

OWNERSHIP AND CONTROL OF MINERAL RESOURCES IN THE NIGER DELTA REGION OF NIGERIA*

Abstract

Natural resources are free gifts to mankind for quiet enjoyment. The quest for ownership and control of natural resources, specifically Petroleum has been a milestone of controversy among people, nations and the international community at large. In Nigeria the crisis over ownership of mineral resources is in diverse folds, which have led to several heated debates, conflicts and misinterpretations. Some of these conflicts are between the Federal, State Government and the Local Communities and the Government. The methodology was doctrinal and the approaches were, analytic and comparative. The primary sources such as; statutes and law reports both municipal and international and secondary sources like; articles and textbooks both online and unpublished were used in this study. It was found that the extant laws did not adequately address the concerns and yearnings of the Niger-delta region, hence the incessant objections. The researchers recommend among others, that besides the 3% community trust fund in the Petroleum Industry Act and the 13% in the Constitution, the law should allow, increase of allocation, full consultations of communities and their participation in the decision making process.

Keywords: Ownership, Control, Mineral Resources, Niger Delta, Nigeria

1. Introduction

Nigeria as a country is richly endowed with natural resources deposits, which are located in different States of the country. Natural resources are raw materials that are extracted from the ground or soil. They are found naturally embedded in the soil and can only be modified by man for his benefit and use. The natural resource includes: fossil fuels, coal, oil, natural gas, gold, copper, iron, etc.¹ Nigeria is a major producer and exporter of petroleum and its petroleum industry is about five decades old with a plethora of exclusionary laws with regards to active participation of host communities (HCs) in the control, ownership and management of resources on 'their land'.² The theme of this article will centre on whether individual/person or community/ region can rightly own and control oil and gas, precisely facing the distinctive features of State practices across the global jurisdictions. However, this work has to look at the front burner debates, ownership and control of resources in the Federal, State and local position and as treated in Common law, Civil and Islamic angles. The issue of vesting ownership and control of the oil industry in the hands of the Federal government (FGN) and leaving out the communities, who live on the land where the actual exploration and production takes place has been a serious question of concern. However, the signing into Law the awaited PIA could be a changer or ignite hope on the Host communities. It is on this premise that a sharp contrast between Nigeria and other source nations were drawn, and learnt that, the law governing this subject matter has been lopsidedly made unlike what is obtainable in other jurisdictions like; some part of United States of America and Canada that there are shared responsibilities among States/regions as the case may be.

2. Definition of Terms

Natural resources are those supplied to us by nature and they are of three kinds namely; land, mineral and renewable resources. According to PIA, 2021) viewed 'Petroleum' is hydrocarbons and associated substances as it exists in its natural state in strata, and includes crude oil, natural gas, condensate and mixtures of any of them, but does not include bitumen and coal³. Almost same with Petroleum Act 1969 defined it⁴ as 'mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation'. *Ownership* is 'a right indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration'⁵ Ownership implies the general liberty to use, dispose, destroy or transfer the thing in question to others. The right of ownership is safeguarded by law⁶.

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¹T Okonkwo, 'Ownership and Control of Natural Resources under the Nigerian Constitution 1999 and Its Implications for Environmental Law and Practice' *International Law Research*; Vol.6. Canadian Center of Science and Education (2017), 1927-5234 -www.http://.premium@academia.mail.com_01.pdf, accessed, 12th April, 2020.

² I Sagay 'Ownership and Control of Nigerian Petroleum Resources: A legal Angle', (1997), in VE Eromosele, (Eds). 'Nigerian Petroleum Business: A Handbook', Lagos, *Advent Communications Limited*, (1997).

³ Petroleum Industry Act 2021, Section 318.

⁴ Petroleum Act 1969, now Cap.(P10), *Laws of the Federation*, (Revised 2004)

⁵F O Ayodele – Akaakar. 'Appraising the Oil and Gas Laws: A Search for Enduring Legislation for the Niger Delta Region'. *Journal of Sustainable Development in Africa*, (2001) P. 1 - 27.

⁶AS Hornby, 'Oxford Advanced Learners Dictionary of Current English', (Oxford: *Oxford University press*, 2010), Pp.254 & 896

Ownership refers to 'the legal right that a legal system grants to an individual in order to allow him or her to exercise the maximum degree of formalized control over a scarce resource'.⁷ *Control* is defined as to exercise a directing, restraining, or governing influence over a thing or organization'. PIA, 2021 states that 'control' means the direct or indirect ownership of more than 50% of the voting rights in a company, partnership or legal entity.⁸ *Resources*⁹ can be defined as a reserve of wealth and staff that can be obtained by an individual or an organization in order to function effectively'.

3. Ownership of Mineral Resources

Under Common Law

Traditionally 'Common Law' refers to the family of Anglo-American inspired legal systems'.¹⁰ Common law legal systems rely on the judicial development and evolution of general principles of law, and in particular natural justice norms. Hence earlier judicial and even administrative decisions are considered precedents and vested with legal authority.¹¹ The general rule under the common law was that minerals and petroleum resources *in situ* belonged to the owner of the land in accordance with the maxim: *cuius est solum eius est usque ad coelum et ad inferos* or the 'ad coelum principle' ('to whom belongs the soil it is his, even to heaven, and to the middle of the earth') Precedents in common law systems are more often than not inspired by leading cases and established case law in Britain and the USA. In fact the two countries are referred to as the original and typical Common law States¹².

Under Civil Law

The phrase 'Civil law system' is used in the English legal terminology to designate legal systems that are mostly based on a codified law, rather than judicial legal precedents, as is the case under the common law systems.¹³ Unlike in the common legal system, the Civil law systems as codified body of statute limits the exercise of judicial discretion and judicial law. Generally, as it would blur the separation of the legislative from the judicial power, in the context of the doctrine of separation of powers¹⁴. However, abstract principles that inevitably contained in the legal codes, tends to invite the exercise of judicial discretion, leading to the establishment over time of a vast body of judicial legal authority that is considered strongly persuasive, albeit not constituting judicial precedents as common law systems would have it.¹⁵ Under Civil law regimes¹⁶, the applicable codes govern ownership of the petroleum rights. As the Civil law systems have their origins in Roman law, property rights in Civil law systems strongly mirror Roman law¹⁷. Examples; France, Holland, Germany and China. In Africa these includes; Algeria (civil and religious law), Gabon, Burkina Faso, Burundi, Chad, etc. Historically, principles of Roman law provided that private ownership included ownership to the centre of the earth and to the sky. Although these concepts have been codified, most States in Civil law jurisdictions have eventually passed particular legislation to reserve subsurface rights to the State. Many Civil law regimes have therefore imported and codified concepts of oil and gas ownership from the common law.¹⁸ Douglas has however opined that the distinction between the Common law and Civil law on ownership of minerals has become blurred.¹⁹

⁷ B Clark, 'Migratory Things on Land: Property Rights and a Law of Capture,' *European Journal of Commercial Law*, 6 no,3 (October 2002), p.3.

⁸ PIA, Section 318, *ibid*.

⁹ OE Akachi, et.al 'Mineral Resources Management Information System, UK, *European Journal of Computer Science and Information System*, Vol.3, No.2, (May 2015) Pp.13-23, <https://www.eajournals.org> accessed 4th September, 2019.

¹⁰ G S Braut, 'Risk Regulation in the North Sea: A Common Law Perspective on Norwegian Legislation' *Safety Science Monitor*, (2010) http://ivr2003.net/idc/literature/kam_01.pdf.accessed, 12th January, 2021.

¹¹ G S Braut, 'Risk Regulation in the North Sea: A Common Law Perspective on Norwegian Legislation' *Safety Science Monitor*, (2010) < http://ivr2003.net/idc/literature/kam_01.pdf.accessed,, 12th January, 2021

¹² G S Braut, *Op. Cit.* P.1.

¹³ C Hertel, 'Legal Systems of the World – an Overview' *Notarius International*, (2009); D Terris, (-et al) 'The International Judge: An Introduction to the Men and Women who decide the World's Cases' (Brandies University Press 2007) Pp.248-249; and Ohio State Bar Association, 'The Law and You: A Legal Handbook of Consumers and Journalists' (Ohio State Bar Association 2012) P.5-6.

¹⁴ B O Igwenyi, 'Modern Constitutional Law in Nigeria', (Abakaliki, *Nwamazi Publication Limited*, Reprinted 2010), Pp 55-69.

¹⁵ H K Zweigert, et .al, 'An Introduction to Comparative Law' (USA:Oxford University Press (3rd.ed) *UCLA Law Review*, 2010, Pp. 979-980.

¹⁶ *Ibid*.

¹⁷ E H P Brants, 'Liability for Damage to Public Natural Resources, Standing Damage', *Kluwer Law International*, (2001), P.36. The term 'civil law' refers to those jurisdictions which have adopted the European continental system of law derived essentially from ancient Roman law, but owing much to the Germanic tradition.

¹⁸ *Ibid*.

¹⁹ M T Douglas 'Protection Of Petroleum Resources In Africa: A Comparative Analysis Of Oil And Gas Laws of Selected African States', South Africa: *Degree of Doctor Legum submitted in accordance with the requirements at the University Of South Africa*, 2014, Pg.39-40. <http://www.academia.edu/article/pdf43126>.accessed 3rd march, 2020.

Under Islamic Law

Under the Islamic Law,²⁰ ownership of property in general is governed by the *Qur'an*.²¹ The *Qur'an* allows for private ownership of property, subject to the rights of others and consideration of public interest. Mineral laws in Islam are based on the Islamic law of contracts.²² The Arabic word *Aqd* (contract) literally means 'tie' or 'bond'.²³ During the first periods of Islam, four schools of Islamic jurisprudence took shape: the *Hanafi*; the *Maliki*; the *Shafie*; and the *Hanbali*.²⁴ These schools of thought in principles of ownership of minerals are not consistent among the different schools under Islamic law. The Court held *inter alia*, 'that the regime of mining concessions, has remained embryonic in Muslim Law and is not the same in different schools'²⁵ it does follow that the principle of one school cannot be introduced into another, unless it is done by an act of authority. Under the *Hanafi*, it is the most widely accepted jurisprudence among the Muslims today and is still adopted in many Arab and Muslim States, such as Egypt, Syria and Lebanon, etc. Ownership of minerals follows ownership of land.²⁶ The *Shafie* school of thought,²⁷ hidden minerals follow land ownership while unhidden minerals are not owned.²⁸ Under the *Shafie*, where a mine is part of the State's domain, the sovereign has *Iqta*, the right of discretion to grant an exclusive concession subject to payment of a royalty.²⁹ Under the *Maliki* School of thought,³⁰ on the other hand, all natural resources are State owned. Accordingly, *Hanbali*, states unhidden minerals, whether in private or State-owned lands, cannot be owned privately.³¹

4. The Legal Framework of Nigeria on Ownership of Mineral Resources.

The vesting of ownership and control of mineral resources in the Nigerian State is historical and dates back to the colonial era. This has had a great impact on Nigerian's legal system and the conception of property rights. Besides Nigeria fashioned out of Britain, being the mother nation.³² State control over her natural resources were gained from the inspiration drawn from the United Nations General Assembly Resolution of 1962, which declared that, the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State.³³

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Constitutionally, the ownership and control of mineral resources in Nigeria are provided in Section 44(3)³⁴, that 'the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone shall vest in the government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly'. Additionally, it is under Part I of the Second Schedule of the Exclusive List in respect of which only the National Assembly has power'.³⁵ Similar provisions are contained in Section 1, Nigeria Minerals and Mining Act, No; 20, 2007. Even the embattled Petroleum Industry Act, 2021 signed into Law³⁶. The implication of the above provisions is that no State government or individual/communities/local government has a legal right of ownership of mineral resources

²⁰ In Africa the following countries apply Islamic law like Qatar either partly or wholly: Libya and Sudan (Islamic Law), Morocco and Mauritania (mix of Islamic law and the French civil code); and some States in Northern Nigeria.

²¹ The *Qur'an* is the central religious text of Islam, see an article on Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t125/e1945?_hi=18&_pos=789, accessed 30th May, 2020.

²² M T Douglas, *Ibid*.

²³ *Ibid*.

²⁴ K.M Al-Jumah, 'Arab State Contract Disputes: Lessons from the Past', *Arab Law Quarterly*, (2002)17(3) 215 at 234-238

²⁵ *Saudi Arabi v Arabian American Oil Co, the Aramco*, (1963), 27 I.L.R., p. 116.

²⁶ *Ibid*.

²⁷ The *Shāfi'ie* School of fiqh, or religious law, within Sunni Islam is named after *Imām ash- Shāfi'ī*. This School of thought stipulates authority to four sources of jurisprudence, also known as the *Usul al-fiqh*. In hierarchical order the *usul al-fiqh* consists of: the *Quran*, the Sunnah of Prophet Muhammad, *ijma'* 'consensus', and *qiyas* 'analogy'.

²⁸ KM Al-Jumah, *Ibid*.

²⁹ *Ibid*.

³⁰ The *Mālikī* is the third-largest of the four schools, followed by approximately 15 per cent of Muslims, mostly in North Africa, West Africa, United Arab Emirates, and some parts of Saudi Arabia.

³¹ *Al-Jumah, Ibid*.

³² C Chukwura, 'An Appraisal of the Legal Regime for the Definition and Classification of Theories of Ownership of Mineral Resources in Nigeria', (2012), Anambra, *Academic Scholarship*, <https://www.academicedu.ng.com>, Accessed 4th August, 2021.

³³ Permanent Sovereignty over Natural Resources, General Assembly Resolution, (1962) 1803(XVII) (Dec. 14, 1962), http://www.untreaty.un.org/cod/avl/ha/ga_1803.html, Accessed on the 1st July, 2020.

³⁴ CFRN.1999.S. 44(3) *Ibid*.

³⁵ CFRN.1999.S. Part 1, Second Schedule, *Ibid*.

³⁶ Section 1, PIA, 2021.

found within its territory³⁷. The debate on the amount to be allocated to the States/regions, especially Niger delta as stipulated by the Constitution in line with Section 162(2)³⁸ has remained christened in the landmark case of *A.G. Federation v. A.G. of Abia State & 35 Ors*³⁹. Though as sound as it is, it may not have solved the dilemma looking at the persistent brawl aftermath. On the other hand, The Constitution, being the *grundnorm* is supreme, and if any other law is inconsistent with its provisions the Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.⁴⁰

Petroleum Act 1969⁴¹

The first important Petroleum ownership/control legislation in Nigeria is the Petroleum Act, 1969,⁴² which explicitly and intricately defines the issues of petroleum resource ownership and control. This Act provides for the exploration of Petroleum from Territorial Waters and the Continental Shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources in the Federal government. The preamble of the Act describes it thus, ‘An act to provide for exploration for the Territorial Waters and Continental shelf of Nigeria and to vest ownership of, and all on-shore revenue from petroleum resources derivable therefrom in the Federal government and all other incidental matters thereto’⁴³ the Act in the same manner, followed the Constitutional imprints.

Mineral and Mining Act 2007⁴⁴

The Nigerian Minerals and Mining Act, 2007 repealed the Minerals and Mining Act, 1999. Section 1 of the Act⁴⁵ provides: ‘the entire property in and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and watercourses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested on the Federal government of Nigeria’. Consequent upon the provision, the Act⁴⁶ provided that all lands in which minerals have been found in commercial quantities shall, from the commencement of the Act, be acquired by the Federal Government. Section 22 of the Act provides that the use of land for mining operations shall have a priority over other uses of land as constituting an overriding public interest.⁴⁷

Exclusive Economic Zone Act

The preamble captures the intendment and objectives of this Act. The Act declares Nigeria’s exclusive sovereign right over the natural resources of the Exclusive Economic Zone which natural resource are minerals (only to be found in the continental shelf) and living species found in the superjacent waters. It also claims sovereign and exclusive rights to the natural resource of the superjacent waters i.e.; the sea itself for 200 nautical miles. In other words, the Exclusive Economic Zone Act contains two major aspects, the aspect relating to Continental shelf and Mineral resources. Section 1(1) of the Act⁴⁸ provides, there is hereby denominated a zone to be known as the Exclusive Economic Zone of Nigeria (hereinafter referred to as the ‘Exclusive Zone’) which shall be an area extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured’.⁴⁹ Similarly, Section 2 of the Act thus, states, ‘sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the sea bed shall vest in the Federal Republic of Nigeria or agency’.⁵⁰

³⁷ H N Nwefuru, ‘Nigerian State, Natural Governance and Resource Control Controversy: Interrogating the Implications of Mono-Economy’ *Journal of Economic and Finance*, e- ISSN: 2321-5933 Volume 9, Issue 4 Ver. II (Jul – Aug. 2018), PP 52-60.

<<https://www.iosrjournals.org>. accessed, 2nd November, 2021.

³⁸ CFRN, 1999, *ibid*

³⁹ (2002), 6 NWLR pt. 764, 543-903 P.18.

⁴⁰ S.1(3) CFRN, 1999. *Ibid*.

⁴¹ Petroleum Act 1969, Cap.P10 Laws of the Federation of Nigeria, (Revised 2004).

⁴² Petroleum Act. *Ibid*.

⁴³ Petroleum Act- Preamble. *Ibid*.

⁴⁴ Nigeria Mineral and mining Act, No. 20, 2007.

⁴⁵ *Ibid*.

⁴⁶ Section 1(2), Nigeria Mineral and Mining Act. *Ibid*.

⁴⁷ S. 44(3) CFRN. *Ibid*.

⁴⁸ E.17. 1978 now Cap E17, (Revised Laws of the Federation of Nigeria, 2004).

⁴⁹ E17.LFN, 2004, *Ibid*.

⁵⁰ *Ibid*.

Land Use Act⁵¹

The significance of country's land ownership/tenure system in Nigeria remains incomplete without the appreciation of its effect on control and ownership of mineral resources.⁵² Prior to the coming into force of the Land Use Act, Nigeria's land ownership and tenure system had undergone historical development distinctly in pre-colonial and post-colonial era.⁵³ The Land Use Act, 1978 was, therefore, promulgated and became applicable all over the Federation as evident in its preamble and Section 1⁵⁴, vesting all lands comprised in the territory of each State in the Federation on the Governor of the State, who in turn shall hold it in trust and administer it for the use and common benefit of all Nigerians'. The Act brought an entirely new dimension into landownership in the country. This includes lands that contain mineral deposits (mining) or land used for related purposes⁵⁵. Hence, none of the States that are component units of the Federation have any direct control over minerals. Thus, in the case of *South Atlantic Petroleum Ltd v. Minister of Petroleum Resources*, it was held that petroleum resources in Nigeria are vested in the Federal Government. Interested persons are granted licenses or leases to explore, prospect or mine oil and gas.

Petroleum Industry Act (PIA) 2021⁵⁶

The (PIA, 2021) Act was officially passed after long-awaited years, on 1st July, 2021 after it was first presented in 2008, assented by President, Buhari, on 16th August, 2021⁵⁷. The Act in Section 1, vests Petroleum ownership on the Federal Government like her sister legislations.⁵⁸ The Act is an amalgam of (16) Nigerian petroleum laws that outline the framework to boost oil and gas output in Nigeria while enhancing the sector's attractiveness for international investment to the benefit of Nigeria and Nigerians as a whole. Interestingly, the Act contemplates award of 3% of the revenue to the host communities' on development trusts funds that would be for environmental, social, and infrastructure projects for host communities in order to alleviate their age long sufferings and unmitigated plights from oil and gas activities that have continued to undermine the progress of the host communities, although the leader of PANDEF, *Clark* had voiced in outcry that the passage of the Bill without their full considerations clearly shows the Present' administrations total disregards and concern for the peoples of the Niger- delta.⁵⁹ The group whose concerns proposed 10 % for the community Development Trust Fund has expressed their displeasure that their interests and aspiration were relegated in the Act⁶⁰. On the other hand, the Act lays the foundation for a stronger, efficient and attractive energy industry in Nigeria. And despite the displeasure it is a welcome development geared towards sustainable energy transformation⁶¹.

5. Ownership of Mineral Resources: The Global Practice

Etymologically, ownership concept is settled within the purview of common-law or Civil Law tradition. However, legal ownership of mineral resources in most international jurisdictions is settled by the national constitution and/or legislation dealing with mineral resource development⁶². The above different systems have emerged as characterizing global approaches to ownership and control of mineral resources, namely: 'the land ownership system, the concessionary system and the claim system'⁶³. The right to exploit those resources therefore will only be available with express consent of the State, which is granted by way of concession/license. This is the system upon which the public concept of ownership of mineral resources is based. Finally, the *claim* system is a fluid system which implies that whoever discovers mineral deposit will, subject to some legal formalities, have the sole right of exploiting it. This system has its origin from German law.⁶⁴ It still maintains some significance in the application of what is known as *the law of capture*, particularly in the United States, where it is brought to aid the settlement of disputes arising out of the application of the first two systems, but hardly as an independent system

⁵¹ LUA.LFN,2004, *Ibid*.

⁵² C I Emeh, 'An Analysis of the Legal Rights of the Niger Delta States in Relation to Ownership and Control of Mineral Resources under Nigerian Law', *Academic Law Journal*,(2013), *Pp.30-45*.<<https://www.academic-edu.ng.com/Pdf>, accessed,20th January,2021.

⁵³ I O Smith, 'The Law of Real Property in Nigeria', (Lagos: *Law Centre, Lagos State University Press*, 2003).

⁵⁴ *Ibid. Land Use Act. S.1.*

⁵⁵ (2006)10CLR 122 .

⁵⁶ PIA (2021) assented by President, Muhammad Buhari on 16th August, 2021 after 13 years of initiation.

⁵⁷ Channels T.V. News at 10, (August, 2021). *PIB Signed into Law*.<[https:// www.channelstvnews online.com](https://www.channelstvnews online.com). Accessed 17th August, 2021 at 10.23.p.m.

⁵⁸ PI Act, (2021)

⁵⁹ K Robinson. PANDEF Spokesman on PIB signed into Law', (August,2021), *Barrister law Articles*, <https://barristerng.com/signingPIBinto law,buhari shows he does not care about niger-delta sufferings-pandef/>

⁶⁰ *Ibid*

⁶¹ EM Madaki..PIB signed into Law. (August,2021), <https://www.google.com/search?q=Metronews%0ab.signing+.pib.into+law%..> Accessed, 20th Sept, 2021.

⁶² B B Richard, 'International Law and Natural Resources Policies'. *Nat. Resources Journal* (1980)J. V.20 .451 Available at: <https://digitalrepository.unm.edu/nrj/vol20/iss3.P.453Pdf>, accessed,27th December,2020.

⁶³ E L Johnson, 'Rights to Minerals in Sweden: Current Situation from an Historical Perspective '(2001)19 (3) *JENRL*,278.

⁶⁴ See *Ibid*,p.280

in its own right. The current global practices, however reveals coalesced different systems⁶⁵: Private Ownership; State/Public Ownership; and Mix of these two systems. These systems will be briefly considered as adopted in jurisdictions of, US and Canada

The US Ownership and Control of Mineral Resources

In the US, rights to oil, gas, and minerals are generally held by the owner of the surface until and unless these mineral rights are severed or assigned to others. Where the mineral estate has been severed from the surface estate, the mineral estate is dominant and the holder of the mineral estate is entitled to use the surface to the extent reasonably needed to explore and develop all minerals in the mineral estate⁶⁶. In US, both Federal and State governments can also be owners of mineral estates, both onshore and offshore. Under the Submerged Lands Act⁶⁷, each coastal State owns the land extending three nautical miles (5.6 km) from the shore at mean low tide, and has jurisdiction to decide whether or not, and under what terms, to lease the area for oil and gas. Exceptions include Texas and the West Coast of Florida, which for historical reasons; own the seabed out to approximately ten nautical miles (16km) from the shore. The OCSLA provides Federal jurisdiction for all offshore lands beyond the State limit⁶⁸. In 1983, a Presidential proclamation extended Federal jurisdiction out to 200 nautical miles from shore, the boundary for the US Exclusive Economic Zone⁶⁹. Here, the Leases, Licences or Concessions term are either granted by the Federal or State agencies respectively. Generally, the Federal and State government split ownership; States have primary authority over mineral resources, which are in the three-mile area extending outward from their coasts.⁷⁰ It should be added that even in the United State, which is seen as the bastion of private ownership of mineral resources, State ownership of mineral resources is very much recognized. it is only limited to on-shore resources. The State has always maintained claim to ownership of offshore mineral resources.

Ownership and Control of Oil Resources in Canada

Constitutionally, the Article, 109 of the Canadian Constitution vests oil and gas resources on the several Provinces of Canada.⁷¹ The regulation of the extraction of oil and gas varies depending on the jurisdiction and nature of the development. The Canada Petroleum Resources Act deals on all the energy resources in the State⁷². Canada is a State whose mineral resources are split between the provincial crown, the federal crown, and private freehold ownership⁷³. Under the first Nations, private ownership largely depends on the time that the land was settled. Before 1887, the government did not reserve mines and minerals in the granting of land, whereas since 1887 the government's usual practice is to reserve mineral rights. In Alberta, the Province owns approximately 81% of the mineral rights. The Federal government owns 9% of the mineral rights, which includes most Indian reserves and national parks. The final 10% is held privately under freehold ownership. In areas of Canada which were settled earlier, such as southern Manitoba, up to 80% of mine and mineral rights are privately owned⁷⁴. In Canada, mines and minerals are severable from other land rights. In many cases, surface rights owners do not also own the mines and minerals below the surface. The proportion of oil and gas interests which are held privately or by the government varies by province. To prevent waste of oil and gas resources under this regime, provinces have legislation designed to encourage efficient extraction⁷⁵. In Alberta, the Oil and Gas Conservation Act creates a licencing regime for oil and gas wells that imposes certain spacing requirements between wells⁷⁶. The Federal government owns most mines and minerals on Indian reserves. Indian Oil and Gas Canada is responsible for managing and regulating oil and gas resources on First Nation reserve lands across Canada. The revenue generated is held in trust for First Nations due to the Crown's fiduciary obligations to First Nations and the Crown's obligations under the Indian Oil and Gas Act. Exceptions to this ownership are those First Nation groups with settled land claims. Generally, oil and gas rights are subject to the law of capture, which means that the first person to 'capture' the resource owns the resource. While the law of capture is the starting point, each province controls

⁶⁵ NS Usman, *et al* (Eds) 'Issues in Mineral Resource Ownership and Control: International Trend and the Nigeria Question', (2017), *Indonesia Resource paper*, <https://www.researchgate-ng.com.pdf>. Accessed, 27th March, 2020.

⁶⁶SL Graham, 'Oil and Gas -- The Effect of Theories of Ownership in US', *Scholarship Law Journal*. 2015. vol. P.54. <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=3753&context=ndlr>, accessed, 21st March, 2021.

⁶⁷US Submerged Land Act, 1953.

⁶⁸ Outer Continental Shelf Lands Act of 1953 as Amended (43 USC § 1331 et seq.).

⁶⁹'Oil and Gas in United States', (2014), Washington, *Practical Law Guide*, <https://www.practicallaw.com/energy-mjg>. Accessed, 2nd November, 2021.

⁷⁰K Smith 'Who owns Mineral Resources in USA' *Natural Resources Revenue Data*, Washington, 2020, P.1. <https://revenue.data.doi.gov/ownership>, Accessed, 6th November, 2021.

⁷¹ Article 109, Constitution of Canada, 1986.

⁷² Canada Petroleum Resources Act, 1991.

⁷³ Section 1, Canada Petroleum Resource Act, 1991.

⁷⁴ CPRA, 1991. *Op. Cit.* P.95.

⁷⁵ Canada Oil and Gas Directory, 2020, <https://www.canadaoil/gas.directory.com>, Accessed, 2nd November, 2021.

⁷⁶ *Ibid.*

the ability of producers to extract hydrocarbons in a responsible manner that ensures conservation and prevents waste of oil and gas resources.

6. Conclusion and Recommendations

The paper shows that the Nigerian legal framework on the subject is State/National approach on ownership of Mineral resources as a vestige of Common law. The Jurisdictions like US and Canada do not consecrate the ownership of mineral resources on the State only, thereby leaving a means for Provinces to regulate its resources within her regions/provinces. It is found that if PIA has thoughtfully considered the earlier 10% proposed Community Development Trust Fund before passing it into law, the present outcry from the PANDEF would have been laid to rest. Natural resources (such as oil, natural gas, diamonds, and minerals. etc) are often a major source of national income, and are also a major cause of conflict and instability if mismanaged or shared unfairly. Countries with weak legal institutions like (Nigeria) often struggle to handle the potentially destructive force of corruption and attempts by various actors to capture the wealth generated by natural resources. Niger –delta region is the bastion of Nigerians petroleum generation albeit the policies have been unfairly made coupled with weak bureaucracies of the sector. Internationally, ownership of minerals is an issue treated in the legislations of a sovereign entity. It is notable in the research that what determines a State model of legislation/regulatory mechanism is either being receptacle of English Common law, Dutch or Roman law, Civil and Islamic origin. States that were colonized by British, Dutch or Portuguese or Arabs tend to follow the imprint of their erstwhile masters. The comparative studies of USA, Canada and Nigeria show the common law- federal systems however, what is obtainable in Nigerian State is purely weak federalism with no shared responsibilities. The studies has shown that most developed States like USA, Canada and Australia, has not consecrated ownership of minerals on the central or Federal only as there has always been a distributive allocation among provinces/region and little shift in the Nigeria would be a better recipe addressing the Niger-delta crisis. It is discovered that Niger-delta would not cease in agitation over Oil found in their regions save an overwhelming development via social welfare inclusiveness. Similarly, much as the PIA is a welcome development, a step in the right direction that calls for accolade as more is needed to deregister the objections however stated for a sustainable energy sector in Nigeria.

Summarily therefore, the issue of any minerals in Nigeria will continue to remain contentious as long as conscious efforts are not made to adopt an inclusive approach towards the fair, just and equitable distribution of the revenue. In consideration of our present state of our economy suffering recession, insecurity of varied nature in different zones and the possible consequence of a total collapse if misguidedly handled. It has become imperative that the above issue be addressed without delay. It is believed that when this is done, Nigeria will be on the path to progress and development and only then, shall we justify the name ‘Giant of Africa’. Finally, Nigeria laws must grow with the people. Since society is evolving, law as an instrument of social engineering, should be positive and progressive to aid speedy economic growth and transformation. Nigerian laws on ownership of minerals should be amended; the sole Federal government ownership and the allocation of not less than 13% of the revenue to the State, is not sufficient to ensure progress, even growth and development in Nigeria. Nigeria legislation has to be made people/community inclusive, where fair share of the resources revenues and development should accrue to the communities directly in line with best international practices as in other source nations such as Canada and USA. The Nigerian State has to increase the development fund meant for the host communities and deregister their grievances since, whole transfer of control cannot be feasible looking at the heterogeneous entity of Nigeria.