

## OWNERSHIP OF MINERAL OILS IN NIGERIA: THE NEED FOR JUDICIAL REVIEW OF LEGISLATIONS AFFECTING THE NIGER DELTA REGION

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**Abstract:** *The subject of ownership and control of oil and gas in Nigeria is one that has generated a great deal of passion and controversy amongst people and nations. Since her attainment of independence in 1960, there has been a constant struggle for ownership and control of these natural resources (oil and gas) between Nigerian citizens and the Federal Government of Nigeria. The Niger Delta Region whose oil wealth sustains the whole country remains a portrait of poverty, infrastructural decay, social dislocation and environmental degradation. This article examines some of the issues which have overtime hampered the practice of Corporate Social Responsibility (CSR) in the Niger-Delta region especially with regards to Petroleum exploration in the Region which include but not limited to environmental and ecological degradation, loss of means of livelihood, inter and intra communities squabbles, among others. All these negative impacts of petroleum exploration in the Niger Delta Region together with other reasons such as lack of human development, lack of good governance, lack of infrastructure, delays in delivering benefits to communities, lack of equity in the distribution of resources, social federalism, derivation issue, land ownership and control of resources including the oppressive and obsolete laws affecting the Niger-Delta Such as the mineral Act, the Petroleum Act, the Oil pipeline Act, the land Use Act, etc which have overtime hampered the practice of corporate social responsibility (CSR) in the region especially the legal mechanisms in place as they relate to the environment, oil and gas industry in Nigeria with a view for reforms. The article further examines the geopolitics of ownership and control of oil and gas and the burning issue of resource control agitation. The writer ended this article with concluding remarks as well as suggesting appropriate recommendations as a way out of the quagmire*

**Keywords:** Ownership, Oil and Gas, Resource Control, Revenue Derivation Principle, Socio-Economic Development, Corporate Social Responsibility.

**Research Area:** Social Science

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### 1. INTRODUCTION

At common law, the general principle is that the owner of a parcel of land has a right to all minerals below the surface of his land and he may do whatsoever it pleases him, that is, he may exploit them or lease them to another person entirely. In other words, the owner of land owns it to an indefinite extent, upward as well as downward, *Cujus est Solum, ejus est usque ad coelum et ad inferos* (whoever owns the soil owns up to the sky and down to the depths) is the latin maxim.

Nigeria in 1914 started as a unitary state with the Federal Government being responsible for all acts of governance until about 1946 when some form of federalism was recognised. In 1954 federalism in a way understood by many was introduced. This was actually short-lived due to some events that took place in its history like the coup and attempts at secession, and prolonged military government. These strengthened the central government

coupled with the move by other countries to turn the world into a global village thereby making their central government more and more powerful.

However, with the cession, invasion and amalgamation of the various communities that formed Nigeria by the British, all rights and interests hitherto owned by the various peoples as regards resources, mineral oils were later transferred to the Federal Republic of Nigeria at independence through its central (Federal) government with the introduction of the Land Use Act 1978 in Nigeria, by the then Military Government under the leadership of General Olusegun Obasanjo while State owns the land, the federal government owns minerals contained in the land. To access those mineral resources the federal government compulsorily acquires the land and pays compensation where necessary.

No doubt exploration and mining of minerals resources have not been without problems to the ecological systems of the areas in which the resources are found. The intensity of the struggle for resources control in Nigeria is a manifestation of the complexity of the issue. The agitation for resources control in the Niger Delta region of Nigeria took different dimensions, including the advancement of a political agenda, military insurrection and judicial onslaughts (Faga, 2013).

The problems of the Niger Delta region are multi-dimensional in nature ranging from political to economic, social and environmental and they all stem from the presence of the black gold (Jemalu, 2013:467-468). What ordinarily should have been the greater economic strength and weapon of the people has turned out to be their dirge – of blood, tears, sorrows, abject poverty and squalor, dehumanisation and great injustice (Jemalu, 2013:467-468). Basically, this paper seeks to explore the agitation for resource control in Nigerian Federalism, its implication and challenges. The framework of this paper is the legal analysis of ownership and control of natural resources (oil and gas) in Nigeria and the need for proactive legal reforms which will comprehensively tackle issues of corporate social responsibilities and bring our laws in tandem with legal reforms in the international arena. This will be considered in relation to the multinational oil corporations that operate in the region, the impact of their activities on the people, communities and the environment.

## **2. CONCEPTUAL CLARIFICATION OF KEY TERMS AND DEFINITION OF CONCEPTS**

### **2.1 OWNERSHIP**

Ownership connotes the totality of rights and powers that are capable of being exercised over a thing (Nwabueze, 1982:7). In other words, “the right to make physical use of a thing, the right to the income from it, in money, in kind or in services, and the power of management, including that of alienation (Nwabueze, 1982:7). In other words, we may define ownership as “the right of enjoying or disposing of things in the most absolute manner”.

Ownership is a multi-referential word which does not lend itself to an apt or precise definition (Tobi, 1997:22). Ordinarily, ownership is defined as “bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others (Garner, 1891:1138). Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and heritable (Garner, 1891:1138).

The age-long concept of ownership is expressed as a bundle of rights including rights to *Udendi* (use and enjoy), *Fruendi* (dispose or transfer) and *abutendi* (abuse, consume or destroy (Ikpambese, 2010:22). Undoubtedly, this age-long concept does not carry along the political, social and economic development of the present era (Ikpambese, 2010:22. Jurists and scholars have not been able to come to terms with each other on the meaning of ownership in

so far as it relates to real property. For example, Austine defined ownership as a right over a determinate thing, indefinite in point of the user, unlimited in point of duration (Austine, 1940:214). This implies absolute ownership which entails the right of free use, exclusive enjoyment, altering, disposing or destroying the thing owned. This obviously is the traditional view of the concept of ownership.

James observed that “the adjective ‘absolute’ is usually avoided because of various limitations which exist over the land holder’s exercise of his dominating right”. The learned author preferred the expression ‘maximal’ although he conceded that ‘absolute’ is permissible if it is remembered that it denotes the greatest interest in land admitted by customary land tenure (James, 1973:18).

Nevertheless, there is no absolute ownership under land tenure in Nigeria. The Governor of each state holds the land in trust and administers same for the benefit of all citizens and likewise the Local Government chairmen (Land Use Act Cap L5 LFN, 2004). The right of occupancy easement or any interest to be granted under the Act must be for a definite term (Land Use Act, Section 8, 2004). Furthermore, no one under the Land Use Act can dispose of land in any State of Nigeria without the Governor’s consent first sought and obtained (Land Use Act, Section 21 and 22, 2004).

Once again, one’s right of occupancy could be revoked by the Governor and his continued use ceased (Land Use Act, Section 28, 2004). The rights may also be limited by Town and Country Planning Laws (Sections 13 and 15 Town and country planning law, 2004). The foregoing are some of the limitations which affects absolute ownership of land within the Nigerian context. Government and the governor of a state respectively may give consent to disposition thereof.

Even in English Common Law, the allodial title which can be equated with the absolute ownership is vested in the crown (Ikpambese, 2010:28). (Elegido, 2006:209-211) pointed out that Honore gave incidents of ownership found in developed systems but all suffer same limitations. Such legal incidents of ownership are: right to possess, right to use, to manage and to receive the income, right to capital, right to security, right to transmit, absence of term, duty to prevent harm, liability to execution, residuary character, for example on the termination of a lease the rights of the lessee revert to the owner.

Customarily, ownership implies that the owner’s title is superior to any other right which may exist in land. There is limited ownership where there are joint owners, life tenancy and or property is charged to an easement. Thus, custom and interest of state have limited the concept of ownership (Ikpambese, 2010:28). In fact, (Yakubu, 1985:55) has aptly summed up the objective of the limitations of the bundle of rights as follows:

*The laws of parliament or the king or the emperor and the international law and conventions or customs may and do restrict some of these rights. The emergence of welfarism in many states means that public interest is superior to that of individual and it consequently results in curtailing an individual power or interests.*

(Nwabueze 1982:7-8) explained the concept of ownership thus:

*Ownership is the most comprehensive and complete relation that can exist in respect of anything. It implies the fullest amplitude of rights of enjoyment, management and disposal over property. To put it the other way around, it implies that the owner’s title to these rights is superior and paramount over any other rights that may exist in the land in favour of other persons.*

Ownership connotes the totality of or the bundle of the rights of the owner over and above every other person on a thing. It connotes a complete and total right over a property. The owner of a property is not subject to the right of another person. Because he is the owner,

he has the full and final rights of alienation or disposition of the property. The owner has the inalienable right to sell the property at any price, even at a giveaway price; he can even give it out *gratis*, that is, for no consideration. To sum, (Tobi, 1997:22) has succinctly explained this concept of ownership thus;

*It connotes a complete and total right over a property the owner of the property is not subject to the rights of another person. Because he is the owner, he has the full and final rights of alienation or disposition of the property and he exercises his right of alienation and disposition without seeking the consent of another party because as a matter of laws and fact there is no other party's right over the property that is higher than that of his. The owner of a property can use it for any purpose: material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose which is detrimental to his personal or proprietary interest. In so far as the property is his and inheres in him, nobody can say anything. He is the alpha and omega of the property. The property begins with him and also ends with him. Unless he transfers his ownership over the property to a third party, he remains the allodial owner.*

The meaning of ownership in respect of land, under customary law, was considered in the case of (*Chief Nsirem and Anor V Nwakerendu and Anor, 1955*). This case involves dispute as to ownership of land between the people of Andoni referred to as the appellant and the people of Opobo, the respondents herein on record. The appeal depended on the interpretation of an arbitration award by a District Officer in 1939 and in particular, on the meaning placed on the word ownership as it relates to land. It was held, following (*Emmil and Ors V Tuakyi and Anor, 1952*), that the word owner is loosely used in West Africa and in the present case means that the respondents have a right of Occupancy in accordance with the relevant native law and custom concerned; together with other right of Usufruct (possession in the award). The decision in the cases of (*Chief Nsirem and Anor V Nwakerendu and Anor, 1955*) and (*Emmil and Ors V Tuakyi and Anor, 1952*) disclose that the word 'ownership' is same in Nigeria, West Africa and even entire African land holding, of course, subject to limitations earlier pointed out.

In our customary land law, the word 'ownership' and title is employed interchangeably. Title means a right to ownership. It can be original or derivative. For instance, where a person does not take from any predecessor, then, title would be said to be original. This is noticeable when one first settles on vacant land and becomes entitled to it. But where title is inherited from a predecessor it is term derivative (Ikpambese, 2010:29).

In practice, Lawyers and litigants filing actions for declaration of title to land employ, the use of the word 'ownership' and 'title' interchangeably and synonymously. It is advisable to use both words loosely and to be understood in the context in which it is utilized, especially as the concept of ownership has shifted from absolute to restricted ownership due to the rights of government and the citizens. Given these facts, it is preferable to describe ownership to land as a bundle of limited rights.

## **2.2 OIL AND GAS**

The term oil is used loosely to refer to petroleum in many cases and it usually means the same thing as crude oil unless the meaning is expanded in particular situations.

According to (Omorogbe, 2001:1) in her book described petroleum as a compound mainly composed of hydrogen and carbon, and it is commonly called hydrocarbon. It can exist in gaseous, liquid or solid form. When it is found as a solid; it is coal, shale, tar sands or bitumen. In liquid form, it is referred, to as crude oil. Hydrocarbons in gaseous form are known

as natural gas. The most commonly known hydrocarbon is crude oil which is also referred to by many as petroleum

There has also been a statutory definition of petroleum under the Petroleum Act (Cap, 2004:9) of Nigeria which provides that:

*Petroleum means “mineral oil (or any other related hydrocarbon) or natural gas as it exists in its natural state in strata and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation. Furthermore “crude oil” is defined in the Act as “oil in its natural state before it has been refined or treated (excluding water and other foreign substances)” (Cap, 2004:9)*

According to the Petroleum Act, (Cap, 2004:9) natural gas means “gas obtained from boreholes and wells and consisting primarily of hydrocarbons “it is the combination of certain hydrocarbon substances in gaseous form that accompany crude oil in its occurrence. It is in this form of its unrefined state that makes it natural gas.

From these definitions and descriptions of petroleum, it can be said that the term petroleum, includes (crude) oil and natural gas, while each of oil and gas has similar qualities but are not the same in many of their components.

### *2.2.1 Resource Control*

The concept of resource control means many things to different persons. Some understand it as a total take-over of the resources located in an area or state by the people of that area or state. Others understand it to mean that the stakeholders in the resource area should manage greater proportions of the resources harnessed in those areas. As used in the Nigerian debate, the term has evolved as an emotive and nebulous concept laden with sentiments, subjectivity and phobia. Its highfalutin usage complicates understanding. Nevertheless, the concept of resource control may be taken to mean:

*The substantive powers for the community to collect monetary and other benefits accruing from the exploitation and use of resources in its domain and deploy same to its developmental purposes. Here the community is self-ruling and homogenous, this power is inherent and automatic. When the community is part of a larger nation-state, the power and its extent has to be mediated by the principle of fiscal federalism. (Faga, 2013:74)*

Generally, a resource may be seen as a useful material or substance. Technically it refers to the positive interaction between man and nature, as a means designed to satisfy some given ends, wants and social objectives. From this perspective, a resource is a social relation having two basic attributes – utility and functionality. (Faga, 2013:70)

Indeed, the term resource control has no accurate or mathematical precision in its meaning. Nevertheless, Darah, one of the commentators on the issue observed that “there is some confusion about the meaning and economic implications of the term “resource control.” (Darah, 2001:19-20) Emeka also helplessly declared “it is doubtful whether one can extract a core meaning of the term “resource control”. (Emeka, 2009:5)

Sometimes, the term resource control and derivation are often erroneously used interchangeably. Agitation for resource control is seen by some as agitations by the south-south people, especially states with oil to control proceeds from the exploration and exploitation of crude oil and gas. Victor Attah lamented that:

*It is regrettable that those who wanted to cause confusion sometimes use resource control and derivation interchangeably. The distinction between resource control and derivation is very important. Derivation simply posits that if any mineral in any state is exploited and it yields revenue then certain percentage of that revenue shall be retained (given back) to that state on the principle of derivation while the rest will accrue to the federation account to be enjoyed by all the federating units (Attah, 2001).*

Resource control is an emotive issue; some commentators define it in line with sentiment. For instance, Odebala, E. O. defines resource control as:

*The call for the abrogation of the Land Use Act and other legislative instruments like the Petroleum Act, 1969 which made it possible for the federal government to control resources of people without allowing them access to the resources and revenue derived there-from. (Odebala, 2001)*

According to a communiqué issued at the end of a meeting of the 17 southern states governors in a summit, resource control was defined as:

*The practice of true federalism and natural law in which the federating units express the rights to primarily control the natural resources within their borders and make agreed contribution towards the maintenance of common services of the government of the center. (Communiqué of summit of 17 southern states governor held at Benin City, Edo State on 27th March, 2001).*

Ibanga, M. writing on the Bases and Implications of Resource Control by states in Nigeria, commented that:

*Within the context of the current contest between some states and the federal government of Nigeria, (demand for) resource control by states signifies the political legal authority by states to manage natural resources within their territories, in terms of defining the manner and mode of exploitation as well as utilization of proceeds accruing thereto. (Uya, 2002:622)*

Nwauche defines the term ‘resource control’ as a “claim on control, management and development of natural resources found in the territories of the nationalities/states in the Nigerian federation (Nwauche, 2002:2). Given these facts, ‘resource control’ refers to the right to control, determine and use natural resources within the respective territories of the states of the federation of Nigeria by the states in which these resources are based. (Mohammed, 213-215)

### *2.2.2 Revenue Derivation Principle*

Derivation means that a sizeable proportion of revenue receipts from particular natural resources should be given back to the state(s) from which such natural resources are derived. Virtually, all the states of the federation have at least one form of natural resources or the other. Obviously, the principle of derivation emphasized that federally, collected revenue on resource from land or water of a particular state should be returned to them wholly or substantially. The crux of the issue here is over how much of the collected revenue should be returned to the states from where these resources were derived.

### **2.3 SOCIO-ECONOMIC DEVELOPMENT**

According to the *New Webster's Dictionary of the English Language International Edition*, socio-economic development means: relating to combined social and economic conditions to cause to grow or expand by putting money into, to develop a business (Lexicon publications, 2004:216). Article 1 of International Covenants on Human Rights Provides that “*all peoples have the right to self-determination*” and by virtue of their right there freely pursued their social economic and cultural development. Article 20 of the African Charter on Human and peoples Right Sub (1) stipulates that:

*All peoples shall have right to existence and in alienable 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.*

Self-determination intertwines with development. So, good governance is a *sine qua non* for meaningful economic and social development (Thornberry, 1993:101). Economic development therefore, is the process by which a nation improves the economic, political and social well-being of its people. The term has been used frequently by economist, politicians and others in the 20<sup>th</sup> century. The concept, however, has been in existence in the West for centuries. Modernization, Westernization and especially industrialization are other terms people have used while discussing economic development. Economic development has a direct relationship with the environment and environmental issues (Economic development, 2016).

### **3. CORPORATE SOCIAL RESPONSIBILITY**

The concept of corporate social responsibility has acquired broad support in various international fora. There is no universally accepted definition of the concept; however, there is a consensus of opinion that it implies a demonstration of certain responsible behaviour on the part of governments and the business sector towards society and the environment.

According to (Mallen, 2010)

*“Corporate social responsibility is about how companies manage the business processes to produce an overall positive impact on society”.*

To him, companies need to answer to two aspects of their operations:

1. The quality of their management-both in terms of people and processes (the inner circle).
2. The nature of and quantity of their impact on society in various areas.

The deformation by the European commission is more encompassing which sees social responsibility as:

*A concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis (Jemialu, 2013:469).*

### **4. THE GEO-POLITICS OF OWNERSHIP OF OIL AND GAS IN NIGERIA**

The study of ownership and control of oil and gas in Nigeria has brought much arguments and controversies amongst scholars, youths and even lawmakers. In the works of imminent scholars like Professor Alagoa, Dr. Yusuf Bala Usman, Dr. Alkassim, Abba and a host of others, it is the general consensus that there is compactness and interdependence in Nigeria's geological formation. (Y.B, 2000:19) The authors went further to posit that:

*Although in both the political nomenclature and the aerial geography of the country, there is North and South dichotomy, such division has no basis in the geology of the country (Y.B, 2000:19).*

Imagine at this moment of our political history, when the survival of the country and the continuity of the federation are rested entirely on the control of mineral resources, rather than discussing the geography of Nigeria based on North and South, some writers are busy talking about the complex basement rock and the sedimentary rock formation of the country; the lake Chad basin, the Sokoto Rima basin, the Niger Benue basin, the Niger Delta, the Benin-Lagos coast-land and the Cross River basin and that these areas constitute the oil-producing and the prospective oil-producing basins of the Country, and these basins share a common geological heritage of a sedimentary rock formation (Hyne, 1995:2-34). Undoubtedly, the plains of Hausa Land, the Jos Plateau, and the central uplands, the Yoruba upland, the Adamawa and Mandara Mountains, are basement complex with deposits of volcanic materials (Hyne, 1995:2-34). Yet still, despite the glaring dichotomy of the soil formation, the claim is that, it is the geological basis of the country that established the foundation for the soil, the water resources and the natural resources endowment of the country. It is argued further that it is the geological evolution of the country that made the soil, formed the mineral resources and defined the fauna and flora of the country (Hyne, 1995:2-34). The Niger Delta, which remained central to this controversy, its waters, its soil, and oil resources are products of the same geological evolution. And that it is not a distinct part of the country as suggested by the proponents of separatism, oil self-determination, and sovereign national conference proponents... (Zuru, 2007:42-43) It is the considered view of this writer that these arguments do not hold water and that undoubtedly; the present position of Nigerian law on resource control is derived from colonial centralist policies of pulling all the wealth in the colony to the centre for onward transportation to the home (imperial) country. The truth is that Nigerian Federalism has failed woefully and our major task now is how to make it responsive and responsible to the aspiration and goal-value of the federating units (Out, 2017:95-149). The clamour call today for true federalism through restructuring implies the functionality of the institutions and structures of states for the attainment of set policy objectives. It is the sincere belief of this writer that the only path to the survival of Nigeria as an entity is true federalism involving fundamental restructuring and decentralization of power. There should be devolution of power to reduce the attraction of the centre. This modest experimentation as practice in most developed countries will give more powers to the regions, states and local governments.

Historically, the Nigerian Petroleum scene opened as far back as 1908, when a German Company, the Nigerian Bitumen Corporation, (Nlerum, 2007:14) was attracted to what is now known as the South Western Nigeria Tar sand deposit. This company in that year commenced exploration for oil in Nigeria at a place near Okitipupa in the present Ondo State. This attempt was to an extent unsuccessful because oil was not found in commercial quantity.

The activities of the German Bitumen company ceased as a result of the First World War. Interest in the possibility of discovering oil in Nigeria was rejuvenated in 1937 with the establishment of the Shell D'Arcy Petroleum Development Company of Nigeria of which its mother company was the mineral oil companies of Shell Petroleum Company and British Petroleum Company. In November 1938 Shell B-P received an oil exploration licence (OEL) covering the whole of Nigeria from the British Colonial Government (Soremekun, 1996:10).

After a five year interruption caused by the second world war shell – BP intensified its exploration activities during the 1946 – 1957 period. This second phase for the search for oil



led to the drilling of two wells in 1951 and 1953 with marginal gas, first at Ihu village near Owerri and the second at Akata location respectively.

During the preceding four years, the company concentrated efforts in the areas around the Niger Delta in the Southern part of Nigeria without discovering well that could produce oil with the continuous exploration and intensive search for oil in these areas, Shell-BP discovered oil in commercial quantity in Oloibiri, in the present-day Bayelsa State in 1956. This discovery opened up the oil industry in 1961, bringing in Mobil, Agip, Safrap (now ELF), Tenneco and Amoseas (Texaco and Chevron respectively) to join the “exploration efforts both in the onshore and offshore areas of Nigeria.

This development was further enhanced by the extension of concessionary rights which previously was monopolised by Shell to the new-comers in the oil industry. The main objective of the government in extending such concessionary rights was to enhance the pace of exploration and production of petroleum. However, actual oil production and export from the Oloibiri field in present-day Bayelsa State Commenced in 1958 with an initial production rate of 5,100 barrels of crude oil per day. Subsequently, the quantity doubled the following year and progressively as more players came onto the oil scene, the production rose to 2.0 million barrels per day in 1972 and peaking at 2.4 million barrels per day in 1979. Nigeria thereafter, attained the status of a major oil producer, ranking 7<sup>th</sup> in the world in 1972, and has since grown to become the sixth-largest oil-producing country in the world.

Ownership of mineral resources like that of land varies from country to country. It all depends on a country’s legislation and in some cases upon generally accepted practice. The exclusive use and enjoyment of land usually carried with it the full rights to its mineral, subject of course to the requirements of the prevailing customs and the government legislation on the land tenure laws of the country.

It is instructive to note that while land in the strict sense is not subject to absolute ownership because it cannot be destroyed, mineral, oil is a wasting asset and therefore capable of absolute ownership in the legal sense. Under customary law, there is no distinction between land and the minerals contained in such lands. However, in some communities, it is doubtful under their customary law, whether such mineral resources were part of the land, for instance, in Nupe Kingdom where the chief owned even economic trees, it is submitted that under such a customary law, the ownership of minerals will not go with land but held for the crown (Mohammed, 2007:132-133).

Also under Islamic law, minerals are of two kinds:

1. Floating minerals being those that are spilt over land and capable of collection without being dug such as salt, potash.
2. Underground minerals such as gold, silver, steel.

The law is that, it is desirable to let ownership of minerals to the general public rather than an individual. However, where a person is allocated land by the state and later it is discovered that there is mineral in the land, he acquires the right of ownership of the minerals notwithstanding its type. The owner can sell it to whoever can dig out the minerals (Mohammed, 2007:132-133). This is the popular view amongst scholars. In Contrast, some scholars are of the view that all minerals from land owned by somebody should be placed under the leader who holds them in the same way as minerals resources from an unowned land (Mohammed, 2007:134). Thus, mineral resources in Islamic law like English law could be

owned exclusively by the state or in some cases by the individual, or private enterprise and it could be joint ownership (Mohammed, 2007:134).

As already stated, under the common law, the owner of land in fee simple absolute was said to own land to an indefinite extent, upward as well as downwards. The Latin maxim *cujus est ejus est usque ad coelum ad inferos* is most appropriate to describe the position of the law. This right is however subject to the right of the state to receive for itself mineral resources or statutorily expropriate it, no doubt, this right of the state was allowed if such resources are to be utilized for the common good of all the citizens in the national interest. The state therefore began to intervene through legislation. This regime of state intervention into the right of its citizens over ownership is a legal reality or concept motivated by several factors like political, social, philosophical and economical (Mohammed, 2007:134).

Thus, where mineral resources are owned by the state, development operations are then subject to the acquisition of rights from government authorities usually in the form of concessions or leases preceded in some cases by licenses or permits. In Nigeria, there are three types of concessions; exploration, prospecting and mining. All these can only be conducted under the license (Mohammed, 2007:134).

Where there is private ownership, it is usual for the owner to either grant the mineral rights out or by an agreement of leases or otherwise contract to company or similar entity, the right to remove the mineral for an agreed financial consideration. In a situation of joint ownership, the state may prescribe its right to specific minerals such as uranium while leaving others to private ownership. A good example of this is Austria.

In Great Britain, the Petroleum (Production) Act of 1934, vested in the Crown the property in all Petroleum in Great Britain, together with the exclusive searching and boring for it (Wokocha, 20005:42).

The nature of ownership of mineral resources in the United States goes with its history, political economy and constitutional evolution. Ownership in the use of minerals and minerals resources is shared by the state represented by the Federal and State Governments and by individuals. The federation of the United States is such that states which were more or less semi-autonomous entities came together to create the federal government and therefore still retain power to make laws on a wide range of subjects. In the United States land and its incidents belong to each component state. Each state has the power to make laws regularly on exploitation operation and production practices of its natural resources (Wokocha, 20005:42).

By the political economy of the United States, being a capitalist nation, private ownership is allowed as regards land and mineral resources contained in it. The laws regulating the ownership rights and incidents of minerals oils vary from state to state. However, a common thread existing in all of them is that a landowner has exclusive right to drill a well upon his land for the purpose of producing oil and gas. The only control of the state on this is to charge taxes, land lease bonus, rental and royalties on such operations. Canada is another federal state with a history of federation similar to that of the United States.

In developing countries there is the general reluctance to place mineral oil resources at the disposal of individuals as to do so, it is believed (Mohammed, 2007:138) would breed a class of wealthy moguls in countries where, because of pervading poverty government programmes should aim at even development and increased standard living for all. Even the capital and technical know-how for the exploitation of minerals is lacking in developing countries. The legislation is, therefore, geared towards investing ownership in the state which as an owner may contract out mineral resources exploitation to foreign enterprises for a fixed

term and under specific conditions which are normally concluded under concession (Mohammed, 2007:138).

The petroleum statutes of African countries have provisions under which all oil and gas in place vest in the state (Algeria- statue no, 1958:51). State ownership in these cases is at the federal or National level and the powers relating to such are exercised by or under the authority of the federal, central or national government. In other African Countries, it may be worse. For instance, the Mines and Minerals Act of Zambia provides thus:

*“All rights ownership in, of searching, mining and disposing of minerals are hereby vested in the president on behalf of the Republic”* (Mineral, 1969).

Sub-Section 2 reads thus:

*All provisions of such section (i) shall have effect notwithstanding any right of ownership or otherwise which any persons may possess in and to the soil on or under which minerals are found or situated* (Mineral Section 3, 1969).

Thus, the state or rather the president owns absolutely all minerals even though individuals may own such lands.

The Nigerian position is similar to that of most developing countries. From the colonial times, ownership of minerals resources was vested in the crown (Colonial Mineral Oils, 1914).

Undoubtedly, when the Land Use Laws are read together with the Petroleum Act, the Constitution and other relevant statutes, the effect is clear, unambiguous and final. All resources in and around, Nigeria does not only belong to the Federal Government, but the control and even the land on or in which they are found are also owned (Wokocha, 2005:21).

The right of ownership and control of natural resources in Nigerian law was restated during the last military government in Nigeria as expressed through the minerals and (Mining Decree, 1999) thus:

*The entire property in and control of all minerals in, under or upon any lands in Nigeria, its contiguous continental shelf and of all rivers, streams and water courses throughout Nigeria, any area covered by territorial waters or constituency, the exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.*

The section further declares that the government of the federation shall acquire in accordance with the Land Use Act, all lands in which minerals have been found in commercial quantities. The subsection further empowers the minister to, with the approval of the Federal Executive Council; designate such lands as security lands Mining Decree, Sub-Sec 2, 1999.

One of the most vocal scholars and a strong proponent of restructuring, Professor Itse Sagay made the following remarks:

*That the imperial masters claimed all the minerals in Nigeria for itself was to be expected. Colonial rulers Operated in their own interest not in the interest of the colonized people* (Sagay, 1997:178).

Further explaining this, late Dr. Bala Usman, wrote:

*Whatever Sovereign rights the governments of the Pre-colonial Politics of the Niger Delta and its hinter land had, over the soil, water and minerals of the area, were destroyed by the British conquest... The British did not conquer the Pre-Colonial*

*Politics of Nigeria only to leave alone their land and minerals. They took full control of these as the sovereign power (Usman, 2000).*

In Nigeria until 1978 after the promulgation of the Land Use Act, families, villages and communities could exercise their right of ownership over land by challenging compulsory acquisition by the government. In (*Ereku V. The Military Governor of Mid-Western State, 1974*) the Itsekiri communal land Trustees and other Communities representatives sued the government for compulsorily acquiring their land on behalf of a foreign oil company. The Supreme Court set aside the compulsory acquisition as unconstitutional, ultra- vires and void (Edict, 1972). Communal ownership was not only acknowledged, but well recognized by officers or government down from the colonial era (Ajomo, 1982:330-339).

In 1978, the Land Use Act (Cap, 2004) was enacted with the result that land right was united with oil right thereby abolishing the pluralistic land tenure system in Nigeria and replacing it with a uniform land tenure system. The Act was calculated to diminish the power of communal ownership by vesting the radical title of such land to the state government in their respective states thus:

*Subject to the provisions of this Act all land comprised in the territory of each state in the federation is hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.*

It is very instructive to note that international law recognizes the right of states with sea boundaries to own minerals in both the territorial sea and continental shelf of their littoral territory. In the eye of international law, only the federal government of Nigeria as a corporate entity has the personality recognized on the international plane. It is, therefore, the owner of waters and sub-soil of our littoral territory and the resources in respect of them up to the limits prescribe by international law.

The *locus classicus* case here on the issue is *Attorney General of the Federation V Attorney General of Abia State and 35 ors*, (Faga, 2013:69-80) that resources in the continental shelf vests in the federal government. The facts of the case are that there arose a dispute between the federal government on the one hand and the eight littoral states of Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers state on the other hand as to the Southern (or seaward) boundary of each of these states. The federal government contended that the southern (or seaward) boundary of each of these states is the low-water mark of the land surface of such state or the seaward limit of inland waters within the state as the case so requires. The federal government, therefore, maintains that natural resources located within the continental shelf of Nigeria are not derivable from any state of the federation.

The eight littoral states did not agree with the federal government's contentions. Each claimed that its territory extends beyond the low-water mark onto the territorial water and even onto the continental shelf and the exclusive economic zone. They maintained that natural resources derived from both onshore and offshore are derivable from their respective territory and in respect thereof each is entitled to the "not less than 13 percent allocation as provided in the proviso to subsection (2) of section 162 of the Constitution. In order to resolve the dispute, the Plaintiff took out a writ of summons praying for:

*"A determination of the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the federation account directly from any natural resources derived from that state*

*pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999.”*

All the states in the Federation were joined as defendants in the action. The parties, except the 29<sup>th</sup> and 30<sup>th</sup> Defendants, that is, Osun and Oyo states filed and exchanged their respective pleadings. Some of the defendants raised counter-claims against the Plaintiff. The pleadings of the Plaintiff and the eight littoral defendant states reflected their respective viewpoints in the dispute. Some of the defendants raised in their pleadings, a number of objections such as there being no dispute, misjoinder, lack of jurisdiction etc. all these objections were taken at an earlier hearing and disposed of. *Attorney General of the Federation V Attorney General of Abia State and 35 ors.*

The Supreme Court in a Judgment of the Court delivered by Michael Ekundayo Ogundare, J.S.C. held in summary that among others:

*Plaintiffs case succeeds and I hereby determine and declare that the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, is the low water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State.*

The decision of the court on this point appeared to have been predicated mainly, on the following:

(a) That the boundaries of the littoral states ended at the low-water mark by virtue of certain colonial Orders in Council, which in the opinion of the court were still valid laws, limiting such boundaries to the “Sea”; (*Attorney General of the Federation V Attorney General of Abia State and 35 ors*)

(b) That by virtue of its nature, these offshore zones are not part of the territory of Nigeria, rather an extra-territorial terrain conceded to Nigeria by international law (*Attorney General of the Federation V Attorney General of Abia State and 35 ors*).

(c) That since international responsibility may arise from such offshore zones and the Constitution of Nigeria confers on the federal government the duty of handling external affairs, such offshore zones cannot be regarded as part of the littoral states of Nigeria; (*Attorney General of the Federation V Attorney General of Abia State and 35 ors*)

(d) That the extensive control and management, inclusive of the powers to make laws, conferred by the TWA, EEZA and the SFA on the federal government raised the inference that ownership of such zones could not be vested in the littoral states (Iguh, 2005:889-892).

The Supreme Court ruling is of course right. The Supreme Court has read the law properly, stating the law as it is. It must be realized that the responsibility of the Court is juridical and not jurisprudential. The Court is to interpret the meaning of the language of the law as presently couched and not to rewrite or amend them or declare them wrong choices of words. It is not to declare whether the law as it is, at the moment is proper, just and equitable or not but to state what they provide and at best whether they have been validly made (*AG Bendel State v. AG Federation and Others* (1982) 3 NCLR 1) by competent legislatures (*AG Abia State and Others v. AG Federation*, 2002). To expect otherwise from the court is to be sentimental and not juridical. The court has therefore done its work. It is for “we the people”

of the federation to activate the political process towards rewriting the law and steering our nation towards the paths of true federalism.

Conclusively, clearly and exhaustively, the Nigerian law as shown above, expressly vests with every available language, the ownership and control of resources in the Nigerian State on the government of the Federation of Nigeria. Why then the agitation for a different form of resource control regime? What is wrong with the current legal regime on resource control? Is there need to rethink the current position of the law on resource control? These questions call for attention.

In arriving at its decision against the littoral states' ownership of the Nigerian offshore zones, the court relied heavily on certain decisions of the English, Australian, Canadian and American courts (Ogundare, 2000:646-647). Each of the above four propositions will now be examined in turn.

Lastly, the 1999 constitution (Section 44 of the 1999 Constitution) which lays down the procedure for compulsory acquisition of land in Nigeria went on to provide under subsection 3 that notwithstanding provisions of the section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in under or upon the territorial waters and the exclusive economic zone of Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly. Thus, while the state or the federal government generally own land, the definition of land in Nigeria excludes minerals and minerals oils. The federal government exclusively owns these. Also, none of the 36 constituents units of the federation can lay a claim to any right respecting Nigeria's territorial waters or the continental shelf of the exclusive economic zone and the mineral resources in them (Ajomo, 1982:138). The Exclusive Economic Zone is a new regime of resources of the sea created by the Exclusive Economic Zone Act No 28 of 1978 and which has been concealed to the Coastal States by International Law under UN draft convention on the law of the sea, 1982.

## **5. THE POLITICS OF AGITATION FOR RESOURCE CONTROL IN THE NIGER DELTA REGION**

The Niger Delta region of Nigeria is located within the Southern part of Nigeria and endowed with enormous natural resources especially oil and gas. It was formally the British Oil Rivers protectorate from 1885 to 1893, when it was expanded and became the Niger Coast protectorate (Ahiarammunah, 2013:47). The region consists of present-day Bayelsa, Delta and Rivers States and had been expanded to include all oil-producing states consisting of Abia, Akwa Ibom, Cross River, Edo, Imo, and Ondo States (Cap, 2004).

The Niger Delta region is home to various tribes or people in Nigeria and it also the natural habitat to abundant land and sea flora and fauna of great economic value. However, the case scenario today is different due to the systematic and gradual elimination and depletion of the human, manmade resources- fructus industries and the natural resources of this fertile region which is one of the largest deltas in the world (Jemailu, 2015:467).

Since the discovery of oil well in commercial quantity in a place popularly known as "Oloibiri well No. 1" in June 1956 in a village near Oloibiri, Bayelsa State from where the first oil in Nigeria began to flow in 1958; the Niger Delta Region has been associated with petroleum exploration and ecological degradation which most often times result in loss of means of livelihood, inter and intra communities squabbles among others. Undoubtedly, since the 1970s

oil has accounted for about 80% of the Nigerian government revenue and 95% of the country's export earnings (Ahiarammunah, 2013:47-48).

It is indisputable fact that oil operations in the Niger Delta in the areas of exploration and exploitation have had adverse environmental consequences on the region and have remained a strategic source of oil pollution (Shell Bp V. Farah, 1995). The total neglect of the environment and ecological problems of the oil-producing communities and the acute marginalization and deprivation of the people of the Niger Delta from the ownership and control of the oil mineral resources extracted from the region for over five decades, and coupled with the steady decline of oil revenue allocation to the Niger Delta States over the years ignited and intensified the Niger Delta struggle for a fair share of the oil wealth or resources control by the region that produces the oil mineral resources.

The allegation of environmental degradation in the Niger Delta is a statement of a physical fact corroborated by a series of international commissioned studies (CIA Commissioned Report, 1998) but locally undermined by capacity deficiency and misinformed environmentalism rooted in domestic politics (Zuru, 2009:290). The deliberate manipulation of physical evidence of degradation by environmental activities created a huge gap between the myth and the reality of every claim (Civil Liberties Organisation of Nigeria, 1996).

The politics of oil pollution and exploration in the Niger Delta is the expressed resolve of the oil-producing communities; their elite and local pressure groups to preserve the current trends of "conservation" as a political weapon within the geo-economic and political dynamics of the country. In this part of Nigeria, there is a deep sense of anger, frustration and betrayal. The region produces approximately 95% of Nigeria's oil but remains the least developed part of the country (Zuru, 2009:293).

In both the political lexicon and lingual prism of Nigeria, the region sees itself as minority marginalized by the political majority as evident in the structure of the country (Ibelema, 2000:21). This underpins the current environmentalism which, firstly, is in tune with the global conservation movement, Secondly, would enrich the region's bargaining position locally (This Day Newspaper, Feb. 11, 2001:13).

It must be noted that youths in the Niger Delta did not start their present violent disposition from the time oil was first discovered. It was during General Sani Abacha's regime (1993-1998) that youth restiveness started on a small scale. However, prior to this time, we had few cases of youth restiveness like Isaac Jasper Adaka Boro's revolt in March 1966 and the Ogoni Crisis in the nineties (Mosop, 1990).

The Two Million-man march organized by Daniel Kanu and his organization "Youths Earnestly Asked for Abacha" in the first quarter of 1998, during the period when the former president of Nigeria late Sani Abacha wanted to transform as a civilian president of Nigeria. The march was tagged "two million man March" because two million youths were expected to arrive eagle square Abuja to march and declare Solidarity to Late President Sani Abacha. On getting there, however, the Niger Delta youths were confronted with the reality of their regions underdevelopment as Abuja was European or America city in Nigeria when the youth saw the beauty of Abuja with its imposing infrastructures; they realized the level of neglect their various communities had suffered over the years.

From that moment; things assumed dramatic turn as the issue of neglect became glaring. As soon as they returned back from Abuja to their communities, the started organizing protest and agitation for proper development and better life. Determined to achieve this

objective, youth bodies emerged under various names but with similar demands for resource control and they carried it to everywhere.

Thus, the militancy in the Niger Delta, which started almost as a child play worsened and had a great toll on the economy and security of the country. It degenerated from genuine struggle to criminality ranging from oil bunkering to kidnapping, arms procurement and sponsoring of the militant groups in the region, among others for about four years before Late President Yar' Adua assumed power the Niger Delta militant virtually turned oil-rich region unto a war zone and held the nation to ransom with over 5000 camps scattered across the creeks, the militants armed to the teeth destroyed vital oil installations and kidnapped expatriate oil workers, most of whom fled from the country while many oil companies closed shops. Their campaign of terror took a huge toll on the nation's oil output and earnings. In fact, the use of military force by way of the joint task force (JTF) by previous regimes before Yar' Adua emergence as president did not help matters. However, Late Yar' Adua having a listening voice and being a good man, took so many official and unofficial steps in bringing about peace in the Niger Delta region today by way of amnesty offered to the Niger Delta militants on the 25<sup>th</sup> of June, 2009 and others. In fact, different peace deals were packaged, targeting different interest groups in the conflict. One of the first steps late president Yar' Adua took was to release Mujahud Asari-Dokobo, leader of the Niger Delta Peoples Volunteer Force, NDPVF, who had been in detention for 18 months, immediately after his swearing in as the president of Nigeria (Tell magazine, August 17, 2009:52).

Another bold step he took was the setting up of the ill-fated Niger Delta summit under chairmanship of Ibrahim Gambari but later replaced by a Technical Committee on the Niger Delta (TCND), headed by Ledum Mitee, president of the movement for the survival of the Ogoni people, MOSOP, to collate all the past recommendations on the Niger Delta from the Willinks Commission of 1957 to the recent Niger Delta Master plan drawn up by the Niger Delta Development Commission (NNDC), in association with all the stakeholders (Tell magazine, August 17, 2009:52).

Yar' Adua tried during his short regime to achieve peace in the Niger Delta region especially with the amnesty programme oil production as at then resumed with increase output. But the problem today is how to manage the post-amnesty programme by successive governments living up to its promise and embarking on human, capital and physical development of the region, environmental protection and averting intra-militant squabbles so as to consolidate on the gains of the amnesty programme. Rather, the reverse is the case scenario today. Uniform men who are meant to protect the civil populace as military officers are parading the streets terrorizing the communities, raping their wives and killing innocent souls in the guise of protecting oil wells. The writer of this article recently is prosecuting twenty two cases involving Human Rights abuses in the Niger Delta region, Akala-Olu LGA, Ahoada West in particular where as a result of unknown fire outbreak in one of the Oil Well 5 to be specific which resulted to the massive illegal arrest of the inhabitants or indigenes by armed security operatives based on a baseless, unsubstantiated and false allegation of the indigenes blowing up one of the oil well 5 which actual cause was as a result of an act of God (system failure) from the malfunctioning's of the equipment from later findings. Nineteen youths were arrested, tortured and in the process one of them Mr. Marvellous Gentleman died and has not been buried till date. This writer instituted an action against the Respondents jointly and severally in the Federal High Court Port Harcourt Division to secure the enforcement of the fundamental rights of the Applicants who were detained illegally for one week from 09/02/2016 to 16/02/2016. Out of the sum of Two Hundred and Fifty Million, that the applicant



asked for the aggravated and general damages for the illegal and unconstitutional detention by the Respondents, the judge, awarded only Two Hundred Thousand Naira against the Nigerian Police, exonerated the Agip Oil Company that instigated the arrest and detention on technical grounds. Imagine the ridiculous award for prosecuting a matter for over a year against the company and police who never contested the case. The victory became a pyrrhic one as the amount was ridiculously low compared to the cost of prosecuting the case and the agony the victim went through in the course of detention. What a mockery for our judicial system; for the jetsam and flotsam in the society have no access to justice again (Mr. Ernest God-day V Nigeria Agip Oil Co. Ltd and Ors, 2017). The facts on the ground is that the Nigerian Judiciary have not been leaving up to expectations in handling most of these multi-national's oil company matters either for fear the federal government victimizing them by sacking them out of their jobs or in most cases out of apparent corruption and unbridled greed and compromise with these companies to perpetuate injustice on the citizenry, justice is mostly for the rich and for cash and carry in this our country today to a greater extent. In fact, if you really desire justice in cases involving these multi-national oil companies, you can sue them in their headquarters abroad and it is only then you can expect a fair context.

The present constitutional and other statutory provisions on ownership and control of mineral resources in Nigeria all favour the federal government. The oil companies and the federal government have not done much for oil communities in the last decade or two. The world Business Council for Sustainable Development (WBCSD) proposed a global strategic approach on how to generate economic wealth, followed by environmental improvement and social responsibility (Natufe, 2010). Corporate Social responsibility is therefore not only the expected ethical behaviour of companies; it also defines the self-interest of companies. Companies' failure to consider community perceptions has meant that they "have been unable to derive the maxim advantage they deserve and expect from the corporate social responsibility (CSR) initiatives."

The writer of this article associates himself with the erudite scholar Professor Sagay, in a chapter contribution *Ownership and Control of Petroleum Resources: A legal Angle* (Sagay, 1997:178) where he suggested that the Federal Government should hold these resources in trust for the people; that people from the areas should be put in management and control of these resources by the federal government; he further lamented over the powers of the minister of petroleum on control of the resources.

One basic truth about the country is that we need to operate true federalism based on fiscal federalism. The fact remains that revenue allocation to all the levels of government has not been prudently, accountably, transparently and responsibly managed by our leaders. We have seen monumental cases of corruption and corrupt practices in Nigeria. Transparency International the Berlin-based non-governmental organization NGO, has adjudged Nigeria, as the most or second or third most corrupt nation in the world. The assessment may be debatable but none-the-less it shows the gravity of the problem of corruption in Nigeria.

At the rate the country is going about the governance of its citizenry, we may be heading towards the precipice of self-destruction in the fight for resource control. The Republic of South Africa is not blessed with petroleum resources yet it has a better economy than Nigeria. We need the total restructuring of the polity Nigeria to reflect the true wishes and aspirations of our citizenry. Nigerians deserve more from those in authority by way of accountability.

## **6. LEGISLATIONS AFFECTING OWNERSHIP OF OIL AND GAS IN NIGERIA**

Statutes both internationally and locally provide for the regulation of ownership of oil and gas. All over the world, the question of who the ownership, control and development of natural resources vests upon has been a subject of debate among the nations. Consequently, the issue has assumed a controversial dimension in the world. For the purpose of this article, we shall dwell more on the currently applicable legal regime regulating ownership of natural resources (oil and gas) in Nigeria and mention shall be made of a few international treaties as well.

The current applicable legislations affecting ownership of oil and gas in includes *inter alia*:

1. The Constitution of the Federal Republic of Nigeria 1999 as Amended
2. The Land Use Act, 1978 Cap L5, Laws of the Federation of Nigeria 2004
3. Nigeria Minerals and Mining Act, 2007
4. The Petroleum Act Cap, P10, laws of the Federation of Nigeria 2004
5. Exclusive Economic Zone Act Cap E17, laws of the Federation of Nigeria 2004.
6. Territorial Water Act, Cap 75, laws of the Federation of Nigeria 2004
7. The National-inland Water-Ways Authority Act, Cap 47, laws of the Federation of Nigeria 2004.
8. The Lands (title vesting) Act, Cap 17, laws of the Federation of Nigeria.

### ***6.1 Constitution of the Federation of Nigeria of 1999, as Amended***

The Constitution of the Federal Republic of Nigeria of 1999, (as amended), confers exclusive power on the Nigerian State to own, control and regulate the activities of minerals, mineral oils and by-products this power. This power is firmly provided for in Section 44() of the Constitution and specifically states:

*Notwithstanding the foregoing provision of this Section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon territorial waters and the Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.*

### ***6.2 Land Use Act***

It can be submitted that the structure that existed prior to the introduction of the Land Use Act reflects a basic tenet of ideal federalism. Also, it would appear that the unitary configuration sought to promote uniformity in the country through the Land Use Act and brought an end to the duality in Nigeria's land tenure system (Lanre, 2013:172).

The Land Use Act was specifically entrenched in the 1979 Constitution and was equally retained in the 1999 Constitution, as amended, thus making its repeal cumbersome and tedious (Lanre, 2013:172). The Land Use Act introduced an entirely new dimension into land ownership in the country by abolishing the ownership rights of communities and individuals to land and turning their interests into rights of occupancy only (Ajomo, 1982:335). It is, therefore, clear that land ownership and tenure in Nigeria is a qualified one in which absolute title is vested in the Governor. However, it must be mentioned that, notwithstanding the vesting of title in the Governor's land in the respective state, one cannot exercise rights over lands that belong to the federal government and its agencies (Cap, 2004).

It is equally instructive to note that, apart from legislation, case law has also acceded to the fact that ownership and control of mineral resources being vested in the federal government.

This was confirmed by the Supreme Court of Nigeria in the case of *Attorney General of the Federation v. Attorney General Abia State (No. 2)* where it was held that “the federal government alone and not the littoral states can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters and sovereign rights over the Exclusive Economic Zone subject to universally recognized rights.” (*Attorney General of the Federation v. Attorney General Abia State, 2002*) The court went on to decide that the mere fact that oil rigs bear the names of indigenous communities on the coastline adjacent to such offshore area does not prove ownership of such offshore areas (*Attorney General of the Federation v. Attorney General Abia State, 2002*). There is no doubt from the pronouncement of the Supreme Court that ownership and control of mineral resources-whether on-shore, off-shore, in Nigeria’s territorial waters, the exclusive economic zone (EEZ, 1978) or the continental shelf (The Petroleum Act, 1990) is vested in the Federal Government of Nigeria.

### ***6.3 The Nigerian Minerals and Mining Act of 2007 repeals the Minerals and Mining Act of 1999 section 1(1)(2)(3)***

1. *The entire property in and control of all minerals resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers stream and watercourses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and behalf of the people of Nigeria.*

2. *All lands in which minerals have been found in commercial quantities shall, from the commencement of this Act be acquired by the Government of the Federation in accordance with the provision of the Land Use Act.*

3. *The property in mineral resources shall pass from the Government to the person by whom mineral resources are lawfully won, upon their recovery in accordance with this Act (Nigeria Minerals and Mining Act, 2007).*

Consequent upon this provision, the Act in Section 1(2) provided that all lands in which minerals have been found in commercial quantities shall, from the commencement of the Act, be acquired by the Government of the Federation in accordance with the provisions of the Land Use Act. However, by virtue of Section 3, some lands are excluded from mineral exploration and exploitation and, as such, no mineral title can be granted in respect of such land.

### ***6.4 Petroleum Act***

The Petroleum Act is described in its preamble as an Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable therefrom the Federal Government and for all other matters incidental thereto (NIGERIA MINERAL, MINING SECTOR AND BUSINESS GUIDE, 82, 1990). This Act has more legislation on oil and gas and was enacted to ensure that all lands or areas in which oil and gas are found are under control of the Federal Government.

Section 1(1) and (2) provides thus;

(1) *The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.*

(2) *This section applies to all land covered by water which-*

(a) *is in Nigeria; or*

(b) *forms part of the continental shelf; or*

(c) *forms part of the exclusive economic zone of Nigeria* (Laws of the Federation, 2004).

### **6.5 Exclusive Economic Zone Act**

An exclusive economic zone (EEZ) is a sea zone prescribed by the United Nations Convention on the law of the Sea over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind.

Section 2(1) and (2) provide thus;

1. *Without prejudice to the Territorial Waters Act, the Petroleum Act or the Sea Fisheries Act, sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the sea bed, subsoil and superjacent waters of the Exclusive Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercisable by the Federal Government or by such Minister or agency as the Government may, from time to time, designate in that behalf either generally or in any special case.*

2. *Subsection (1) of this section shall be subject to the provisions of any treaty to which Nigeria is a party with respect to the exploitation of the living resources of the Exclusive Zone* (Laws of the Federation, 2004).

### **6.6 Territorial Water Act**

In International Law, the term territorial waters refer to that part of the ocean immediately adjacent to the shore of a state and subject to its territorial jurisdiction. The state possesses both the jurisdictional right to regulate, police, and adjudicate the territorial waters and the proprietary right to control and exploit natural resources in those waters and exclude others from them. Territorial waters differ from the high seas, which are common to all nations and are governed by the principle of freedom of the seas. The high seas are not subject to appropriation by persons or states but are available to everyone for navigation, exploitation of resources, and other lawful uses. The legal status of territorial waters also extends to the seabed and subsoil under them and to the airspace above them.

### **6.7 The National – Inland Water-Ways Authority Act**

This Act vests the rivers, creeks, lagoons and intra-coastal waterways on the Authority which is a body established by the Federal Government to control the activities carried out in these areas (Sec. 10,11 and 12).

### **6.8 The Lands (title vesting) Act (Laws of the Federation, 2004)**

The lands (title vesting) Act equally vest ownership of lands in the Federal Government and goes as far as stating that any land which was owned by the State Government before the enactment of this Act shall upon the enactment be vested in the federal government. The sections are replicated as follows:

1. *Vesting of ownership of lands in the Federal Government of Nigeria. For the avoidance of any doubt and notwithstanding anything to the contrary contained in the Constitution of the Federal Republic of Nigeria or any enactment, law or vesting instrument, the title to all the lands within 100 metres limit of the 1967 lagoon, sea or ocean in or bordering Nigeria or of oceans bordering the Federal Republic of Nigeria shall, to the exclusion of any right accruing to anybody corporate or un-incorporate*

*or industry, vest in the Federal Government of Nigeria without any further assurance than this Act.*

*Accordingly, any purported title to any land referred to in subsection (1) of this section held by any state or local government, any individual or by anybody corporate or un-incorporate before the commencement of this Act, is hereby vested in the Federal Government of Nigeria.*

## *2. Control and management of lands*

*All the lands referred to in section 1 of this Act shall be controlled and managed for and on behalf of the Federal Government of Nigeria by the Federal Ministry charge with responsibility for lands and land matters or any other authority designated by that Ministry for the purposes of this Act.*

All over the world, the question of who the ownership, control and development of natural resources lay with has been a subject of debate among the nations. Consequently, the issue has assumed a controversial dimension in the world. It is on this premises that the United Nations (UN) held several Conferences on the Law of the Sea with the agenda of solving the problem of ownership, control and development of natural resources. The immediate result of this is the Law of the Sea Convention (LOSC) (Atsegbua, 2004).

The first U.N conference on the law of the sea was promulgated at a conference held in Geneva in 1958. This conference led to the codification of four other treaties that dealt with some areas of the law of the sea. This approach certainly marks the beginning of the United Nations' interferences over the control; development and ownership of mineral resources, as it gave birth to various laws, rules and treaties that loosen the grip of the superpower over the resources of the lower countries. The conferences worked for more than 10 years on a comprehensive treaty that would codify international law concerning territorial waters, sea lanes and ocean resources.

On 10<sup>th</sup> December 1982, 117 nations signed the UN Convention on the sea; the convention which went into effect November 16, 1994, claims the mineral on the ocean floor beneath the high seas as "the common heritage of mankind". The exploration of minerals was to be governed by global rather than national authority. Production ceiling has been set to prevent economic harm to land-based producers of the same minerals (Atsegbua, 2004). There have been continuing negotiations with the United States and other nations to resolve this issue, which is one of the serious obstacles to universal acceptance of the treaty (Atsegbua, 2004). Thus the 1994 agreement amended the Mining provisions, which led the United States to submit the treaty to U.S Senate for ratification. The convention further provides that every nation that has a continental shelf is granted exclusive right to explore and exploit the oil, gas and other resources in the shelf up to 200 miles from the shelf and more under specified circumstances.

The Convention provides thus:

*The coastal state expertise over the continental sovereignty rights for the purpose of exploring it and exploiting is natural resources.*

*The rights referred to in paragraph 1 are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state.*

It should be mentioned that from the above provisions of the UNCLOS, it can be safely stated that the fishing mineral extraction within the continental zones are entirely within the control of the Coastal nations.

### **6.9 International Resolution on Natural Resources**

#### **6.9.1 Resolution 1803 (xvii) of 19 December 1962:**

i. The rights of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of the national development and the well-being of the state concerned.

ii. The exploration, development and disposition of such resources as well as 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 and desirable with regards to the authorisation, prohibition of such activities.”

iii. “In case where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, of the national legislation in force, and by international law. The profit derived must be shared in the proportions freely agreed upon, in each case between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that state’s sovereignty over its natural wealth and resources”

It is pertinent to point out here that of all the paragraphs stated above paragraphs three (3) are the most relevant. This is because it discusses the issue of expropriation and nationalisation proper.

On the whole, the importance of this resolution lies in the fact that it gained back the support of the developed countries (Omorogbe, 1987) This resolution represents a compromise between the interests of developing countries in the protection of their rights over their natural wealth and resources and those of the developed countries in securing adequate guarantees for the protection of foreign investments (Adams, 2016:36).

#### **6.9.2 Resolution 2158 (xxi) of 20 November 1966**

This resolution took into consideration the role of foreign capital investments in the exploration and development of the natural resources of the less developed countries and accorded international recognition to the principle of host government’s participation in the administration of foreign-owned mining operations through the acquisition of equity interest (Omorogbe, 1987).

Specifically, the resolution is that the United Nations should undertake a full effort that all countries exercise their inalienable right of permanent sovereignty over their natural resources (Omorogbe, 1987).

#### **6.9.3 Resolution 3016 (xxvi) of December 1972 and 3171 (xxviii) of 17 December 1973**

Resolution 3016 (xxvii) of 1972 re-emphasizes the right of states with regard to permanent sovereignty over their natural resources.

Paragraph 3 of resolution is to the effect that the Hickonloper amendment under which the United States president is authorized to suspend bilateral assistance to any country which expropriates United States investment without discharging its obligations under international law. It is inconsistent with Article 4(2) of the UN charter.

On the other hand; In resolution 3171 (xxviii) of 1973, the United National General Assembly affirmed that nationalization is an expression of sovereignty and that a nationalized state is entitled to determine the amount of possible compensation and the mode of payment, and that any dispute that might arise should be settled in accordance with the national legislation (municipal law) of the nationalization state.

#### *6.9.4 Resolution 3281 (xxix) of 12 December 1974 Charter of Economic Rights and Duties of States.*

The charter consists of a preamble and thirty-four articles. Article 1 thereof states that international economic relations shall be governed by fifteen basic principles, which are identical with the democracy friendly relations and cooperation among states in accordance with the charter of the United Nations, namely resolution 2125 (xxv) of 24 December 1970. These principles include sovereignty, territorial integrity and political independence of states, sovereign equality of all states; equal rights and self-determination of people and the remedying of injustice occasioned by the force which deprives a nation of the natural means necessary for her normal development of far-reaching effect is the provision of Article 2 of the charter. This provision is to the effect that;

*Every state has and shall freely exercise full permanent sovereignty, including possession, user and disposal over her wealth, natural resources and economic activities.*

### **7. CONCLUDING REMARKS**

The theories of ownership of oil and gas are not immutable. These theories have been put to practice in one form or the other as it is suitable for different nations. Undoubtedly, the fact that oil and gas are capable of being owned is a truism. It is only the form in which it can be owned that has generated controversy and a variety of opinion from experts. Thus, from a general perspective, oil is capable of absolute ownership while on the other hand, it may be said that it is not capable of absolute ownership because of its unstable character.

The present position of Nigerian law on resource control is derived from colonial centralist policies of pulling all the wealth in the colony to the centre for onward transportation to the home (imperial) country. The concept of true federalism should imply the functionality of the institutions and structures of states for the attainment of set policy objectives. Nigerians federalism has failed and our major task now is how to make it responsive and responsible to aspirations and goal-value of the federating- units.

### **8. RECOMMENDATIONS**

It must be pointed out unequivocally that the demarcation of the relevant maritime zone for the purposes of the derivation formation cannot be arbitrary but must be based on established principles of public international law. The derivation principles should be extended to the continental shelf of Nigeria as defined by article 76 of 1982 law of the sea convention a treaty that has been ratified by Nigeria. A resort to 200 meters waters depth isobaths is a reversion to the depth and exploitability definition of the 1958 continental shelf convention which appears anachronistic, especially in the light of Nigeria ratification of the 1982 convention.

It is settled law that the ownership and control of natural resources is vested in the Federal Government. Individuals, Communities, local Governments and states on or under whose land minerals are found have no legal right to claim ownership of their minerals. It is

my humble opinion that the crises to resources control, that led to the offshore boundary case lies more on good governance in the Nigerian body politic. No matter the constitutional changes that will be made to the 1999 constitution, if good governance is not injected into Nigerian body polity, a day may come when the immediate communities where these natural resources are located in the Niger Delta regions will demand direct ownership and control of their natural resources and “heaven will not fall.”

We recommend that the current constitution Amendment committee of the National Assembly should incorporate the following amendments into the constitution:

- (i) The express repeal of Decree No. 106 of 1992
- (ii) The amendment of the 1999 constitution to correct such obsolete legislations as the Mineral Act, the Petroleum Act, the Oil pipeline Act, the land Use Act, etc which have overtime hampered the practice of corporate social responsibility (CSR) in the region especially the legal mechanisms in place as they relate to the environment, oil and gas industry in Nigeria with a view for reforms.
- (iii) The amendment of section 3(1) and part 1 of the first schedule of the 1999 constitution to reflect that the continental shelf is part of the seaward states. This presupposes also that the territorial waters and EEZ are part of the seaward states.
- (iv) The extension of seaward states land to the continental shelf should be without prejudice to the Federal Government’s exclusive legislative powers over all matters relating to territorial waters, EEZ and continental shelf of Nigeria.
- (v) The Federal government of Nigeria should look at the possibility of legalising or legitimating the amnesty programme as a damage control measure. What is needed as a first step in the right direction is for the president to approach the National Assembly to amend the constitution by including or enacting amnesty law for now as it stands the amnesty law is a discretionary exercise of power by the executive arm of government.
- (vi) The Land Use Act needs to be amended to reflect true federalism through restructuring based on the current agitations for land reforms and resource control by states government.
- (vii) Most of the current laws are obsolete and therefore do not have provisions that reflect the new and emerging species of offences in the oil and gas industry in relation to the environment. For example, when the criminal code was enacted in 1916, pollution control was not a priority at that time and oil had not been discovered in Nigeria as at then.

The oil and gas industry presently is primary regulated by the petroleum Act (Cap. P.10 laws of the federation of Nigeria 2004) and the petroleum profits tax Act (Cap P.13 laws of the Federation of Nigeria 2004) both of which are enacted prior to 1970 (1969 and 1958 respectively). Although the petroleum Act at present has 7 regulations and both statutes have been amended severally over the past 40 years nonetheless, both, legislations remain substantially in the original form in which they were enacted.

The circumstances are therefore such that the primary laws regulating the industry including NNPC Act Cap. N. 123 LFN 204 is 40, 50 and 32 years respectively. The fact that those legislations are out of date means those sectors and aspects of the industry (such as natural gas utilization and environmental issues which have gained pronouce over the last forty years have remained outside their purview and are therefore subject to the arbitrariness of regulatory



authorities. There is a need for these laws to be amended to reflect the realities of the moment. The laws should be drafted in clear unequivocal terms.

1. There should be monitoring and enforcement mechanisms to take care of a robust corporate responsibility within the Niger Delta region.
2. The economy should be diversified
3. There should be a devolution of power. Power must be decentralized to reduce the attraction of the centre. This is modest experimentation that will give more powers to the regions, states and local governments.
4. We must strive towards reducing the cost of governance.

Finally, on the issue of resource control, Nigeria should adopt joint control or mixed control of public and private rights of ownership modelled after that United States of America, which provides the best option suitable for our nation. This will go a long way to make our leaders more responsible, responsive, prudent and accountable in the management of revenue under their respective control.

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