International Journal of Law, Policy and Social Review
www.lawjournals.net
Online ISSN: 2664-6838, Print ISSN: 2664-682X
Received: 20-07-2023, Accepted: 06-08-2023, Published: 21-08-2023
Volume 5, Issue 3, 2023, Page No. 57-62

Determining who rightly owns and should control natural resources in the Nigeria federal structure and the environmental law effects

Simeon Olaosebikan Oni[1], Hilary Nwaechefu[2]
[1] Senior Lecturer, Faculty of Law, Lead City University, Ibadan, Nigeria
[2] Associate Professor, Faculty of Law, Atiba University, Oyo State Nigeria

Abstract
The Nigerian constitution is the grund norm or the basic law upon which other laws hinge, including Environmental Law. The constitutional law, as it relates to ownership and control of natural resources, seems to favour the federal government of Nigeria under the exclusive legislative list of the constitution. The Constitution of the Federal Republic of Nigeria directs the federal government to hold the natural resource for the common good and benefit of the citizens. There have been several litigations between state and federal governments on the ownership and control of natural resources in Nigeria, and the argument is ongoing. The paper's primary objective is to examine the constitutional law and political implications of some judicial pronouncements on Nigeria's ownership and control of natural resources. This paper adopts the non-doctrinal approach, using law reports, textbooks, the internet and statutes. The finding in this article is that too much concentration of ownership and control of natural resources in the exclusive list creates imbalance and friction in the federation. This paper makes recommendations calling for reforms as it obtains in other jurisdictions of, notably, South Africa, a Neighbouring African country.

Keywords: Natural resources, constitution, environment, exclusive list, coastal water

Introduction

There intermittent cases of resource control coming before the Supreme courts in Nigeria between the states and the federal government of Nigeria should be a wake-up call for stakeholders on constitutional matters on the exclusive and concurrent legislative lists. This ugly trend might have accounted for the reason that led to the celebrated case of *Attorney-General of the Federation v. Attorney-General of Abia State and 35 Others*, where the Supreme Court of Nigeria extensively discussed the provisions of the Petroleum Act 1969; the Territorial Waters Act, the 1979 and 1999 Constitutions of the Federal Republic of Nigeria. The case also raised the Exclusive Economic Zone Act and the United Nations Law of the Sea, 1982. Many well-meaning Nigerians, including academics, frown against the concentrated power on the exclusive legislative list; it is disheartening that little has been done to check this constitutional lopsidedness. The littoral states are rapidly losing confidence in the constitutional arrangement of granting ownership and control of most natural resources to the federal government at the expense of the state governments. This seemingly constitutional lopsidedness has attracted the attention and criticisms of different stakeholders such as Judges, Lawyers, Academics, Religious bodies and social critics, depending on your point of view. Despite the persistence of concern and criticisms of different stakeholders, this constitutional lopsidedness has continued without hope of salvaging the trend. The natural resources include fossil fuels, coal, oil, natural gas, gold, copper, iron, diamonds and minerals. Aladeitan has described natural resources as "a gift of nature and an endowment of comfort that makes the existence of mankind complete".

Many writers have dwelt on the ownership and control of natural resources in Nigeria. The courts try reconciling the littoral states and the federal government of Nigeria on the issue of resource control brought before it. Thus, the wealth which is created through the ownership of natural resources must be distributed in such a manner that guarantees a reasonable share for the state where the natural resources are endowed and extracted and exploited from.

The natural resources of any nation are determinants of its wealth and stability, and matters arising from the resources must be handled with care to avert a crisis or even civil war. This is why the courts determine issues and resolve constitutional conflicts. Notwithstanding scholarly efforts and judicial contributions on the subject matter, ownership and control of natural resources continues to generate constitutional problems in Nigeria. In light of all these, Academics and other stakeholders have made useful contributions toward solving this ownership crisis, which is ongoing. There is no doubt that a discussion of this nature will serve the immediate and future needs to achieve peace and harmonious relationship among the littoral states and the federal government in Nigeria.

Ownership of Natural Resources in Nigeria

The concept of ownership in legal terminology regarding natural resources is not as specific as in other properties. This is because there is state the states' ownership and the individuals' ownership rights over natural resources. Sometimes these ownership rights tend to conflict and cause court litigations. For centuries, the legal maxim *cujus est solum, ejus est usque ad coelom et ad inferos* (the owner of the surface owns everything from the skies to the centre of the earth) has applied to ownership disputes. In many instances, it is impossible to trace the oil and gas produced

from a well to determine where it came from in the subsurface with any degree of certainty. This situation escalates the conflict of interest in ownership of oil and gas resources. This gave rise to the theory of ownership, which we shall examine shortly.

1. Absolute Ownership Theory

The concept of "absolute ownership" can be expressed in the Latin maxim *quic quid plantatur, solo solo cedit,* meaning that whatever is affixed to the soil becomes part of the soil, and whoever owns the soil owns whatever grows out of it too. This definition of absolutism of land ownership could be misleading. This is a fact because in Nigeria, the ownership of land vests in the Governor of that state but the mineral-like oil and gas ownership vest in the federal government. Similarly, the Latin maxim of *cojus est solum, ejus est usque ad coelom ad inferos*, which means "to whomever the soil belongs he also owns the sky and to the depth", Air laws do not conform to the absolute theory or principle. Nigeria's Petroleum Act further clarifies the position of the Nigeria resources and its ownership, providing that "the entire ownership, management and control of all petroleum in Nigeria, under, or upon any lands to which this section applies shall be vested in the Nigerian state." The natural resources embedded in Nigerian soil are state-owned and not by individual landowners.

The absolute theory under the United States regime

In the Texas state of the US, the law puts the ownership of oil and gas thus: "that a landowner owns a corporeal possessory interest (similar to a fee simple) in the substances beneath his land, but his ownership is a determinable fee subject to the rule of capture". The theory received the judicial pronouncement in the case of *Stephen County v. Mid-Kansas Oil & Gas Co.,* where the court stated as follows:

> Oil and gas in place are minerals and realty subject to ownership, severance, and sale while embedded in the sands and rocks beneath the earth's surface in like manner and to the same extent as coal or other solid minerals.

Another judicial authority for the ownership theory, as it is applied in the state of Texas in *Brown v. Humble Oil & Refining Co*., is that ownership of oil and gas should be a matter of capture where such natural resources flow out of the well of one's land and this is a property right.

One can see that the meaning of absolute ownership does not apply equally in all jurisdictions. It usually has qualified meaning and application, as seen in the Nigerian and US jurisdictions. In the Nigeriad jurisdiction, the community where the mineral resources are found is the surface land owner, while the mineral resources underneath belong to the federal government. All that is required is for the federal government to pay adequate compensation to the host community, which settles it.

2. Qualified ownership theory

The proponents of this theory believe that mineral resources cannot be owned until they are captured and personally possessed. This theory means that non-absolute property rest in a person. The ownership is limited in time, restricted to one or more uses, or shared.[16] In our context, it is simply the theory that minerals cannot be an asset to anyone in place before they are extracted and reduced to possession. At best, the land owner has the exclusive right to reduce the oil or gas to possession. Thus, this theory "does not accept that full ownership can be vested in oil and gas *in situ*." Clark has described this theory as a "proprietary right, that is, analogous with a profit *à prendre* under English common law or a servitude right to minerals under Scots law." The qualified ownership theory can be referred to as the capture theory.

As far back as 1900, the qualified ownership theory received judicial support in the case of *Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co.* In this case, the defendant used pumps to increase the natural flow of gas from its wells in violation of an

Indiana statute. It was proved that the practice would be detrimental to the reservoir, and the court held that the plaintiffs, who owned other land in the reservoir, were entitled to an injunction to halt the practice. The United States Supreme Court stated the differences between natural gas and underground water. While pronouncing the property rights of the plaintiffs in the natural gas, it said that without the consent of the owner of the land, the public could not appropriate it, use it, or enjoy any benefit from it. This power of the land owner to exclude the public from its use and enjoyment plainly distinguishes it from all other things with which it has been compared in the service, enjoyment, and control of which the public has the right to participate.

The leading case for qualified ownership, as it is applied in Oklahoma, is *Rich v. Donaghey,* where the court, citing the Supreme Court decision in *Ohio Oil*, stated that fee simple owners of land have no absolute right or title to the oil or gas which might permeate the strata underlying the surface of their ground, as in the case of coal or other solid minerals fixed in, and forming part of, the soil itself.

But concerning such oil and gas, they had certain rights designated by the same courts as qualified ownership thereof, but which may be more accurately stated as an exclusive right, subject to legislative control against waste and the like, to erect structures on the surface of their land, and explore thereof by drilling wells through the underlying strata,

3. The Non-Ownership Theory

This theory believes that the owner of a severed mineral interest has the right only to search for, develop, and produce it" but does not have a present right to possess the oil and gas in place. The Supreme Court of Pennsylvania, in the case of *Westmoreland and Cambria Natural Gas Co. v. De Witt etal,* declared support for this theory in the following words:

> Natural gas belongs to the owner of the land, and is part of it, and, so long as it is on or in it, is subject to his control; but when it escapes and goes into another land or enters another person's area of control, the title of the former owner is gone.

If an adjoining or distant owner drills a well on his land and taps his neighbour's vein of gas so that it comes into his well and is under his control, such gas belongs to the well's owner. The owner of the land, leasing it to another to drill gas wells thereon and reserve the right to till the soil after the lessee has drilled a well and has gas ready to flow into pipes by turning a valve, cannot claim that the lessee is not

in possession and that he must resort to a court of law to establish his title before a court of equity will interfere.

In *State v. Ohio Oil Co*., the court re-affirms the non-ownership theory. It said that the title to natural gas vests in the owner of the land, in or under which it exists today, and that tomorrow, having passed into or under the ground of an adjoining owner, it thereby becomes [the property of that adjoining owner], is no less absurd, and contrary to all the analogies of the law, than to say that wild animals or fowls, in 'their fugitive and wandering existence,' in passing over the land, become the property of the owner of such land, or that fish, in their passage up or down a stream of water, become the property of each successive owner over whose land the stream passes. Hence, the court reasoned that to hold otherwise would be as unreasonable and untenable as to say that the air and the sunshine that float over the owner's land are a part of the land and are the property of the owner. Therefore, the court held that once a gas escapes into another person's controlled land, the gas belongs to the person whose land it escaped to. At that point, it has become actual possession.

The non-ownership theory could no longer stand the test of time. Discovery has shown that gas is mobile and not static, it moves from place to place, and where it settles, the corporate body or individual or government that owns the land can lay hold to it and claim ownership. In fact, by the instrument of legislation, any natural resource can be made subject to ownership within a territory. This concept applies to Nigeria, whereby legislation and natural resources belong to the federal government irrespective of the place of its deposit. First is that modern scientific technology has defeated the theory; however, as oil and gas move from one place to another, it is presently capable of ownership by an individual, corporate entities, or government. Second, the concept that oil and gas are migratory, though on the face of it is true, is limited to the extent that when oil and gas eventually reach "a trap," they remain "relatively static until the reservoir is tapped"

The Nigeria perspective

The ownership and control of natural resources in Nigeria pre-dates the Constitution of the Federal Republic of Nigeria 1999 (as amended). Before Nigeria's independence, the country and its natural resources were regarded as the property of Great Britain. The British people claimed and controlled the natural resources found in Nigeria without "the interest of the colonised people. British colonial administration enacted oil and mining regulations that vested mineral rights in Nigeria in the British government. In 1914, Lord Lugard enacted the Mineral Oil Ordinance "to secure easy administration over mining and oil rights … and making it a wholly British concern".

Commenting on this provision, Okonmah has written that this piece of legislation "vested the right to search for, win and work mineral oils exclusively in British subjects or companies controlled by them." This statute entrusted Lord Lugard the power to exclusively grant "sole concessionary rights over mining and oil… only to British companies and subjects…"

According to Schatzl, the 1914 Mineral Oils Ordinance empowered the company to:

> At all reasonable times to enter into and upon any part of the leased area for all or any of the following purposes: (a) to examine boreholes, wells, chattels, plant, appliances, buildings, installations, works, and effects used for the operation… (b) to inspect the samples of strata, petroleum or water which the lease is required to keep in accordance with the provision of the lease.

This statute failed to recognise the interest of Nigerians. The Minerals Ordinance 1916 provides that: The Nigeria 1979 Constitution provides that the federal government has exclusive ownership of oil and solid mineral resources but requires it to pay a minimum of 13 percent of the revenue extracted from the oil-producing states to that state. The constitution states that this derivation principle "shall be constantly reflected in any approved formula." The issue of revenue allocation, which is tied to the ownership and control of natural resources by the provisions Nigerian constitution, has been judicially determined, though the case was eventually settled politically with the country's National Assembly abolishing the on-shore and The 1960 Constitution provided 100 percent, while the 1963 Constitution provided 50 percent payable to the regions where natural resources were extracted. The 1999 Constitution provided for thirteen (13) percent. A recent attempt by the federal government to deprive the littoral states of revenue from the off-shore natural resources based on the derivation principle was the main subject of litigation in the case of *Attorney-General of the Federation v. Attorney-General of Abia State and 35 Others*, where the Supreme Court of Nigeria extensively discussed the provisions of the Petroleum Act 1969; the Territorial Waters Act, the 1979 and 1999 Constitutions of Nigeria. The case also raised the issues of the Exclusive Economic Zone Act and the United Nations Law of the Sea, 1982.

The off-shore dichotomy is applied in sharing revenues accruing to the oil-producing states. The 1999 constitution and the Mineral and Mining act 2007 and the petroleum are the laws governing natural resources in nigeria.

The 1999 Constitution of Nigeria (as amended) vests the ownership and control of natural resources in the federal government. Section 44 (3) vests the natural resources in the federal government, which shall manage them in a manner prescribed by the national parliament.

Furthermore, the constitution gave the federal government exclusive right to oil field and mineral resources in Nigeria. The exclusivity of this provision, like that of the 1963 and 1979 Constitutions, represents a reflection of British colonial statutes in Nigeria that vested ownership and control of natural resources on the Crown while granting oil exploration and mining rights and prospecting licences to corporate entities. The Petroleum Act of 1969 pursued the same concept that ownership and control of "all on-shore and off-shore revenue from the territorial waters and the continental shelf of Nigeria and petroleum resources derivable from that place, vest in the Federal Government…"

The Nigeria Minerals and Mining Act, which repealed the Minerals and Mining Act of 1999, provides that:

> The entire property in and control of all mineral resources in, under or upon any land in Nigeria, its continuous continental shelf and all rivers, streams and water courses throughout Nigeria, any area covered by its territorial

> waters or constituency and the Exclusive Economic Zones is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.

The Land Use Act vests all land in the Governor of the federating states of Nigeria, who is expected to hold the land in trust and for the common good of the citizen. The Governor allocates land to the people and issues a Certificate of Occupancy (C.of.O) as a kind of lease. At the same time, the Governor possesses the reversionary power, acting as the head lessor for 99 years. Thus, though the title to land vests in the Governor, he cannot lay claim to lands which belong to the federal government and its agencies. The Governor cannot also lay claim to lands containing natural resources, nor can he "have any direct control over the exploration and exploitation of minerals".

The issue of ownership and control of natural resources throws up the question of the legitimateness or constitutionality of the concept. This article has attempted to argue the problem, but gaps and limitations remain, which hopefully will be addressed in future research. Despite the constitutional and statutory legislations which vest ownership and control of natural resources in the federal government, the debate on "resource control" persists and continues to be a contemporary topic with various legal opinions on where actual ownership and control of natural resources reside. The Niger Delta people remain aggrieved and maintain that the land and natural resources "within the Ijaw territory belong to the Ijaw communities and are the basis of our survival". The Kaima Declaration further declares that the Ijaw nation refused to recognise any decree that sought to divest them of the proprietory over the resources endowed in their land; more so, the communities were not carried along while promulgating such a decree. These include the Land Use Decree and the Petroleum Decree".

Simply put, the Niger Delta region asks for resource control and self-determination of the indigenous people of Ijaw land." Therefore, this article argues that a very proactive and enduring constitutional approach is needed to accommodate the legitimate expectation of the littoral states. Fiscal federalism appears to be the solution. There should be a constitutional inclusion of a holistic and transparent "broader public finance discipline" in terms of the division of governmental functions and financial relations among the levels of federating units of the Federal Republic of Nigeria. This way, the littoral states will feel involved in the Nigerian project. The frustration has continued leading to the ongoing rise in militancy that destroys oil installations in the Niger Delta. This situation was captured by a public commentator in the following words:

> There is a great sense of frustration on the part of the states in that there is a very large mismatch between the requirements of the states to supply services in a whole variety of areas for their citizens and the lack of necessary resources to meet the criteria adequately; it is essential to balance the powers, responsibilities and the financial resources at this level of government. Some of these may involve constitutional issues. There is the need for, and there should be, an administrative arrangement between levels of government. Canada, for instance, after sixty years of confederation, eventually transferred the authority for natural resources from the federal government to the provinces – union in 1867; resource control, 1931. As time passed, the people realised the need to bring resources into the hands of the regions and that the provinces, too, perhaps would do a better job of managing those resources. Another area of consensus is that a federation is a dynamic institution. It is not static; it has to evolve with time and be responsive to the needs of the people.

The positions in South Africa and the United States are not different, as the people have gone through the same experiences in Nigeria. The implication for environmental law of the federal government's ownership and control of natural resources is that it leaves the coastal states with fewer funds to combat the hazards posed to their environment by exploring and exploiting the natural resources. The decision of the federal government to revisit the issue of off-shore/on-shore oil dichotomy and the response of the National Assembly in passing the Off-shore/On-shore Oil Dichotomy Abrogation Bill, abolishing the dichotomy would enable the eight littoral states of Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers to benefit from the revenue accruable from off-shore in all the contiguous zone within the state(s) that adjoins such sea. With more income accruable to them, the littoral states would be better positioned to advance, safeguard and protect their citizens' developmental needs and environmental rights, thus enhancing coordinated management and protection of the environment. The littoral states presently maintain that they want complete control of the natural resources located in their area. Professor Itse Sagay argued that the paramount condition for continued willing participation in the ongoing Nigerian project must be the total ownership and control by the people of the South-South of their God-given natural resources, or at the very least, a resort to the provisions of the 1960 constitution on revenue allocation, particularly the process of mineral resources. As an instrument for the peaceful realisation of these legitimate objectives and the recovery of ownership of the resources seized from them by the decisive majority groups, the South-South should support the convening of a National Conference to discuss the basis of future political, economic and social association and co-existence between the ethnic nationalities of this country.

The Principle of Derivation

Not only did the constitution vest the ownership and control of natural resources with the federal government of Nigeria, but case laws also tow the same line of reasoning. Thus in the case of *Attorney-General of the Federation v. Attorney-General, Abia State (No. 2)*, the Nigerian Supreme Court held, among other things, 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 recognised rights. According to the Supreme Court, the ownership, control and management rights over the natural resources located in the off-shore areas of Nigeria are the exclusive preserve of the Federal Government of Nigeria to the exclusion of the federating units and the mere fact that oil rigs bear the names of indigenous communities on the coastline adjacent to such off-shore area does not prove ownership of such off-shore regions. This case brought to the fore the controversy between the federal and state governments over revenue

allocation, popularly known as "the principle of derivation", which is a constitutional mechanism established by the federal government "to compensate for the minerals that are being extracted from states in which the minerals are found". According to Mudiaga Odje, the derivation principle "is a constitutional directive which constitutes a form of reparation for an expropriated interest and cannot be waived or derogated from by either the state or federal government". The principle is the mechanism for revenue allocation the 1999 constitution The rationale behind this mechanism is the need to utilise part of the total revenue from oil and gas accruing to the Federation Account in favour of the littoral states to help them use the money in tackling the ecological and environmental damage caused in their communities as a result of oil prospecting and hydrocarbon operations. The mechanism under the 1960 Constitution of Nigeria was 100 per cent, later reduced to 50 per cent under the 1963 Constitution, but now not less than 13 percent in the 1999 Constitution. The present 13 per cent has been dramatically eroded by declining crude oil prices, economic recession and monumental corruption in the oil industry in Nigeria. This equally has affected the fortunes of the littoral states, which cannot, in the present situation of things, "meet up with their obligations, and this became the turning point for their agitation for resource control".

Writing on revenue allocation and resource control in the Nigerian Federation, a public affairs commentator has observed as follows:

The controversy between the federal and state governments over revenue mobilisation and allocation has assumed monumental proportion, with the state governments now asserting the right of control over natural resources within their state boundaries and calling for devolution of powers to the states beyond those provided for in the 1999 Constitution. The federal government took a pre-emptive legal action in mid-February 2001 by filing a suit against the 36 state governments in the Supreme Court over resource control and off-shore oil claims. This singular federal government's action immediately escalated the issue of resource control into a major constitutional and political confrontation between the two bodies – politic.… Their action has further heightened the tension generated over state claims over resource control and revenue derivation and the uncompromising posture of the federal government coupled with its lukewarm approach towards institutionalising an acceptable revenue allocation formula.

Nwokedi further argued that though the 1999 Constitution is ambiguous on the question of derivation principle as applicable to off-shore mineral resources, informed legal expert opinion tends to imply that the provisions of Act 9 of 1999 allowed some revenue to accrue to littoral states from off-shore mineral operation. The Act, referred to as Deep Off-shore and Inland Basin Production Sharing Contracts Act, as it then stood, recognised that compensation was due to the littoral derivation states for deep off-shore and inland basin oil exploration. However, the question of whether or not littoral states are entitled to revenue derived from off-shore mining operations *was* a subject of litigation in the Supreme Court between the federal and state governments. Notwithstanding the judicial decision, the controversy over off-shore mineral resources and resource control will never be settled amicably and satisfactorily unless through a political or constitutional process, preferably through a national conference. Meanwhile, the controversy rages on.

This article argues that what gave rise to the upsurge in demand for resource control by some states was their frustration over the existing revenue allocation system and the failure on the part of the federal government to institutionalise an acceptable revenue-sharing formula. In addition, adopting an adequate legal and administrative mechanism to ensure fiscal autonomy for the federating states will enable them to exercise their constitutional and statutory responsibilities to their people adequately. That system must, of necessity, give adequate recognition to the right of each state to enjoy a substantial proportion of revenue accruing to it from its natural resources and a measure of control or participation in the exploitation of natural resources within its geographical boundaries. It should be clear to the federal authorities that the constitution is the supreme law of the land, and no one has the right to alter or suppress its application. In true federalism, the states should be entitled to their constitutional and legitimate shares of the federally collected revenues as and when due and to a considerable measure of control over their revenue resources. This is an essential attribute of a federal system. A case in point is in the USA, where Wyoming is currently reaping the full benefits of its resource control of oil. Before the then-upswing in energy prices, the state was experiencing a great depression with a budget shortfall of $183 million, which later rose to a $700 million surplus due to the rise in natural gas prices. Yet the US federal government did not and could not interfere with the state's earnings or prescribe how the excess oil revenue must be spent. In Spain, which is not even a federation, a considerable measure of autonomy over resource control was granted to the Basque region, which has been fighting for secession or a separate identity. The same is true of the Province of Quebec in the Dominion of Canada, where the province was granted substantial autonomy in managing its resources and internal affairs to discourage it from seceding from Canada. In Switzerland, the federating states called "the cantons" are so autonomous in self-government but also in the control of their natural resources that one could easily refer to Switzerland as a confederation of quasi-independent states. The political arrangement in that country is such that even the office of the President of the Republic rotates among the cantons to ensure equality, equity and freedom of association among the federating states. Decentralisation or devolution of political and economic powers is a common attribute of other successful federations in Latin America, Europe and Asia. Nigerian federation should not, therefore, be an exception.

However, because of Nigeria's peculiar political and constitutional history, it is essential to organise a national conference of various ethnic nationalities to work out a suitable constitutional framework for devoting powers to the federating states. Meanwhile, it is suggested as a way to dampen the demand for reasonable control by some states, to involve the states in which oil or other mineral resources are located in a partnership arrangement with the expatriate oil or mining companies. Ideally, it should be a tripartite joint ownership agreement between the foreign company, the federal and the state governments, each with its equity contribution, share and other stakes in the company's operation. The dividends earned by the states from their equity holdings as well as their participation or involvement in the major policy decisions of the operations.

Conclusion

Considering the plight of the littoral states, calling for resource control, the other states of the federation should be given the right to resource control and the freedom to derivate revenue of up to 50% of the accruable revenue from each state of the federation. There is a need to revisit the 1960 constitutional arrangement to allow for excellent resource control than the present constitutional lopsided provision. The constitution needs to be amended to allow for at least 50% derivation. In our view, this new arrangement will promote inclusiveness and reduce agitation for secession and self-determination in Nigeria. In the alternative, the constitution be amended to give states autonomy to make laws that will govern the hydrocarbon operations, exploitation and production of the natural resources just as is obtained in Canada, South Africa and the United States. The federal government should limit its interest to taxes, land lease bonuses, royalties and rentals. The constitution could be amended to allow private landowners to drain mineral resources. This is the position in the United States, where private property rights are firmly entrenched.

References

1. Aladeitan L. 'Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy' *Thurgood Marshall Law Review*,2013:38:159 at 160.
2. Sneha R, R Garg. 'Ownership' (2012). Lawyers in India; Law Articles available at http://www.legalserv.ceindia.com> accessed 1st August 2023
3. Section 44(3) and item 39 Constitution of the Federal Republic of Nigeria, 1999 (as amended)
4. Section 1, Petroleum Act, Cap. P10 Laws of the Federation of Nigeria 2004, Vol. 13. See also, section 44 (3) and item 39 Constitution of the Federal Republic of Nigeria, 1999 (as amended).
5. Other states, like Oklahoma, have adopted the 'exclusive-right-to-take' theory that a landowner does not own the substances that underlie his land, but merely retains the exclusive right to capture the substances, a non-corporeal interest'
6. (1923) 113 Tex. 160, 167, 254 S. W. 290, 292.
7. B Clark, 'Migratory Things On Land" Property Rights and a Law of Capture' (2002). *Electronic Journal of Comparative Law* (ECJL), Vol. 6, Netherlands
8. 155 Ind. 461, 57 NE 915 (1900).
9. Section 1, Petroleum Act, Cap. P10 Laws of the Federation of Nigeria 2004, Vol. 13. See also, section 44 (3) and item 39 Constitution of the Federal Republic of Nigeria, 1999 (as amended)
10. Ind. Acts 1893, C. 136 §1, Ind. Stat. Ann. (Burns, 1933) §46 - 306.
11. MK Woodward, 'Ownership of Interest in Oil and Gas' (1965). *Ohio State Law Journal*, Volume 26, No. 3, 353 – 369
12. US Legal, 'Non-Ownership Theory Law and Legal Definition' available at http://www.definitions.uslegal.com >accessed August 2, 2023
13. 18A.724, 725 (Pa 1889).
14. 49 N. E. 809, 812 (1898).
15. Section 1, Petroleum Act, Cap. P10 Laws of the Federation of Nigeria 2004, Vol. 13. See also, section 44 (3) and item 39 Constitution of the Federal Republic of Nigeria, 1999 (as amended).
16. GW Hardy III, 'Public Policy and Terminability of Mineral Rights in Louisiana' (1966). *Louisiana Law Review*, Volume 26 Number 4, at 734
17. section 162 (2)1999 Constitutions of the Federal Republic of Nigeria
18. ibid
19. (2001) 11 NWLR 689
20. Act No. 24, 5 May 1999
21. Cap. L5, Laws of the Federation of Nigeria, 2004.
22. Act No. 20.
23. Cap. P10 Laws of the Federation of Nigeria, 2004.
24. Footnote 22, above
25. Schedule II, Legislative Powers, Part I, Exclusive Legislative List, item 39, Constitution of the Federal Republic of Nigeria 1999 (as amended)
26. GW Hardy III, 'Public Policy and Terminability of Mineral Rights in Louisiana' (1966). *Louisiana Law Review*, Volume 26 Number 4, at 734
27. I Sagay, 'Ownership and Control of Nigerian Petroleum Resources: A Legal Angle', (1997) *Nigerian Petroleum Business: A Handbook*
28. (Victor Erostosele, ed.) at p 8
29. In 1906 and 1907, Legal Guidelines on mining were enacted to govern the operations of the mining and oil companies in Nigeria. In 1914 Lord Lugard enacted the Mineral Oils Ordinance.
30. AOY Raji and TS Abejide, 'The British Mining and Oil Regulations in Colonial Nigeria C. 1914 – 1960s: An Assessment', (2014).
31. *Singaporean Journal of Business Economics and Management Studies*, Volume 2, No. 10 at 63 – 66.
32. LH Schatzl, *Petroleum in Nigeria* (1969), Ibadan: Oxford University Press at 78.
33. Annual Report of the Colonies, Nigeria 1916, No. 946
34. Preamble to the Petroleum Act, 1969, ibid section 1 (1) further provides that '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'. Section 1 (2) goes further to detail the 'extent of the coverage' intended by the Act.
35. No. 20, 2007. passed into Law on March 16, 2007.
36. sections 1 (1), 1 (2) and 3 of the Act
37. Cap. L5, Laws of the Federation of Nigeria, 2004.
38. Sections 1 and 2, Land Use Act 1978
39. Section 49, Land Use Act 1978
40. Sections 1 and 2, Land Use Act 1978
41. Ijaw Youths of the Niger Delta, *The Kaima Declaration*, available at http://www.dawodu.net/kaima.html >accessed on July 3, 2023)
42. 1978 and 1969 respectively
43. Sagay, Resource Control 'Meaning', available at www.profit.sesagay.com. (assessed on July 3, 2023).
44. J Nwokocha, 'Struggles for Equitable Revenue Sharing', Sunday Vanguard, August 11, 2002 p. 16.
45. (2002) 6 NWLR (pt. 764) 542.
46. A Mudiaga Odje, *True Federalism and Resource Control in Nigeria* (2002) Quadro Impressions Ltd at 370
47. RC Nwokedi, *Revenue Allocation and Resource Control in Nigerian Federation* (2001) Snaap
48. Press Ltd, Enugu, at 123-126