-determination as cornerstones of human rights realization.²² Article 22 states that “everyone, as a member of society . . . is entitled to realization. . . . in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his per-

18. See, e.g., CASSESE, *supra* note 13, at 37-47 (discussing the debate over including self-determination in the International Bill of Rights, given that some influential figures regarded self-determination as a political principle rather than a right); Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43 INT'L & COMP. L.Q. 241, 254 (1994) (discussing the transition from the 1920 ICJ *Aaland Islands* case, which limited the legal character of self-determination where it was contrary to the interests of the international community, to the post-1960 international legal system which recognized self-determination as an acceptable ingredient); A. RIGO SUREDA, *THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION: A STUDY OF UNITED NATIONS PRACTICE* 25-27 (1973).

19. Koskenniemi, *supra* note 18, at 254.

20. CASSESE, *supra* note 13, at 49.

21. U.N. Charter art. 1, ¶ 2 (“The purposes of the United Nations are . . . (2) to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples.”).

22. Oloka-Onyango, *supra* note 1, at 171 (calling articles 21 and 22 the “progenitors of the right of self-determination in international human rights law”).

sonality.”²³ This article assumes that the resources of a state will be used for the realization of basic human rights. The “organization” of each state is also a relevant concern, as seen in article 21 that “everyone has the right to take part in the government of his country.”²⁴ As described in the UDHR, economic self-determination, operating as a principle distinct from secessionary self-determination, enables peoples to participate in decisions taken on the use of their resources.

In the early 1950s, the General Assembly started to explore a more specific concept of economic self-determination that focused on peoples’ sovereignty over their own resources in the context of anti-colonialism and global stability.²⁵ One resolution, written in 1952, delineates economic self-determination by balancing the rights of developing countries against macro-economic stability, both in the developing countries’ economies and in the global economy.²⁶ The methods suggested for helping realize economic self-determination are narrowly constrained within the framework of foreign investment used during that period.²⁷ A second resolution from 1952 demonstrates a common sense among member states that economic development was directly linked to stability in

23. Universal Declaration on Human Rights, G.A. Res. 217A, art. 22, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/810 (Dec. 12, 1948).

24. *Id.* art. 21. See also Falkowski, *supra* note 17, at 228 (arguing that, by supporting a representative government, the Universal Declaration “implicitly recognize[s] the natural law principle on which self-determination is based”).

25. See, e.g., Oloka-Onyango, *supra* note 1, at 173.

26. Integrated Economic Development and Commercial Agreements, G.A. Res. 523, at 20, U.N. GAOR, 6th Sess, Supp. No. 20, U.N. Doc. A/2119 (Jan. 12, 1952) (“*The General Assembly*, . . . Considering that the under-developed countries have the right to determine freely the use of their natural resources . . . to further the realization of their plans of economic development in accordance with their national interests, and to further the expansion of the world economy, (1) Recommends that Members of the UN, within the framework of their general economic policy, should . . . (b) Consider the possibility of facilitating . . . (ii) the development of natural resources which can be utilized for the domestic needs of the under-developed countries and also for the needs of international trade.”).

27. *Id.* (“Members of the United Nations . . . should . . . [c]onsider the possibility of facilitating through commercial agreements: The movement of machinery, equipment and industrial raw materials needed by the under-developed countries for their economic development and for the improvement of their standards of living.”).

developing countries.²⁸ This resolution acknowledges the right to economic self-determination and suggests it is a way to achieve stability.²⁹ Ten years later, that connection was explicitly spelled out: “Violations of the right of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace.”³⁰ Always mindful of maintaining economic order, the Assembly argued that the best way for states to preserve peaceful conditions while exercising economic self-determination was to “maintain the flow of capital” and engage in “economic co-operation among nations.”³¹

As articulations of economic self-determination gathered momentum in the late 1950s, the General Assembly expressed a desire to define the right more clearly.³² By this point, drafts of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (“Covenants”) had been completed. They included language on peoples’ “permanent sovereignty over their natural wealth and resources” as a “basic constituent” of the right to self-determination.³³ The General Assembly established a commission to determine “the actual extent and character of this sovereignty,” and to provide recommendations for strengthening the right where necessary.³⁴ Not one single African nation was included in the Commission on Permanent

28. Right to Exploit Freely Natural Wealth and Resources, G.A. Res. 626, U.N. GAOR, 7th Sess., Supp. No. 20, U.N. Doc. A/2361 (Dec. 21, 1952) (“The General Assembly, *Considering* that the economic development of the under-developed countries is one of the fundamental requisites for the strengthening of universal peace . . . *recommends* all Member States, in the exercise of their right freely to use and exploit their natural wealth and resources . . . to have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital.”).

29. *Id.*

30. Permanent Sovereignty Over Natural Resources, G.A. Res. 1803, Preamble at §7, U.N. GAOR, 17th Sess., Supp. No. 17, U.S. Doc. A/5217 (Dec. 14, 1962).

31. G.A. Res. 626, *supra* note 28, ¶ 1.

32. G.A. Res. 1314, U.N. GAOR, 13th Sess., Supp. No. 18, U.N. Doc. A/4090 (Dec. 12, 1958).

33. *Id.*

34. *Id.*

Sovereignty over Natural Resources, though some recently liberated colonies such as Guatemala, Chile, and the Philippines participated.

In two resolutions issued in the early 1960s, the General Assembly articulated two concepts that became central to the accepted definition of the right to economic self-determination.³⁵ First, the Assembly made abundantly clear that the people of a state have the right to participate in decisions regarding the disposal of their natural wealth: A 1962 resolution declares that “peoples and nations” should freely consider the dynamics of exploration and disposition of resources,³⁶ while a 1960 resolution affirms that peoples—as opposed to states—may “freely dispose of their natural wealth and resources.”³⁷ Second, the 1962 resolution includes strong language indicating that natural resources must be used in the interest of the people.³⁸ These two concepts—“free disposition” in the “interests of the people”—became central features of article 1 of each of the Covenants.

The language on disposition of resources in “the interests of the people”—and in particular, of colonized people—fueled a fiery debate. Over the objections of some Western states,³⁹ the General Assembly used language indicating a specific link between economic-self determination and peoples.⁴⁰ This replaced language from the 1952 resolutions that had focused on the link between economic self-determination and

35. See Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N. GAOR 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (Dec. 14, 1960); G.A. Res. 1803, *supra* note 30.

36. G.A. Res. 1803, *supra* note 30, ¶ 2 (“The exploration, development, and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.”).

37. G.A. Res. 1514, *supra* note 35.

38. G.A. Res. 1803, *supra* note 30 (“[T]he right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”).

39. See CASSESE, *supra* note 13, at 46.

40. G.A. Res. 1514, *supra* note 35 (“affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law”).

“under-developed” countries.⁴¹ The 1952 resolutions justified establishing economic self-determination based on concern for the domestic and international economies.⁴² The introduction of language which more specifically targeted peoples rather than states marked a significant step forward for the establishment of economic self-determination as a distinct right capable of application outside of the context of secessionary self-determination; this language can be useful to advocacy today.

B. *The Codification of the Right to Economic Self-Determination*

The first major legal documents to feature self-determination prominently were the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.⁴³ The Covenants, which were adopted and opened for signature in 1966, provide the framework for a rights-based approach to collectively-held wealth, by establishing economic self-determination as a specific and distinct right.⁴⁴ The African Charter on Human and Peoples’ Rights (“Banjul Charter”), the regional human rights treaty adopted by the Organization of African Unity in 1981, does even more to define the right to economic self-determination as a powerful advocacy tool.⁴⁵ All three instruments promulgate a strong version of economic self-determination that emphasizes peoples’ ability to dispose freely of their own resources. The power of the language in these three treaties can and should be harnessed when advocating for human rights realization in mineral-rich countries in Africa.

41. G.A. Res. 523, *supra* note 26; G.A. Res. 626, *supra* note 28, ¶ 1.

42. G.A. Res. 523, *supra* note 26 (“Members of the UN . . . should . . . [facilitate] the development of natural resources which can be utilized for the domestic needs of the under-developed countries.”); G.A. Res. 626, *supra* note 28.

43. CASSESE, *supra* note 13, at 52.

44. See ICCPR, *supra* note 4, art. 1; ICESCR, *supra* note 4, art. 1 (identical texts). On Sept. 25, 1987, Equatorial Guinea acceded to the ICCPR (<http://www.ohchr.org/english/countries/ratification/4.htm>) and the ICESCR (<http://www.ohchr.org/english/law/cescr-ratify.htm>).

45. Banjul Charter, *supra* note 4, arts. 20, 21. Equatorial Guinea ratified the Banjul Charter on Apr. 7, 1986. (<http://www1.umn.edu/humanrts/in-stree/ratz1afchar.htm>).

1. The Right to Economic Self-Determination in the Covenants

The Covenants codify the principles that self-determination in its many forms is a fundamental right⁴⁶ and the launching pad for the realization of a broad panoply of individual human rights.⁴⁷ The documents specifically include more than just secessionary self-determination, making the right to economic self-determination—or self-governance of natural resources—one of the major components of the codification of self-determination.⁴⁸ Both Covenants start with identical provisions:

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

(3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.⁴⁹

46. See Falkowski, *supra* note 17, at 211 (self-determination is the basis for all rights).

47. Kiwanuka, *supra* note 9, at 85 (arguing that self-determination is a collective right that distributes individual rights); Antonio Cassese, *The Self-Determination of Peoples*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 92,101 (Louis Henkin ed., 1981) (arguing that self-determination is the source and pre-requisite for individual rights).

48. See ICESCR, *supra* note 4, art. 1(2); and ICCPR, *supra* note 4, art. 1(2).

49. ICCPR, *supra* note 4, art. 1; ICESCR, *supra* note 4, art. 1 (identical texts).

The prominent placement of these identical provisions at the beginning of each Covenant demonstrates the foundational nature of self-determination and forms the basis for both the civil and political rights and the economic and social rights that follow. By firmly evoking rights-based language in these articles, the Covenants take pains to establish that self-determination encompasses specific rights, as opposed to being merely a political foundation on which individual rights can be realized.

Among those specific rights is economic self-determination. Arts. 1(2) state that “all peoples may, for their own ends, freely dispose of their natural wealth and resources.”⁵⁰ This grant of economic self-determination is made above and beyond the political and developmental self-determination seen in Arts. 1(1). In the language of the Covenants, economic self-determination has a guaranteed minimum: “[I]n no case may a people be deprived of its own means of subsistence.”⁵¹

Economic self-determination as defined in the Covenants gives peoples a way of managing collective wealth by emphasizing two main concepts. First, the instruments emphasize the ability to “freely dispose” of natural wealth and resources. “Free disposition” recognizes that there often needs to be a representative body overseeing the distribution of collective wealth.⁵² This need not necessarily be achieved through governmental change. One method of achieving better representation is to increase the transparency of oil distribution.⁵³ However, the phrase “all peoples may . . . freely dispose of their natural wealth” carries an underlying assumption that members of the state have the ability to participate in decisions regarding the use of their mineral resources. Second, the Covenants emphasize that peoples’ natural wealth and re-

50. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4, art. 1(2) (identical texts).

51. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4, art. 1(2) (identical texts).

52. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 52 (“A goal of better representation can underpin self-determination claims of all types.”).

53. See, e.g., Publish What You Pay, <http://www.publishwhatyoupay.org> (last visited Feb. 7, 2007); see also Cynthia A. Williams, *Civil Society Initiatives and “Soft Law” in the Oil and Gas Industry*, 36 N.Y.U. J. INT’L L. & POL. 457, 470-91 (2004) (giving a detailed assessment of three different voluntary reporting initiatives).

sources must be used “for their own ends.” The authority overseeing natural wealth must, therefore, use these resources to benefit the whole people, not just a small minority thereof.⁵⁴ Cassese alleges that this is a consequence, in economic terms, of peoples’ right to representative government.⁵⁵ The two positive elements of article 1(2) are, therefore, firmly interlinked: Without the right to free disposition, peoples would have no way of enforcing the use for their own (collective) ends. And likewise, without a provision stating that resources must be used for the ends of the peoples, there would be little to stop “free disposition” from becoming a mockery in the hands of those with political power.

Article 1(2) also includes a limiting clause, which states that economic self-determination can be curtailed by international treaties promoting economic cooperation, so long as those treaties are not fundamentally opposed to the right of peoples to dispose of natural wealth.⁵⁶ Though the drafters wished to incorporate the general principle that one country should not exploit the resources of another,⁵⁷ they were under considerable pressure to safeguard foreign investment.⁵⁸ While this may seem like a limitation to the right of economic self-determination, both Covenants include—at much later points in the documents—an identical provision reiterating the paramount commitment to the right of economic self-determination: “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”⁵⁹ The drafting process for the Covenants was drawn out for more than a decade; the addition of these later provisions demonstrates both the ongoing debate and the evolving law.⁶⁰ The inclusion of these later two articles—which essen-

54. Cassese, *supra* note 47, at 103.

55. *Id.*

56. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4, art. 1(2) (“without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law.”); *see also* Cassese, *supra* note 47, at 103-04.

57. Cassese, *supra* note 47, at 103.

58. *Id.*; *see also* MARC BOSSUYT, GUIDE TO THE TRAVAUX PRÉPARATOIRES OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1987).

59. ICCPR, *supra* note 4, art. 47; ICESCR, *supra* note 4, art. 25 (identical texts).

60. Cassese, *supra* note 47, at 103.

tially restate the language of article 1(2) without the references to international obligations—can be seen as a triumph for economic self-determination above concern for the international economic order.⁶¹

Economic self-determination is not merely a right which affects the economic, social, and cultural sphere. The Covenants take an interconnected approach to self-determination, in which the constituent parts are tightly woven together to form a platform for the realization of individual rights.⁶² Without one of the most basic elements of self-determination—self-rule—realization of economic self-determination is nearly impossible. Peoples' ability to choose their political status is the minimum baseline for a representative government.⁶³ In order to exercise the right to economic self-determination, peoples need to be able to "freely dispose" of their natural wealth, implying that some sort of representative body controlling their resources may be the most practical way of realizing this right.⁶⁴ Economic self-determination is a permanent right: "[I]n no case may a people be deprived of its own means of subsistence."⁶⁵ And so economic self-determination implies an ongoing democratic process. Economic self-determination may best be exercised through a representative body controlling the state's resources. Economic self-determination is, in effect, both driven by and supportive of democratic participation and self-governance.

In fact, political self-determination and economic self-determination co-exist in an ongoing symbiosis. The drafters of the Covenants made a very specific change from "all peoples shall have the right to self determination" to "all peoples *have* the right of self-determination" in order to emphasize the per-

61. See G.A. Res. 1803, *supra* note 30 (affecting interpretation of Art. 1); see also Cassese, *supra* note 47, at 103.

62. See Kiwanuka, *supra* note 9, at 85.

63. MICHAEL IGNATIEFF, *THE LESSER EVIL: POLITICAL ETHICS IN AN AGE OF TERROR* 88 (2004) (arguing that a democracy cannot succeed unless the communities who support it are "willing to accept the basic legitimacy of the democratic state's right to survival").

64. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 52.

65. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4 art. 1(2) (identical texts).

manent nature of the right.⁶⁶ The legal scholar James Falkowski argues that the right to choose a government inherent in political self-determination is a continuing right.⁶⁷ This argument rests on the notion that applying self-determination only once would be insufficient; this is true too of economic self-determination. A people's ability to freely dispose of natural wealth rests on ongoing access to a representative and responsive government.⁶⁸

In countries with great natural wealth, economic self-determination as defined in the Covenants can and should form a fundamental part of human rights advocacy. By utilizing their fundamental and continuing right to economic self-determination, peoples can choose to dispose freely of their natural resources for their own ends, and they can choose to allocate substantial resources to the realization of economic and social rights. This in turn gives the population a more profound claim to the right to participate in democratic elections. The argument that self-determination is the platform for the realization of a broad panoply of human rights is highly relevant here.⁶⁹ By grounding human rights arguments in economic self-determination, advocates can pursue many other human rights claims.

2. A Reinforced Articulation of the Right to Economic Self-Determination in the Banjul Charter

The codification of economic self-determination in the Banjul Charter adds to the articulation of economic self-determination in the Covenants and gives people in mineral-rich African countries a second, and even more powerful, tool for human rights advocacy.⁷⁰ The Charter states that:

66. See Cassese, *supra* note 47, at 98 (describing the statements of a spokesman presenting the final draft of the Covenants).

67. Falkowski, *supra* note 17, at 230.

68. See Koskeniemi, *supra* note 18, at 245 (arguing that the type of state involved in a claim of secession helps establish the legitimacy of that claim).

69. Kiwanuka, *supra* note 9, at 85 (arguing that self-determination is a collective right that distributes individual rights); Cassese, *supra* note 47, at 101 (arguing that self-determination is the source and prerequisite for individual rights).

70. Equatorial Guinea ratified the Banjul Charter on Apr. 7, 1986 (<http://www1.umn.edu/humanrts/instreet/ratzlafchar.htm>), more than a year before the country's full accession on Sept. 25, 1987 to the ICCPR (<http://www1.umn.edu/humanrts/instreet/ratzlafchar.htm>).

Article 20:

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

...

Article 21:

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources.⁷¹

These articles on self-determination are more specific and more empowering than the codification in the Covenants in two primary ways: First, the articles make clear that all forms of self-determination are “unquestionable and inalienable”; these unqualified rights may not be cabined using progressive realization.⁷² Second, the Banjul Charter mandates that natu-

www.ohchr.org/english/countries/ratification/4.htm) and the ICESCR (<http://www.ohchr.org/english/law/cescr-ratify.htm>).

71. Banjul Charter, *supra* note 4, arts. 20, 21.

72. *Id.* art. 20.

ral wealth and resources be used in “the *exclusive* interest of the people” rather than for the state or a colonial power.⁷³

Article 20 uses as a starting point language that mirrors the general provision on self-determination found in article 1(1) of each of the Covenants,⁷⁴ but includes additional language that establishes the unqualifiable nature of the right to self-determination.⁷⁵ Richard Kiwanuka argues that the drafters articulated this unconditional conceptualization of self-determination in reaction to what they perceived as ongoing influence by colonial powers.⁷⁶ Economic self-determination today can be used to address lingering aspects of colonialism present in many African economies without needing to rely on secessionary self-determination as cover.

Much like the general article on self-determination (art. 20), the article on the disposition of natural resources (art. 21) includes strong language on the inalienable quality of the right.⁷⁷ Many other articles in the Banjul Charter contain ambiguous language on enforcement, from permissive progressive realization standards⁷⁸ to so-called “clawback” clauses.⁷⁹ In part because of these issues, the Banjul Charter has been criticized for being toothless, “a false dawn for the promotion

73. *Id.* art. 21 (emphasis added).

74. *Id.* art. 20 (All peoples “shall freely determine their political status and shall pursue their economic and social development according to the policy that they have freely chosen.”).

75. *Id.* (“All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination.”).

76. Kiwanuka, *supra* note 9, at 88-89.

77. Banjul Charter, *supra*, note 4, art. 21(1) (“In no case shall a people be deprived of it.”).

78. *See, e.g., id.* art. 26 (“States parties to the present Charter . . . shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.”); *id.* art. 16 (“States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”).

79. *See, e.g., id.* art. 6 (“No one may be deprived of his freedom *except for reasons and conditions previously laid down by law.*”) (emphasis added); *id.* art. 8 (“No one may, *subject to law and order,* be submitted to measures restricting the exercise of these freedoms.”) (emphasis added); *id.* art. 10(1) (“Every individual shall have the right to free association *provided that he abides by the law.*”) (emphasis added).

and protection of human rights.”⁸⁰ It is remarkable, then, that the wording on self-determination is so strong. The powerful, unqualified nature of language on self-determination can be used to great effect today.

The detailed article on the disposition of natural resources in “the exclusive interest of the people”⁸¹ is both an example of the drafters’ commitment to self-determination and a reflection of lingering concerns over the ongoing effects of colonialism on African economies.⁸² Article 21 reserves natural resources exclusively for African peoples.⁸³ Once again, it uses the Covenants’ notion of peoples’ right to dispose of natural wealth for their own ends as a starting point and adds that these resources must be used in the “*exclusive* interest of the people.”⁸⁴ Peoples should be able “to fully benefit from the advantages derived from their national resources.”⁸⁵ Under this language, it is clear that the only proper beneficiary of exploitation of natural resources is the people. In the event of spoliation, the people—and not the state or company—is entitled to compensation.⁸⁶ The Banjul Charter makes it absolutely clear that economic self-determination is an unqualifiable right and that the natural resources belong to the people.

The articles on economic self-determination and disposition of natural resources in the Banjul Charter can be wielded as a powerful tool to bring about the greater realization of fundamental human rights among the many mineral-rich African countries that are party to the Charter. The document em-

80. Gino J. Naldi, *Future Trends in Human Rights in Africa: The Increased Role of the OAU?*, in *THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS: THE SYSTEM IN PRACTICE, 1986-2000* 1, 5 (Malcolm D. Evans & Rachel Murray eds., 2002).

81. Banjul Charter, *supra* note 4, art. 21(1).

82. *SERAC & CESR v. Nigeria*, Communication (The Ogoni Case), African Comm. Hum. & Peoples’ Rights, Comm. No. 155/96 (Oct. 27, 2001) (stating that the drafters of Article 21 were attempting to redress the continent’s “painful legacy”); *see also* J. Oloka-Oyango, *Reinforcing Marginalized Rights in an Age of Globalization: International Mechanisms, Non-State Actors, and the Struggle for Peoples’ Rights in Africa*, 18 *AM. U. INT’L L. REV.* 851, 867-71 (2003) (discussing the connection between colonialism and articulation of African peoples’ rights in the Ogoni case).

83. Banjul Charter, *supra* note 4, art. 21.

84. *Id.* art. 21(1) (emphasis added).

85. *Id.* art. 21(5).

86. *Id.* art. 21(2).

braces self-determination as a fundamental right, and uses it as a tool to end the devastating and lingering effects of colonialism. That same language can now be used to end incursions on peoples' rights by non-democratic states. States party to the Charter have agreed that peoples have the "unquestionable and inalienable" ability to "pursue their economic and social development according to the policy they have freely chosen."⁸⁷ The Banjul Charter is a document that "guarantees cross-cutting rights which straddle, underlie or facilitate the exercise of both civil and political rights and economic, social, and cultural rights."⁸⁸ By using the articles on economic self-determination as a fundamental part of an advocacy strategy, human rights advocates can demand to participate in policy decisions and make a claim to substantial resources that can help bring about the realization of fundamental human rights.

Economic self-determination, as codified in the principle human rights treaties, encompasses two crucial points. First is the free disposition standard: All peoples must be able to freely dispose of their natural resources. Such free disposition requires a certain level of political participation in a representative body that distributes the natural wealth. Second, all peoples must be able to use their wealth in a manner that benefits them. This standard—the "for their own ends" standard—has been refined in a number of ways. It can be taken to imply some sort of distributional equity. It also means that all peoples should "enjoy and utilize fully and freely their natural wealth and resources."⁸⁹ In the African context, this standard is even higher: Natural wealth and resources must be used in the *exclusive* interest of the peoples.⁹⁰ In too many mineral-rich countries, only a minute portion of the population chooses how to dispose of resources, and, likewise, only a minute population benefits from the wealth. Advocates need to highlight the continuing breach of the people's right to economic self-determination as a foundational strategy for human rights realization in this context.

87. *Id.* art. 20.

88. Chidi Anselm Odinkalu, *Analysis of Paralysis or Paralysis by Analysis?: Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and Peoples' Rights*, 23 HUM. RTS. Q. 327, 337 (2001).

89. ICCPR, *supra* note 4, art. 47; ICESCR, *supra* note 4, art. 25 (identical texts).

90. Banjul Charter, *supra* note 4, art. 21(1).

C. *Economic Self-Determination and Anti-Colonialism*

Despite the language articulated in the Covenants and the Banjul Charter, economic self-determination in the post-World War II era was predominantly associated with secessionary self-determination.⁹¹ When support for secessionary self-determination faded amongst fears of fragmentary secession after the end of the Cold War,⁹² economic self-determination—considered a mere corollary⁹³—fell out of favor as well. Economic self-determination can and must survive the backlash against secessionary self-determination. Self-determination in the post-Cold War era need not be eviscerated by fears of disrupting territorial integrity.⁹⁴ Economic self-determination can be applied without threatening secession by emphasizing peoples' right to participate in decisions on natural resources. Consequently, it should be viewed as a tool distinct from secessionary self-determination: a device for wresting mineral-rich economies away from the economic structures established by colonial powers.⁹⁵

In the period directly following World War II, self-determination had potentially explosive ramifications for secession, with its ability to override territorial integrity.⁹⁶ Too broad an application of self-determination caused fear among international lawyers⁹⁷—how could it be justified or practical for hun-

91. Oloka-Onyango, *supra* note 1, at 168.

92. See IGNATIEFF, *supra* note 1, at 12 (arguing that since the Cold War ended, relatively new states have “won the ‘right of self-determination’ on the cruelest possible terms: they have simply been left to fend for themselves”); see also Falkowski, *supra* note 17, at 235 (arguing that it is time for a reconceptualization of self-determination); Alston, *supra* note 1, at 270-71 (arguing that self-determination has declined considerably in the post-Cold War era).

93. Oloka-Onyango, *supra* note 1, at 169.

94. Koskenniemi, *supra* note 18, at 242 (arguing that self-determination must be applied beyond the colonial context, and should not be limited by fears of disrupting territorial integrity).

95. See Oloka-Onyango, *supra* note 1, at 171-72 (arguing that the export-based economic structures established in sub-Saharan Africa during the colonial period continue today, to the detriment of the post-colonial states).

96. See, e.g., IGNATIEFF, *supra* note 1, at 12 (arguing that the Cold War regulated the proliferation of nation-states, just as other systems of superpowers had in previous eras).

97. Koskenniemi, *supra* note 18, at 243 (“Doctrinal purity about a right of self-determination put an intolerable burden on the international lawyer . . .”).

dreds and hundreds of miniscule groups to raise claims for independent statehood?⁹⁸ How could it be determined which groups constitute a “people” deserving of self-rule?⁹⁹ Understandably, states adamantly and consistently rejected any notion of a right to secession.¹⁰⁰ Because of the “deeply ingrained aversion to contemplating the right to secede, even in the abstract,”¹⁰¹ self-determination in the post-World War II era was predominantly applied to anti-colonial situations only. Consequently, a particular vision of self-determination dominated the discourse, leaving little room for alternative, innovative methods of realization.

Limiting self-determination to colonial situations—what this Note will call the anti-colonial limiting principle—gives rise to a narrow reading of self-determination at odds with the notion that self-determination is a continuing right.¹⁰² Secessionary self-determination in the colonial context can be exercised only once: As soon as the colonial power has ceded control of the territory, self-determination has been realized. At this point *uti possidetis* freezes the territorial title, and the newly independent state’s entitlement to territorial integrity overrides any further self-determination claims.¹⁰³

The anti-colonial limiting principle was a compromise that emerged from the deeply controversial debates over self-

98. See, e.g., Falkowski, *supra* note 17, at 210 (recognizing that there are numerous existing states containing more than one “people”); Talbot, *supra* note 6, at 156 (arguing that recognition of the self-determination claims of small regions within countries becomes more possible when the nation-state itself is secure in its identity, so that self-determination can flourish on an internal scale without “requiring the proliferation of ethnically based microstates”).

99. See IGNATIEFF, *supra* note 1, at 9-10 (arguing that individuals feel a sense of belonging to a people because of intangible, ‘sentimental’ factors); Oloka-Onyango, *supra* note 1, at 163 (mentioning that minorities, women, refugees, children and indigenous groups rarely constitute a “people” in the context of self-determination); see also Koskenniemi, *supra* note 18, at 243 (examining the claims to statehood of the six official Yugoslav “nations”).

100. CASSESE, *supra* note 13, at 122.

101. Oloka-Onyango, *supra* note 1, at 198.

102. Falkowski, *supra* note 17, at 230. See also Cassese, *supra* note 47, at 98 (arguing that self-determination is an ongoing right, given that “all peoples have the right to self-determination” under Article 1(1)).

103. Jan Klabbers & René Lefeber, *Africa: Lost Between Self-Determination and Uti Possidetis*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 37, 37-38 (Catherin Brölmann ed., 1993).

determination during the drafting of the Covenants.¹⁰⁴ But it is a compromise riddled with opportunities for exploitation; it prevents fragmentation of states, but at a very high cost to fundamental rights. First, the principle excludes redefinition of boundaries even in extreme cases. Peoples who are denied self-government by a local power as opposed to a colonial one have no recourse. Second, the principle leaves no room for acknowledging the continuing nature of the right to self-determination, and so forms of internal self-determination are by definition excluded.

The anti-colonial limiting principle also excludes realization of economic self-determination, despite the fact that economic self-determination was a natural corollary of the movement for political independence in colonial territories.¹⁰⁵ In 1960, the General Assembly stated that any grant of political independence to colonized peoples must necessarily be accompanied by control over natural wealth and resources.¹⁰⁶ However, economic self-determination in this context is hollow. With no acceptance of the ongoing nature of the right, there is no way that a people can challenge denial of economic self-determination by a domestic oppressor.

The anti-colonial limiting principle has largely disintegrated, for three reasons. First, the end of the Cold War changed the dynamics of the debate on self-determination; formerly socialist countries who had argued passionately against internal self-determination no longer constituted a powerful voice.¹⁰⁷ Second, international courts have acknowledged self-determination claims of peoples oppressed by non-colonial powers.¹⁰⁸ Third, starting the early 1970s, the concept of peoples' rights gained increasing acceptance in areas

104. CASSESE, *supra* note 13, at 44-47 (discussing the various positions of Socialist, Third World, and Western states on self-determination, secession, and state sovereignty).

105. See Oloka-Onyango, *supra*, note 1 at 171.

106. G.A. Res. 1514, *supra* note 35 (stating that the continued existence of colonialism "impedes the social, cultural, and economic development of dependent peoples," and affirming that these peoples may "freely dispose of their natural wealth and resources").

107. See CASSESE, *supra* note 13, at 45.

108. See, e.g., The South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), 1962 I.C.J. 319 (Dec. 21) (Preliminary Objections Judgment); The South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), 1966 I.C.J. 6 (July 18) (Second Phase Judgment).

such as minority rights and the right to the environment, though support for these positions has fallen away in the post-Cold War era.¹⁰⁹ These three developments lay the groundwork for a plausible reinvigoration of economic self-determination.

The anti-colonial limiting principle and economic self-determination initially shared a common policy goal: ending colonialism. Yet despite these historical links, anti-colonial fighters did not focus enough on economic issues.¹¹⁰ This concern remains highly relevant to Equatorial Guinea and other mineral-rich African countries. These countries still suffer from the vestiges of the economic structures established during the colonial era: foreign and transnational investment patterns favor rich, neo-colonial powers.¹¹¹ Human rights activists need to push for a new vision of self-determination that addresses anti-colonial issues without limiting self-determination's application to the single moment of achieving political independence from the colonial regime.

Since the end of the Cold War, amidst fears of fragmentary secession, self-determination has been in flux.¹¹² Economic self-determination can fill this gap because it does not threaten secessionism. Instead of hinting at the chaos associated with splintering states, economic self-determination neatly acknowledges that nations are comprised of "collections of individuals who are linked principally by the existence of a statal decision-procedure which makes it possible for them to participate in the conduct of their common affairs within the State."¹¹³ Economic self-determination claims leave state borders intact by providing a way for individuals to exercise control over their natural resources without fundamentally challenging the state's existence.

109. Alston, *supra* note 1, at 273-83 (using discussions of minority rights and environmental rights to demonstrate how much peoples' rights have failed to live up to their expectations).

110. Oloka-Onyango, *supra* note 1, at 171.

111. *Id.* at 172.

112. See IGNATIEFF, *supra* note 1, at 12; Falkowski, *supra* note 17, at 235 (arguing that it is time for a reconceptualization of self-determination); Alston, *supra* note 1, at 270-71 (arguing that self-determination has declined considerably in the post-Cold War era).

113. Koskenniemi, *supra* note 18, at 249.

There is little question that secessionary self-determination is gasping for air.¹¹⁴ In the post-Cold War era, many international lawyers and diplomats have run from secessionary self-determination, fearing that “the emergence of new states is likely to embolden groups within other states.”¹¹⁵ Alston argues that in the post-Cold War period, external self-determination has been consigned “to the history of the struggle for decolonization.”¹¹⁶ Liberation movements have waned, and the dissolution of Yugoslavia—in addition to ongoing struggles in former Soviet republics—has made people wary of fragmentary secession.¹¹⁷ But it is worth remembering that self-determination can be realized in different ways, many of which fall far short of—and in fact diminish the likelihood of—independent statehood.¹¹⁸ A resurgence of economic self-determination, which relies on internal participation rather than secession, can form the basis for coherent human rights advocacy on the exploitation of mineral resources in the current legal and political climate.

III. *Time for a Re-Birth: Emerging Approaches to Self-Determination in the Post-Cold War Era*

The conceptual framework of self-determination that dominated the practical application of the principle during the decades following World War II left unanswered many breaches of economic self-determination in sub-Saharan Africa. Claims for internal and economic self-determination can be (and have been) made across the continent,¹¹⁹ and these claims are supported by the legal definitions of self-determination that emerged from the Covenants and the Banjul Charter. It is time for a new era of self-determination: one that rec-

114. See Alston, *supra* note 1; Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, 47 INT'L & COMP. L.Q. 537 (1998).

115. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 4.

116. Alston, *supra* note 1, at 271.

117. *Id.* at 269.

118. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 46.

119. See, e.g., SERAC & CESR v. Nigeria, African Comm. Hum. & Peoples' Rights, Comm. No. 41/90 (raising an economic self-determination claim among others); J.G.A. Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia, Comm. No. 760/1997, U.N. doc. CCPR/C/69/D/760/1997 (2000) (raising a claim for internal self-determination in Namibia).

ognizes forms of self-determination which do not necessarily challenge territorial integrity, and upholds economic self-determination as a fundamental tool for human rights advocacy. According to Martti Koskenniemi, present-day law on self-determination should fundamentally encompass some notion of democratic participation.¹²⁰ Forms of self-determination that do not threaten territorial integrity—including economic self-determination—nurture democratic principles while providing the requisite resources to redress economic and social rights violations.¹²¹

The developing support for internal self-determination¹²² provides an excellent foundation for the rebirth of economic self-determination. Internal self-determination—the right to participate in representative government and to determine the social, economic, and cultural policies of the state¹²³—diminishes the threat of minority secession by focusing on the importance of democratic participation.¹²⁴ Scholars have already begun to recognize non-colonial peoples as legitimate holders of claims for internal self-determination.¹²⁵ This awareness that self-determination can apply beyond secession bodes well for a greater acceptance of economic self-determination in today's human rights discourse.

120. Koskenniemi, *supra* note 18, at 256 (“Reliance on a formal conception of an impenetrable statehood too easily throws a legitimizing veil over oppressive domestic practices.”).

121. Falkowski, *supra* note 17, at 235-36 (arguing that self-determination must be used to build a world order based on democratic principles, for “when a government no longer represents the will of the majority of its people it no longer has any legitimate authority over them”).

122. *See, e.g.*, Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (The Canadian Supreme Court has identified certain criteria under which minority rights can lead to self-determination.); Klabbers & Lefeber, *supra* note 103, at 48 (arguing that there is “considerable doctrinal support for a legal entitlement to external self-determination, if a people has been deprived of its right of internal self-determination”). *But see* Alston, *supra* note 1, at 276 (arguing that people's rights have declined since the end of the Cold War, and that now the consensus is to “move away from the old rhetoric of collective, group, or peoples' rights for minorities”).

123. Cassese, *supra* note 47, at 96-97.

124. Oloka-Onyango, *supra* note 1, at 167.

125. *See, e.g.*, IGNATIEFF, *supra* note 1, at 178-213 (discussing the push for an independent Kurdistan).

Internal self-determination matters because, in Cassese's phrase, it is "the synthesis and summa of human rights."¹²⁶ According to Cassese, internal self-determination is more than just the right to self-government. Internal self-determination encompasses all rights that make possible the right to self-government, including freedoms of expression, association, and speech. Internal self-determination also embraces the notion that "the government, once chosen, continues to enjoy the consensus of the people and is neither oppressive nor authoritarian."¹²⁷ Economic self-determination builds from internal self-determination: Internal self-determination makes possible the free disposition of a people's resources. Economic self-determination in tandem with internal self-determination, should be seen as a foundational principle which vests in peoples as a necessary means of conveying to individuals their fundamental human rights.¹²⁸

A. *The Enduring Competition Between People and States for Control over Natural Resources*

Economic self-determination, much like internal self-determination, has at its core a power struggle between peoples and states. Since self-determination became an articulated legal concept, states and peoples have gradually become competitors for the resources of the territory.¹²⁹ Oloka-Onyango argues, "states in modern times serve less to facilitate the dynamic of self-determination than they serve to impede it."¹³⁰ With the rise of internal self-determination, commentators have become more aware of the relationship between governments and peoples when considering self-determination claims.¹³¹ Economic self-determination in Equatorial Guinea amounts to a struggle between the people and the Obiang government. Realization of economic self-determination can help

126. ANTONIO CASSESE, *Political Self-Determination—Old Concepts and New Developments*, in UN LAW/FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW 137, 154-55 (Antonio Cassese ed. 1979).

127. *Id.* See also Kiwanuka, *supra* note 9, at 100.

128. Cassese, *supra* note 47, at 101.

129. Oloka-Onyango, *supra* note 1, at 167.

130. *Id.* at 206.

131. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 46-52.

stabilize the country and prevent claims for secessionary self-determination.¹³²

Our post-colonial concept of economic self-determination must recognize and empower peoples as rights holders.¹³³ The deep connection between internal self-determination and economic self-determination is void if states hold the right to economic self-determination. Peoples, as rights holders, can use their ability to participate in the political process to “freely dispose” of their resources. In addition, enshrining people as rights holders of economic self-determination is the only way to ensure that they are the primary beneficiaries of their resources.

There is much dispute in the literature as to what constitutes a “people” for the purposes of self-determination, but that is not the subject of this Note.¹³⁴ In even the most conservative reading of this debate, the Equatoguineans constitute a “people.” The Declaration on Friendly Relations of 1970 emphasized that the concept applies to all peoples, not just to colonially-oppressed peoples.¹³⁵ Article 1 of the Conventions applies at minimum to peoples organized as states.¹³⁶

132. J.M.K. Ahoussou, *A Refugee in Cote D'Ivoire: Foreign Dissident Murdered*, L'Inter BBC MONITORING INTERNATIONAL REPORTS, Feb. 10, 2006 (discussing the murder of the leader of a movement for self-determination for the island of Bioko, one of the constituent parts of Equatorial Guinea); see also Klabbers and Lefeber, *supra* note 103, at 48 (arguing there is considerable doctrinal support for a legal entitlement to external self-determination, if a people has been deprived of its right of internal self-determination).

133. See Falkowski, *supra* note 17 at 235 (arguing that political self-determination, in keeping with natural law, is best seen as a world in which people are sovereign).

134. See, e.g., Ved P. Nanda, *Revisiting Self-Determination as an International Law Concept: A Major Challenge in the Post-Cold War Era*, 3 ILSA J. INT'L & COMP. L. 443, 445-46 (1997) (discussing which groups constitute “peoples” with respect to self-determination).

135. G.A. Res. 2625, U.N. GAOR 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970).

136. See Quane, *supra* note 114, at 561.

1. Problems with the De Facto State-Centered Application of Self-Determination

Self-determination, in its political origins, was deeply connected to statehood,¹³⁷ but as the doctrine developed into a legal concept, self-determination came to be seen as a peoples' right.¹³⁸ In too many states, however, non-representative governments still exercise near-exclusive control of natural resources.¹³⁹ With the focus on colonizer and colonized, states have benefited more than peoples from self-determination during the bulk of the post-war period. But in a modern application of economic self-determination, there are numerous problems with this de facto, state-centered concept, primary among them the on-going violation of the peoples' right. As economic liberalism gives the West greater power to access the resources of the developing world, these problems become more and more evident.¹⁴⁰ It is time to embrace a vision of economic self-determination that calls for the control of mineral resources by peoples (through representative bodies).

The state-centered notion of economic self-determination is particularly inappropriate in the African context. The process of decolonization left artificial states imposed on diverse and divided peoples.¹⁴¹ Borders, kept largely intact from the colonial period, had been drawn without any regard for the categories of "peoples" established by the ICJ, such as ethnicity, or race. In fact, the borders grew from a colonial distribution of economic power, allowing self-determination to be dictated by the heirs to that power, rather than by the peoples inhabiting particular states.

Oloka-Onyango argues that the state-centered application of self-determination is a very Western concept, one ill-suited

137. See Koskenniemi, *supra* note 18, at 246 (discussing the Aaland Islands case).

138. See, e.g., Alston, *supra* note 1.

139. Cf. Oloka-Onyango, *supra* note 1, at 184-85 (arguing that anti-colonial fighters in Africa did not focus enough on peoples' self-determination movements).

140. See *id.* at 188-89 (arguing that the group, or "state," must not be taken as a given; instead proponents of self-determination should recognize that other groups, including women, have a claim to entitlement).

141. MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* 16-18 (1996).

to application in the post-colonial African context.¹⁴² During the process of decolonization there was significant tension between pan-Africanism (which argued for the reconsideration of colonial boundaries) and those who wished to maintain the Berlin Conference lines and embrace *uti possidetis*.¹⁴³ The OAU strongly favored maintaining existing borders, but this position was countered by many dissenting points: the divisions of tribes across borders, the large number of countries, and the regional powers who claimed greater territory.¹⁴⁴

Traditional notions of state-centered self-determination are irrelevant in contemporary political realities.¹⁴⁵ First, these traditional notions derive from a dichotomy between the colonial and the colonized—not the oppressor and the oppressed. This does not adequately provide a foundation for a focused application of economic self-determination, which should be used as an empowering tool for peoples within a dictatorial state. Second, proponents of state-centered applications of self-determination argue that in some instances, only states have the necessary leverage on the international stage.¹⁴⁶ But this argument falls apart when governments fail to advocate on behalf of their peoples—at that point, the people's rights are undefended.

Equating “people” with “states” for the purposes of self-determination “assumes that the interests of the people are adequately represented by their state.”¹⁴⁷ This ill-conceived notion of self-determination not only impedes peoples' assertions of their rights, but strengthens the state's international legitimacy, thus further weakening the peoples' position.¹⁴⁸ As Koskenniemi argues, “reliance on a formal conception of an im-

142. See Oloka-Onyango, *supra* note 1, at 183-84 (arguing that African notions of “self” and “statehood” are very different from European conceptions).

143. *Id.* at 184-85; Klabbers and Lefeber, *supra* note 103, at 56-58.

144. Klabbers & Lefeber, *supra* note 103, at 56-58.

145. See Falkowski, *supra* note 17, at 238 (arguing that the traditional concept of self-determination vests the right in the state).

146. Kiwanuka, *supra* note 9, at 95-96 (arguing that, for example, states have much more leverage than peoples to lobby the international community for greater resources for development programs).

147. *Id.* at 97.

148. *Id.* (“Equating peoples and states strengthens the state and subjects the rights of the people to the whims of whoever controls the political process.”).

penetrable statehood too easily throws a legitimizing veil over oppressive domestic practices.”¹⁴⁹ Adhering to the de facto, state-centered application of self-determination negatively impacts the competition between peoples and states for natural resources that underlines the struggle for human rights realization in resource-rich countries.

2. Peoples as Rights-Bearers, States as Duty-Holders

Despite the de facto state-centered application of self-determination, a persuasive legal doctrine has emerged in the last four decades supporting the notion that peoples are the bearers of the right to economic self-determination. The discourse on economic self-determination in the period immediately following World War II showed some ambiguity as to whether states or peoples bore the right to economic self-determination. General Assembly resolutions from this period use “people” and “state” interchangeably, and even in the throes of the anti-colonial movement, self-determination was never labeled a right belonging to states rather than peoples.¹⁵⁰ These resolutions were not written with the clear intention of clarifying this dispute; rather the delegates were fiercely debating the extent to which economic self-determination could be used as a tool to end colonialism.¹⁵¹

149. Koskenniemi, *supra* note 18, at 256.

150. *See, e.g.*, G.A. Res. 523, *supra* note 26 (stating that that “under-developed countries have the right to determine freely the use of their natural resources” and speaking in general terms of “economic development” in these countries); G.A. Res. 626, *supra* note 28 (referring to the “right of peoples freely to use and exploit their natural wealth and resources,” but merely one paragraph later recommending “all Member States, in the exercise of their right freely to use and exploit their natural wealth and resources”); G.A. Res. 1803, *supra* note 30 (declaring in Paragraph 4 of the preamble that “any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,” yet just three paragraphs later, recommending that “economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination”).

151. *See* Oloka-Onyango, *supra* note 1, at 173-74; *see also* CASSESE, *supra* note 13, at 44 (arguing that members of the socialist bloc in particular limited self-determination claims to colonized entities).

By the 1960s, economic self-determination was more clearly labeled as a peoples' right. The draft Covenants refer to "permanent sovereignty over natural wealth and resources," but do not specifically attribute permanent sovereignty to peoples or states.¹⁵² In 1962, however, the General Assembly specifically stated that peoples have a direct interest in their permanent sovereignty: "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned."¹⁵³ The awareness that peoples play a central role in the realization of economic self-determination was clearly present, even this early in the conceptualization of the right.

The final language of the Covenants, of course, confirms the vesting of the right to economic self-determination in the peoples. Articles 1(2) plainly state that "all *peoples* may, for *their* own ends, freely dispose of *their* natural resources."¹⁵⁴ The Covenants protect all peoples, not just those closest to the state's governing figures: "[I]n no case may a people be deprived of its own means of subsistence."¹⁵⁵ Nowhere in the first two sections of the provisions on self-determination is the state mentioned; in fact the Article opens with a simple statement of peoples' rights: "All peoples have the right to self-determination."¹⁵⁶ The state is only mentioned in terms of duties, *not* in terms of rights: "[T]he States Parties to the present Covenant . . . shall promote the realization of the right of self-determination."¹⁵⁷

The Banjul Charter reinforces the notion that peoples are the holders of the right to economic self-determination, as distinct from the state. However, the relationship between "peoples" and "state" in the Banjul Charter is complex. The Banjul Charter grew from the Organization of African Unity (OAU), an organization that had among its principle objectives "to de-

152. See Bossuyt, *supra* note 58.

153. G.A. Res. 1803 *supra* note 30, ¶1

154. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4, art. 1(2) (identical texts) (emphasis added).

155. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4, art. 1(2).

156. ICCPR, *supra* note 4, art. 1(1); ICESCR, *supra* note 4, art. 1(1) (identical texts).

157. ICCPR, *supra* note 4, art. 1(3); ICESCR, *supra* note 4, art. 1(3) (identical texts).

fend the sovereignty and territorial integrity of its Member States and to rid Africa of colonialism and racialism.”¹⁵⁸ Naldi argues that this mindset was very much present when the Banjul Charter was written.¹⁵⁹ Odinkalu agrees that the preservation of independence and sovereign integrity was a prevailing concern for the OAU.¹⁶⁰ However, he goes on to argue that the drafters of the Banjul Charter were also influenced by the existing regional human rights bodies in America and Europe, and ultimately produced an innovative framework, built on indivisibility and interdependence of human rights.¹⁶¹ The articles on self-determination in the Banjul Charter appear in the middle of a series of articles on peoples’ rights,¹⁶² and there is considerable debate over the meaning of “peoples” in this section of the Charter.¹⁶³ This debate reflects the tensions within the OAU at the time of drafting: Some argue that “peoples” in the Charter is synonymous with the state, others argue that “peoples” refers to the pan-African notion that all Africans are one people.¹⁶⁴ Kiwanuka argues that the meaning of “peoples” is not consistent throughout the Charter, and is best determined in the context of the particular right discussed.¹⁶⁵

Articles 20 and 21 are far more complex on this point than the corresponding language in the Covenants. Simultaneously, the Banjul Charter provisions are both fiercely protec-

158. Naldi, *supra* note 80, at 2-6 (examining the factors that help explain why the OAU failed for many years to adequately address human rights issues).

159. *Id.*

160. Chidi Anselm Odinkalu, *Implementing Economic, Social and Cultural Rights Under the African Charter on Human and Peoples’ Rights*, in *THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS: THE SYSTEM IN PRACTICE*, 1986-2000 178, 180 (Malcom D. Evans & Rachel Murray eds., 2002).

161. *Id.* at 183-88.

162. Banjul Charter, *supra* note 4, arts. 19-24.

163. See, e.g., N. Barney Pityana, *The Challenge of Culture for Human Rights in Africa: The African Charter in a Comparative Context*, in *THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS: THE SYSTEM IN PRACTICE*, 1986-2000 219, 231-34 (Malcolm D. Evans & Rachel Murray eds., 2002); Kiwanuka, *supra* note 9; Oloka-Onyango, *supra* note 1, at 164-66; H.W.O. Okoth-Ogendo, *Human and Peoples’ Rights: What Point is Africa Trying to Make?*, in *HUMAN RIGHTS AND GOVERNANCE IN AFRICA*, 74, 78-81 (Ronald Cohen, Goran Hyden & Winston P. Nagen eds., 1993).

164. See Pityana, *supra* note 163, at 231 (summarizing the various positions taken by scholars on the meaning of “peoples” in the Banjul Charter).

165. Kiwanuka, *supra* note 9, at 82.

tive of peoples' rights and ostensibly committed to helping states fight colonialism. Article 20 identifies "colonized and oppressed peoples" as the holders of the right to self-determination. This is a mainstream categorization in keeping with the limiting of self-determination to anti-colonialism.¹⁶⁶ Article 21 lacks definitional clarification on the distinction between peoples and states with respect to economic self-determination.¹⁶⁷ Clause 1 reserves the right of economic self-determination to the peoples, and states that "in no case shall a people be deprived of it."¹⁶⁸ But just four paragraphs later, we learn that "States parties . . . shall individually and collectively exercise the right to free disposal of their wealth and natural resources."¹⁶⁹ The Article ends, however, with a statement that stresses States' duties to preserve peoples' rights: "States parties . . . shall undertake to eliminate all forms of foreign economic exploitation . . . so as to enable their *peoples* to fully benefit from the advantages derived from *their* national resources."¹⁷⁰

What should we make of the Banjul Charter's lack of clarity regarding "people" and "state" with respect to self-determination? In some ways, it reflects the drafters' greater fear of colonialism than internal oppression; rigid state sovereignty was a way to protect against further colonial encroachment. However, Oloka-Onyango argues that "rather than privileging the interests of the state, it is possible to read [article 21] as a direct boost to the rights and interests of the peoples within the state, and of the responsibility of the state to those peoples."¹⁷¹ If sovereignty were the only concern, then the article would refer only to states. As written, the article enumerates peoples' rights that are not articulated in the Covenants—for instance, that the right to exploit natural resources should be exercised in the *exclusive* interest of the people.¹⁷²

166. *Id.* at 88-89 (arguing that UN practice supports the idea of colonized people—as opposed to some sort of emerging state—holding a right to self-determination).

167. See Oloka-Onyango, *supra* note 82, at 888.

168. Banjul Charter, *supra* note 4, art. 21(1).

169. *Id.* art. 21(4).

170. *Id.* art. 21(5) (emphasis added).

171. Oloka-Onyango, *supra* note 82, at 890 (arguing that the Commission's decision in the Ogoni case implicitly supports his reading of Art. 21).

172. Banjul Charter, *supra* note 4, art. 21(1).

The definition of which “peoples” are entitled to self-determination is contentious and involves many potential categories.¹⁷³ However, it is clear that *all* persons within a State can constitute a “people.”¹⁷⁴ A “people” in this sense is the aggregate of various smaller groupings of peoples—such as minority peoples. Kiwanuka argues that peoples, defined as *all* persons within a State, have the collective right to “uninterrupted enjoyment of the right to self-determination, which should protect the people against oppression and exploitation.”¹⁷⁵ Both the Covenants and the Banjul Charter give considerable backing to the notion that peoples are the holders of the right to economic self-determination.

The support found in the international instruments for the notion that peoples are the holders of the right to economic self-determination corresponds with the logical extension of the right to internal self-determination. If economic self-determination derives from the continuing right to internal self-determination, then it only makes sense for the right to economic self-determination to vest in peoples. Internal self-determination stems from the notion that not every group of people can operate its own state; many states are multicultural.¹⁷⁶ Internal self-determination is a way of recognizing all peoples’ right to self-government without causing the breakdown of state borders.¹⁷⁷ Therefore, it is impossible for internal self-determination to vest in the state; rather, the state has the duty to provide internal self-determination for its people. Because economic self-determination fundamentally builds on internal self-determination, it is properly vested in peoples as opposed to the state.

173. According to the International Commission of Jurists, a people may be formed through “1. A common history; 2. racial or ethnic ties; 3. cultural or linguistic ties; 4 religious or ideological ties; 5. a common territory or geographical location; 6. a common economic base; and 7. a sufficient number of people.” INTERNATIONAL COMMISSION OF JURISTS, *supra* note 8 at 70.

174. Kiwanuka, *supra* note 9, at 99.

175. *Id.* at 99.

176. Falkowski, *supra* note 17, at 210.

177. CASSESE, *supra* note 13, at 101.

B. *The Timing Is Right: Economic Self-Determination's
Compatibility with Current Discourses on Economic
Liberalism, Democratization, and
Ongoing Anti-Colonialism*

With the growing fear of secessionary self-determination and the decline of support for peoples' rights since the end of the Cold War, economic self-determination has been cast aside.¹⁷⁸ And yet, the theory of economic self-determination is very much aligned with contemporary movements in the international legal and political framework. For instance, economic self-determination supports the modern propensity for democratization, because it fundamentally demands the participation of people in determining the appropriate use of their resources. Second, economic self-determination is a clear ally of economic liberalism because it supports growing economic interdependence.¹⁷⁹ Third, economic self-determination provides theoretical justifications for ongoing anti-colonial struggles intending to free sub-Saharan Africa from the deleterious remnants of the colonial economic system.¹⁸⁰

1. Economic Self-Determination and Economic Liberalism

Economic self-determination serves as liberalism's natural ally. Some scholars argue that self-determination can run counter to the interests of liberalism.¹⁸¹ For instance, some

178. Oloka-Onyango, *supra* note 1, at 174-77. Cf. Alston, *supra* note 1, at 276 ("[F]ragmentationist tendencies of the post-Cold War era, combined with some of the consequences of globalization, have led many commentators to stress the need to move away from the old rhetoric of collective, group, or peoples' rights for minorities.").

179. See, e.g., Damian Ondo Mañe, *Emergence of the Gulf of Guinea in The Global Economy* 11 (International Monetary Fund Working Paper, WP/05/235) (arguing that oil revenue in the Gulf of Guinea, if managed in transparent public funds, could be used as a guarantee for private foreign investors to deliver funds for business infrastructure).

180. See Oloka-Onyango, *supra* note 1, at 180.

181. See, e.g., William Bradford, "With a Very Great Blame on Our Hearts": *Reparations, Reconciliation, and an American Indian Plea for Justice*, 27 AM. INDIAN L. REV. 1, 128 (2002); Quane, *supra* note 114, at 571-72 (arguing that the exercise of external self-determination can threaten international peace and security); Nanda, *supra* note 134, at 444-45 (arguing that self-determination has an explosive quality in the post-Cold War era that will jeopardize the "fragile international order," but ultimately concluding that secession is still permissible in extreme situations).

indigenous peoples' claims for self-determination include a degree of separatism that does not correspond with the integrationist tendencies of liberalism; these claims assume that the legal and political interests of the indigenous group are divergent from the individual rights-based approach to jurisprudence in liberal society.¹⁸² Further, the fragmentary prospects of a broadly-adopted right to secession threaten the interdependence that forms the basis for economic liberalism.¹⁸³ But economic self-determination—as an internal rather than secessionary tool—actually supports economic liberalism. Early efforts to define the right to economic self-determination saw the concept as a way to “maintain[] the flow of capital” and engage in “economic co-operation among nations.”¹⁸⁴ The Covenants include provisions directing states parties to implement economic self-determination without jeopardizing international economic agreements.¹⁸⁵ Economic self-determination was not designed in opposition to international economic growth.

In fact, the interdependent world advocated by economic liberals today¹⁸⁶ can be supported and nurtured by economic self-determination. The rise of interdependent economic networks has “dwarfed traditional sovereignty” by minimizing the state.¹⁸⁷ This leaves open an opportunity to reconceptualize sovereignty through the lens of economic self-determination. Economic self-determination allows us to define and apply the concept of self-determination in a way that promotes, rather

182. See, e.g., Bradford, *supra* note 181, at 128.

183. See, e.g., Talbott, *supra* note 6.

184. G.A. Res. 626, *supra* note 28, ¶ 1.

185. ICCPR, *supra* note 4, art. 1(2); ICESCR, *supra* note 4, art. 1(2) (identical texts); see also CASSESE, *supra* note 13.

186. See THOMAS FRIEDMAN, *THE LEXUS AND THE OLIVE TREE: UNDERSTANDING GLOBALIZATION* (2000); see also Talbott, *supra* note 6, at 156 (arguing that there is virtue in “porous borders and intertwined economies”). Economic liberalism (and globalization) can be defined as the “ongoing process of greater interdependence among countries and their citizens.” Stanley Fischer, *Globalization and its Challenges*, 93 *AMERICAN ECON. REV.*, May 2003, at 1, 2.

187. Oloka-Onyango, *supra* note 1, at 193 (arguing this leads to an erosion in the efficacy of democracy).

than discourages, inter-state trade.¹⁸⁸ For instance, Strobe Talbott argues that economic growth should be encouraged because it offers a “remedy for conflicts within states that is better than secession.”¹⁸⁹ Economic self-determination, by quelling movements for government overthrow or secession, encourages greater stability. This makes a place like Equatorial Guinea more attractive to investors and increases the number of people—Equatoguinean or foreign—who have an interest in sustaining and improving Equatorial Guinea’s economy. Economic self-determination can help bring about the realization of resource-dependent human rights, such as education and health. These in turn boost the development of the region, and can serve as a guarantee for foreign investment that can solidify business infrastructure.¹⁹⁰ Economic self-determination, therefore, reduces instability by making more people stakeholders and by minimizing secessionist impulses.¹⁹¹

Some of the most powerful stakeholders in the globalization movement have good reason to consider economic self-determination as a viable foundation informing their economic policies. For instance, economic self-determination can support the work of the World Bank, which has as its stated objective enabling people to enjoy freedom from poverty.¹⁹² The World Bank can and does “contribute to the promotion and protection of human rights.”¹⁹³ Considering economic self-determination when making loans to mineral-rich developing countries does not impermissibly stretch the Bank’s

188. See Talbott, *supra* note 6, at 155 (arguing that American foreign policy in the Clinton era tried to apply self-determination in a manner that encouraged integration).

189. *Id.* at 152.

190. Mañe, *supra* note 179, at 16.

191. See, e.g., IGNATIEFF, *supra* note 1, at 152-54 (connecting the rise in Quebecois nationalism to the economic marginalization of Quebec by Canada’s English-speaking rulers); Oloka-Onyango, *supra* note 1, at 196-97 (emphasizing the close link between economic disenfranchisement and demands for self-determination).

192. Ibrahim Shihata, *The World Bank and Human Rights*, in INTERNATIONAL COMMISSION OF JURISTS, REPORT OF A REGIONAL SEMINAR ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 139, 140 (1999).

193. *Id.* See also John Giorciarci, *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement*, 33 CORNELL INT’L L.J. 331, 346 (2000) (establishing a framework for determining whether or not the World Bank can consider particular human rights violations when making loan decisions).

mandate.¹⁹⁴ The IMF argues that the Gulf of Guinea is endowed with abundant natural resources which, if managed well, can contribute to global prosperity.¹⁹⁵ Both the World Bank and the IMF should use economic self-determination as an underlying framework when promoting human rights and good governance in borrower countries.

2. Economic Self-Determination and Democratization

Much of the political support for secessionary self-determination has morphed into support for democratization in the post-Cold War era.¹⁹⁶ Economic self-determination supports the modern movement for democratization—defined as participation in electoral systems as well as the development of broader liberal democratic institutions such as the rule of law, constitutionalism, and equality before the law.¹⁹⁷ Democratization and economic self-determination are interlinked on two levels: Not only is democratic participation an inherent part of the “free disposition” standard in the exercise of economic self-determination, but economic self-determination can also provide the necessary resources for universal education that increases and deepens democratic participation.

Emerging support for democratization, motivated in part by the fear of further fragmentation of states,¹⁹⁸ can be seen as a replacement for secessionary self-determination. Meanwhile, there has been increasing acceptance of the idea that preventing human rights violations justifies interference in another state’s affairs.¹⁹⁹ Together, these two concepts demonstrate a commitment to promoting democratic pluralism and

194. For a detailed consideration of the extent to which human rights concerns fit within the World Bank’s mandate, see, e.g. Ciorciari, *supra* note 193; François Gianviti, *Economic, Social and Cultural Human Rights and the International Monetary Fund*, in NON-STATE ACTORS AND HUMAN RIGHTS 113, 114-16 (Philip Alston ed., 2005); Genoveva Hernandez Uriz, *To Lend or Not to Lend: Oil, Human Rights, and the World Bank’s Internal Contradictions*, 14 HARV. HUM. RTS. J. 197, 225-30 (2001).

195. Mañe, *supra* note 179, at 3.

196. See Talbot, *supra* note 6, at 159-62.

197. See FAREED ZAKARIA, *THE FUTURE OF FREEDOM* 13-21 (2003) (discussing a broad definition of democratization).

198. Alston, *supra* note 1, at 271.

199. See HERSCH LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS*, 175-76 (1950) (stating that human rights that have become international obligations are no longer essentially a matter of domestic jurisdiction).

human rights through internal self-determination.²⁰⁰ Economic self-determination has a symbiotic relationship with democratization, by enhancing economic and social rights to enable people to participate in democratic processes, and by granting people the resources with which to implement their democratically-taken decisions. Conceptually, the rebirth of economic self-determination feeds naturally into the liberal goals that predominate in today's international order.

Economic self-determination comports with principles of liberalism by giving substance to democratization. The Covenants emphasize that "all peoples *have* the right of self-determination"; economic self-determination has a fundamentally ongoing nature.²⁰¹ Democratization does not necessarily *replace* political self-determination; rather, it provides the foundation for effective realization of the principle of self-determination.²⁰² Political empowerment without economic content is an unbalanced system of democracy.²⁰³ Alston argues that the decline in prominence of self-determination during the post-Cold War era has led to the concept being "all but superseded by the discourse of civil and political rights."²⁰⁴ But self-determination is more than just its civil and political dimensions; self-determination as detailed in the Covenants also encompasses economic aspects. Democratization has replaced the political aspects of self-determination; now is the time to complement that movement by resurrecting the economic aspects.²⁰⁵

200. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 65.

201. See Falkowski, *supra* note 17, at 230 (arguing that the change to "have" implies that representative government is a necessary element of the realization of self-determination, and that merely allowing the right to be exercised once is not sufficient).

202. Talbott, *supra* note 6, at 159 ("Democracy is the policy system most explicitly designed to ensure self-determination.").

203. See Shedrack C. Agbakwa, *Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights*, 5 YALE H.R. & DEV. L.J. 177, 178 (2002) (arguing that rights are indivisible and that African governments must bring economic and social rights to the forefront of governing).

204. Alston, *supra* note 1, at 289.

205. See Oloka-Onyango, *supra* note 1, at 196 ("Even if political self-determination is assured, the absence of economic self-determination creates the possibility of its eventual forfeiture.").

Economic self-determination, as an integral part of an effective democracy, can help mineral-rich countries avoid rent-seeking cycles and promote good governance.²⁰⁶ Karl argues that oil exploitation in the developing world is often accompanied by the destructive cycle of rent-seeking, state disorganization, and regime decay.²⁰⁷ Norway—a robust democracy with a good degree of wealth distribution—is one of the few exceptions to this pattern.²⁰⁸ Karl identifies various factors that would help offset or reverse this cycle—including diversified tax structures, professionalized civil services, and more representative and equitable institutions—all of which could be bolstered through economic self-determination.²⁰⁹ Economic self-determination cannot solve the massive governance problems associated with oil discovery. But it can provide valuable support for democracy-building efforts that can stabilize the country.

Effective realization of economic self-determination helps increase female participation in democracy. Women are disproportionately impacted by violations of economic self-determination, because they are hit worse by ongoing poverty.²¹⁰ Natural resource exploitation exacerbates this impact. For instance, the destruction of the natural environment can cause dislocation and disruption of subsistence agriculture for many women.²¹¹ Furthermore, women are frequently unable to participate in the job opportunities created by new exploitation of natural resources, and so are more vulnerable to the poverty created by the changing economy.²¹² The participation of wo-

206. See KARL, *supra* note 2, at 189-222 (arguing that countries that rely on oil wealth for the majority of their export economies suffer from a governance cycle which over-commits the government to a level of public spending during oil booms that is unsustainable during oil busts).

207. *Id.* at 139-40 (discussing the manner in which this cycle insulates policy-makers from non-oil interests).

208. *Id.* at 190.

209. See *id.* at 242 (discussing many factors that are required simultaneously to solve this complex policy dilemma).

210. Oloka-Onyango, *supra* note 1, at 191 (arguing that women suffer disproportionately from the relegation of economic rights to a second-class level); Christine Chinkin & Shelley Wright, *The Hunger Trap: Women, Food, and Self-Determination*, 14 MICH. J. INT'L L. 292, 294 (1993) (arguing that women suffer disproportionately because of economic poverty).

211. Chinkin & Wright, *supra* note 210, at 307.

212. *Id.*

men and girls is key to full democratization: they can bolster economic development, civil society, and good governance.²¹³ Realizing economic self-determination helps women participate in democratization. And yet, self-determination in the era of decolonization marginalized women's concerns by placing great emphasis on a state-centered application of the doctrine.²¹⁴ That imbalance can now be redressed through the rebirth of economic self-determination in a manner that stresses the importance of women's participation in the democratic process. Women's ability "to exercise rights of self-determination in a political sense is inextricably connected to economic and cultural integration."²¹⁵ Using economic self-determination when advocating for women's rights is a way to promote democracy.²¹⁶

Economic self-determination is therefore a natural ally of the emerging trend for democratization. It calls for a more democratic decision-making process on the use and distribution of natural resources. Economic self-determination gives peoples the resources to make democratization a reality.

3. Economic Self-Determination and Ongoing Anti-Colonialism

Economic self-determination should be an integral part of the ongoing anti-colonial movement in sub-Saharan Africa. The language on self-determination in the Banjul Charter makes it clear that colonialism is an ongoing issue in African human rights dialogue. Article 20(3) calls for assistance of states parties "in their liberation struggle against foreign domination, be it political, economic, or cultural." The idea of self-determination based only on territory is erroneous given the nomadic and familial structures of sub-Saharan African societies.²¹⁷ The Banjul Charter also urges states parties to the charter to "undertake to eliminate all forms of foreign eco-

213. Isobel Coleman, *The Payoff From Women's Rights*, 83 FOREIGN AFF. 80, 80 (2004).

214. Oloka-Onyango, *supra* note 1, at 163-68.

215. Chinkin & Wright, *supra* note 210, at 294.

216. Coleman, *supra* note 213, at 95.

217. Oloka-Onyango, *supra* note 1, at 183-85 (arguing that a state-centered approach to African human rights ignores the needs of women and nomadic populations).

conomic exploitation particularly that practiced by international monopolies.”²¹⁸

The links drawn in the Banjul Charter between economies and colonialism are deeply rooted, given the manner in which state creation in the colonial era was disruptive to the economic order.²¹⁹ Oloka-Onyango uses the example of the nomadic Fulani people in Central Sudan in the early 1800s, who were seen as a central part of the economic life of the communities through which they traveled.²²⁰ Colonization established a certain character of state institutions in many parts of Africa.²²¹ Under European direct rule, a single legal order according to the “civilized” laws of Europe was established in many colonized countries.²²² This excluded most illiterate or rural Africans from participating in civil society.²²³ In addition, this precluded a natural, synthesizing evolution of civil and customary law into a culturally appropriate system. Mamdani argues that current African state structures were crystallized during the colonial era, shaping around this bifurcated urban/rural divide.²²⁴ A system of self-determination centered on states to the exclusion of the people cannot adequately redress these colonial wrongs and restore a principled notion of self-governance. Economic self-determination lays the foundation for reversing this destructive pattern, by providing peoples with the theoretical underpinnings of an economic system based on universal democratic participation.

Economic self-determination is a powerful way to lessen the ongoing effects of colonization on today’s economy in sub-Saharan Africa. “Extensive linkages” between colony and colonized still exist today, and early applications of self-determination all but ignored this aspect of colonialism.²²⁵ Now, the time is ripe to recognize a form of self-determination that better acknowledges and redresses the lasting impact of colonization. Economic self-determination breaks down the state-cen-

218. Banjul Charter, *supra* note 4, art. 21(5).

219. Oloka-Onyango, *supra* note 1, at 184.

220. *Id.*

221. MAMDANI, *supra* note 141, at 16-18.

222. *Id.* at 16.

223. *Id.* at 16 (“[C]ivil society, in this sense, was presumed to be civilized society, from whose ranks the uncivilized were excluded.”).

224. *Id.* at 18.

225. Oloka-Onyango, *supra*, note 1, at 171.

tered model of self-determination, a Western construct that sits awkwardly on African shoulders.²²⁶ Oloka-Onyango argues that sub-Saharan Africans have not traditionally been “associated with a territory to the extent that they have been in European experiences,” and consequently the concepts of “statehood” used in sub-Saharan Africa diverge from the concepts used in Europe.²²⁷ Early attempts to apply anti-colonial self-determination placed a heavy emphasis on political self-determination; early African leaders, eager to secure their sovereignty, adhered to this notion of the “political kingdom.”²²⁸ By enhancing interdependence within a country and among countries, and by bringing about greater democratic control of natural resources, economic self-determination helps forge a less state-centered, less colonial economic system.

IV. CASE STUDY: ECONOMIC SELF-DETERMINATION AND HUMAN RIGHTS REALIZATION IN EQUATORIAL GUINEA

A. *Mineral Discovery in Equatorial Guinea*

Equatorial Guinea, a tiny island nation in the Gulf of Guinea, has immense natural resources. However, these resources have not resulted in greater human rights realization among the people of Equatorial Guinea. Equatorial Guinea discovered large reserves of oil in 1995. By 2005, Equatorial Guinea had found 1.1 billion barrels of proven reserves, with further exploration ongoing.²²⁹ The oil is almost exclusively off-shore, making extraction relatively cheap and easy.²³⁰ Once production is at capacity, Equatorial Guinea will be sub-Saharan Africa’s third largest oil producer, after Nigeria and

226. *See id.* at 183-85.

227. *Id.* at 184 (quoting Isabelle R. Gunning, *Expanding the International Definition of Refugee: A Multicultural View*, 13 *FORDHAM INT’L L.J.* 35, 73-74 (1989)).

228. *Id.* at 171.

229. U.S. Dept. of State, *Background Note: Equatorial Guinea (January 2005)*, available at <http://www.state.gov/r/pa/ei/bgn/7221.htm> (last visited Nov. 2006) [hereinafter State Department Background Report 2005] (stating that Equatorial Guinea’s total proven reserves are 1.1 billion barrels, with exploration ongoing).

230. Energy Information Administration, U.S. Dept. of Energy, *Country Analysis Brief: Equatorial Guinea*, (May 2006), available at http://www.eia.doe.gov/emeu/cabs/Equatorial_Guinea/pdf.pdf.

Angola.²³¹ Equatorial Guinea has a far smaller population than either of those two countries, and so the resource discovery could potentially have a huge impact on the standard of living in Equatorial Guinea. As the newest major oil producer in the region,²³² Equatorial Guinea serves both to illustrate the problems in realizing human rights in resource-rich poor countries, and to demonstrate the potential for using economic self-determination to reframe the human rights debate.

Equatorial Guinea's oil discovery and development patterns follow the model of some of its West African neighbors.²³³ Gabon discovered oil offshore in the early 1970s²³⁴ and is thought to have considerable future potential for growth in the oil industry due to its underexplored deepwater resources.²³⁵ Other Gulf of Guinea countries—notably Nigeria and São Tomé e Príncipe—also have substantial untapped off-shore resources.²³⁶ In fact, a small handful of West African states are thought to possess up to ten percent of the world's proven oil reserves²³⁷—equal to or greater than those of Kuwait.²³⁸

231. United Kingdom Foreign and Commonwealth Office, *Country Profile: Equatorial Guinea*, available at <http://www.fco.gov.uk> (select Countries and Regions; then select Country Profiles from drop down box; then follow Equatorial Guinea hyperlink) (last updated Sep. 7, 2006), (noting that production is projected to reach 500,000 barrels per day by 2008).

232. See Mañe, *supra* note 179, at 4, 20.

233. Major oil producing countries in the Gulf of Guinea include: Angola, Cameroon, the Republic of the Congo, Equatorial Guinea, Gabon, and Nigeria. *Id.*

234. U.S. CENTRAL INTELLIGENCE AGENCY, *Gabon Country Profile*, in *WORLD FACTBOOK 2007*, available at <https://www.cia.gov/cia/publications/factbook/geos/gb.html> (last updated Jan. 23, 2007).

235. U.S. Dept. of Energy, *Key Energy Issues in Sub-Saharan Africa*, (Energy Information Administration Paper) (on file with author).

236. Energy Information Administration, U.S. Dept. of Energy, *Country Analysis Brief: Nigeria*, available at <http://www.eia.doe.gov/emeu/cabs/Nigeria/Oil.html> (last updated Mar. 2006); U.S. CENTRAL INTELLIGENCE AGENCY, *São Tomé and Príncipe Country Profile*, in *WORLD FACTBOOK 2007*, available at <https://www.cia.gov/cia/publications/factbook/geos/tp.html> (last updated Jan. 23, 2007).

237. State Department Background Report 2005, *supra* note 229.

238. Energy Information Administration, U.S. Dept. of Energy, *Country Analysis Brief: Kuwait*, available at <http://www.eia.doe.gov/emeu/cabs/Kuwait/Oil.html> (last updated Nov. 2006).

Off-shore oil in Equatorial Guinea and in West Africa in general has attracted considerable international attention from businessmen and foreign states.²³⁹ The geographical position of the Gulf of Guinea is advantageous for oil exploitation because it is relatively near to the world's main consumers of energy and it benefits from the absence of maritime transit chokepoints between the region and those parts of the world.²⁴⁰ Developers have flocked to the region to explore blocs and start exploiting tracts.²⁴¹ About fifty to sixty percent of exploratory drilling efforts result in discovery, a rate five times higher than for explorations in the United States.²⁴² The crude oil from the Gulf of Guinea is of better quality than that from Latin America.²⁴³ Many prominent U.S. oil companies have become involved in oil in Equatorial Guinea, including Exxon Mobil Corp., Marathon Oil Co., and Amerada Hess Corp.²⁴⁴ Business looks so good that a once-weekly, business-class charter flight has been established from Houston to Malabo, Equatorial Guinea's capital.²⁴⁵

Equatorial Guinea also provides a snapshot of the various government and international actors that have become interested in West Africa's mineral resources. The United States sees oil in West Africa as a strategic opportunity to reduce reliance on the Middle East.²⁴⁶ The U.S. government and U.S. companies are expected to invest more than \$10 billion per year for the next ten years in various oil activities in West Af-

239. Mañe, *supra* note 179, at 5 ("The Gulf of Guinea is expected to become more important in the U.S., Europe and Asia's energy strategies.").

240. *Id.* at 4 (comparing the Gulf of Guinea's geographical location to other oil producing regions, and discussing the world maritime lanes for oil transportation).

241. Reed Kramer, *Finding Africa's 'Big Oil'—in Deep Water*, Jan. 21, 2003, <http://allafrica.com/stories/200301210053.html>.

242. *Id.*

243. Mañe, *supra* note 179, at 5 (stating that the API gravity in the Gulf of Guinea oil is typically above 30°, while in Latin America oil rarely exceeds 30°).

244. See David Ivanovich, *Corruption Influence by Big Oil Alleged; Senate Panel Uncovers Deals in West Africa*, HOUSTON CHRONICLE, July 16, 2004, at B1.

245. U.S. Dept. of State, *Background Note: Equatorial Guinea (January 2006)*, available at <http://www.state.gov/r/pa/ei/bgn/7221.htm> [hereinafter State Department Background Report 2006].

246. See Paul Maidment, *The Other Gulf*, FORBES, Mar. 10, 2003; see also Yohannes Okbazghi, *America's New Frontier: Oil in the Gulf of Guinea*, 33 THE BLACK SCHOLAR (Summer 2003) at 2.

rica.²⁴⁷ Both China²⁴⁸ and the European Union²⁴⁹ have also shown considerable interest in West African oil as a potential strategic source of energy. In addition to the major U.S. oil companies, international companies from Australia, Malaysia, South Africa, and Switzerland have an interest in one or more exploration blocks in Equatorial Guinea's waters,²⁵⁰ while China's leading energy companies have signed oil contracts in Equatorial Guinea and Angola.²⁵¹ Both the World Bank and the IMF have played active roles in developing Equatorial Guinea's oil resources.²⁵² World Bank involvement in the region demonstrates an increasing responsiveness to human rights concerns, especially in the case of the Chad/Cameroon oil pipeline.²⁵³ Many of these actors also play major roles in development assistance to poor countries such as Equatorial Guinea.

247. Mañe, *supra* note 179, at 5 (describing investments in "oceanic research in the deep-sea waters of Equatorial Guinea and Angola; the restoration and preservation of the forests of Gabon, Equatorial Guinea, Congo DRC, Cameroon and CAR; the implementation of a training framework for African peace-keeping forces; and discrete political interventions").

248. Vivienne Walt, *China's African Safari*, FORTUNE, Feb. 20, 2006 at 41 (discussing China's presence in the "race to tap Africa's oil resources").

249. Mañe, *supra* note 179, at 5.

250. State Department Background Report 2006, *supra* note 245 (listing Chevron (U.S.), Vanco Energy (U.S.), Atlas Petroleum International (U.S.), Devon Energy (U.S.), Roc Oil (Australia), Petronas (Malaysia), Sasol Petroleum (South Africa), and Glencore (Switzerland) as companies with interests in the Ceiba oil field just off shore of Rio Muni). R

251. Walt, *supra* note 248 (the companies that have signed these contracts are Sinopec, China National Petroleum Corp., and CNOOC). R

252. Press Release, Int'l Monetary Fund, Statement by IMF Deputy Managing Director Agustín Carstens at the Conclusion of a Visit to Equatorial Guinea, (27 Jan. 2005) available at <http://www.imf.org/external/np/sec/pr/2005/pr0513.htm>. "The World Bank helped to fund a technical exploration project that began in 1992, and after that continued to work with investors aiming to build Equatorial Guinea's technical capacity." Summary of World Bank involvement in Equatorial Guinea, <http://www.worldbank.org/gq>. Equatorial Guinea participates in regular Article IV consultations, and interacts with IMF through their advisory role to CEMAC. IMF Public Relations Department, Republic of Equatorial Guinea and the IMF, Jan. 31 2005 (on file with author).

253. See, e.g., Uriz, *supra* note 194, at 198-201 (discussing the World Bank's actions as lender and "moral guarantor" in the Chad/ Cameroon pipeline project).

All this activity means that Equatorial Guinea is getting rich. Government revenues have increased by more than one hundred percent over the last seven years.²⁵⁴ Real GDP growth is off the charts—estimates for 2005 rank Equatorial Guinea's growth rate (19.4%) as the highest in the world.²⁵⁵ Even this remarkable figure represents a cooling-down from the peak growth rate of sixty-six percent in 2001.²⁵⁶ The country's GDP per capita has shot up exponentially, from \$590 in 1998²⁵⁷ to \$30,130 in 2002.²⁵⁸ Yet despite this substantial increase in GDP per capita, there has been little improvement in realization of human rights. There is no question that Equatorial Guinea, much like the other oil-producing states in West Africa,²⁵⁹ has resources at its disposal like never before. Advocates must use every available tool to ensure that the wealth flowing from these natural resources is used for human rights realization.

B. *Poverty, Poor Governance, and Human Rights Realization*

Just as Equatorial Guinea is representative of international interest in West African oil, its lack of good governance and poor human rights realization resembles that of many resource-rich countries in Africa. According to the IMF, all major oil producing countries in the Gulf of Guinea underperform the world medians in indicators of good governance such as lack of violence, rule of law, and control of corruption.²⁶⁰ Meanwhile, many of these countries have low

254. State Department Background Report 2005, *supra* note 229 (stating that government revenue grew by more than 100% during the 2001-2003 period).

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255. *Emerging Market Indicators*, THE ECONOMIST, Jan. 29, 2005, at 98.

256. State Department Background Report 2005, *supra* note 229.

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257. *Id.*

258. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: 2004 (2004), *available at* <http://hdr.undp.org/reports/global/2004/>.

259. Mañe, *supra* note 179, at 15 (finding the seven largest oil-producing nations in the Gulf of Guinea are expected to generate more than USD 350 billion in oil revenues over the 2002-2019 period, which is close to the current GDP of all sub-Saharan African countries combined).

260. *Id.* at 13.

rates of realization of economic and social rights and feature poorly on human development indexes.²⁶¹

Equatorial Guinea became independent in 1968, after several hundred years of control by Portugal, Britain, and Spain.²⁶² In the first eleven years of independence, under the rule of Francisco Macias Nguema, much of the country's limited health, utilities, and transportation infrastructures fell into disarray.²⁶³ Macias' nephew Teodoro Obiang Nguema Mbasogo assumed power in 1979 and has governed ever since.²⁶⁴ In the early years of the Obiang presidency, schools reopened and primary education was expanded.²⁶⁵ However, despite the vast increases in GDP over the last ten years, Equatoguineans have not seen any major improvement in the realization of their economic and social rights.²⁶⁶

Since oil was first discovered ten years ago, health and education indicators have not seen any significant improvement. The percentage of GDP spent on healthcare (around one percent) has barely changed.²⁶⁷ Life expectancy at birth is just 49.1 years—scarcely higher than it was during the Macias years²⁶⁸—and fatality rates from typhoid and malaria in particular are very high.²⁶⁹ Despite the fact that Equatorial Guinea

261. See, e.g., OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 2, at 10 ("In many [African] countries rich in oil, gas, and minerals, a majority live in severe poverty, lacking the most basic health, sanitation, and educational services."); see also UNDP HUMAN DEVELOPMENT REPORT: 2004, *supra* note 258.

262. State Department Background Report 2006, *supra* note 245.

263. *Id.*

264. *Id.*

265. *Id.*

266. See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: 2005 228 (2005), available at <http://hdr.undp.org/reports/global/2005>. Equatorial Guinea ranks 71st among 103 developing countries for which the human poverty index was measured. The human poverty index is a measure of the proportion of people below a threshold level in basic dimensions of human development—living a long and healthy life, having access to education, and a decent standard of living. *Id.*

267. *Id.* at 204 (comparing public expenditure on health (1.0 % of GDP) in 1990 to public expenditure on health (1.2 % of GDP) in 2001).

268. *Id.* at 170 (life expectancy at birth in 1970-1975 was 40.5 years; life expectancy at birth in 2000-2005 is 49.1 years).

269. See U.S. CENTRAL INTELLIGENCE AGENCY, *Equatorial Guinea Country Profile*, in THE WORLD FACTBOOK 2007, available at <https://www.cia.gov/cia/publications/factbook/geos/ek.html> (last updated Jan. 23, 2007).

now has a higher GDP per capita than Portugal,²⁷⁰ it has fewer physicians per 100,000 people by a factor of twelve.²⁷¹ There are chronic water shortages in Malabo and in Bata, the economic capital on the mainland.²⁷² As one Malabo resident stated in January 2005, “I haven’t had a single drop of water in three or four days. I’m ashamed to let anyone come into the house because of the stench from the toilet, but I don’t have enough money to buy a container of water.”²⁷³ Likewise, neither education spending nor educational achievement has seen significant improvements in the years since oil was first discovered. Public expenditure on education in 2002 was just 0.6 % of the country’s GDP.²⁷⁴ Only thirty-three percent of children reach grade 5, whereas in other countries with similar GDPs per capita, almost every child reaches grade 5.²⁷⁵ Years of underfunding in education have led to a lack of educated or skilled Equatoguineans who can take on the new oil-related jobs.²⁷⁶

Equatorial Guinea is falling precipitously into the governance problems associated with mineral-dependent countries.²⁷⁷ In 1997, the political scientist Terry Lynn Karl set out a seminal analysis of the governance problems associated with “petro-states”: First, oil causes an extreme centralization of power by insulating policy makers from non-oil interests. Second, political bureaucracies become responsive only to oil

270. UNDP HUMAN DEVELOPMENT REPORT: 2005, *supra* note 266, at 252 (Equatorial Guinea’s GDP per capita in \$US PPP is \$19,780, whereas that of Portugal is \$18,126). R

271. UNDP HUMAN DEVELOPMENT REPORT: 2004, *supra* note 258, at 158. (Equatorial Guinea has twenty-five physicians per 100,000 people, whereas Portugal has 324). R

272. *Oil, Oil Everywhere but not a Drop of Water to Drink in E. Guinea Capital*, Agence-France Presse, Feb. 2, 2005.

273. *Id.* (quoting Maria-Cristina, a Malabo resident).

274. UNDP HUMAN DEVELOPMENT REPORT: 2005, *supra* note 266, at 256. R

275. *Id.* at 178. For example, ninety-nine percent of children in Iceland reach grade 5 and one hundred percent of children in the Netherlands reach grade 5. *Id.* at 176.

276. United Kingdom Foreign and Commonwealth Office, *Country Profile*, *supra* note 231. (“One of the biggest inhibitors to improved economic performance is the lack of educated or skilled personnel in all walks of life, stemming from years of underfunding for education.”). R

277. See KARL, *supra* note 2, at 23 (1997) (arguing that most oil exporting states, especially those who were relatively poor at the point of oil discovery, share similar governance challenges).

concerns, and little importance is given to other government functions. The result is a vicious cycle of uncontrolled spending during boom periods, and increased poverty at the next oil bust.²⁷⁸ These bust-and-boom spending patterns have crippled other oil-rich West African countries, such as Nigeria and Angola.²⁷⁹ Gabon, which currently has a per capita income four times that of most nations of sub-Saharan Africa,²⁸⁰ has an “economy . . . hobbled by poor fiscal management.”²⁸¹ Breaking this pattern in Equatorial Guinea—and freeing mineral resources for economic and social rights realization—should be a pressing concern for human rights activists.

In the last ten years, there has been an extreme concentration of wealth among the political elite. Various family members and government officials close to President Obiang have stored more than \$700 million of oil revenue in various private bank accounts.²⁸² The bank in question—Riggs Bank, in Washington D.C.—has been accused by the U.S. Senate Permanent Subcommittee on Government Affairs of failing to file reports on numerous suspicious transactions by Obiang and other members of the government of Equatorial Guinea.²⁸³ The World Bank has criticized the government’s grants of excessively favorable contracts to oil companies.²⁸⁴ These contracts are vastly disproportionate to typical oil contracts, offering the oil companies a far bigger share than convention would dictate.²⁸⁵ A cloak of secrecy surrounds most of the in-

278. *Id.* at 138-39. Karl defines a “petro-state” as a developing country that relies “overwhelmingly” on oil exploitation for government revenue. *Id.* at 16.

279. See Mañe, *supra* note 179, at 13 (discussing the Gulf of Guinea’s poor quality of policy management stemming from the abundance of oil resources, and arguing that the boom-bust, oil-driven fiscal policies “disrupt the carrying out of core government obligations and steady growth in non-oil sectors”).

280. *Gabon Country Profile*, in *WORLD FACTBOOK 2007 supra* note 234.

281. *Id.*

282. See, e.g., Ivanovich, *supra* note 244; Declan Walsh, *A Murderous Dictator, His Rapper Son and a \$700m-a-Year Oil Boom*, *THE INDEPENDENT*, Mar. 16, 2004, at 24.

283. Terence O’Hara, *Riggs Bank Agrees to Guilty Plea and Fine; Civil, Criminal Penalties Would Total \$41 Million*, *THE WASHINGTON POST*, Jan. 28, 2005, at A01.

284. *THE WORLD BANK, PROJECT PERFORMANCE ASSESSMENT REPORT, EQUATORIAL GUINEA, SECOND PETROLEUM TECHNICAL ASSISTANCE PROJECT 2 (2002)*

285. *Id.*

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teractions between the oil companies and the government, despite repeated calls for transparency.²⁸⁶ Poor fiscal management and a lack of transparency in public accounting plagues many government operations.²⁸⁷ The lack of transparency impedes Equatoguineans from freely disposing of their resources.

C. *The Relevance of Economic Self-Determination to Human Rights Realization*

The resources generated by oil discovery represent a significant opportunity for Equatoguineans. By exercising their right to economic self-determination—their right to freely dispose of their resources for their own ends—they could significantly enlarge the pool of resources available for the realization of economic and social rights. However, in breach of both the Covenants and the Banjul Charter, Equatoguineans lack access to their oil resources and cannot dispose of those resources for their own ends.²⁸⁸ An advocacy strategy that incorporates a revitalized notion of economic self-determination and gives Equatoguineans access to their own resources is crucial. Economic self-determination can provide the bedrock for the more complete realization of other human rights in general, and resource-driven economic and social rights in particular.

Economic self-determination should operate as a central tool in framing human rights advocacy in Equatorial Guinea and similar resource-rich poor countries, because it provides foundational support for two major areas of rights realization. First, economic self-determination helps secure the funds for the realization of resource-driven economic and social rights such as education and health. Public spending on education

286. See, e.g., Simon Taylor, *Corporate Secrecy Oils the Wheels of Poverty*, Publish What You Pay, <http://pwyp.gn.apc.org/english/media/mediapage.shtml?x=54923> (last visited Feb. 7, 2007).

287. U.S. DEPT. OF STATE, 1999 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, EQUATORIAL GUINEA (2000), available at http://www.state.gov/www/global/human_rights/1999_hrp_report/eqguinea.html.

288. Equatorial Guinea acceded on Sept. 25, 1987 to the ICCPR (<http://www.ohchr.org/english/countries/ratification/4.htm>) and the ICESCR (<http://www.ohchr.org/english/law/cescr-ratify.htm>). Equatorial Guinea ratified the Banjul Charter on Apr. 7, 1986. (<http://www1.umn.edu/humanrts/instree/ratzlafchar.htm>).

and health in Equatorial Guinea has not increased notably since the discovery of oil; nor have the indicators of health or educational achievement improved. Economic self-determination provides people with resources to use *for their own ends*. All too frequently, human rights activists advocating for better realization of economic and social rights face arguments that there are no available resources for, say, health or education. Through economic self-determination, funds could be established for the greater realization of individual economic and social rights, should peoples choose to use the funds in such a manner. Economic self-determination strengthens the leverage of the people against the state in the competition for the use of natural resources.

Second, economic self-determination provides the groundwork for increased democratic participation. The exercise of economic self-determination in and of itself requires democratic participation in order to *freely dispose* of the natural resources belonging to the people. Such free disposition necessitates involvement in the governing process in some way—whether by voting in genuine elections for a responsive general government or electing a specific body that deals directly with mineral resources. Self-determination is a continuing right, and economic self-determination promotes the ongoing exercise of internal self-determination by encouraging and enabling democratic engagement. Economic self-determination could be used as a rallying cry for greater democratic participation in Equatorial Guinea. Economic self-determination furthers democratic participation on another level, by providing the resources for improving the health and educational levels of Equatoguineans, thus enabling them to participate in democratic dialogues on a more profound level. Economic self-determination strengthens the legitimacy of the call for democratic control of natural resources.

Economic self-determination should inform the policies and strategies for many actors with a stake in oil in Equatorial Guinea and West Africa in general. One group of actors that could potentially use economic self-determination as a base guideline is the international financial institutions. They certainly have the capacity and the mandate to take steps to help West African countries cope with the challenges of mineral ex-

ploitation.²⁸⁹ These institutions must recognize the fundamental right to economic self-determination as a foundational guide to forming their own strategies. For instance, the international financial institutions should use economic self-determination to help insulate West African nations against the volatility of oil prices. Transparently-managed funds can help stabilize public revenue and mitigate the impact of shocks in the oil market.²⁹⁰ The World Bank, the International Monetary Fund, and the African Development Bank all have the capacity to help Equatorial Guinea and other mineral-rich countries in West Africa establish and manage such funds.²⁹¹

Human rights activists at both the international and domestic level should urge the large number of companies with an interest in West African oil to take note of the fundamental human rights at stake. Western countries with strategic interests in West Africa—such as the United States and member states of the European Union—should embrace economic self-determination for its human rights ramifications and also for its capacity to promote internal stability and prevent secessionary self-determination movements.²⁹² While there are few effective domestic non-governmental organizations promoting human rights in Equatorial Guinea,²⁹³ the activists that do exist should work with international human rights groups on promoting the right to economic self-determination. Given that oil is a prominent issue on the political scene in West Africa, and given that oil revenues make up an enormous portion of the countries' GDPs, it makes good sense to structure human rights advocacy around this issue. Economic self-determination provides the theoretical foundations for powerful advocacy.

289. Mañe, *supra* note 179, at 18 (acknowledging and embracing the role of the IMF and other multilateral institutions in facilitating mineral exploitation in the Gulf of Guinea).

290. *Id.* at 14.

291. *Id.*

292. *Cf.* Ahoussou, *supra* note 132, (discussing the murder of the leader of a movement for self-determination for the island of Bioko, one of the constituent parts of Equatorial Guinea).

293. U.S. DEPT. OF STATE, 1999 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, EQUATORIAL GUINEA, *supra* note 287.

V. CONCLUSION

Economic self-determination is a powerful tool for framing the discussion on human rights realization in Equatorial Guinea and in other mineral-rich countries. Economic self-determination was codified as a distinct, powerful right in the Covenants and in the Banjul Charter. Though it faded into the background in comparison to secessionary self-determination during the anti-colonial movements in the 1960s and 1970s, economic self-determination is now ripe for a repositioning in the human rights dialogue. While support for secessionary self-determination has faded away, economic self-determination can and should survive because it does not threaten secession but rather aims to increase democratic processes. In light of the boom in oil resources in West Africa, now is the time to reinvigorate economic self-determination as a fundamental tool for human rights realization.

Since the Cold War, attitudes toward self-determination have been mutating rapidly.²⁹⁴ The time is ripe to implement economic self-determination in a manner that better protects the natural resources and human rights of Equatoguineans.²⁹⁵ Violations of economic self-determination plague Equatorial Guinea and other mineral-rich West African nations; free disposition of resources eludes the people of these nations.²⁹⁶ The ongoing violations of the right to economic self-determination diminish Equatoguineans' capacity to enjoy other human rights. Despite this fundamental breakdown of rights realization, economic self-determination has not taken its rightful place as a powerful tool in the current human rights discourse.

Economic self-determination drives human rights advocacy by providing the fundamental theoretical justifications for altering the way in which mineral resources are exploited and the resulting wealth distributed. Economic self-determination calls for people to participate in deciding how to dispose of their natural resources for their own ends. The monopolization of both the decision-making and the wealth that results from oil exploitation in Equatorial Guinea is a clear violation of this principle. Economic self-determination can provide a

294. See, e.g. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at xi.

295. See, e.g., Oloka-Onyango, *supra* note 1, at 154-59.

296. See discussion *supra* Part III.A.1.

fundamental justification for legal action against governments or international actors who exploit resources irresponsibly.²⁹⁷ Furthermore, economic self-determination provides the foundation for greater realization of economic and social rights.

New and dynamic interpretations of the fundamental right of self-determination—under threat since the end of the Cold War—must be introduced into the mainstream human rights dialogue. Self-determination lays the foundation for the realization of numerous other human rights; it cannot be allowed to fall to the wayside. And yet, after the Cold War, very few innovative approaches to self-determination have been proposed.²⁹⁸ The rebirth of economic self-determination today is grounded in the fundamental principles of the concept: anti-colonialism, self-rule, and human rights realization. Applying economic self-determination to current problems of resource exploitation is in keeping with mainstream movements for economic liberalism and democratization. Furthermore, economic self-determination redresses the lingering inequalities of the economic structures established by colonialism. Economic self-determination must be reborn as a vital part of modern human rights discourse on mineral exploitation.

297. Cf. OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 2, at 41-49 (describing legal strategies taken to combat corruption and human rights violations in the context of mineral exploitation).

298. HALPERIN, SCHEFFER & SMALL, *supra* note 11, at 46 (arguing that even the new standards for self-determination that were tailor-made for Yugoslavia and the Soviet Union made no efforts to put in place a less Eurocentric, less state-centered scheme).

