

**Abstract**

The question of natural resources governance in the Federal Republic of Nigeria has attained a vexed dimension. This is particularly so on account of the imbalance which exists between the centre and the federating states where the natural resources are derived and the neglect of the outcry which same has generated overtime. This research is aimed at study of operation of the concept of federalism and governance of natural resources in Nigeria and selected jurisdictions. The methodology adopted is the doctrinal method, with the methods of analytical and comparative analysis of statutes, decided cases, textbooks, journal articles and access to internet sources. The researcher found amongst others that in Nigeria there is no true federation in that the central government appears to be dominating the federating states with strong powers residing at the centre. Further, the legal framework in Nigeria with respect to resource governance is quite expropriatory and centrist in nature. The governance policies are tailored towards denying the producers of the natural resources the inalienable power of control and even the realization of the position of being an owner. This position has led to consistent agitations for resource control and also threatens national cohesion in the country amongst other consequences which shall be considered in this work and thus bring to question the operative federalism obtainable in Nigeria. The researcher therefore recommended that true federalism be practiced in Nigeria as in the United States of America with powers decentralized to states.

**Keywords:** Natural Resources, Ownership, Control, Nigerian Federalism

**1. Introduction**

The focus of this study is on an area which had been subjected to a great debate so much that it would appear that it has been trapped within the mesh of profound verbiage and analysis particularly in Nigeria. It has been observed while commenting on the magnitude of controversies and concern expressed on the area in the past in Nigeria that few national issues have provoked profound debate and lengthy discussions than the practice of federalism and resource control within the past four decades.<sup>1</sup> The question of natural resources governance and federalism is therefore one which had not only attracted the attention of multiple thinkers but had also raised veritable concern as to its operations in various countries inclusive of Nigeria.

**2. Clarification of Key Terms**

Before delving into the main issue of ownership and control of natural resources in a federation, thoughts shall be given to the operative and key words which shall be constantly referred to. Suffice it to say therefore that it is important to offer an explanation of these key words for ease of reference and understanding.

**Natural Resources**

Natural resources as had been explained in this work 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 benefits and use. The natural resources include fossil fuels, coal, oil, natural gas, gold, copper, iron, diamond and minerals. Aladeitan has described natural resources as a gift of nature and an endowment of comfort that makes the existence of mankind complete<sup>2</sup>. In another vein, natural resources have been said to refer to the natural-given material assets that are usually available and harnessed by the people of a given state so as to sustain life and create wealth<sup>3</sup>. The natural resources consist of all organic valuables accruable from the earth, land, waters, the wildlife and natural vegetation. The instances of such resources are minerals, metals, wildlife, fish, timber, wood, sand, clay etc. These resources are freely provided by nature in both subsistence and commercial quantities for human exploitation, use and benefits.

**Governance**

Governance refers to a system which engenders control and regulation for the sustenance and survival of any public domain. It consists of both governmental and non-governmental mechanisms and measures that are geared towards guided and regulated life in governmental, civil and corporate domains. It has also been described as the means by which society defines goals and priorities and advance cooperation. It includes policies, laws, decrees, norms, instruments and institution. Governance is not the province of government alone and includes informal institutional arrangements like voluntary codes of conduct for private business, professional procedures and partnerships among all sectors. These include numerous and varied arrangements but an essential element is that they mobilize diverse constituencies to agree on common goals and help realize them<sup>4</sup>.

**Ownership**

Ownership has been described as a complex juristic concept which has its origin in the Ancient Roman Law. In Roman Law, ownership and possession were respectively termed *dominium* and *possessio*. The term *dominium* demotes absolute right to a thing while *possessio* implied only physical control over it. They gave more importance to ownership because in their opinion, it is more important to have absolute right over a thing than to have physical control over it<sup>5</sup>. The ownership and control of natural resources is thus very important to a country's wealth and well-being and therefore cannot be treated with levity.

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<sup>1</sup>. J C Ebegbulem, 'Federalism and the Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta Crisis', *International Journal of Humanities and Social Science* (vol. 1, No. 12, 2011) P.218.

<sup>2</sup>. L Aladeitan, 'Ownership and Control of Oil, Gas and Mineral Resources in Nigeria: Between Legality and Legitimacy' *Thurgood Marshall Law Review* (vol. 38, 2013, P. 159 at 160).

<sup>3</sup>. A Okoli and C A Uhemba, 'Crisis of Natural Resource Governance in Nigeria's Extractive Industry: Examining the Phenomenon of Artisanal Mining/Quarry', *Journal of Human Social Science* (2015, 15 (7) P. 39-48).

<sup>4</sup>. G Roba, S Gibbons and Y Mahadi, Booklet 1: Strengthening Natural Resource Governance in Garba Tala, *International Union for the Conservation of Nature*, 2013.

<sup>5</sup>. R Sneha and R Garg, 'Ownership and Control of Oil, Gas and Mineral Resources in Nigeria: Between Legality and Legitimacy' *Thurgood Marshall Law Review*, (vol. 38, 2013, PP. 159 at 160).

Another jurist which examined ownership is Salmond. According to him, ownership constitutes of a bundle of rights<sup>6</sup>. Salmond's definition point out two characteristics of ownership: Ownership is a relationship between a person and right that is vested in him and ownership is an incorporeal body or form (immaterial, having no material body or form). According to Austin, 'ownership means a right which avails against everyone who is subject to the law conferring the right to put things to user of infinite nature'. He also defined full ownership as 'a right indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration'. The concept of ownership is very material relating some to who controls the natural resources.

In this study, ownership connotes *dominium* that is complete power to use, to enjoy and to dispose of property at will. It would therefore appear that the legal right to own and control natural resources in Nigeria resides with the federal government which exercises the maximum degree of formalized control<sup>7</sup>. It is therefore obvious that the ownership of natural resources as embedded in the Nigerian Constitution translate into state ownership. The ownership regime of natural resources can also be ascertained from international conventions and customary international law, common law and natural constitutions. This situation has given rise to the emergence of different theories of ownership and control of natural resources. The theories are examined as appearing below.

### 3. Theories of Ownership and Mineral Resources

There are several theories of ownership that governs the legal relationship and entitlements over natural resources. These concepts define the states' ownership and the individuals' ownership rights over natural resources. It is a common view that due to the fugacious nature of subsurface oil and gas, the Courts of the late 1800's were presented with difficulties.

For centuries, the legal *maxim cuius est solum, ejus est usque ad coelum et ad inferos* (the owner of the surface owns everything from skies to the center of the earth) has applied to ownership disputes. But due to the fugacious nature of oil and gas, a neighbour could drill a well on his side of the fence and drain away an owner's oil or gas. How someone could be said to own oil and gas unless he or the state could prevent the owner's loss. Then, as now, it is impossible to trace the oil and gas produced from a well so as to determine where it actually came from in the subsurface with any degree of certainty. This problem was very serious and impactful in the United States of America because the 14<sup>th</sup> Amendment of the American Constitution specifically protects private property<sup>8</sup>. The theories are examined as appearing hereafter. The absolute ownership theory recognizes the totality of rights over a piece of land hence it declares that whoever owns a piece of land, owns the natural resources lying underneath it. It has been defined as the actual right a person is having on a property. A property in ownership can be freely transferable and inheritable. Lands includes the right to minerals underneath and the airspace over it. This definition of absolute ownership accords with the Latin *maxim quic quid plantatur solo solo cedit* (whatever is affixed to the soil belongs to the soil). This is only a general statement of the law. This is so because in some jurisdictions like Nigeria, though title to land vests in the governor of each state, the natural resources which by definition is part of the land does not belong to the state but vests in the federal government.

The federal government absolutely owns the minerals<sup>9</sup>. According to Aladeitan, the implication of the ownership in place theory is that the land owner owned the land and the resources beneath his land absolutely and could confer separate titles to them by reservation, separation or severance<sup>10</sup>. The Nigeria's Petroleum Act codifies this theory by stating that the entire ownership and control of all petroleum in, under or upon any lands in which this section applies shall be vested in the state<sup>11</sup>. Therefore, in Nigeria natural resources is absolutely owned by the state. The theory of 'ownership-in-place' was first adopted in the United States state of Texas in respect of ownership of oil and gas to the effect that a land owner owns a corporeal possessory interest (similar to a fee simple) in the substance beneath his land but his ownership is a determinable fee subject to rule of capture<sup>12</sup>. The theory was given judicial recognition in the leading case of *Stephen County v. Mid-Kansas Oil & Gas Co.* where it was observed by the Court thus: 'Oil and gas in a place are minerals and realty subject to ownership, severance and sale while embedded in the sands and rocks beneath the earth's surface in like manner and to the same extent as is coal or any other solid material'<sup>13</sup>.

The qualified ownership theory views ownership of oil and gas in a limited scope. It is the view here that oil and gas are incapable of ownership until they are harnessed and retained in actual possession. It follows therefore that ownership in the belief and thinking based on this theory cannot be extended to minerals or natural resources until extracted. The theory means in this light that non-absolute property inheres in a person. The ownership is limited in time, restricted to one or more uses or shared as stated in the case of *Holmes v. United States*<sup>14</sup>. It has been observed that this theory does not accept that full ownership can be vested in oil and gas *in situ*<sup>15</sup>. In the view of Clark, this theory is a proprietary right that is analogous with a profit *a prendre* under English common law or a servitude right to minerals under Scots law<sup>16</sup>. The qualified ownership theory has been referred to by some courts and writers as the 'law of capture'. The position is taken that under the Nigerian Land Use Act, the oil producing communities only own surface rights and they do not have right of access to the oil and gas. As far back as 1900, the qualified ownership theory received judicial pronouncement in the case of *Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co.*<sup>17</sup> In this case, the defendant used pumps to increase the natural flow

<sup>6</sup>. P J Fitzgerald, *Salmond on Jurisprudence*, 12th Edition (Universal Law Publishing Co. Ltd., Delhi, 2013), PP. 504, 256-259.

<sup>7</sup>. Items 39 and 41, Schedule II, Exclusive Legislative List (ELL), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>8</sup>. 'About Owning Petroleum and Natural Gas'. Available at <http://www.thoa.ca/about-frehold-mineral-rights/about-owning-petroleum-a-anatural-gas.html>. Accessed 13th December, 2020.

<sup>9</sup>. Section 44(3) and item 39 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>10</sup>. L. Aladeitan, 'Ownership and Control of Oil, Gas and Natural Resources in Nigeria: Between Legality and Legitimacy' (2013) *Thurgood Marshall Law Review*, vol. 38, 159 at 160.

<sup>11</sup>. Section 1, Petroleum Act, Cap P<sub>10</sub> Laws of the Federation of Nigeria, 2004.

<sup>12</sup>. Other states like Oklahoma have adopted the exclusive-right-to take theory that a landowner does not own the substance that underlie his land but merely retains the exclusive right to capture the substances, a mom-corporeal interest.

<sup>13</sup>. [1923] 113 Tex. 160,167,254 S.W. 290,292.

<sup>14</sup>. 85F. 3d 956, 959 (2nd Cir.1996)

<sup>15</sup>. B Clark, 'Migratory Things in Land: Property Rights and a Law of Capture' *Electronic Journal of Comparative Law (ECJL)* vol. 6, 2002 Netherlands.

<sup>16</sup>. *Ibid*.

<sup>17</sup>. 155 Ind. 461, 57 N.E. 915(1900).

of gas from its wells in violation of an Indiana Statute<sup>18</sup>. It was proved that the practice would be injurious to the reservoir and the court held that the Plaintiffs who owned other land in the reservoir were entitled to an injunction to halt the practice. The United States Supreme Court stated the differences between natural gas and underground water. While pronouncing on the property rights of the Plaintiffs in the natural gas, it said:

Without the consent of the owner of land, the public cannot appropriate it, use it, or enjoy any benefit whatever, from it. This power of the owner of the land to exclude the public from its use and enjoyment plainly distinguishes it from all other things with which it has been compared, in use, enjoyment and control of which the public has the right to participate and tends to impress upon it, even when in the ground in its natural state, at least, in a qualified degree, one of the characteristics or attributes of private property<sup>19</sup>.

The leading case for qualified ownership as it applied to Oklahoma is *Rich v. Donaghey*<sup>20</sup> where the Court citing the Supreme Court decision in *Ohio Oil*, stated that fee simple owners of land have:

... no absolute right or title to the oil or gas which might permeate the strata underlying the surface of their land, as in the case of coal or other solid minerals fixed in, and forming part of it, the soil itself. But with respect to such oil and gas, they had certain rights designated by the same courts as a qualified ownership thereof, but which may be more accurately stated as exclusive right, subject to legislative control against waste and the like, to erect structures on the surface of their land and explore thereof by drilling wells through the underlying strata and to take therefrom and reduce to possession and thus acquire absolute title as personal property to such as might be found and obtained thereby. The right is the proper of sale and may be granted or reserved. This right so granted or reserved and held separate and apart from the possession of the land itself, is an incorporeal hereditament; or more specifically, as designated in the ancient French, a profit a *prendre*...

According to Woodward, under this theory, the owner of the land can have no 'title' to the oil and gas in place, but he does have the exclusive right to drill and produce from his own tract and to become the owner of the product when it is brought up to the surface. The non-ownership theory has been explained as a characterization of oil and gas rights used in a minority of jurisdiction in the United States. This theory holds that the owner of a severed mineral interest does not have a present right to possess the oil and gas in place but... has the right only to search for, develop and produce it<sup>21</sup>. The Supreme Court of Pennsylvania in the case of *Westmoreland and Cambria Natural Gas Co. v. De Witt et al*<sup>22</sup>. Declared support for this theory in the following words:

Natural gas belongs to the owner of the land and is part of it and so long as it is on or in it, is subject to his control; but when it escapes and into other hand, or comes under another's control, the title of the former owner is gone. If an adjoining or distant owner drills a well on his own land and taps his neighbour's vein of gas, so that it comes into his well and under his control, such gas belongs to the owner of the well. The owner of land, leasing it to another for the purpose of drilling gas well thereon, and reserving the right to till the soil after the lessee has drilled a well and has gas ready to flow into pipes by turning a valve cannot claim that the lessee is not in possession and that he must resort to a Court of law to establish his title before a Court of equity will interfere...

The Court describes gas as *ferae naturae* in common with animals and unlike other minerals, they have the power and tendency to escape without the volition of the owner. The fugitive and wandering existence within the limits of a particular tract was uncertain<sup>23</sup>. The Court also stated that possession of the land therefore is not necessarily possession of the gas<sup>24</sup>. In the case of *State v. Ohio Oil Co.*<sup>25</sup>, the non-ownership theory was re-affirmed by the Court in the following terms:

To say that the title to natural gas vest in the owner of the land, in, or under which it exists today and that tomorrow, having passed into the land of an adjoining owner, it thereby becomes the property of that adjoining owner, is no less absurd and contrary to all the analogies of the law, than to say that wild animals or fowls, in their fugitive and wandering existence in passing over the land, become the property of the owner of such land, or that fish, in their passage up or down a stream of water, become the property to each successive owner over whose land the stream passes. Hence, the Court reasoned that to hold otherwise will be as unreasonable and untenable as to say that air and sunshine which float over owner's land is part of the land and is the property of the owner of the land. The Court therefore held that the title to natural gas does not vest in any private owner until it is reduced to actual possession<sup>26</sup>.

Given the trend of various courts' decisions in *Kelly v. Ohio Oil Co.*<sup>27</sup> emanating from Ohio, writers have classified Ohio as an absolute ownership state. Woodward<sup>28</sup> had opined however that the case of *Kelly v. Ohio Oil Co.*<sup>29</sup> contains language which would support either absolute or qualified theory. The Court stated that: 'Petroleum oil is mineral and while in the earth, it is part of the realty and should it move from place to place by percolation or otherwise, it forms part of that tract of land in which it tarries for the time being....' A leading authority for non-ownership as it is applied in Louisiana is the case of *Strother v. Mangham*<sup>30</sup>. In the said case, the court stated thus:

The doctrine that the owner of the land has no property right in the oil and gas beneath the surface until he has reduced it to possession in no manner denies to such owner the exclusive right to the use of the surface for the purposes of such

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<sup>18</sup>. Indiana Acts 1893, C 136, Indiana Statute Ann. (Burns 1933) 46-306.

<sup>19</sup>. 155 Ind. 461, 57 N.E. 915 (1900).

<sup>20</sup>. (1918) Okla. S.C; 3 A.L.R.352 at 355.

<sup>21</sup>. U.S Legal, 'Non-Ownership of Interest in Oil and Gas' *Ohio State Law Journal* vol. 26, No. 3 1965, PP. 353-369.

<sup>22</sup>. 18A, 724, 725 (Pa. 1889).

<sup>23</sup>. *Ibid*.

<sup>24</sup>. *Ibid*.

<sup>25</sup>. 49 N.E. 809 (1898).

<sup>26</sup>. L Aladeitan (Supra) P. 164.

<sup>27</sup>. [1897] 49 N.E. 401.

<sup>28</sup>. M K Woodward (supra) 360.

<sup>29</sup>. Footnote 27 above.

<sup>30</sup>. [1916] 138 La 437.

reduction or for any other purpose not prohibited by law, but to the contrary, concedes that right, as inherent in the title to the land and subject only to the control of state, in the exercise of its police power and the right may be sold as may any other right to the oil and gas that may be found and reduced to possession.

The principle that oil and gas cannot be owned absolutely until found and reduced to possession is recognized in all of the oil and gas producing jurisdictions of the United States. The principle was incorporated into Canadian oil and gas law by the 1953 decision of the judicial committee of the Privy Council in *Borys v. CPR and Imperial Oil Limited*<sup>31</sup>. According to Lord Porter, for the Privy Council:

The substances are fugacious and are not stable within the container although they cannot escape from it. If any of the three substances (petroleum, gas or water) is withdrawn from a portion of the property which does not belong to the appellant but lies within the same container and any oil or gas situated in his property thereby filters from it to the surrounding lands, admittedly he has no remedy. So also, if any substance is withdrawn from his property thereby causing any fugacious matter to enter his land, the surrounding owners have no remedy against him. The only safeguard is to be the first to get to work in which case, those who make the recovery become owners of the material which they withdraw for any well which is situated on their property or from which they have authority to draw.

The ownership of strata theory is to the effect that the land owner owns the sedimentary layer containing the oil and gas within the limits of the vertical planes representing the boundaries of his tract whereas the servitude theory declares that the owner has an exclusive right to remove the minerals. This exclusive right is referred to as 'servitude'. By this theory, the minerals are not possessed by the owner prior to removal thus they are not capable of possession by anyone prior to removal. Generally, this theory applies equally to situations of complete or severed ownership. It has been observed that judicial pronouncements that a surface owner who is in actual possession of the surface is in constructive possession of the minerals in place has muddled this theory<sup>32</sup>. The view expressed by Aladeitan on the influence of the above theories regarding state ownership and private ownership of natural resources appears to be quite apt. According to him, modern concepts of state ownership and private ownership of natural resources has been greatly influenced by either of the above theories of ownership of natural resources and these has become the basis of the legal system and concept of property rights adopted by different countries across the world in the regulation, use, management, transfer and alienation of their natural resources endowment<sup>33</sup>.

#### **4. Ownership and Control of Natural Resources as a Fundamental Feature of True Federalism**

Ownership and control of natural resources is an important feature in a federation. It is a reflection of the key tenets of federalism. It is about natural resource governance which refers to the application of the governance concept, principles and practices in determining how natural resources are exploited and utilized by relevant stakeholders. It encompasses norms, rules, institution as well as mechanisms that tend to regulate the decisions and conduct of government, organizations and individual stakeholders in relation to natural resource access, control, allocation, exploitation and use. The various principles of federalism should therefore promote the exercise of ownership rights and control of natural resources by the federating units in the federation. It is not in doubt that since natural resources can be used to create and increase the wealth of a country, its ownership and control has become a subject of legal, political and socio-cultural controversy. It is thus imperative that wealth which is created through the ownership of natural resources must be distributed in such a manner that guarantees a reasonable share for the locality from which the natural resources are produced. It has been observed that the true federalism and control of resources are mutually complementary and true federal state should practice resource control<sup>34</sup>. The basic principles and or characteristics of federalism as earlier pointed out include:

- (i) The power sharing arrangement should not place such preponderance of power in the hands of either natural or regional government or to make it so powerful that it is able to bend the will of the others to its own.
- (ii) Federalism presupposes that the national and regional governments should stand to each other in a relationship of meaningful independence resting upon a balanced division of powers and resources. Each must have powers and resources sufficient to support the structure of a functioning government.

The principles or characteristics of federalism adumbrated above from which flows unarguably the requirement of independence and authority of the federating units touch on the issues of control, management and ownership of resources in existence in the federation. It would therefore amount to a complete erosion of the core essence of federalism where the powers rested on the federating units are limited with respect to the ability to control natural resources within its territory. To give support to the above is the view expressed thus:

Advocates for resource control have argued that in any true federalism, powers are shared between the federating units and the central government in such a way that each government has its own apparatus for the conduct of its own affairs. They stress that in any true federalism, the oil, gas or any other mineral found in any state belongs to that state<sup>35</sup>.

A true federation should therefore allow the federating units to manage, own and control natural resources in the areas concerned. This can be achieved through the legal mechanism put in place with respect to division of power and resources in the federation. As Nwabueze had rightly observed, the basic principle of federalism is as stated below:

The essence of federalism is that both the general and regional governments possess, in respect of some matters, an authority which is both independent and exclusive of the other. There must be no subordination of the one to the other on matters within their exclusive spheres. But the independence required is not just independence with regards to power to regulate and execute such matters. It requires also independence with respect to the means or resources necessary for the effective performance of the functions of legislation and execution. A government invested with independent and exclusive legislative and executive powers over certain matters but with no independent financial resources for carrying them out has no real independence. Its lack of independent financial resources must necessarily subordinate it to the

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<sup>31</sup>. [1953] 7 W.W.R. 550-551

<sup>32</sup>. J C Smith, 'Ownership and Use of Subterranean Space' available at <https://www.emif.org>. Accessed February, 2021

<sup>33</sup>. L Aladeitan *op cit*. P. 167.

<sup>34</sup>. Mudiage, *The Challenges of True Federalism and Resource Control in Nigeria* (Omadro Impressions Limited, 2000) p. 21.

<sup>35</sup>. K A Ekuri *et al*, 'Resource Control: a Necessary Element for True Federalism in Nigeria; *International Journal of Advanced Studies in Economics and Public Sector Management* (2017) vol. 5, No. 1. P. 221.

authority vested with control of those resources which can be used to hamper or impede the performance of its legislative and executive functions, even to the point that its independence in those matters is altogether destroyed. Financial independence is thus indispensable to real independence in legislative and executive matters. The principle must therefore be accepted that federalism requires that both the general and regional governments must each have under its own independent control the financial resources necessary for the performance of its exclusive functions<sup>36</sup>.

The above makes it abundantly clear that in a true federation, the federating units must be allowed to control the resources within its domain in order that the authority it enjoys in the federation can be properly exercised and the functions bestowed on it can be meaningfully discharged.

## **5. Conclusion and Recommendations**

It has already been revealed in the research that in the Nigerian federalism, centralized ownership and control of natural resources holds sway. There are important considerations to be made which should be taken into account in the reform process. It is important to bear in mind that the Nigerian federalism is symmetrical in nature hence all the units of the federation should stand on equal footing in relation to the central government. In order to address any imbalance in the federation with respect to natural resources governance, any proposal made must be of general application to all the states of the federation. There is also need to maintain a balance between the contending interests, that is, not just preserving state authority but also enabling the federal government to act where national action is desirable. The balancing of both interests demands a nuanced approach to the question of allocation of rights and powers over natural resources. It is also important that thought be given to the position that natural resources are unevenly distributed across geographic regions hence the need for a system that balances local control over natural resources with the equally competing national need to bridge inter-regional economic disparities.

In the light of the foregoing, it is now intended to consider some reform options. It is proposed that onshore natural resource ownership and governance should be completely decentralized to the constituent states under an arrangement which allows each state of the federation to own and control its onshore natural resources, regulate and develop same to raise revenue for its sustenance. There is therefore need to amend the constitutional provision which exclusively vest ownership and control of natural resources in the federal government. In this regard, section 44 (3) of the Constitution of Nigeria, 1999 should be amended to reflect devolution of ownership rights to the federating states over onshore resources as well as offshore resources. Apart from specifically vesting ownership rights in the federating states to the extent already set out, the amendment would provide for management of all onshore and offshore natural resources in accordance with federal laws. Since the Constitution of Nigeria is the Supreme law of the land, and other legislations derive validity from it, the proposed amendment of section 44 (3) of the Constitution will require consequential amendment to relevant provisions of other statutes made pursuant to the Constitution. The statutes are the Petroleum Act, 1969, the Minerals and Mining Act and subsidiary regulations made thereunder should be modified to bring them into conformity with any amendment to the Constitution. The legislations should be amended to permit the states where natural resources are found to exercise rights of ownership and control. In so doing, the dominance posture of the federal government and the centrist federal control over natural resources would have been put to a check which will bring about a balance in the federation.

It is also suggested that the Land Use Act, 1978 be amended particularly section 1 thereof which vests all lands comprised in the territory of each state of the federation in the governors of the state in trust for the benefit of all Nigerians. This should be amended to provide explicitly that all onshore natural resources found beneath all lands comprised in the territory of each state shall also vest in the state. It is to be noted that since the centralization of oil revenue is a direct incident of centrist ownership of natural resources, it follows that the proposals for devolution of ownership rights to federating states will necessarily require modification of the current fiscal arrangement. It follows therefore that the devolution of resource ownership requires decentralization of natural resource revenue. The current fiscal system is thus to be modified to accommodate the interest of the oil bearing states. There is no doubt that the proposed constitutional amendment may appear onerous, it is not insurmountable. Its effectiveness may depend on a number of factors including the development of a robust and efficient institutions by the federating states, the readiness of federal politicians and agencies to accept the new regime of shared competences over natural resources and also the readiness of the Supreme Court of Nigeria to enforce the constitutional delineation of the competence between the federal and state governments. No doubt, the apex Court had in a number of its decisions, affirmed the sanctity of the constitutional delineation of the competences between levels of government and also sanctioned acts of the federal government found to constitute invasion of the spheres reserved to federating states.<sup>37</sup> In a more recent decision, the apex Court also recognized the autonomy of states in the Nigerian federation<sup>38</sup> and this is in keeping with the spirit of a true federalism which requires the division of power between a central and state government and this certainly should extend to control and management of natural resources

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<sup>36</sup> B Nwabueze, *Constitutional Democracy in Africa* vol. 1. (Spectrum Books Ltd. Ibadan, 2003) 149-150.

<sup>37</sup> *A-G. Lagos State v. A-G Federation* [2003] 12 NWLR (Pt. 833) 1, 120; *A-G Abia State v. A-G. Federation* [2002] 6 NWLR (Pt. 763) 264, 365, 448, 461.

<sup>38</sup> *A-G Abia State v. A-G. Federation* [2022] 16 NWLR (Pt. 1856) 205 at 434.