

## Resource Control and Appraising Debates on True Federalism in Nigeria: Critical Perspectives and Political Options

---

**Michael Takim Otu**

*Department of Private and Property Law  
Faculty of Law, University of Calabar*

---

### ABSTRACT

Since the advent of the present civilian administration in Nigeria 1999 till date, one issue that has provoked and generated heated arguments, passionate discourses and much controversy is the issue of resource control. Certainly, the problem of division of revenues has presented itself in one form or another since the amalgamation of the Northern and Southern protectorates of Nigeria by Sir Frederick (Later Lord) Lugard in 1914. Each successive government tried to find a practical approach to the problem of redistribution of such resources as are in the country in order to ensure that there should be fair distribution of resources among the people, irrespective of their places of birth or residence. As a matter of fact, individual and communal right to natural resources in land has been eroded in this country to a large extent. There has been incessant call for resource control by various ideological and militant groups in the south-south region of Nigeria. These states are often called the Niger-Delta states. The quest is to have a large share of the revenue that accrues to the nation from oil resources that is excavated from these states. In this sense, it is demanded that the states should have ownership and considerable control over the mineral oil. In all modern societies where there are deep ethnic religious or ideological cleavages, a federal form of government of one type or the other has been used quite successfully to regulate relations among such groups. This article seeks to examine the concept of federalism and explore it within the context of the federal republic of Nigeria by tracing its evolution and distinguishing its uniqueness in Nigeria. This article further examines the vexed issue of resource control in Nigeria, highlighting the legal provisions that provide the current legal framework for resource control and the agitation for a change of strategy. The article identifies the fact that the current legal framework is wrong, anti-federalist and inimical to effective resource development and economic progress in Nigeria. The paper identifies the implication of centralist resource control in the Nigerian federation, with special attention to the petroleum sector of the economy and its implications for Nigeria's development aspirations. It further attempted a vivid comparative analysis of resource control in Nigeria vis- a- vis other jurisdictions, and finally, advocated cogent reasons for introduction of true federalism, findings, conclusion and recommendations were made and solutions proffered for the way forward to solving the lingering crisis of federalism and resource control in Nigeria.

**Keywords:** *Resource control, Revenue derivation principle, Federalism, Fiscal federalism sovereignty, Self-determination, Ownership*

*Corresponding Author:* Michael Takim Otu

## Background to the Study

The issue of resource control has taken the center stage of agitation by both the federal government and government of the state of our Nigerian federation on how best to ensure an equitable redistribution of resources among the people of this country irrespective of their places of birth or residence. This wave of agitation is only a resurgence of a time long malaise plaguing the Nigerian nation for over 35 years of its 56 years lifetime. The agitation for resource control can be traced back to pre-independence Nigeria. The battle for the control of the coastal trade leading to the deportation of King Jaja of Opobo and other coastal kings<sup>1</sup>, marked the beginning. The second phase of the agitation for resource control came in the penultimate management of colonialism. This was inspired by the spirit of self-determination and the fear of inequity among regions, especially the western and northern regions respectively and the numerous minorities of the south south regions (then united eastern region).<sup>2</sup> The region consists of present day Bayelsa, Delta and Rivers states and had been expanded to include all oil producing states consisting of Abia, AkwaIbom, Cross River, Edo, Imo and Ondo states.<sup>3</sup> The region is one of the largest wetlands in the world and consists of a number of ecological zones namely sandy coastal ridge barriers, salt water mangroves, fresh water permanent and seasonal, swamp forest, lowland rain forest and fertile dry land.

The current call marks the third epoch of the agitation. Originating from the struggles and martyrdom of one compressed giant<sup>4</sup> Ken Saro-Wiwa and his Ogoni people, fermenting with Egbesu clashes and the blood of dead aged and infants. In the marshes of Odi in Bayelsa state,<sup>5</sup> and blooming in the periodic meetings of the now elected governors of the southern states of Nigeria.<sup>6</sup>

The demand for ownership and or control of resources should therefore not be viewed as an outrageous demand neither should it be considered as a novel or unpatriotic one.<sup>7</sup> This is the most civilized form of the struggle; other forms have taken the form of deliberate outbursts of pipelines, arson, murder, kidnaps and shut downs at the refineries resulting in constant disruptions of production.<sup>8</sup>

In response, the federal government has had to resort to taking both proactive and military actions to protect the national economy that is exclusively dependent on oil revenue and to frighten the agitators. The federal government established the Niger Delta Development Commission to replace the past commission (OMPADEC) and commercial payment of the constitutionally stipulated 13% derivative revenue from oil to the oil states.<sup>9</sup> Federalism is not only the sharing of functions between various tiers of government but also sharing of revenue and revenue sources for the discharge of those functions. The Nigerian federation is a

<sup>1</sup>Alogoa, E. J. "The Eastern Niger Delta and the Hinterland in the 19<sup>th</sup> Century". In *Ground Work of Nigerian History*. Ikime, O. (Ed) 1980, Heinmann, p.250.

<sup>2</sup>Adedeji, A. "Mastering Nigeria's Conflict," *The Guardian* 19/4/2001, p.5. see also Esajere, A; *Nigeria's Courteous Path to Genuine Derivation*, *The Guardian* 8/1/07, pp. 8-9; see further Wokocho, R. A.: *Resource Control in Nigeria. The Legal and Regulatory Challenges and Implications*, Civimics Publishers (Nig), Owerri, 2005, p.11.

<sup>3</sup>S.2(b) of the Niger Delta Development Commission (Establishment Act), Cap. N86, LFN, 2004.

<sup>4</sup>Dr. Ibiwarilikiriko's apposite description of Ken-SaroWiwa who was hanged with 8 of his kinsmen on 10 November, 1995 for the cause in his most recent but last work, "Oily years of the Niger Delta" 2001. Dr. Ikiriko was another intellectual kingpin of the struggle who passed away without realizing his will to secure justice for the Niger Delta through literary (poetic) activism

<sup>5</sup>Where a clash between youths and government police left seven policemen dead and the federal government ordered the complete destruction of the entire Odi community with all citizens inhabiting it in reprisal.

<sup>6</sup>Resource control has been a major item on the agenda of the periodic meeting of the southern governors of Nigeria. See for example, *Tell* magazine of April 9, 2001, pp. 24-37.

<sup>7</sup>Wokocho, R. A. *Op.cit* p.12.

<sup>8</sup>Mohammed, M. A. *Resource Control in Nigeria: Legal Issues and related problem*, Ph.D Dissertation (Unpublished) Faculty of Law, University of Abuja, 2007, p.210

<sup>9</sup>Section 162 of the 1999 Constitution

two-tiered level of government with the federal government at the centre and thirty-six states including a federal capital territory.<sup>10</sup> The existence of a federal system with its accompanying political units necessitated a revenue sharing arrangement to enable each unit carry out its constitutionally assigned responsibilities.

Federalism provides opportunities at different level for component parts to protect their identities and pursue their programs while traversing the same tracks as others. It is always natural for the federating units to contest the operation of the system. It is the ability to adjust and balance the federal level as it swings that is the key indication of a working federalism. Thus, the issue of revenue allocation and resource control have remained so topical and continue to defy many solutions, makes it eminently important to analyse the present law on the issue in Nigeria making a comparison albeit skeletally with the law and practice in other systems especially those of advanced federalism and democracies that have comparable legal and constitutional frameworks with Nigeria.

This struggle better known world-wide as the righteous indignation and justified revolt of a marginalized oil rich Niger Delta is for justice, a demand for equitable re-federation of Nigeria's economic policy, a call for a viably developed and truly federated Republic of Nigeria.<sup>11</sup> The cost of this struggle to the nation is much. It would be fool-hardy to view these developments as temporary outbursts of suppressed feelings that will disappear with time. These struggles are arguably sufficient to liquidate the Nigerian federation or at best impoverish democratic governance.<sup>12</sup>

### **Conceptual Clarification of Key Terms and Definition of Concepts**

#### **Resource Control**

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

*The substantive powers for the community to collect monetary and other benefits accruing from the exploitation and use of resources in its domain and deploy same to its developmental purposes. Here the community is self-ruling and homogenous, this power is inherent and automatic. When the community is part of a larger nation-state, the power and its extent has to be mediated by the principle of fiscal federalism.<sup>13</sup>*

Generally, a resource may be seen as a useful material or substance. Technically it refers to the positive interaction between man and nature, as a means designed to satisfy some given ends, wants and social objectives. From this perspective, a resource is a social relation having two basic attributes – utility and functionality. The essence of a resource is its functionality rather than thing itself.<sup>14</sup>

---

<sup>10</sup>Section 2 of the 1999 Constitution

<sup>11</sup>Wokocha, R. A. *Op.cit*, p. 14.

<sup>12</sup>Mohammed, M. A. *Op.cit*; p.211.

<sup>13</sup>Faga, H. P. "Title to Maritime Territories and the Controversy of Revenue Derivation from Oil Resources in Nigeria: Reconstructing the Trajectories of the Offshore Boundary case". Ekiti State University, Ado-Ekiti Law journal, (2013) Volume 5, p.74, quoting Roberts, F. O. N. "Resource Control" in Contemporary Issues in the Management of the Nigerian Economy, 2006.

<sup>14</sup>Faga, H. P. *Ibid*. p.70, quoting Roy, P. (1999)\_ Economic Geography: A Study of Resources. New Central Book Agency (P), Calcutta. Cited in 'Contemporary Issues in the Management of the Nigerian Economy "

The term resource control has no generally acceptable definition. G. G. Darah, one of the commentators on the issue observed that “there is some confusion about the meaning and economic implications of the term “resource control.”<sup>15</sup> Emeka also helplessly declared “it is doubtful whether one can extract a core meaning of the term “resource control” .<sup>16</sup>

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

*It is regrettable that those who wanted to cause confusion sometimes use resource control and derivation interchangeably. The distinction between resource control and derivation is very important. Derivation simply posits that if any mineral in any state is exploited and it yields revenue then certain percentage of that revenue shall be retained (given back) to that state on the principle of derivation while the rest will accrue to the federation account to be enjoyed by all the federating units.<sup>17</sup>*

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

*The call for the abrogation of the Land Use Act and other legislative instruments like the Petroleum Act, 1969 which made it possible for the federal government to control resources of people without allowing them access to the resources and revenue derived there-from.<sup>18</sup>*

According to a communiqué issued at the end of a meeting of the 17 southern states governors in a summit they held in Benin City on 27<sup>th</sup> March, 2001, resource control was defined as:

*The practice of true federalism and natural law in which the federating units express the rights to primarily control the natural resources within their borders and make agreed contribution towards the maintenance of common services of the government of the center.<sup>19</sup>*

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

*Within the context of the current contest between some states and the federal government of Nigeria, (demand for) resource control by states signifies the political legal authority by states to manage natural resources within their territories, in terms of defining the manner and mode of exploitation as well as utilization of proceeds accruing thereto.<sup>20</sup>*

Nwauche defines the term 'resource control' as a “claim on control, management and development of natural resources found in the territories of the nationalities/states in the Nigerian federation.<sup>21</sup> Given these facts, 'resource control' refers to the right to control,

<sup>15</sup>Darah, G. G. “Politics of Oil & Resource Control”. From Guardian, Monday April 9<sup>th</sup> 2001, pp. 19 – 20.

<sup>16</sup>Emeka, C. “The Legal & Regulatory Challenges of Resource Control”. Paper presented at the 2002 Nigerian Law Teacher Conference, LASU, Lagos, 23<sup>rd</sup> April, 2002, p.5.

<sup>17</sup>Attah, V. “Understanding Resource Control”.<http://www.dawodu.com/attah1.htm>. adopted from Datinone, D..”Resource Control: The Economic & Political Dimension”, April 12, 2001.

<sup>18</sup>Odebala, E. O. 'Resource Control' The Issues Involved”. In the Guardian of January 31<sup>st</sup>, 2001.

<sup>19</sup>Communiqué of summit of 17 southern states governor held at Benin City, Edo State on 27<sup>th</sup> March, 2001.

<sup>20</sup>Uya, O. E. & Okoro (eds). Local Government Grassroots Democracy in Nigeria. University of Calabar Press, 2002, p.622.

<sup>21</sup>Nwauche, S. S. “The Legal & Regulatory Challenges of Resource Control in Nigeria”. Paper presented at Annual Law Teachers Conference, LASU, Lagos, April 2002, at p.2.

determine and use natural resources within the respective territories of the states of the federation of Nigeria by the states in which these resources are based.<sup>22</sup>

### Revenue Derivation Principle

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

### Federalism

Like most concepts, there is no universally acceptable definition of the term federalism. As defined in *Black's Law Dictionary*,<sup>23</sup> federalism is the legal relationship and distribution of power between the national and regional governments within a federal system of government. *The New Webster's Dictionary of the English Language* defines the term "federalism" as simply "the federal principle of government."<sup>24</sup> Federalism is essentially a compromise solution in a multinational state between two types of self-determination - the determination provided by a national government which guarantees security for all in the nation-state on one hand and the self-determination of component groups to retain their beneficial identities on the other.<sup>25</sup> Federalism emanates from the desire of people to form a federal union without necessarily losing their identity.<sup>26</sup> Scholars of federalism have traced its origin and development to the United States of America for example K. C. Wheare argues that:

*The modern idea of what federal government is has been determined by the United States of America... Any definition of federal government which failed to include the United States would thereby be condemned as unread... For the federal principle has come to mean what it does, because the United States has come to be what it is.*<sup>27</sup>

Federalism implies a situation in which the central and regional governments constitutionally "are not subordinate to one another, but coordinate with each other."<sup>28</sup> As K. C. Wheare ingeniously coined it federalism is "unity in diversity".<sup>29</sup> Therefore in an essentially classical federal system, master-servant relationship does not exist since powers of operation are derivable directly from the constitution. The demand for the association in the first place is expected to be voluntary and that usually gives room for mutual respect. In the federal systems of America, Switzerland, Australia and Germany, such respect exists. Thus, federalism is a framework for the coexistence of duty and diversity. It realizes the differences of ethnicity, economy, religion, education and other factors but strives to build unity out of the differences.

<sup>22</sup>Mohammed, M. A. "Resource Control in Nigeria: Legal Issues and Related Problems" *Op. Cit.* pp. 213 – 215.

<sup>23</sup>Garner, B. A. *Black's Dictionary*. West Publishing Co. USA, 8<sup>th</sup> Edition, 2004, p.644.

<sup>24</sup>Lexicon hit. Publishers, New York, 1990, p.

<sup>25</sup>Afolayan, M. A. "The problem of Taxation and True Federalism in Nigeria. Ekiti State University, Ado-Ekiti, (2013) Vol. 5, p. 496.

<sup>26</sup>Isawa, Elaigwu.: *The Politics of Federalism in Nigeria*, Aha Publishing House, Ltd; 2005, at Pg. 1.

<sup>27</sup>Kenneth C. Wheare, *Federal Government*, Oxford University Press, New York, 1964 at Page 112.

<sup>28</sup>*Ibid*; 4<sup>th</sup> edition, 1963, p.10; see also Abisoye, O.; "Appraising Debates on True Federalism in Nigeria. So Kefun J.A. (ed) *Current Issues in Nigerian Law*. Vol. 4 NOUN, Lagos, 2014, p.263.

<sup>29</sup>Kolawole, D., "Nigerian in Search of True Federalism" [www.eksu.edu.ng](http://www.eksu.edu.ng). accessed on 26/09/2014

According to Professor Nwabueze,<sup>30</sup> federalism is an arrangement whereby powers of government within a country are shared between a national, country-wide government and a number of regionalized governments in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs and with an authority in some matters exclusive of all others. He went further to state that federalism is thus essentially an arrangement between governments, a constitutional device by which powers within a country are shared among two tiers of government; rather than among geographical entities comprising different people. According to him, six different principles are involved in this definition as follows:<sup>31</sup>

1. Separateness and independence of each government.
2. Mutual non-interference or intergovernmental immunities.
3. The question of equality as between the regional governments
4. Number of regional governments between whom a federal arrangement can meaningfully exist
5. Techniques for the division of powers; and
6. A supreme constitution.

Contributing to this scholarship, it is proper at this point to look at the judicial pronouncement on the concept of our federalism. In the Nigerian case of *A. G. Abia State & Ors v. A. G. Federation & 32 Ors*<sup>32</sup>, the Supreme Court made elaborate decisions on the concept when said:

*Federalism, as a legal and political concept, generally connotes an association of states; formed for certain common purposes, but the states retain a large measure of their original independence or autonomy. It is the coordinate relationship and distribution of power between the individual states and the national government, which is at the centre. Federalism, as a viable concept of organizing a pluralistic society such as Nigeria, for governance, does not encourage so much concentration of power in the centre, which is the federal government. In federalism, the component states do not play the role of errand boys. The other extreme is also true and it is that they do not exercise sovereignty, which only belongs to the nation as a sovereign entity. States in a federation rather exercise the middle role, if I may say so, for lack of better expression of exercising legislative and fiscal autonomy as provided for in the constitution....*

The above dictum of the Supreme Court in our view summarizes the whole essence of federalism especially with specific reference to Nigerian version of the concept, with the attendant call for re-examination of our federalism. Unfortunately, in Nigeria, the misconception about federalism is to see it as a form of government in which the central government is superior to the other governments and therefore distributes national resources to others at its own whims and caprices. National resources are by rational thinking resources that are collectively produced, collectively owned and which should therefore be collectively utilized. Indeed, a state is federal to the extent that it is managing diversity because one of the attributes of federalism is the existence of diversity. The federal formula is therefore geared towards translating such diversities into unity.

---

<sup>30</sup>Nwabueze, B. O. *Federalism in Nigeria under the Presidential Constitution*, London, Sweet & Maxwell, 1983, p.1.

<sup>31</sup>*Ibid*, pp.1-22.

<sup>32</sup>(2006) 16 NWLR Part 1005 at 265; 1 CLC 94, Per Niki Tobi, JSC.

### **Fiscal Federalism**

Fiscal federalism generally as a concept connotes revenue generation in a federal system of government especially through taxes. Thus, while revenue points at all sources of income for the government including grants, loans, foreign aids, etc; from internal and foreign bodies, taxation is narrowed at the income generated by the government through the exercise of its taxing powers on its citizens and subjects. Taxation is thus one of the ways of generating revenue by a government.<sup>33</sup>

The allocation of functions to different tiers of government in any federal system has fiscal implications. This is due to the fact that the discharge of the assigned functions involves expenditures and revenue. Consequently in addition to specifying the division of powers of government, a federal system has to deal with the counterpart issues of fiscal relations amongst the various levels of government. There is the need to ensure fiscal balance so that each tier of government in the federation will have adequate resources to discharge its assigned functions. The stability and smooth running of federal set up depend to a large extent on how well it is able to deal with the problem of the financial relations between the compact units.<sup>34</sup>

### **Sovereignty**

According to the World Book Encyclopedia, the name 'sovereign' was first applied to Kings. Everyone in a kingdom was subject to the King. The King himself was usually "sovereign" which means "subject to no one". This idea remains today even though there are very few kings, as national states are considered subject to no one.<sup>35</sup> Encyclopedia Americana looks at the concept from political science angle and stated that it is the concept of the absolute and unlimited authority in a state, the power to which all persons and things are subject.<sup>36</sup> Wikipedia: the free Encyclopedia defines sovereignty as the exclusive right to exercise supreme authority over a geographic region, group of people, or oneself. Sovereignty over nation is generally vested in a government or other political agency, though there are cases where an individual holds it. The concept of sovereignty also pertains to a government possessing full control over its own affairs within a territorial or geographical area or limit.<sup>37</sup>

Under international law, the concept of sovereignty refers to the exercise of power by a state. Sovereignty in this extent may be either *de jure* or *de facto*. *De jure* sovereignty refers to the legal right to exercise power by a state while *de facto* sovereignty refers to the ability of state to exercise such power.<sup>38</sup>

### **Self-Determination**

According to the *New Webster's Dictionary of the English Language*,<sup>39</sup> self-determination is the right of a people to decide its own form of government or political status." Article 1 of both International Covenants on Human Rights provides that "all peoples have the right to self-determination." By virtue of that right, they freely pursue their economic, social and cultural development. Article 20 of the African Charter on Human and People's Right Sub(1) stipulates that:

<sup>33</sup>Afolayan, M. S. "The Problem of Taxation and True Federalism in Nigeria". Ekiti State University, Ado-Ekiti, Law Journal, 2013, Vol. 5, Page 498.

<sup>34</sup>See Mohammed, M. A. *Op.cit*, p. 56 citing Fajana, O.: "Three and-a-Half Decades of Fiscal Federalism in Nigeria". In Esigwu, J. L. & Akindele, R. A. eds. *Foundations of Nigerian Federalism*, Vol. 3 (1 GSR) 2001.

<sup>35</sup>See Mohammed, M.A. *Op.cit*.p.69 citing World Book Encyclopedia, Vol. 18 (World Book Inc) Chicago, 1988.

<sup>36</sup>Vol. 25 (Americana Corporation) Connecticut, 1978.

<sup>37</sup><http://en.wikipedia.org/wiki/w>.

<sup>38</sup>*Ibid*.

<sup>39</sup>International Edition Publishers and Group, New York, 1972, p.905.

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

Self-determination intertwines with development. So, good governance is a *sine qua non* for meaningful economic and social development.<sup>40</sup> Self-determination and democracy are intermingled as one is a means of realizing the other. There has to be self-determination in order to talk of democracy. Conversely, there has to be democracy in order to meaningfully exercise the right to self-determination.

### **Ownership**

Ownership connotes the totality of rights and powers that are capable of being exercised over a thing.<sup>41</sup> In other words, “the right to make physical use of a thing, the right to the income from it, in money, in kind or in services, and the power of management, including that of alienation.”<sup>42</sup> In other words, we may define ownership as “the right of enjoying or disposing of things in the most absolute manner”.

Ownership is a multi-referential word which does not lend itself to an apt or precise definition.<sup>43</sup> Ordinarily ownership is defined as “bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others.”<sup>44</sup> Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and heritable.<sup>45</sup>

The age long concept of ownership is expressed as a bundle of rights including rights to *Udendi* (use and enjoy), *Fruendi* (dispose or transfer) and *abutendi* (abuse, consume or destroy).<sup>46</sup> Undoubtedly, this age long concept does not carry along the political, social and economic development of the present era.<sup>47</sup> Jurists and scholars have not been able to come to terms with each other on the meaning of ownership in so far as it relates to real property. For example, Austine defined ownership as a right over a determinate thing, indefinite in point of user, unlimited in point of duration.<sup>48</sup> This implies absolute ownership which entails the right of free use, exclusive enjoyment, altering, disposing or destroying the thing owned. This obviously is the traditional view of the concept of ownership.

James observed that “the adjective 'absolute' is usually avoided because of various limitations which exist over the land holder's exercise of his dominating right”. The learned author preferred the expression 'maximal' although he conceded that 'absolute' is permissible if it is remembered that it denotes the greatest interest in land admitted by customary land tenure<sup>49</sup>.

Nevertheless, there is no absolute ownership under the land tenure in Nigeria. The Governor of each state holds the land in trust and administers same for the benefit of all citizens and likewise the Local Government chairmen.<sup>50</sup> The right of occupancy easement or any interest

<sup>40</sup> United Nations “The Realization of the Right to Development”, Global Consultation on the Right to Development as a Human Right, HR/PUB/91/2/1991 paras 80, 105, 151 and 161, cited in Thornberry, P; “The Democratic or internal aspect of self-determination with remarks on federalism”, in Tomuschat, C. (ed), *Modern Law of Self-Determination*, Dordrecht, MartinusNijhoff Publishers, 1993, p.101 at 103, (footnote 6); OAS CJI/Res 159 (LXXV-O/09, Supra, Preamble Para. 2.

<sup>41</sup>Nwabueze, B. O. *Nigerian Land Law*. Nwanife Publishers Limited, Enugu, 1982, p.7

<sup>42</sup>*Ibid*;

<sup>43</sup>Tobi, N; *Cases and Materials on Nigerian Land Law*. Abrochi international company limited, Lagos, Repr 1997, p.22

<sup>44</sup>Garner, B. A. *OP.Cit*, p.1138

<sup>45</sup>*Ibid*

<sup>46</sup>Ikpambese, M. A. *Nigerian Land Law, Principles, Practice and Procedure*. Oracle Business Limited, Makurdi, 2010, p.26.

<sup>47</sup>*ibid*

<sup>48</sup>Ikpambese, M. A. *Op.Cit*, p.27 quoting Austine J. on *Jurisprudence*, 7<sup>th</sup> edition (1940) p.214

<sup>49</sup>James, R. W. *Modern Land Law of Nigeria*, University of Ife Press, Ile-Ife, 1973, p.18

<sup>50</sup>Section 1 of the Land Use Act Cap L5 LFN, 2004



to be granted under the Act must be for a definite term<sup>51</sup>. Furthermore, no one under the Land Use Act can dispose of land in any State of Nigeria without the Governor's consent first sought and obtained<sup>52</sup>.

Once again, one's right of occupancy could be revoked by the Governor and his continued use ceased<sup>53</sup>. The rights may also be limited by Town and Country Planning Laws<sup>54</sup>. The foregoing are some of the limitations which affects absolute ownership of land within the Nigerian context. Government and the governor of a state respectively may give consent to disposition thereof.

Even in English Common Law the allodial title which can be equated with the absolute ownership is vested in the crown<sup>55</sup>. Elegido<sup>56</sup> pointed out that Honore gave incidents of ownership found in developed systems but all suffer same limitations. Such legal incidents of ownership are: right to possess, right to use, to manage and to receive the income, right to capital, right to security, right to transmit, absence of term, duty to prevent harm, liability to execution, residuary character, for example on the termination of a lease the rights of the lessee revert to the owner.

Customarily, ownership implies that the owner's title is superior to any other right which may exist in land. There is limited ownership where there are joint owners, life tenancy and or property is charged to an easement. Thus custom and interest state have limited the concept of ownership<sup>57</sup>. In fact Yakubu<sup>58</sup> has aptly summed up the objective of the limitations of the bundle of rights as follows:

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

Nwabueze<sup>59</sup> explained the concept of ownership thus:

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

Ownership connotes the totality of or the bundle of the rights of the owner over and above every other person on a thing<sup>60</sup>. It connotes a complete and total right over a property. The owner of a property is not subject to the right of another person. Because he is the owner, he has the full and final rights of alienation or disposition of the property<sup>61</sup>. The owner has the inalienable right to sell the property at any price, even at a giveaway price, he can even give it

---

<sup>51</sup>Section 8, *Ibid*

<sup>52</sup>Sections 21 and 22 *Ibid*.

<sup>53</sup>Section 28 of the Land Use Act (*OP.Cit*)

<sup>54</sup>Sections 13 and 15 Town and country planning law.Cap 165 Benue State, SS 10 and 23, cap. T. 3 laws of Cross River State, 2004

<sup>55</sup>Ikpambese, M. A. *Op. Cit*, p.28

<sup>56</sup>Elegido, J. M.; *Jurisprudence*, spectrum books limited, Ibadan, Repr. 2006, pp.209-211

<sup>57</sup>Ikpambese, M. A. *OP. Cit*, p.28

<sup>58</sup>Yakubu, M. G., *Land Law in Nigeria*. London and Basingstoke; Macmillan Publishers, 1985, p.55.

<sup>59</sup>Nwabueze, B. O. *Op. Cit*, pp. 7-8

<sup>60</sup>Tobi, N; *Op. Cit*, pp. 24-25

<sup>61</sup>*Ibid*

out gratis, that is, for no consideration<sup>62</sup>. To sum, Tobi<sup>63</sup> has succinctly explained this concept of ownership thus;

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

The meaning of ownership in respect of land, under customary law was considered in the case of *Chief Nsirem & Anor V Nwakerendu & Anor*<sup>64</sup>. This case involves dispute as to ownership of land between the people of Andoni referred to as the appellant and the people of Opobo, the respondents herein on record. The appeal depended on the interpretation of an arbitration award by a District Officer in 1939 and in particular, on the meaning placed on the word ownership as it relates to land. It was held, following *Emmil & Ors V Tuakyi & Anor*<sup>65</sup>, that the word owner is loosely used in West Africa and in the present case means that the respondents have a right of Occupancy in accordance with the relevant native law and custom concerned; together with other right of Usufruct (possession in the award). The decision in the cases of *Chief Nsirem & Anor V Nwakerendu & Anor*<sup>66</sup> and *Emmil & Ors V Tuakyi & Anor*<sup>67</sup> disclose that the word 'ownership' is same in Nigeria, West Africa and even entire African land holding, of course subject to limitations earlier pointed out.

In our customary land law the word 'ownership' and title is employed interchangeably. Title means a right to ownership. It can be original or derivative. For instance, where a person does not take from any predecessor, then, title would be said to be original. This is noticeable when one first settles on vacant land and becomes entitled to it. But where title is inherited from a predecessor it is term derivative<sup>68</sup>.

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

### **Legal Perspective of Ownership and Control of Resources in Nigeria**

In Nigeria, the subject “natural” or “mineral resources” is within the legislative competence of

<sup>62</sup> *Ibid*

<sup>63</sup> *Ibid*; see further *Abraham V. Olorunfunmi (1990) INWLR (pt 165) 53*

<sup>64</sup> (1955) 15 WACA 76

<sup>65</sup> (1952) 13 WACA 10

<sup>66</sup> (*supra*)

<sup>67</sup> (*supra*)

<sup>68</sup> Ikpambese, M. A. Op. Cit, p.29

the federal legislature, standing on the sure foundation of section 44(3) of the 1999 constitution which provides that:

*The entire property in and control of the minerals, mineral oils, and natural gas in under or upon any land in Nigeria, or in under or upon the territorial waters or the exclusive economic zone of Nigeria shall rest in the government of the federal and shall be managed in such a manner as may be prescribed by the National Assembly.*

Thus on the legal regime of resource control in Nigeria the 1999 constitution leaves no one in doubt as to which level of government has the property in, and control over natural resources within the Nigerian federalism. To further guarantee the exclusive exercise of this power by the federal government, the constitution of the federal republic of Nigeria clearly enumerates under the legislative list, “mines, and minerals, including oil fields, oil mining, geological surveys and natural gas”.<sup>69</sup> The various legislation has reflected this trend. The first of such was the colonial mineral oils ordinance of 1914, which was later amended both in 1925 and 1950. The ordinance provided that the entire property in and control of all minerals and mineral oils was vested in the then colony. The 1946 minerals Act also provided to the same effect that the entire property in and control of all minerals and mineral oils, in, under or upon any land in Nigeria and of all rivers, streams and water courses throughout Nigeria is and shall be vested in the state. Thus, from the Republican constitution up to the 1999 constitution mines and minerals including oil fields, oil mining, geological surveys and natural gas have been listed as item on exclusive legislative list of the federal government<sup>70</sup>.

The federal legislature has since exercised its power under the above provisions in a number of legislations which form the other legal basis for the current state of resource control in Nigeria. These include the Petroleum Decree of 1969.<sup>71</sup> This law (Petroleum Act) vests the entire ownership and control of all petroleum in, under or upon any lands in Nigeria, including under the territorial waters, the continental shelf and the exclusive economic zone, in the Nigerian state.<sup>72</sup> Lands in Nigeria in or upon which petroleum may be are unqualified and so include all kinds, while the Territorial Waters of Nigeria have been defined for all purposes by the Territorial Waters Act<sup>73</sup> to include:

*“every part of the open sea within twelve nautical miles of the coast of Nigeria (measured from low watermark) or of the seaward limits of inland water.”*

It is important to note that the only area left, the internal waterways, has again been clearly declared to be federal navigable waterways under the management, directive and control of the National Inland Waterways Authority established by the federal government, through the National Inland Waterways Authority Decree<sup>74</sup>. Thus all lands and waters within or around the territory of Nigeria are effectively covered and secured to the federal government's exclusive rights or power of control and management, by the combined effect of the provisions of the Land Use Act, Territorial Waters Act, Navigable Waterways Declaration Act<sup>75</sup> and the National Inland Waterways Authority Decree.<sup>76</sup>

<sup>69</sup>Item 37 on Part 1 of the Second Schedule to the 1999 Constitution. See also Nwabueze, B. O. “Federalism under the Presidential Constitution”, 1985, p.39.

<sup>70</sup>See Item 39 of the Exclusive Legislative List Part 1 Second Schedule to the Constitution, 1999.

<sup>71</sup>Decree No. 51 of 1969. Now Cap 350 in Laws of the Federation of Nigeria (LFN) 1990 as amended by Decree No. 23 of 1996 and Decree No. 22 of 1998. See also Ayodele-Akaakar, F. O. “Oil and gas – The Issue of Ownership and the Nigerian Situation FJRSB. Vol. 2 1997.

<sup>72</sup>See S.1 (1) and (2) Exclusive Economic Zone Act Cap 192 LFN 1990 as amended by Decree NO. 1 of 1993

<sup>73</sup>Cap. 428 LFN 1990. See also S.18 of the Interpretations Act Cap. 192 LFN 1990 as amended by Decree No. 1 of 1993

<sup>74</sup>Decree No 13 of 1997. See also F. O. Akaar, “Legal and Institutional Framework”. Vol. 39 Phase 11, Niger Delta Environment Survey (NDES) Final Report.

<sup>75</sup>Cap 287 LFN 1990

<sup>76</sup>*Op. Cit*

The offshore resources situate at the continental shelf were again coveted to the Federal Government in 1971 by the instrument of the Offshore Oil Revenue Decree.<sup>77</sup> In addition to the above legal provisions, the control and ownership of mineral resources, were conclusively determined by the enactment in 1978 of the land Use Decree which radically and colonially expropriated all lands belonging to Nigerians and vested same in the government of Nigeria to be managed by the governors of the respective states in the interest of the nation. According to Section 1 of the Act:

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

The provisions of the lands (vesting) Decree of 1993 which vested the title of all lands within 100 metres of the 1967 shoreline and all land reclaimed near the Lagoon, sea or ocean in or bordering Nigeria, in the federal government of Nigeria<sup>78</sup> seems to strengthen the provisions of section 1 of the Land Use Act of 1978.

The legal effect of these land laws is that beyond control of the resources in the land, the government took over the entire ownership in land deeming and certifying individual ownership to the rights to use; thus making them mere licensees<sup>79</sup> and holding the lands at the pleasure of the government<sup>80</sup>. Undoubtedly, when the Land Use Laws are read together with the Petroleum Act, the constitution and other relevant statutes, the effect is clear, unambiguous and final. All resources in and around, Nigeria does not only belong to the federal government, but the control and even the land on or in which they are found is also so owned. The right of ownership and control of natural resources in Nigerian law was for the benefit of doubts, restated in the last days of the last military government in Nigeria. Expressed through the Mineral and Mining Decree of 1999,<sup>81</sup> the law provides that:

*The entire property in and control of all minerals, in, under or upon any lands in Nigeria, its contiguous continental shelf and of all rivers, streams and water courses throughout Nigeria, any area covered by territorial waters or constituency, the exclusive economic zone is and shall be vested in the government of the federation for and on behalf of the people of Nigeria.*<sup>82</sup>

The section further declares that the government of the federation shall acquire in accordance with the Land Use Act, all lands in which minerals have been found in commercial quantities. The subsection further empowers the minister to; with the approval of the federal executive council designate such lands as security lands.<sup>83</sup>

The Supreme Court has most recently confirmed the validity of federal control of natural resources in Nigeria's continental shelf, when it held in the recent case of *AG Federation v. AG of Abia State and 35 Others*,<sup>84</sup> that resources in the continental shelf vests in the federal government. The facts of the case are that there arose a dispute between the federal government on the one

---

<sup>77</sup>Decree No. 9 of 1971

<sup>78</sup>S.1(1) of the Decree

<sup>79</sup>Fekumoh, J.F. "Commercial Interests in Land: Past, Present and Future, in Proceedings of 26<sup>th</sup> Annual Conference of Law Teachers, p.86 at p.97.

<sup>80</sup>S.28 and the entire part v of the Land Use Act of 1978; see Wokocho, R. A. Resource Control in Nigeria: The Legal and Regulatory Challenges and Implications. Civinics Publishers (Nig) 2005, p.20.

<sup>81</sup>Decree No. 34 of 1999

<sup>82</sup>S.1(1) of the Decree.

<sup>83</sup>Ibid. sub-section (2)

<sup>84</sup>(2002)10SCNQLR163

hand and the eight littoral states of Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers state on the other hand as to the Southern (or seaward) boundary of each of these states. The federal government contended that the southern (or seaward) boundary of each of these states is the low-water mark of the land surface of such state or the seaward limit of inland waters within the state as the case so requires. The federal government, therefore, maintains that natural resources located within the continental shelf of Nigeria are not derivable from any state of the federation.

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

*"A determination of the seaward boundary of a littoral states within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the federation account directly from any natural resources derived from that state pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999."*

All the states in the Federation were joined as defendants in the action. The parties, except the 29<sup>th</sup> and 30<sup>th</sup> Defendants, that is, Osun and Oyo states filed and exchanged their respective pleadings. Some of the defendants raised counter-claims against the Plaintiff. The pleadings of the Plaintiff and the eight littoral defendant states reflected their respective viewpoints in the dispute. Some of the defendants raised in their pleadings, a number of objections such as there being no dispute, misjoinder, lack of jurisdiction etc. all these objections were taken at an earlier hearing and disposed of.<sup>85</sup>

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

*Plaintiffs case succeeds and I hereby determine and declare that the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, is the low water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State.*<sup>86</sup>

The Supreme Court ruling is of course right. The Supreme Court has read the law properly, stating the law as it is. It must be realized that the responsibility of the Court is juridical and not jurisprudential. The Court is to interpret the meaning of the language of the law as presently couched and not to rewrite or amend them or declare them wrong choices of words. It is not to declare whether the law as it is, at the moment is proper, just and equitable or not but to state what they provide and at best whether they have been validly made<sup>87</sup> by competent legislatures.<sup>88</sup> To expect otherwise from the court is to be sentimental and not juridical. The

<sup>85</sup>See *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors*(2001) 11 NWLR689.

<sup>86</sup>This conclusion effectively extended to the Federal Government, resources that should really belong to the states in a true federation.

<sup>87</sup>See for example *AG Bendel State v. AG Federation and Others* (1982) 3 NCLR 1.

<sup>88</sup>*AG Abia State and Others v. AG Federation* (2002), unreported decision of the Supreme Court of Nigeria.

court has therefore done its work. It is for “we the people” of the federation to activate the political process towards rewriting the law and steering our nation towards the paths of true federalism.

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

### **The Impact of Central Control of Resources on the Nigerian States**

The principle of federalism emphasizes the autonomy of component units and the maintenance of coordinate status among these units. The economic viability of a component state in federalism is very crucial to the sustainability of such state, if it must maintain its required autonomy.<sup>89</sup> Presently in Nigeria with 36 states and a federal capital territory, all the states are predominantly funded from the federation account. Undoubtedly, central funding of states as such has never adequately catered for the needs and developmental objectives of these sub-federal units:

*If the truth must be told, ours is a glorified unitarism masquerading as federalism. Situations where the component unit – the states, go cap-in-hand to the central government (called federal government) for assistance cannot by any stretch of imagination qualify as a federation.*

No doubt, the upsurge in the number of states in Nigeria posed basic administrative and financial problems for the states. The states are so weak that they cannot muster enough strength to mobilize resources internally. The overall effect of this is that Nigeria is practicing centralized federalism since 1966 when the military first took over the throne of power, there was indication that the country moved towards unitary system of government than to a federal system. Due to the command structure of the military and the nature of their posting everything in the country was centralized. Without reservation, the impact of the present position of Nigerian law on resource control is astounding and highly under developmental.<sup>90</sup> These impacts may be summarized as follows:

**Overwhelmed government** – By centralizing resource control, the government of the federation of Nigeria has assigned to itself too many functions which in federalism are usually the responsibility of the unit governments of the federation.

**Political instability** –The present state of resource control in Nigeria has led to serious political instability in the country. It has been behind every military coup as the “militaricians” cite corruption as the sin of the overthrown civilian governments, and the civilians cite treasury looting as the sole objective and consequence of military rule. It is common knowledge that both claims are rights and both claimants guilty of the same crime – national plundering. The victim no doubt, is the nation and its people who are both denied the benefit of independence and the effective exercise of the right to self-determination, development and democratic leadership<sup>91</sup>

<sup>89</sup> Adolayan, M. S. “The Problem of Taxation and True Federalism in Nigeria” Ekiti State University Law Journal (2013) Vol. 5, Page 503.

<sup>90</sup> Wokocho, R. A. *Op.cit*, p.28.

<sup>91</sup> *Ibid*.P.33.

**Anarchy** – The impact of federal control of resources is still evident with the legislative, executive and even subsidiary governments neck deep in the “dance of death” with corruption and insensitivity to national issues. This invariably leads to anarchy in the system especially considering the looming election crises since 2007 till date.

**Corruption** – The centralization of resource control in Nigeria has made the central government too big, too powerful and too attractive. The violent and shameless greed, with which federal offices are pursued in Nigeria, is a direct consequence of this factor. People see political offices or appointments as a do or die affair. Imagine the jumbo take home in millions of naira of our federal legislators; too much wealth in the center has turned it to a gold mine where gold diggers aspire to go and share national cake and to appropriate to themselves as much of it, as they can to the detriment of the ordinary citizens.

**Economic alienation of citizens** – The federal government in its quest to control the natural resources, over the years, has kept both state governments and citizens away from the main sector of the mono-sectoral economy. Rather the federal government prefers foreign investors who provide ready cash to service the insatiable desires of the beneficiaries of every government in power.

**Neo-colonialism** – The present state of resource control in Nigeria has promoted external dependency and foreign control of the Nigerian economy. Oil is the mainstay of the Nigerian economy and the oil industry or market is being manipulated or controlled by foreigners who constantly affect any government in Nigeria. They can create socio-political problems, at will, and procure the overthrow of governments at will. Imagine for instance, the influence of IMF and Brettonwoods Institutions on Nigerian governments.

**Ethnic Distrust** – The centralization of resource control has left local resources and its management at the hands of the federal government. For a highly ethnic nation like Nigeria, the government officials and company staffs are seen feeding fat on the wealth of the local host who increasingly gets pushed further below the power line and whose environment continues to degenerate with exploration activities. This is the genesis of the Niger-Delta crises among many other crises now engulfing the country. There is so much ethnic chauvinism, distrust, lack of faith in the federation and thus threatened the very fabrics of the nation's cohesion and existence.

**Environmental Degradation** – The vesting of ownership and control rights in the federal government of Nigeria has endangered severe degradation of the environment in the parts of the country where oil and gas exploration activities occur. The effect of gas flaring on man, flora and fauna are too well known suffice it to say that it devastates the entire environment and subjects the people of the host communities to install mental decimation.<sup>92</sup>

### **Comparative Analysis of Resource Control in Nigeria Vis-À-Vis other Jurisdictions**

The various countries have different means of regulating ownership and control of oil. Each country has its peculiarities depending on its background and experiences as it relates to oil. We shall consider the three ways mineral resources are being control in other jurisdictions.

---

<sup>92</sup>Wokocha, R. A. “Development Rights Concerns in the Niger-Delta Region of Nigeria”. In Development Right Issues in the Niger-Delta 2002 Jite Books, p.23.

These are:

- i. Public or government control in absolutism
- ii. Private or individual control and
- iii. Joint control or existence of public and private rights of ownership and control.

**Public Control of Resources** – Public control of resources occurs where the ownership and or right of control vests in a sovereign state acting through its government. The constitution or statues of most countries provides for this vesting rights in the government. Countries that have adopted this approach of resource control are Algeria, Angola, Equatorial Guinea, Ghana and Nigeria. Most acquisition of natural resources follows the pattern of Algerian constitution which provides that public property is an asset of the national collectivity. It encompasses the subsoil, the mines and quarries, the source of national energy, the national maritime zone, the waters and the forest.<sup>93</sup> The Angolan constitution provides a classical example. According to Article 12 thereof:

*All natural resources in the soil and subsoil, in the territorial waters, on the continental shelf and in the airspace shall be the property of the state.*<sup>94</sup>

Among the developing countries, from the South America to Africa and Asia, there are various laws and policies in regards to ownership and control of petroleum and natural gas. In Venezuela, petroleum dominates the economy. The Venezuelan mining law of December 29, 1944, as amended, declares all mines, seams, beds or mineral deposits to be public utility and under that country's constitution they are only to be exploited under a concession granted by national executive power. Thus, any international oil company or a private company that seeks to carry out any mining operation in that country must first enter into agreement with the government of the country which holds all executive authority on the mineral resources in the country.

The Zambian Mines and Minerals Act No. 32 of 1976, vests the property in all minerals in the state for the common benefit of the people notwithstanding any right of ownership or otherwise which any person may possess in and to the oil or land under which minerals are found or situated. Similarly, the Mines and Mineral Act of Botswana vests the ownership in all minerals including petroleum in the state for the common benefit of the people in spite of any right of ownership or otherwise which any person may possess in and to the oil or land under which mineralis found.

Indonesia, the government enacted two major laws in 1999 – namely the law of regional autonomy and the law on inter-governmental fiscal relations. The first law grants extensive authority to 26 provinces in all matters including small-scale mining except defense, foreign, judicial, monetary and religious affairs. The second law, to be enforced by the ministry of finance, provides a specific share of revenues from oil, gas and mining development to mineral resource-rich provinces.

In Saudi Arabia, the oil industry is the most important sector of the Saudi economy. Saudi Arabia's proven petroleum reserves amount to one-fourth of the world total. It is the largest exporter of petroleum in the world. State ownership of oil is recognised in this country with the royal government holding the mineral in trust for the entire citizens of the country. The state owned Oil Company engages in joint ventures with foreign partners for the production of petroleum.

---

<sup>93</sup>Wokocha, R. A.: *Op.Cit.* pp. 35 – 36.

<sup>94</sup>See also Articles 27 and 28 of the Equatorial Guinean Constitution. See similarly the Constitution of Ghana S. 257(6) of the 1992. Note in these countries individual ownership of land precludes mineral in them



**Private Control of Resources** – Private control of resources occurs where the right to own and control the exploitation of resources in property vests in the persons who own the property in which they are found. African countries in the group include Botswana, Namibia, Gabon, Burkina Faso and Benin Republic. For instance the Namibian constitution provides that the state or any competent organ may expropriate property in public interest only subject to the payment of Just Compensation according to Law<sup>95</sup> and vests natural mineral resources in the state only where it occurs on a land not already otherwise validly owned by a person.<sup>96</sup>

**Mixed Control of Resources** – Control in a jurisdiction is mixed, where the legal system permits both public and private ownership. The state in this scenario can own and control natural resources especially on government-owned lands, while other legal persons such as individuals' corporate and incorporate bodies and units of the government enjoy the rights of resources ownership and control. Example of such countries includes United States of America, Australia, Canada and Northern Ireland.

The United States of America is a classical illustration where mineral resources ownership vests in private and public forms respectively. There has been private ownership of petroleum in the country, since the inception of the industry ownership in the United States of America is conceptually different in another major respect. In certain jurisdictions ownership of oil in situ is not recognised and ownership is said to occur only when the oil has been produced and reduced to possession. It is important to note that individual coastal states have some level of authority on the mineral oil that is found in such a state. Therefore the federal government does not hold absolute ownership as is the situation in some countries but holds the right jointly with the state government.

In the case of *United States vs. Louisiana* decided in May 1960 the Supreme Court of United States held that coastal states can have joint ownership of oil with the federal government. In Australia, where mineral resources occur on public lands, they are owned and controlled by public authorities, while those that occur on or in private lands are equally so privately owned by such land owners. Private ownership on the other hand, results from the common law rule of “*Quic quid, plantatur solo solocedit*” whereby he who owns a land owns all that is above and beneath it. Such private rights are often enjoyed in full, complete with right to veto development while the law however provides for the public acquisition of such lands for development of the resources, subject to payment of adequate compensation.<sup>97</sup>

Petroleum in Mexico is extracted, processed and sold by Petroles Mexicanos (Pemex), a government-owned company. Although most mining firms that the Mexican government once owned have been privatized or sold to private investors, the petroleum industry remains largely in government hands. In Canada, individual federating state ownership of oil is practiced in Canada. This has left each of the provinces that make up the country to develop its own exploration plans that are pursued locally and set to drive the national economy.

In Great Britain, it was the national government of the early thirties which settled the problem of ownership when the Petroleum (Production) Act of 1934 vested in the crown the property in all petroleum *in situ* in Great Britain, together with the exclusive right of searching and drilling for it. The law has remained so since then.

---

<sup>95</sup> Article 16(2)

<sup>96</sup> Article 100

<sup>97</sup> Wokocha, R. A.: *Op.cit.* p.38.

It is important to note that the vesting of ownership as shown above among other jurisdictions must not be taken as justifying the manner of control in Nigeria. There is a wide gulf of difference between the similarity of law on ownership and its implementation.<sup>98</sup> The US situation for instance, does not leave actual exploitation in US federal corporations as in Nigeria; neither does it preclude its people from participating effectively in all sectors of the industry, unlike the Nigerian situation where federal control effectively excluded indigenous participation in preference of exclusive foreign control.<sup>99</sup>

Undoubtedly, there is no country specifically that is practicing one theory or another as it is not so stated in their laws on petroleum but a thorough analysis of the provisions of these several laws will indicate the type of theory that is dominant in a particular legislation. One thing that is common to all is that ownership is vested in the state in order to harness the resources for the benefit of the entire country. The United States of America is therefore a manifest example greatly recommended to our nation.

### **True Federalism Versus Effective Resource Control in Nigerian Law**

The principle of federalism emphasizes the autonomy of component units and the maintenance of coordinate status among these units. The various tiers of government ought to share political power as expressly spelt out in the constitution. Unfortunately, the current foundation and principles on which our constitution is operated over the years particularly since the advent of democracy has not in any way practiced a true federalism in its practical sense.<sup>100</sup> The Nigerian federation is fundamentally defective, bedeviled by a complex assortment of Acquired Federative Deficiency Syndrome (AFDS) contracted from repeated bouts of infliction with leadership and legislations acutely/suffering from Acquired Inheritance Defence Syndrome (AIDS).<sup>101</sup>

Communicating on the nature of Nigeria federation which he called “a deformed federation”, Dare Babarinsa, one of the fiery journalists in Nigeria in his book “House of War” at pages 227-278 had this to say:

*Nigeria is a deformed federation. The components nationalities have few logical bases for relating to one another. They usually feel uneasy about the nation. A federation is supposed to be state where the component nationalities have a measure of control over their destinies. Component units are supposed to be autonomous and economically viable units. They are supposed to have linguistics affinity and cultural cohesion. But since the coming of the military in 1966, they have transformed the federation into one of very strong centre and very weak states. Now the federal government has become a monster, terrorizing the states.*<sup>102</sup>

Undoubtedly, in Nigeria we started with federalism on the foundation of people-centred political system, but long period of military intervention led to the distortion of our political system and public sector governance.<sup>103</sup> According to Professor Kolawole, the Nigerian variant of federalism does not depict true federalism. Federalism unlike economics or politics is not developmental. It is not a product of a gradual growth. It is a form of government. Therefore, a nation chooses either to be federal or not. That we have variants of federalism but in concept and practice it must still remain federal. The concept of true federalism should imply the functionality of the institutions and structures of states for the attainment of set policy of objectives. In this respect, true federalism implies functional federalism.<sup>104</sup>

<sup>98</sup>Ibid, p.40.

<sup>99</sup>Ibid, pp. 40-41

<sup>100</sup>OziegbeOkoeki, “Quest for true federalism in Nigeria”. www.nigerianlawguru.com. Accessed on 26/09/2014.

<sup>101</sup>Wokocho, R. A. Op.Cit. p.50

<sup>102</sup>Afolayan, M. S. Op.Cit. p.505 quoting Chief Afebabalola, “The Nation or Country called Nigeria”, a Lecture delivered at the Law Week of the Law Society (Faculty of Law, University of Ado-Ekiti on Friday, 1<sup>st</sup> July, 2005 at pg. 26.

<sup>103</sup>Abisoye, Omotayo, Op.Cit.p.282.

<sup>104</sup>Kolawole, D. “Nigeria in Search of True Federalism”. www.eksu.edu.ng. accessed on 26/09/2014.

Nigeria is yet to operate a true federal system of government that will bring about peaceful co-existence among the various ethnic groups that make up states in Nigeria with persistent call for the realization of true federalism by eminent Nigerians like Prof. Itse Sagay, Femi Falana, Tam David West, Chief Bisi Akande and a host of others, the President Jonathan led administration heeded this call and conveyed a national conference. The national conference was inaugurated on 17<sup>th</sup> March, 2014 to among other things make recommendations that will advance our togetherness on issues ranging from – form of government, structures of government, devolution of powers, revenue sharing, resource control, state and local government creation, boundary adjustment, state police and fiscal federalism to local government elections, indigeneship, gender equality and children's rights.

The resolution of the National Conference on the need for Nigeria to practice true federalism has been described as a reliable solution to the disagreements and agitations that have faced the nation in terms of revenue sharing formula.<sup>105</sup> One of the burning issues at the conference was on the revenue sharing formula. The director of public affairs in the Edo State government, Greg Ogiogwa, made the observation on 29<sup>th</sup> July, 2014 while giving his opinion on the achievements recorded by the national conference Mr. Ogiogwa pointed out that the ability of the centre to control all the resources of Nigeria had been the cause of the agitations and a shift from the initial agreement by the federating units – the East, West and North – to come together to form a federation. In his words, “the component units of Nigeria, the north, east and west agreed to come together based on laid down agreement that there would be certain autonomy of the federating units but we are at the moment, further back from where it was in 1960.

The problems of Nigeria lie on the issue of devolution of power – true federalism and that of resources allocation and the conference will not make very much sense if it fails to resolve these issues. The government should democratize the economy by letting the people manage the resources in their land and collect a specified amount of money from them. The federal government has to step away from the management of the resources and the national conference has the opportunity to put this in their resolution, he said.<sup>106</sup> The national conference on 26<sup>th</sup> June, 2014 accepted the recommendation of its committee on politics and governance to return Nigeria to a true federal structure with the states as federating units. The conference also adopted another recommendation which will allow the states to create local government as they deem necessary. The conference resolved that minority groups that wish to exist as separate states and meet the criteria for statecreation should be allowed to do so under the instrumentality of the relevant laws and procedures as part of their right to internal self-determination. It restated the unconditional rights and freedom of every and any other ethnic nationality that considers itself as unjustly subjected to real and perceived injustice and marginalization to join their kith and kin through the instrumentality of relevant laws.<sup>107</sup>

The conference which kicks off March, 2014 under President Goodluck Jonathan's administration lasted for a period of about five months after submitting its report to the former president. It is our fervent hope that the recommendations of the conference would see the light of the day under President Mohammadu Buhari. But it seems that will be an uphill task if not mere wishful thinking.

<sup>105</sup> See the Resource Control Case of *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors* (No. 2) (2002) 6 NWLR (Pt 674) 542. Where the provisions of section 162 of the 1999 Constitution as amended was contested in Supreme Court of Nigeria.

<sup>106</sup> “True Federalism will take away Nigerians agitations – Ogiogwua”, By Channels Television, [www.channelstv.com](http://www.channelstv.com). Accessed on 26/09/2014

<sup>107</sup> Onwete, F. National Conference Adopts True Federalism for Nigeria”. [www.premiumtimesng.com](http://www.premiumtimesng.com). Accessed on 26/09/2014

## **Findings**

The country (Nigeria) is still being faced with the problem of national integration. There is eminent danger of disintegration in this country. In some quarters there is the demand for a return to regionalism and the 1960-65 concept of federalism including the allocation of 50 – 100% of petroleum revenue to the oil producing areas in new revenue sharing formula. The crux of the issue in this country is whether we really want to live together in peace and harmony? Are we ready to forego some of our rights and be our brother's keeper? President Goodluck Jonathan insistence that there are no go areas in the mandate given to the recently concluded national conference shows that we have a long way to go. For instance, the issue of divisibility of the country, can we continue in this forced and unholy marriage called “Nigeria” without our consent? We should tow the path of other developed countries of the world like Ukraine and Scotland who recently decided their fate whether or not they want to live together through a referendum. Crimea formerly in Ukraine voted to join Russia (though still being disputed) while Scotland voted to remain in the United Kingdom thereby rejecting independence.

The bane of Nigerian problem is that of ethnicity. The truth is that we are not tolerant of other ethnic nationalities that do not share the same cultural and religious beliefs and as such we cannot move this country forward in the spirit of true federalism.

## **Conclusion**

Undoubtedly, the present position of Nigerian law on resource control is derived from colonial centralist policies of pulling all the wealth in the colony to the center for onward transportation to the home (imperial) country. Nigerian federalism has failed and our major task now is how to make it responsive and responsible to the aspirations and goal-value of the federating units.

The concept of true federalism should imply the functionality of the institutions and structures of states for the attainment of set policy objectives. Without reservation, true federalism implies functional federalism. The federal formula is attainable if the recourse to self- help is substituted with a desire for conciliation. But in Nigeria this appears more of a mirage than reality. The legislative intervention, initiative in the form of the (Allocation of Revenue of the principle of Derivation) Act, 2004 was a step in the right direction to rectify an obviously flawed decision of the Supreme Court. It must be pointed out on strong terms that the demarcation of the relevant maritime zones, for the purposes of the derivation formula, cannot be arbitrary, but must be based on established principles of public international law. The derivation principle should be extended to the continental shelf of Nigeria as defined by article 76 of the 1982 law of the sea convention, a treaty that has been ratified by Nigeria. A resort to 200 meters water depth isobaths is a reversion to the depth and exploitability definition of the 1958 continental shelf convention which appears anachronistic, especially in the light of Nigeria's ratification of the 1982 convention.

## **Recommendations**

1. There should be strict adherence to fiscal federalism if at all we are to consider the factors of true federalism by ensuring fiscal equality of states. The centre (federal government) should be made less attractive by reducing the percentage of revenue to the federal government and empowering the states more financially. The federal government cannot and should not assume a posture of “a big brother” who distributes largesse on the basis of good behavior.

2. True federalism through re-structuring. It is believed that the only path to the survival of Nigeria as an entity is true federalism involving fundamental restructuring and decentralization of power. The concept of national conference being canvassed is a national avenue where all the accredited representatives from all the ethnic and interest groups of the existing six geo-political zones will meet to fashion out the required principles of federalism suitable for the Nigerian nation.
3. The economy should be diversified. More emphasis should be placed on agriculture and development of other natural resources such as solid minerals and tourism rather than the current attitude of being over dependent on petroleum as the mainstay of the economy.
4. There should be devolution of power. Power must be more decentralized to reduce the attraction of the Centre. This is a modest experimentation that will give more powers to the regions, states and local governments. The exclusive legislative list should be limited to the items such as external affairs, immigration, currency, citizenship and the military. The battle for true federalism has to be fiercely fought through constant agitations, continuous sensitization and unending advocacy.
5. We must strive towards reducing the cost of governance. The American form of presidential system of government currently being experimented by Nigeria is too expensive for our resources to conveniently accommodate. The same situation background and history do not justify its application to Nigeria. The adoption and wholesale application of American federalism and presidential system of government by Nigeria is a monumental mistake in the first instance. America presidential system in Nigeria has been nothing but a huge failure.
6. Finally on the issue of resource control, Nigeria should adopt joint control or mixed control of public and private rights of ownership modelled after the United States of America, which provides the best option suitable for our nation. This will go a long way to make our leaders more responsible, responsive, prudent and accountable in the management of revenue under their respective control.
7. The Constitution of the Federal Republic of Nigeria 1999 must be amended to allow Nigerian citizens sue their leaders on the fundamental objectives and directives principle of state policy as contained in Chapter Two (2) of the Constitution of the Federal Republic of Nigeria. This will no doubt reduce personal enrichment by our leaders from using resources of government at the detriment of other citizenry. The constitution must not only allow the leaders to be sued while in office but also while out of office.