

LEGAL ANALYSIS OF THE RIGHTS OF THE NIGER DELTA STATES ON OWNERSHIP AND CONTROL OF MINERAL RESOURCES IN NIGERIA

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Abstract

The universal blessings of natural resources have become a contentious issue, sparking intense debate and emotional turmoil among nations and individuals alike. Despite being a priceless endowment from nature, the ownership and control of these resources have historically fueled conflicts, wars, and social upheaval, as evidenced by the struggles in the Niger Delta region of Nigeria. This article examines the legal and regulatory framework governing the control and ownership of natural resources in Nigeria, with a focus on the oil and gas sector. By adopting a doctrinal approach, this article scrutinizes pertinent legislation, scholarly works, and court decisions to provide a nuanced understanding of the complex issues. The article argues for a reevaluation of the rights of Niger Delta states in the ownership and regulation of mineral resources, advocating for constitutional amendments that acknowledge state interests, promote industrialization, agriculture, and exploration, and create employment opportunities for the youth. A robust regulatory framework is recommended to ensure transparency, accountability, and community participation in natural resource management.

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1.0 INTRODUCTION

The Federal Republic of Nigeria is endowed with abundant mineral resources and hydrocarbons. There is no state of the federation that does not have one natural -resource or the other. For instance, natural resources including marble, clay, and tantalite are abundant in the Federal Capital Territory (FCT) of Abuja, while gold, salt, lime stone, lead/zinc, oil, and gas reserves are known to exist in Abia State, Adamawa State has an abundance of resources, including salt, lead/zinc, uranium, gypsum, magnetite, clay, limestone, and bentonite.¹ Similar to this, the resources of Akwa-Ibom State, lignite, oil, and gas contribute to the state's economic standing.

While Bauchi State is well-known for amethyst, gypsum, lead, zinc, and uranium, Anambra State is recognized for its lead/zinc, clay, limestone, iron-ore, and salt reserves.² Rivers state is also notable for its richness in oil and gas, silica sand, clay and glass. With substantial deposits of oil and gas, as well as clay and limestone, Bayelsa, a prominent oil-rich state, boasts an abundance of petroleum resources. Benue State is renowned for its vast deposits of minerals, including gypsum, lead and zinc ores, limestone, iron deposits, coal, clay, marble, bauxite, salt, barites, and precious gemstones. Cross River State is endowed with an array of natural resources, featuring limestone, uranium, manganese, lignite, lead and zinc ores, salt, oil, and gas. Borno State is blessed with a diverse geological profile, comprising

¹ Ministry of Foreign Affairs Nigeria Natural Resources' (2014) <https://foreignaffairs.gov.ng/nigeria/natural-resources/> accessed 19 May 2024

² Ibid.

diatomite, clay, limestone, gypsum, kaolin, and bentonite. Meanwhile, Delta State is richly endowed with an assortment of natural resources, including marble, silica sand, a clay. gypsum, lignite, iron deposits, kaolin, and oil and gas reserves, another important oil-producing area.³ The mineral resources of each state have deposits may also be found in significant impact on how that state approaches environmental management and economic growth.⁴

Nigeria, a significant oil-producing nation, made its debut in the world in 1956 with the extraction of the first crude oil barrels for export. This led to considerable changes in the country, including the decrease of traditional revenue sources including agriculture, mining, and crafts. Oil and gas play a key role in addressing global energy demands, accounting for 53% of global energy supply. In Nigeria, the oil sector contributes about 90% of the country's total export revenues and over 70% of the federal government's revenue. Nigerian law generally covers oil and gas under the term 'petroleum,' noting their overlap.⁵

The Nigerian federal government holds exclusive ownership and control over the country's mineral wealth, including petroleum, clay, and marble, among others, as stipulated by the Petroleum Industries Act. This legislation empowers the federal government to exercise dominion over the

³ Ibid.

⁴ Ajie C et al, "The Impact of Solid Minerals Resources on Economic Growth in NIGERIA: AN OLS and Causality Approach Key Word' (2019) 4 International Journal of Humanities, Art and Social Studies (LUHAS) 43 <https://airccse.com/ijhas/papers/4119ijhas05.pdf> accessed 24 May 2024

⁵ Meredith Alder Oil Industry in Nigeria' (202 1) <https://www.statista.com/topics/6914/oil-industry-in-nigeria/> accessed 28 May 2024

oil and gas sector, which is predominantly concentrated in the Niger Delta region. However, the extraction of oil in this region has led to egregious violations of the rights of local residents, prompting numerous legal challenges and demands for the protection and preservation of their interests, as well as the conservation of their environment. However, the violations still persist regardless of the suits and the attempt of the government expressed in the Petroleum Industries Act to remedy such violation.⁶ Hence, the need to analyze the legal rights of the Niger Delta States in relation to ownership and control of mineral resources under the Nigeria law.

2.0 CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Clarification

The following words or phrases are explained within the contextual usage in this paper.

2.1.1 The Concept of Ownership

According to Black's Law Dictionary, ownership encompasses the bundle of rights to possess, utilize, and derive benefits from a property, including the authority to transfer or dispose of it as desired. This definition implies that ownership is distinct from actual control or possession, and instead represents a legal right to exercise dominion over the property, unhindered by external factors or perceived influences. In essence, ownership confers a proprietary interest in the property, empowering the owner to make decision regarding its use, management, and disposition.

⁶⁶ Petroleum Industries Act 2021 No 142, Vol 108

The act of possessing something is another definition of ownership given by the Oxford Advanced Learners Dictionary. In literal terms, an owner is someone who owns something. To own something is to have it as one's own possession. The phrase "ownership" refers to possessions. According to Dias, it consists of many rights, freedoms, privileges, and immunities In relation to the property one owns.⁷

Quic quid plantatur solo solo cedit, the fundamental tenet of common law, states that the owner of a plot of land also owns anything beneath or attached to it. This principle offers landowners a broad spectrum of ownership rights, including the ability to utilize, enjoy, manage, and, to an extent abuse their land. However, this right is not absolute and is subject to constraints imposed by the interests of others.⁸

According to Austin's definition from the 1800s, own ship includes the unrestricted use, the endless duration of a particular thing and the right of disposal. While owners have great power over their property, their actions are restrained by the rights of others. Ownership grants many powers, including the authority to govern -usage, dispose of, produce, or even destroy the property as the owner sees suitable. Additionally, owners hold the power of possession, alienation, bequeathal, security charging, and the ability to give rights to others for specific duration.⁹

⁷ Dias, R.W.M., (1970), *On Jurisprudence*, Butterworth's 3rd Ed. London, p.361.

⁸ ubong Ene "The Doctrine of Quic Quid Plantatur Solo Solo Cedit and Its Application in Nigeria' (*The University of Uyo Law Clinic* 13 August 2019) <https://uniuyolawclinic.wonpress.com/2019/08/13/the-doctrine-of-quic-quid-Plantatur-solo-solo-credit-and-its-application-in-nigeria/> accessed 9 May 2024.

⁹ James Simonton, *Austins Classification of Proprietary Rights* 11 Comell Rev Z77 I20

In the case of *Nigeria National Petroleum Corporation v Sele*¹⁰, the court maintained that owners of land close to waterways not only had the right to fish in such waters but also to settle, erect structures, and even charge rent to anyone desiring to exploit the area.

However, the Land Use Act modified the paradigm by vesting land rights in the state, with the Governor functioning as the trustee of all land within the state's boundaries. This legislation essentially deprived individuals of their land ownership rights, destroying their means of subsistence. Unfortunately, the intended benefits of the Land Use Act have not realized for the people it was created to safeguard. Instead, the Act has become outmoded and its trusteeship provision has failed, turning beneficiaries into victims of its imposition. Chukwuemeri noted that it is an imposition that cannot be maintained forever, not even with the utmost application of government power.¹¹ It is undoubtedly unsustainable given the fervent desire for change on the part of society and the populace. A judicial system that is seen as unfair and outdated cannot endure for very long. Regardless matter how powerful or cruel the force may be, the will of the people will usually prevail in the end.

3.0 OWNERSHIP AND CONTROL OF MINERAL RESOURCES IN NIGERIA

The Nigerian state has traditionally owned and managed minerals and natural resources since the colonial period. The nation's legal structure and conception of property rights have been significantly impacted by this.

¹⁰ *Nigeria National Petroleum Corporation v. Sele* (2013) LLJR-SC

¹¹ Martins C, A Critical Appraisal of the Legal Regime of Ownership of Petroleum and Land in Nigeria <http://www.martinslibrary.blogspot.com>, Accessed on the 27 October 2023 at 12:14pm.

Nigeria was a British colony; hence the majority of its laws were modeled after British laws. Therefore, Nigeria inherited a colonial past in which the English crown held control of its natural riches. This resulted from the perception that the nation belonged to Great Britain as a corporate entity. As a result, Britain owned Nigeria's natural resources, including its oil and gas reserves, solid minerals, and the country's then-suzerain authority.

Sagay says that the colonial overlords appropriated ownership of all the resources in Nigeria for themselves, as was to be anticipated. Instead of acting in the best interests of the colonised people, colonial rulers did it for their person to benefit. After gaining independence in 1960, Nigeria established this paradigm of state ownership of resources, which was further solidified in the Republican Constitution of 1963.¹²

According to Sagay, "After Nigeria gained its independence; the new state accepted and institutionalized this vestige of the colonial past. It is important to remember that the ownership issue had no bearing on the Mineral Oils Ordinances of 1914 as amended in 1925. The Minerals Act of 1958 and the Petroleum Act of 1969 were the first to make ownership requirements legally binding."¹³

Decree No. 28 of 1978, also known as the Exclusive Economic Zone Act, established a novel marine resource management system, introducing the concept of the Exclusive Economic Zone (EEZ), which grants Nigeria

¹² Ministry of foreign affairs Natural Resources Ministry of Foreign Affairs, Nigeria' (2024) <https://foreignaffairs.gov.ng/nigeria/natural-resources/> accessed 7 May 2024

¹³ Sagay (n. 1), Food and Organization on Agriculture of the United Nations 'FAOLEX' (2024) <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC002021> accessed 28 May 2024

sovereign rights over its maritime resources, encompassing a vast area of the Gulf of Guinea.¹⁴ The 1982 United Nations (Convention on the Law of the Sea, held in Montego Bay, established a new resource regime, granting coastal states access to marine resources, a development that contrasts with the traditional concept of statehood tied to territorial ownership. This shift is rooted in the 1962 UN General Assembly Resolution, which emphasized the sovereign right of nations to exercise permanent control over their natural resources, aiming to promote domestic welfare and prosperity. In Nigeria this means that the federal government retains jurisdiction over land and natural resources, exercising control and management within the existing legal framework^{15,15}

2.2 Theoretical framework

2.2.1 The Theory of Qualified Ownership

The Pennsylvania-based Qualified Interest Theory is predicated on the idea that petroleum is similar to "animal ferae naturae," which states that an individual cannot claim exclusive ownership of a wild animal until it is caught and retained in their care. This idea, which is applicable to oil and gas resources, is referred to as the Rule of Capture in the US. In accordance with this view, a person's interest in oil and gas is qualified and dependent on their capacity to physically get the resource^{15,16}

This hypothesis states that if a neighboring property manages to effectively acquire and take possession of the oil and gas, the landowner who thinks

¹⁴ United Nations Delimitation of Exclusive Economic zone of Nigeria
https://www.un.org/depts/Aos/legislationandtreaties/pdf/nga_1978-Decree.pdf

¹⁵ Ibid.

¹⁶ *Barnard v. Monongahela Natural Gas Co* (1906), 21 PA, 362,66,801

they have oil reservoirs on their property may lose their claim to the resource. Courts have decided that adjacent landowners have the right to drill for oil and gas, even if doing so would deplete resources from other properties in decisions like *Barnard v. Monongahela Natural Gas Co*¹⁶ The impacted landowner may get the resource by drilling their Own well. A problem with this argument, however, is that it suggests that hydrocarbons, being volatile, are like wild creatures that may be caught and owned just like any other kind of wildlife. The peculiarities of oil and gas reserves, which may move and flow erratically under the surface and make it difficult to apply conventional ownership notions, may not be completely considered by this comparison.

2.2.2 The Non-Ownership Theory

Originating in Oklahoma, the Non-Ownership Theory maintains that since petroleum is a liquid under the surface of the earth, it cannot be held completely or just partially. This thesis argues that petroleum cannot be owned since it is fugitive, regardless of its physical condition.¹⁷ This perspective has drawn criticism for its nihilistic outlook nevertheless, given that petroleum is now seen as having ownership potential.¹⁸

Cases such as *Frost-Johnson Lumber Co. v. Sailing Heirs and Westmoreland* and *Cambria Natural Gas Co v. Dewit*¹⁹ helped popularize

¹⁷ Isochukwu Oil and Gas 1.2a Ownership (Introduction and principles)' (*Isochukwu Blog*, 20 January 2018)

<https://isochukwu.wordpress.com/2018/01/20/oil-and-gas-1-2a-ownership-introduction-and-principles> accessed 28 May 2024

¹⁸ Ibid.

¹⁹ United Nations, Rio Declaration on Environment and Development (1992).

<https://www.>

this doctrine in American law. The idea that oil and gas, Similar to minerals, have a propensity to flee without the owner's control was established by these examples. As a result, ownership is subject to capture, and owning property does not guarantee that one owns the oil and gas that is contained inside.

The Absolute Ownership and Qualified Ownership Theories, in contrast to the Non-Ownership Theory, provide landowners the authority to extract gas and oil from their property, but they do not bestow ownership of the resources themselves. Rather, people are free to extract and produce gas and oil under governmental control.

Since the Federal Government of Nigeria controls all mineral resources, the Rule of Capture is not applicable there. Unlike in the US, where people have the right to take legal action against trespassers who are taking oil and gas from their property, this centralized ownership model gives the government the right of action.

4.0 LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE OWNERSHIP AND CONTROL OF MINERAL RESOURCES IN NIGERIA

4.1 International Legal Frame Work

4.1.1 Rio Declaration on Environment and Development (1992)

un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol._Declaration.pdf accessed 23 May 2024

The Rio Declaration on Environment and Development, adopted at the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, is a landmark document outlining principles for sustainable development. While its primary focus is on environmental conservation and sustainable development, the declaration also indirectly addresses issues related to mineral resource ownership and management. Specifically, Principle 2 affirms that nations have the sovereign right, as enshrined in the United Nations Charter and international law, to exploit their natural resources in accordance with their own environmental and development priorities, exercising their authority to manage resources in a manner that aligns with their national interests and sustainable development goals. This principle underscores the notion of national sovereignty regarding natural resources, encompassing minerals^{19, 20}

Moreover, Principle 8 emphasizes the importance of reducing and eliminating unsustainable patterns of production and consumption, which indirectly impacts the utilization of mineral resources. It suggests that states should endeavor to promote sustainable management of resources, including minerals, to ensure their availability for present and future generations.²¹

²⁰ Martin, 'Sustainable Consumption and Production' (*United Nations Sustainable Development* 20 October 2023)
<http://www.un.org/sustainabledevelopment/sustainable-consumption-production/> accessed 23 May 2024

²¹ Allen N and others, *Detailed Review of Implementation of the Rio Principles* (2012)
<http://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf> accessed 23 May 2024

In the context of mineral resource ownership and control, the Rio Declaration acknowledges the absolute authority of nations to exercise dominion over their natural resources, affording them the freedom to dictate their management and utilization, unfettered by external influences, and empowering them to make decisions that align with their national interests, priorities, and sustainable development objectives, but it also implies a responsibility to do so in a sustainable promote sustainable management of and environmentally sound manner This means that while states have the authority to exploit their mineral wealth, they are encouraged to do so in a manner that minimizes environmental degradation and considers the needs of future generations.²²

4.1.2 United Nations General Assembly Resolution (XVII) and Mineral Resources (1803)

The UN General Assembly's 1962 Resolution 1803 () /I), titled "Permanent Sovereignty over Natural Resources," is a landmark document that solidified nations' ownership and control over their mineral resources. Adopted during the decolonization era, this resolution embodied the aspirations of newly independent states to assert control over resources previously exploited by colonial powers. This principle is an extension of the right to self-determination and a cornerstone of international law, recognizing permanent sovereignty over natural resources as a vital tool for development. The widespread adoption of Resolution 1803 has significantly shape customary international law, redefining sovereignty, ownership, and Consent in natural resource contracts, and cementing its status as a foundational instrument in the field.²³

²² Ibid.

²³ Ibid.

Article 1 of the UNGA resolution unequivocally affirms the inalienable right of nations and peoples to exercise absolute authority over their natural resources, including minerals, thereby empowering them to dictate the terms of exploration, development, utilization, and management of these resources, and ensuring their sovereign control over the entire value chain, from extraction to distribution, free from external interference or coercion²³. The resolution emphasizes that exercising this right to control resources should prioritize the nations development and the well-being of its citizens (Article 1). This discourages exploitation for short-term gains and encourages responsible management for long-term benefits. The resolution in article 2 acknowledges the potential role of reign investment in mineral resource development (e.g., mining companies). However, it underscores that any agreements with foreign entities must be entered into freely by the nation and comply with its established regulations. This prevents foreign exploitation and ensures the nation retains control over resource utilization. Article 5 of the resolution emphasizes that profits derived from resource development should be shared in a fair manner, freely agreed upon by both the investing party and the nation. This ensures the nation receives a just share of the benefits. Article 8 of the resolution calls upon States and international organizations to strictly respect the sovereignty of peoples and nations over their natural resources. This creates an international obligation for responsible conduct towards resource-rich nations.²⁴

²⁴ Azubuike P, "An Appraisal of the Principle of Permanent Sovereignty over Natural Resources. AZUBUIKE, Prince Ikwuadi' (Academia. edu2018)
https://www.academia.edu/44666221/An_Appraisal_of_the_Principle_of_Permanent_Sovereignty_over_Natural_Resources_AZUBUIKE_Prince_Ikwuadi accessed 23 May 2024

Critics argue that the resolution may favor resource-rich nations over foreign investors, potentially discouraging investment and hindering development LAW e-Commons, permanent sovereignty over natural resources and the sanctity of contracts.²⁵ The resolution lacks a clear enforcement mechanism, making it challenging to hold nations accountable for mismanagement of resources or failure to uphold fair agreements.

In summary, the 1803 UNGA Resolution remains crucial document in international law, granting nations control over their mineral resources while advocating for responsible management for national development. It emphasizes on the importance of respecting sovereignty and ensuring fair agreements in the context of foreign investment. While there are ongoing debates about its balance and implementation, the resolution serves as a foundation for ongoing discussions regarding resource governance and equitable development in the globalized world.

4.2 National Legal Framework

4.2.1 Constitution of the Federal Republic of Nigeria, 1999

The 1999 Constitution of the Federal Republic of Nigeria establishes a legal framework governing the ownership and management of the country's natural resources. Specifically, Section 44(3) of the Constitution vests the federal government with proprietary rights and regulatory powers over all mineral deposits, hydrocarbon resources, and natural gas located on or beneath any land within Nigeria, as well as those situated in the nation's territorial waters and Exclusive Economic Zone, thereby centralizing

²⁵ UN Office of Legal Affairs, Permanent Sovereignty over Natural Resources, General Assembly resolution 1803 (XVI).

control over the exploitation, and management of these resources in the federal authority.²⁶ These resources will be administered in compliance with any directives that the National Assembly may establish.

Part I of the Second Schedule of the Exclusive Legislative List in the 1979 Constitution of the Federal Republic of Nigeria vests the federal government with exclusive authority over the exploitation and management of the nation's subterranean resources, including petroleum deposits, mining activities, geological explorations, and natural gas reserves, thereby granting the federal authority sole jurisdiction over the exploration, extraction, and regulation of these resources. This rule ensures that state and local governments cannot enact laws controlling the discovery, development, and production of mineral resources since they do not have the legal authority to own such resources inside their borders. The Federal Government alone has the authority to enact and execute laws governing the seabed and subsoil of Nigeria's territorial waters, as well as the authorized granting of licenses or leases to explorers and concessionaires.

A derivation fund of at least 13% of the profits from any natural resource may be established by constitution and given to the state from which originates. In an attempt to have the Supreme Court determine the seaward limit of a coastal state in Nigeria, the Federal Government filed a lawsuit against the states of the federation. Any legislation that conflicts with the

²⁶ United Nations "General Assembly Resolution 1803 (XVII) of 1 December 1962, "Permanent Sovereignty over Natural Resources"
<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/resources.pdf>

provisions of the Constitution is null and invalid The Constitution is supreme, and any law contradictory with its provisions will be void.²⁷

4.2.2 Petroleum Industries Act 2021

The Petroleum Industries Act is a basic statute in Nigeria that defines petroleum resource ownership and control. It grants permission to explore for petroleum in the nation's continental shelf and territorial waters, and it gives the federal government ownership of all profits made from these resources both onshore and offshore. The Act also establishes property rights for persons who own land lying upon oil, assuring that land ownership belongs only in the Federal Government.

Section 1 of the Act grants the complete ownership and control of all petroleum in, under, or upon any lands to which the section applies in the state. This covers all of Nigeria's territory, including that which is submerged under water, is beneath its territorial seas, or is a portion of its continental shelf or Exclusive Economic Zone.²⁸

²⁷ The constitution of the Federal Republic of Nigeria's 1999, s 1. Ward H, "Resource Nationalism and Sustainable Development: A Primer and Key Issues (2009) <https://www.ied.org/sites/default/files/pdfs/migrate/G02507.pdf>

²⁸ PIA 2021, s. 1

(iii) Promote an economic climate that is favorable to petroleum activities, enabling holders of oil licenses to take use of the advantages that come with them.

(iv) Control the technical and commercial aspects of upstream petroleum operations, including the issuance of licenses and permission

(v) Ensure that upstream petroleum activities are conducted in accordance with all relevant rules and regulations.

The Act in chapter three makes provisions for Host communities which include establishment of trust fund, trust board and other healthy approaches to environment.

About 20 years ago, the Petroleum Industry Bill (PIB) was originally presented to the National Assembly. On September 28, 2020, after many attempts at passing, the erstwhile President brought it to the National Assembly for consideration. On July 15, 2021, the Senate approved it; on July 16, 2021, the House of Representatives did the same; and on August 16, 2021, the President gave his approval. The Act calls for the reorganization of a system that has failed to function effectively in accordance with international norms, leading to a loss of good governance, transparency, accountability, and worldwide competitiveness as well as financial losses for the petroleum sector.

The Federal Government is granted possession and ownership of Nigeria's petroleum resources, including its continental shelf, exclusive economic zones, and territorial seas, under the five chapters of the Act. The Act's goals as enumerated in S.6 include, but are not limited to:

- (i) Establishing effective and efficient regulatory bodies, with distinct and defined duties for the petroleum sector.
- (ii) Encourage accountability, openness, and sound governance in the management of Nigeria's petroleum resources.

4.2.3 Minerals and Mining Act 2007

The Nigerian Minerals and Mining Act of 2007, which superseded the 1999 legislation, decrees that the Federal Government, acting as the custodian of the nation's interests, retains absolute ownership and control over all mineral deposits and resources situated on or beneath any land, water body, or territorial extension of Nigeria, including its continental shelf, rivers, streams, territorial waters, and Exclusive Economic Zone, thereby vesting

the government with the authority to manage, regulate, and exploit these resources on behalf of the Nigerian people.²⁹

Act aims to stimulate private sector investment and growth in the mining industry by prioritizing mineral exploitation over other land uses, granting the Federal Government proprietary rights and administrative control over mineral resources, and recognizing the public interest in mining as paramount, even though the government holds exclusive ownership of these resources, as affirmed by the Land Use Act, which acknowledges the preeminence of mining activities over other land utilization purposes. The Continental Shelf, a contentious issue in the *Attorney General of the Federation v. Attorney-General of Abia State & 35ors* lawsuit, is likewise covered by the Act. The idea was that coastal governments may increase their potential for income extraction by claiming the area of ocean of shore their states' borders. Nonetheless, the Federal Republic of Nigeria's 1999 Constitution states that the whole Federation of Nigeria is entitled to the proceeds from offshore drilling.

Certain elements in the Act would encourage the private sector's involvement in the expansion of Nigeria's mining industry. The Federal Government will become the owner and controller of minerals, according to one clause. The Property Use Act governs access to land for mining operations, giving the Governor the authority to grant a right of occupancy and the equivalent authority to revoke that right in the event of an overwhelming public interest. However, since both levels of government have competing interests, the process of transferring ownership of property inside a state may be difficult.

²⁹ Minerals and Mining Act, No. 20, 2007, s 1

4.2.4 Exclusive Economic Zones Act

The Act's introductory statement unequivocally asserts Nigeria's absolute sovereign authority over the mineral and biological resources within its Exclusive Economic Zone, encompassing the superjacent seas and continental shelf, extending 200 nautical miles from the baseline of its territorial waters.

This assertion is reinforced by Sections 1(1) and 2(1), which delineate the Exclusive Economic Zone of Nigeria, herein referred to as the "Exclusive Zone", as a designated area subject to the provisions of this legislation, stretching from the outer limits of Nigeria's territorial waters to a distance of 200 nautical miles, thereby establishing the country's sovereign rights over the sea, its natural resources, and the continental shelf, constituting the two primary components of the Exclusive Economic Zone Act.

Section 2(1) of the Act unequivocally declares that the Federal Republic of Nigeria holds absolute and exclusive authority over the exploration, extraction, and utilization of natural resources situated in the seabed, subsoil, and superjacent waters within the Exclusive Economic Zone, without prejudice to the provisions of the Territorial Waters Act, the Petroleum Act, or the Sea Fisheries Act. The Federal Government, or any agency duly authorized by the government, shall have the power to exercise this sovereign authority, either generally or in specific cases, to manage, exploit, and develop natural resources within this designated area. Another noteworthy and illuminating aspect of the Act is its acknowledgement that portions of the Nigerian Continental Shelf could expand into the continental shelves of adjacent nations.

Therefore, the Act's Parts 1 (2) and (3) provides particular methods that take care of any concerns beforehand. Nigeria initially asserted its claim of a 200-nautical mile continental shelf, and subsequent provisions stipulate that the demarcation of its continental shelf with adjacent states shall be determined by treaty or written agreement in areas where the continental shelves of neighboring states may overlap. As established by the international Court of Justice in the *Libyan Arab Jamahiriya v. Malta* case, the existence of an Exquisite Economic Zone is contingent upon a corresponding Continental Shelf, although a Continental Shelf can exist independently. Nigeria not only claims a 200-nautical-mile extent of its continental shelf but has also authorized oil companies to establish artificial structures, including, oil shore drilling platforms, within this area.

Furthermore, it is essential to consider Nigeria's land ownership and tenure system, which significantly influences resource ownership, to comprehensively understand the dynamics of resource ownership in the country.

4.2.5 Land Use Decree 1978

Nigeria's land tenure and ownership structure evolved historically during three distinct eras: pre-colonial, post-colonial, and dual, prior to the Land Use Act's implementation. This led to a parallel system of landownership across the nation. The southern states, which comprised the old Western Region, Eastern Region, Midwestern Region, and Lagos, were dominated by the communal system of property ownership prior to the property Use Act. Private land ownership originated from this system and spread via sales, grants, and partitions.

On the other hand, the Land Tenure Law, which replaced Lord Lugard's 1916 Land and Native Rights Ordinance, was approved by the regional government in 1962 and controlled and regulated the land ownership system in the Northern Region. The Land and Native Rights Ordinances underlying ideas and philosophies are substantially confirmed by the Land Tenure Law, which supersedes Lord Lugard's. This law's effect was to make it easier for the government to seize aboriginal people's lands.

Prior to the Land Use Act's enactment, the existing framework embodied the fundamental principles of a federal system, with a decentralized approach to land management. However, The Land Use Act of 1978 was introduced, applying uniformly across the federation, as evident from its preamble and Section 1, which vests ownership of all lands within each state in the governor, to be held in trust and managed for the collective benefit of all Nigerians. This legislation was deeply entrenched in the 1979 Constitution of the Federal Republic of Nigeria and subsequently retained in the 1999 Constitution, making its repeal a complex and laborious process. The Land Use Act gave landownership in the nation a whole new meaning. It is abundantly evident that land tenure and ownership in Nigeria are qualified, with the governor being granted trusteeship over all properties within his state.

It is important to note, nevertheless, that while state governors have title to land, they are unable to use that authority over property owned by the federal government or any of its agencies. This includes properties with mineral deposits or those emphasize for related purposes. As a result, the finding and use of resources is not directly within the jurisdiction of any of the federation's member states. It is also emphasized that the Federal

Government has ownership and control over mineral resources, as confirmed by case law in addition to legislation.

The Nigerian Supreme Court reaffirmed this principle the landmark case of *Attorney General Abia State & 35 Ors*, ruling that the federal government holds sole authority over the maritime belt, territorial waters, and Exclusive Economic Zone, exercising exclusive legislative, judicial, and sovereign powers, while the coastal states have no inherent rights over these areas. The court further clarified that the names of local villages along the shoreline, as indicated on oil rigs, do not automatically confer ownership of the adjacent offshore territories. Thus, the Supreme Court's verdict established that the Federal Government of Nigeria retains absolute ownership and regulatory control over all, natural resources, both onshore and offshore, within the country's territorial seas, Exclusive Economic Zone, and continental Shelf, solidifying the federal government's jurisdiction over these areas.

4.3 Institutional Framework

4.3.1 Federal Ministry of Solid Minerals Development

Nigeria has made significant strides in establishing a robust institutional and legislative Framework to manage and regulate its mineral resources, particularly subsurface resources like oil and gas. To achieve this, the federal government has implemented various policies aimed at revitalizing key economic sectors, enhancing efficiency and maximizing revenue potential in the oil, gas, and solid minerals industries. A notable milestone was the establishment of the Nigerian

National Petroleum Corporation (NNPC) in 1997, resulting from the merger of the Ministry of Petroleum Resources and the Nigeria National Oil Corporation (NNOC). The NNPC was entrusted with a broad mandate, including marketing, refining, and transporting petroleum products and chemicals, in addition to exploration and production activities, primarily offshore in the Niger Delta. Furthermore, the Federal Ministry of Solid Minerals Development, established in 1995, has played a crucial role in promoting the growth of the mining sector, in line with government directives, while the Nigerian Mineral and Mining Act of 2007 has positioned the government at the forefront of mineral industry development.³⁰

The Nigerian National Petroleum Corporation (NNPC) was established as a regulatory entity to oversee the government's interests in the petroleum sector, with subsidiaries such as the Nigerian Petroleum Development Company Limited (NPDCL), Integrated Data Services Limited (IDSIL), Warri Refining and Petrochemical Company Limited (WRPCL), and Kaduna Refining and Petrochemical Company Limited, which carry out specific functions. The Petroleum Act vests the Petroleum Minister with broad authority to regulate and enforce all activities under the Act and subsidiary legislation. In contrast, the Federal Ministry of Solid Minerals, headed by the Minister for Solid Minerals Development, is responsible for granting mining licenses on behalf of the federal government and overseeing the mining sector. In addition, the Niger Delta Development

³⁰ Idachaba Martins Ajogwu, The Legal Framework For Ownership And Control Of Mineral Resources In Nigeria Martins Ajogwu <http://www.researchgate.net/publication/36367196_the_legal_framework_for_ownership_and_control_of_mineral_resources_in_Nigeria_idachaba_Martins_A.ogv> accessed 23 May, 2024

Commission (NDDC) was established to manage the 39% annual budgetary allocation from multinational oil and gas companies or the development of the Niger Delta region, where oil and gas resources are exploited, serving as a vital institutional and regulatory framework for the management and control of Nigeria's mineral resources, particularly oil and gas.³¹³³

Another innovation in Nigeria's system of regulating and overseeing the operations of its mineral resources is the Nigeria Extractive Industries transparency Initiative Act of 2007. Among other things, the office's mandate includes establishing the institutional framework for accountability and transparency by requiring all oil and gas companies to report and disclose information³²

5.0 EFFECT OF THE OWNERSHIP AND CONTR LOF MINERAL RESOURCES BY THE FEDERAL GOVERNMENT OF NIGERIA ON THE NIGER DELTA REGION

5.1 Effects of Oil Exploration in the Niger Delta Region

The extraction of mineral resources has resulted in the utter devastation of the ecosystem, leading to catastrophic consequences for the environment and human well-being. These developments have not only caught the attention of local, national, and global stakeholders but have also spurred the implementation of stringent environmental regulations governing oil and gas operations, aimed at mitigating or entirely eliminating the harmful impact on the environment. The severity of the ecological damage has

³¹ NPC LTDHome' (NNPCZ024) <<https://nnpcgroup.com> accessed 23 May 2024

³² Dhaxson N, Nigeria' S Extractive Industries Transparency Initiative Just a Glorious Audit?' (2009) <https://www.chatham house.org/sites/default/files/public/Research/Africa/1109neiti.pdf> accessed 27 May, 2024

prompted a concerted effort to establish robust safeguards and measures to prevent further degradation and promote sustainable practices in the extractive industry. Large tracts of land, forests, mangrove swamps, freshwater, and even the continental shelf in Nigeria's Niger Delta region are exploited for oil. A mere glimpse does not properly convey the severity of the impacts of oil exploration in the Niger Delta region. Oil exploration includes activities such as dredging rivers and streams, digging oil wells, and associated tasks including gas flaring and land, air, and sea transportation of people and products.

Most of the aforementioned activities are harmful to the environment and the local populace. Exploration activities and/or disregard by the oil industry have had a direct or indirect impact on almost every facet of life and every location in the area.

Undoubtedly, oil exploration has contributed to the development of the Niger Delta region to some degree. A few towns—Warri in Delta State, Eket in Akwa-Ibom State, and Port-Harcourt—have profited from the oil industry. The presence of oil companies and the placement of refineries have benefited these regions' economies: throughout time. Jobs have also been created by oil companies and other businesses that provide services to the oil sector. Due to the presence of oil firms in the region, allied industries and small businesses have proliferated. The oil companies have made small-scale contributions to development projects including building schools, tarring roads and digging boreholes. Therefore, it becomes sense

to draw the conclusion that not all consequences of oil exploration in Nigeria's Niger Delta have been negative.³³

Despite the aforementioned advantages of oil exploration, the detrimental impacts of this activity much outweigh any gains that the Niger Delta region may have gradually gained. Due to oil, the Niger Delta has seen great hardship and misfortune. In addition to violence, the ecosystem is disintegrating. The indigenous inhabitants of the area live in poverty considerably below the national average since they were forced to give up their traditional lives of farming, fishing, and hunting owing to environmental contamination from oil spills, gas flaring, and other exploratory operations by oil companies. Significant environmental degradation, extreme deforestation leading to species extinction, river pollution, and the destruction of aquatic life all transpire without offering enough compensation to the human population. As a consequence, the people are becoming impoverished. This strengthens the case for the resource curse theory, which contends that the discovery of oil in many developing countries often has the opposite effect of increasing regional prosperity. People that live in the Niger Delta area have been mistreated.

Upon glancing across the Niger Delta, one might see decaying communities. The pictures are very gloomy, and the stories behind them are abhorrent and nasty. There's a litany of issues, squalor, and abandonment. To say that this is a decaying, rotting, slowly dying region would be sufficient. A BBC correspondent named Martin stated the following after visiting the region

³³ Okonta., *where Vultures Feast: Shell. Human Right and Oil*, London (2003) Version, p. 43. ²⁵ Nussbaum, M., (2000), *Women and Human Development: The Capabilities Approach*, Cambridge University Press, 2.

in 1995: The story of how the peasants' farms and means of subsistence were destroyed is horrifying." The confluence of fresh and saline water has led to a massive fish kill in the streams and rivers, forcing fishermen to venture farther out to sea, taking up to three days to reach productive fishing grounds. Even young children can no longer assist their mothers by catching small fish due to the perilous strong currents and polluted water. Moreover, the high, muddy banks along the channel have caused water logging, resulting in crop damage and rendering a significant portion of the land barren and unproductive. Above all, the water is tainted; it might seem entirely green or wholly blue at different times.³⁴

The data presented above provides a clear picture of the scope of the destruction caused by oil drilling in the Niger Delta area. An Environmental Rights Action team (ERA) recently protested the ecological damage caused by the oil companies' activities in the region.³⁵

The Niger Delta exhibits remarkable levels of ecological degradation and pollution. The oil industry's cautious estimates put the number of oil spills between 1970 and 2000 at around 7000.³⁶ Shell, one of the oil companies operating in Nigeria, admitted to an oil spill in 2011 that was reportedly the worst the area has seen in 10 years. Up to 40,000 barrels of crude oil escaped, according to the firm, during the process of transferring crude oil from a floating oil platform to ship 75 miles off the coast of the Niger Delta.

³⁴ A Bomford, *Slow Death of Africa's Lake Chad* BBC News Africa (April 2006) accessed 27 May 2024

³⁵ *Ibid.*

³⁶ A Vaughan, *Oil in Nigeria: A History of Spills, Fines and Fights for Rights* (the Guardian 4 August 2011) > accessed 27 May 2024

The leak was 70 km long and spanned 923 square kilometers, according to satellite photos obtained by independent observers Sky Truth.

Additionally, there is a lot of gas flaring in the region. To avoid over pressurizing the infrastructure and pipelines, gas flaring is the act of releasing excess gas, liquids from refineries and pipelines used in the production of oil and gas, as well as any other byproducts, into the atmosphere. There has been frequent gas flaring in the region for the last 40 years. Because of this, it has been claimed that Nigeria emits more greenhouse gases than all of the world's oil fields combined. Like oil, natural gas likewise rises to the top.

It is referred to as 'related gas." Oil companies often have a wide range of options when it comes to managing flaring. These options include sending it to customers somewhere else, burning it off, or injecting it back into the ground.

Oil companies avoid reinjection because it is significantly more costly than alternative environmentally safer methods. The greatest way to put it in paper on this subject is by Maas, who points out that although flaring is the least cost choice, it has significant negative implications on both the environment and human health. Carcinogens including benzopyrene, benzenc, and toluene are released during flaring. Mercury, chromium, and arsenic are a few of the elements discharged. Two of the greenhouse gases that are released into the atmosphere that causes global warming are methane and carbon dioxide, Because of the Niger Delta's excessive emissions of sulphur dioxide and nitrogen oxide, acid rain may eat through sheet metal roofs.

This is untrue because oil corporations in developed countries are compelled to invest in technology and infrastructure that almost completely prevents flaring.³⁷

5.2 Pollution and Environmental Dangers

There have been significant social and environmental consequences associated with oil extraction. The deterioration of farms, loss of fertile soil, contamination of drinking water and the air, extinction of species and biodiversity, and harm to aquatic ecosystems are only a few of the issues that have seriously harmed the health of those who live in locations where oil extraction is practiced. It is paradoxical that although being commonplace in industrialized countries, environmental restrictions are often disregarded because the impacted groups lack authority, resources, and equality. Because of this, oil firms often force people to leave their own countries, further marginalizing them. Nigeria's oil production system is biased in favor of the governing elite and multinational corporations that directly benefit from oil production.

Over the course of the Niger Delta's more than 50 years of oil and gas exploration and development, the ecosystem has suffered grave environmental consequences, including, oil exploration and exploitations, gas flaring, oil spillage oil pipeline explosions, land degradation deforestation loss of forest Animals.

³⁷ Mass p, 'The Violent Twilight of Oil. Knoph, Barzoi Books, New York (2009).

5.3 Exploration and Utilization of Oil

The Niger Delta's oil prospecting and exploration have not only changed the way of life for locals, but they are also upsetting the region's crust's natural equilibrium. There are three approaches to exploration: exploratory drilling, seismic surveys, and analysis of the geological other data that is already available. The usage of dynamites and other explosives, together with the seismological survey, which measures the depth of the rock strata by using sound waves to collect information via the earth's crust, have a particularly harmful effect on the composition of the planet. Either dry land or aquatic bodies allow the explosives to explode deep under the surface of the earth. Apart from its immediate effects on the local wildlife and aquatic Supplies, the aftershocks have been reported to extend up to a radius of 10 kilometers. As a Consequence, the natural ecosystem of the area experiences greater shocks and rifts the more oil is discovered in the area using this technique.

5.4 Flaring of Gas

Oil exploration and production in the Niger Delta lead to gas flaring, a significant environmental problem. In addition to hurting the local indigenous community, Western oil firms are triggering irreparable gas flare-ups that harm the delicate ecosystem in the region. More over thirty years have elapsed since some flare sites took tire, and every day across the delta, eight million cubic feet of natural gas are burnt off in flares, adding to global warming. According to a statement from Movement for the Survival of the Ogoni People (MOSOP), the Ogoni people's way of life has suffered since they are no longer surrounded by lush greenery and pure air. Flaring is a process that has been utilized for more than 40 years in Nigeria, especially in the Niger-Delta region, to dispose of most waste gases from industrial and operational regions. This leads to climate change and

endangers the ozone layer. With more than 123 flaring sites, Nigeria is one of the biggest emitters of greenhouse gases on the continent. Every day, 1.8 billion cubic feet of gas are added to the Niger-Delta atmosphere, resulting in the release of 45.8 billion kilowatt-hours of heat. Gas flaring has a negative ecological effect and has accelerated the environmental deterioration in the region. The villages of Opuama and Sekewu in Delta State's Warri North Local Government Area are prime instances of how gas flaring has damaged the ozone layer and caused climatic change that is detrimental to the expansion of agriculture.

Since oil was discovered in the Niger Delta, the petroleum industry has grown rapidly, which has had a severe effect on the delicate balance between the flow of energy within the earth and outward. Reduced CO₂ removal rates from degraded woodland ecosystems result in unsustainable land degradation, erosion, deforestation, and soil, water, and air pollution. The government has not yet determined when and how to cease gas flaring in the Niger Delta, despite the hazards it poses to the environment and human health.³⁸

5.5 Oil Pipeline Explosion/Oil Spill

There have been oil spills all over the globe ever since crude oil was found during the industrial revolution. Because of human activities, an estimated 0.7-1.7 million tones of petroleum are spilled into rivers, seas, and oceans each year. Oil spills have posed a severe danger to the ecology of oil-producing countries. If allowed uncontrolled, these spills have the potential

³⁸ ozogu Na And Others, Harmful Impacts Of Gas Flares In Niger Delta: Case Study, Oporoma' [https://www.researchgate.net/publication/369321460_Harmful_Impacts_Of_Gas_Flares_In_Niger_Delta\)_Case_Study_Oporoma](https://www.researchgate.net/publication/369321460_Harmful_Impacts_Of_Gas_Flares_In_Niger_Delta)_Case_Study_Oporoma) Accessed 28 May 2024

to entirely devastate ecosystems. The Niger Delta is one of the top ten most important marine and wetland ecosystems in the planet. This region's oil sector has unquestionably contributed significantly to the prosperity and development of the nation. Unsustainable oil exploration operations have left the Niger Delta regions ecosystem among the world's five most severely harmed. Over a 50-year span, research indicates that between 9 and 13 million barrels of oil were spilled. This is fifty times more than was purportedly spilled during the 1989 Exxon Valdez accident in Alaska.

5.6 Deforestation and Land Degradation

Huge mangrove forests, brackish swamp forests, and rainforests make up the Niger-Delta's vegetation. Both the many creatures that live in these ecosystems and the indigenous people of Nigeria Continue to place a high value on mangroves. It is regrettable that the vast mangrove forests in the vicinity have been devastated by these oil operations. In addition to the illicit logging resulting from easier access to forests, biodiversity has been reduced by oil exploration, particularly around ramp sites, flow stations, and terminals. Oil-induced fires and environmental contamination were major contributors to deforestation and land degradation. In the Niger Delta, there have been many oil-caused fire outbreaks that have destroyed agriculture and caused deforestation, such as the Jesse fire event that happened on October 17, 1998. Regrettably, this fire disaster not only destroyed farmland and the surrounding natural ecosystem, but it also claimed the lives of over a thousand community members.

In September 2008, there was another fire occurrence in the Okirika village in Rivers State. This fire burned for three days, destroying all of the local vegetation and wildlife. Next on the list was the fire scourge that struck the Delta State village of Ugbomro, which made it necessary to do research to

determine the impact of the fire scourge on the soil. Contrary to common belief, which holds that fire improves bush fallowing for crops, it was found that the site experienced significant impoverishment as a result of both the oil leak and the fire incident.³⁹

One may argue that the Niger Delta's pace of deforestation has accelerated due to oil prospecting, forests have been cleared for the building of pipelines and other oil infrastructure as a result of extensive exploration, drilling, and pipeline construction for the transfer of oil and gas products within and beyond the Niger Delta area. This further destroys the region's already fragile environment. The area is more susceptible to natural catastrophes and climate change as a result the degradation of its trees.⁴⁰

The tragedy of oil exploration and pollution stems from the idea that land ought to be preserved in general to support both the present and future generations. The destruction of the earth leaves no trace for the next generation, which will be left with lakes, rivers, and barren land. It usually takes a very long time to rejuvenate the land, and it is very difficult to return the soil to its original condition.

6.0 FINDINGS

It is important to highlight that the legal structure regulating mineral resources in Nigeria clearly assigns ownership and authority over mineral resources to the Nigerian State, specifically to the Government of the Federation of Nigeria.

³⁹ Eregha PB and Irughe, R Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier effects (2009) Journal of Sustainable Development in Africa

⁴⁰ Ibid.

However, despite federal ownership of mineral resources, the practical aspect of extracting oil, for example, necessitates access to land, which falls under the jurisdiction of state governors.

This creates a complex scenario where the federal government owns the resources but requires cooperation from state authorities to access the land for extraction. This situation aligns with the perspective put forth by Angaye, who challenges the dichotomy between land ownership and oil extraction rights. Angaye argues that the notion of one entity owning the land while another owns the resources beneath it is illogical and reflects parochial thinking.

In summary, while mineral resources are legally owned and controlled by the Federal Government in Nigeria, the practicalities of extraction involve navigating the complexities of land ownership vested in state authorities. This highlights the need for a comprehensive approach to resource management that addresses the inherent contradictions and ensures equitable benefit for all stakeholders.

7.0 CONCLUSION & RECOMMENDATIONS

Within the context of Nigerian law, this research carefully examined the legal issues surrounding the ownership and management of natural resources in the Niger Delta area. The article recognized that certain regions of the nation had a wealth of mineral resources and listed the laws that controlled who owned them, such as the 1978 Exclusive Economic Zone Act, the 1969 Petroleum Act, the 2007 Minerals and Mining Act, and the 1999 Federal Republic of Nigeria Constitution.

The article also looked at what happens to landowners when the federal government uses its power to expropriate mineral resources. In these situations, the degree of an individual's or community's stake in the property is called into doubt since they are usually only entitled to compensation for the destruction of improvements on the land.

The dispute stems from the fact that, although being federally held, mineral resources are often found on territory that state governors are in charge of. The resource control dilemma has been exacerbated by this tension, leading to a range of agitation and assaults by the young in the Niger Delta area against people, governments, and international oil firms. Given the social upheaval and environmental devastation that the discovery of oil in Nigeria has generated, some analysts have gone so far as to call it more of a curse than a gift. The above problem gave rise to this research calling for an appraisal of the rights of the Niger Delta states in relation to ownership and control of mineral resources under Nigeria law.

7.1 Recommendations

Considering the aforementioned legal issues, this article suggests the following recommendations:

1. That the Nigerian constitution be amended to consider the States interests on the federal government's exclusive ownership of the country's mineral resources since the location of these mineral resources as joint proprietors. States will engage in healthy competition as a result of this.
2. That Nigeria ought to delve farther into industrialization, agriculture, and extensive solid mineral exploration.

3. Since an idle mind is the devil's workshop, employment placements for qualified youths in the Niger Delta region should be established so they can work and receive monthly payments in order to reduce oil pipeline vandalization and expression of grievances in a manner that is deleterious to the environment.