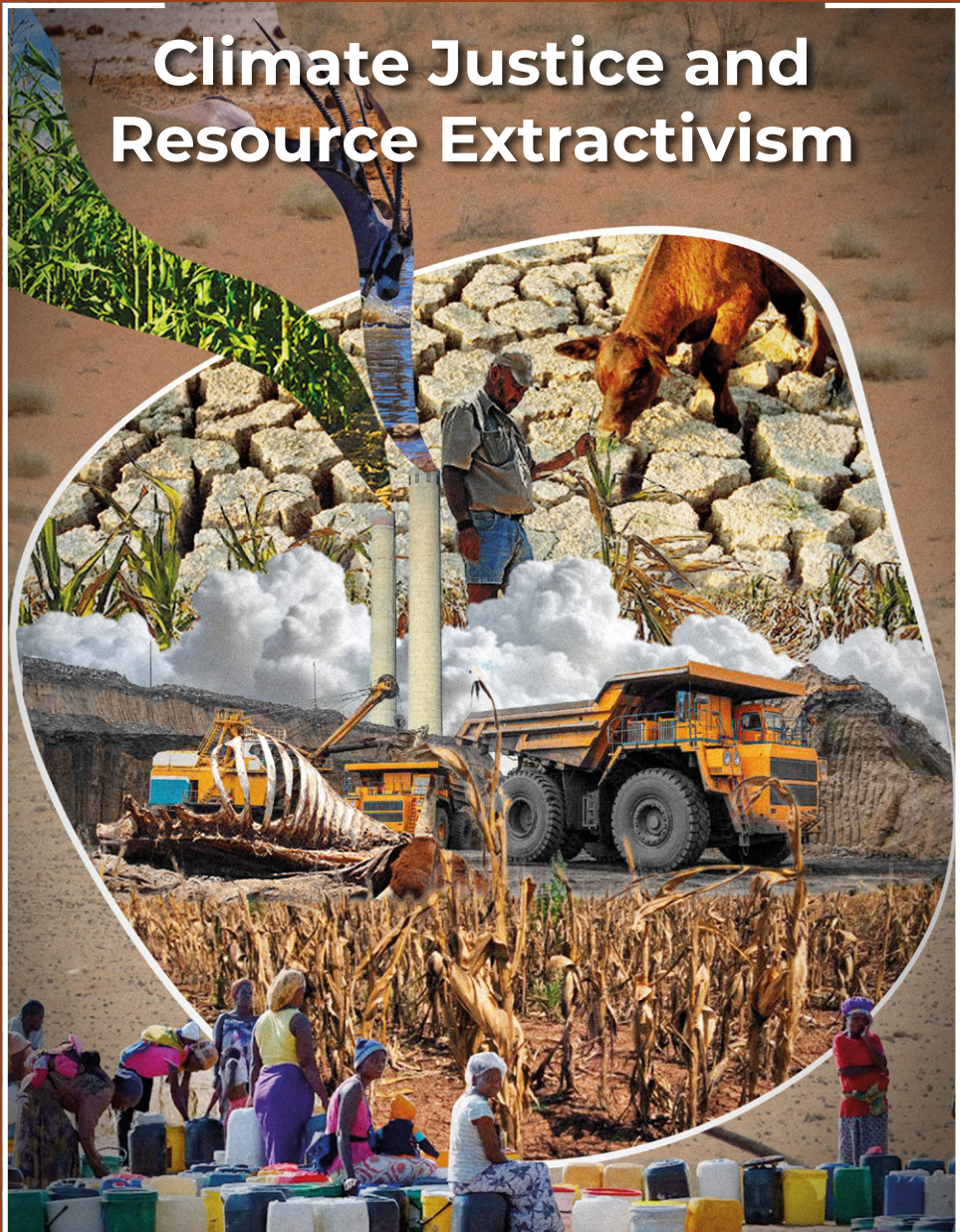


# Climate Justice and Resource Extractivism



# Who Owns Namibia's Wealth and Natural Resources? A Response to Geingob

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In March 2022, late President Hage Geingob was quoted as having said that the oil reserves discovered off the coast of Namibia do not belong to Namibians because the majority shareholders of oil rights are foreigners. According to the lead story of 9 March 2022 of *The Namibian* (*The oil is not ours, 2022*), Geingob reportedly said:

*Legally it [the oil] is not ours. Legally it is owned by the investors, with 90%, but we are going to get it through taxes and royalties until we nationalise and become socialists, and we do not want that.*

The Director General of the National Planning Commission, Obeth Kandjoze, publicly supported this statement on various occasions. The Geingob statement, by extension, arguably applies equally to all Namibia's natural resources, such as diamonds, uranium, oil, natural gas, lead, copper, zinc, fauna, flora, and marine resources. This, minimally, begs several questions: What is meant by 'natural resources'? Who legitimately owns the natural resources of a country? And what duties arise from natural resource ownership?

The Geingob-statement, unsurprisingly, caused much consternation in certain quarters. The sole object of this typology is to respond to and debunk the Geingob statement.

The United Nations (UN) defines natural resources as natural assets (raw materials) occurring in nature that can be used for economic production or consumption. The natural resources of the earth, according to Principle 2 of the Declaration of the UN Conference on the Human Environment, "must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate" (United Nations, 1972, p. 4).

International law serves as a guide to the question of ownership of natural resources. In this regard, the UN General Assembly Resolution 1803 (XVII) (Permanent Sovereignty over Natural Resources) is particularly instructive. This Resolution establishes the principle of Permanent Sovereignty over Natural Resources (PSNR). It unequivocally attributes "the right of peoples and nations to permanent sovereignty over their natural wealth

and resources” (United Nations, 1962). Importantly, such sovereignty “must be exercised in the interest of their national development and of the well-being of the people of the State concerned” (ibid.). In fact, the International Court of Justice (ICJ) in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* unequivocally declared that principle of permanent sovereignty over natural resources is part of customary international law (International Court of Justice, 2022).

Generally, the sovereign State or “the people” are regarded as the owners of natural resources. For instance, the International Covenant on Civil and Political Rights (United Nations, 1966a) and the International Covenant on Economic, Social, and Cultural Rights (United Nations, 1966b) vest the right to PSNR in “all peoples”. Articles 1(2) of both these instruments specifically endow the people with ownership rights over natural resources as a derivative of the right to self-determination.

The issue of wealth and natural resources is codified in Article 21 of the African Charter on Human and Peoples’ Rights. Paragraph 1 of Article 21 in clear terms provides that: “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” (Organization of African Unity, 1981, p. 7).

On the other hand, the law of the sea conventions and international environmental treaties such as the 1992 conventions relating to biodiversity and climate change vest the right to PSNR in States.

The Namibian Constitution also embraces the PSNR principle. Article 100 of the Constitution vests the right to PSNR in the Namibian State. It unambiguously proclaims:

*Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.*

By way of giving content to Article 100, the Namibian legislative framework vests the Government, as the representative of the State, with the right to freely determine and control the prospecting, exploration, development, exploitation, use and marketing of natural resources. Such legislative instruments include the Petroleum (Exploration and Production) Act (2 of 1991), the Petroleum (Taxation) Act (3 of 1991), and the Minerals (Prospecting and Mining) Act (33 of 1992). These instruments implicitly affirm that the Namibian State legally

owns the natural resources as a trustee of the people.

A number of ancillary duties arise from the principle of PSNR. Nico Schrijver (1997) lists a few. Two of his examples are relevant in this context, and relate to:

- the duty to exercise PSNR-related rights in the interest of national development and to ensure that the entire population benefits from the exploitation of resources and the resulting national development; and
- the duty to have due care for the environment; this means first of all, the duty to exercise PSNR in such a way as to prevent significant harm to the environment.

The above brings into sharp focus concerns regarding the transparency and accountability gap, and allegations of corruption and unethical practices in Namibia's mining sector, as raised by the Institute for Public Policy Research. The same applies to the alleged unilateral alienation of communal wealth and natural resources in favour of foreign mining companies by some unscrupulous traditional authorities. In the same vein, concerns about environmental degradation caused by foreign mining companies should not be treated lightly. All these, if proven

true, amount to violations of the State's obligation to protect the human rights of both present and future generations under international human rights law.

The notion that multinational corporations have proprietary rights over natural resources is incompatible with the PSNR-principle. It is important to stress that the Namibian Constitution is the supreme law of the land. What matters most is what the Constitution provides on a certain matter and not the views and whims of the political and ruling elite. This principle is underpinned by the rule of law and the principle of legality – the bedrock and foundation of our legal order.

With that said, it is safe to assert that Geingob's statement regarding the foreign ownership of Namibia's natural resources has no basis under either international or domestic law. The Namibian State is accountable for the management and equal distribution of the natural wealth and resources of the country for the larger public good. This obligation cannot be abdicated to benefit sovereign powers, including multinational corporations. Such an attitude and mindset in managing the country's wealth and natural resources only serves to perpetuate the induced inequality, poverty, and unemployment legacies of Namibia's colonial and apartheid history.

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