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STRIKING A BALANCE BETWEEN HOST COMMUNITY CLAIMS AND NATIONAL INTEREST OVER OWNERSHIP RIGHTS OF OIL RESOURCES IN NIGERIAN DELTA REGION

*Omotayo Tekaron Abisoye **Folasade Folake Aare ***George Gogo Ntor

*[Ph.D., B.L] Senior Lecturer and Head, Public Law Anchor University, Lagos, Nigeria
Email < oabisoye@aul.edu.ng > Digital Id. < https://orcid.org/0000-0002-7839-5888>

[Ph.D., B.L] Senior Lecturer and Head, Private and Property Law, Faculty of Law Anchor University Lagos, Nigeria. **Email faare@aul.edu.ng; Digital Id. < https://orcid.org/0000-0002-6451-249X>

***[LLM., B.L] Lecturer, Department of Public Law, Faculty of Law, Anchor University, Lagos, Nigeria
Email gntor@aul.edu.ng> Digital Id. <https://orcid.org/0009-0001-3335-090X>

Abstract

Ownership of oil resources in most countries is conferred on the central or federal government, not allowing individuals, community or component states/units to lay claim to it. This has been beneficial for international business purposes and has ensured stable revenue particularly for the central/federal government. With increasing environmental damage associated with exploration and distribution from the international oil company operators, coupled with weak institutional arrangements and poorly conceived laws, communities, individuals and states have begun to agitate for control of their resources. Based on the above, the authors argued for cooperative ownership of oil resource under the current legal system in Nigeria. The paper thereafter considered the merits of the current system encouraging communal and state interest in oil resources. The authors then maintained the need for a new 'cooperative approach' to oil ownership in Nigeria involving the Federal Government, States and/or the oil-bearing communities by placing heavy reliance on combination of subsisting local and international frameworks, as a catalyst, intrinsically capable of portending equity and fairness as well as a threshold of balance between local claim and national interest.

Keywords: Oil resources, Ownership right, host-community, resource-claim, national interest

1. Introduction

Crude oil accounts for over 80% of Nigeria's foreign exchange as well as total government revenue.[1] Apart from being Africa's largest oil producer and exporter, Nigeria is also a producer of natural gas with an estimated 200.79 trillion cubic feet of proven natural gas.[2] Most of the natural gas,[3] like the crude oil, is produced from the Niger Delta region or its coastal waters.[4] Apart from oil, the Niger Delta region is also rich in other natural resources having the third largest mangrove forest in the world and great biological diversity.[5] Considered within the ethno-political classification in Nigeria, the Niger Delta is considered a minority area.[6]

The management of Nigeria's oil is vested in the federal government owned Nigerian National Petroleum Corporation.[7] The NNPC operates with a number of traditional foreign oil-prospecting and multinational companies such as Shell, Mobil, Texaco, BP, Elf, and Chevron. Recently, however, many but a few indigenous oil-prospecting companies have also emerged, but their impact remains comparatively low as their work is in managing marginal fields.[8]

Nigeria as a matter of fact, remains a heterogeneous and secular society. Implicit in this is the issue of distribution of oil wealth among the multifarious ethnic groups. This is a

[1] Nume Ekeghe, 'Replacing Oil as Mainstay of Nigerian Economy' ThisDay Live < https://www.thisdaylive.com/index.php/2022/08/31/replacing-oil-as-mainstay-of-nigerian-economy/ > accessed 28 September 2024.

[2] Department of Petroleum Resources, available online at: <https://www.dpr.gov.ng/nigerias-gas-reserves-rise-to-200-79-trillion-cubic-feet-dpr/> accessed 12 February 2023.

[3] Anya Kingsley Anya, Gaga Ekakitie, C. Esther-Anya, Anatoljis Krivins, Inguana Jurgelane-Kaldava,. Entrepreneurial, Legal and Logistics aspects of Gas Industry in Nigeria, Journal of Entrepreneurship and Sustainability Issues, <https://jssidoi.or/.jesi/> Vol. 11 Number 4 (June) [<https://doi 10.9770/jesi.2024.11.4(20) >] accessed 10 September 2024

[4] The Niger-Delta, with a landmass of 70,000 square kilometers, is described as the largest wetland in Africa and among the three largest in the world. The Niger-Delta is thus a difficult terrain. However, the eco-system of the area is acknowledged as one of the most diverse and richest in the world, and therefore, highly supportive of human life. it stretches across nine different states in the coastal South of Nigeria, which borders the Gulf of Guinea, the lobe-shaped 'armpit' along the west coast of Africa extending across Cameroun, Equatorial Guinea, Sao Tome and Principe, Gabon, and Angola. See also Cyril Obi, 'Nigeria's Niger Delta: Understanding the Complex Drivers of Violent Oil-Related Conflict' (2009) 2 *Africa Development* 103, 104.

[5] UNDP Project Document, Niger Delta Biodiversity Project, p. 9, available online at: http://www.undp.org/content/dam/undp/documents/projects/NGA/Niger%20Delta%20Biodiversity_Prodoc.pdf

[6] Abiodun Joseph Oluwadare and Musibau Olabamiji Oyebode 'Oil Resource as a Major Source of Insecurity in the Niger Delta of Nigeria' (2013) 3 (21) *Research on Humanities and Social Sciences* 32.

[7] [Hereafter, The NNPC]. See also, Richard Boele and others, 'Shell, Nigeria and the Ogoni. A Study in Unsustainable Development: The Story of Shell, Nigeria and the Ogoni People–Environment Economy Relationships: Conflict and Prospects for Resolution' (2001) 9 *Sustainable Development* 75

[8] Alex Gboyega, Tina Soreide, Tuan Minh, G. P. Shukla, LePolitical Economy of the Petroleum Sector in Nigeria, Policy Research Working Paper, available online at: <https://openknowledge.worldbank.org/bitstream/handle/10986/3542/WPS5779.txt?sequence=2&isAllowed=y> Accessed 12 March 2024.

major issue for Nigeria, and more particularly, for communities of the Niger Delta region. The federal constitution of Nigeria provides for the ownership and control of oil resources to be vested on the federal government which in turn, is empowered to redistribute the revenue among the country's federating units. In the 1960s, 50% of the money generated from oil (proceeds of royalties and mining rent) went to the regions producing the oil.[9] During the early 1990s, the distribution formula stood at 55% for the Federal Government, 32.5% to the state government, 10% to the local government, 1% to a fund for the amelioration of ecological problems and finally 1.5% to the Oil and Minerals Producing Areas Development Commission (OMPADEC).[10]

OMPADEC was then charged with channelling funds specifically to oil producing communities. More recently the figure allocated to the state governments has been increased to 13%.[11] The Niger Delta Development Commission (NDDC) which has replaced OMPADEC is funded by a combination of contributions from the federal government and oil companies: 15 per cent of the allocations due to the member states of the commission under the "derivation principle" of revenue allocation; 3 per cent of the total annual budget of any oil company operating in the Niger Delta; and 50 per cent of funds due to the member states from the ecological fund.[12] There are, in fact, no specific allocations to oil host communities, but only to the oil producing states, of which many of the affected states have failed to channel substantial part of the 13% derivation fund to host communities that suffer the most from the oil producing activities of oil companies.[13]

The states have their allocations, however, their actual share of oil revenue usually decrease gradually while the portions of the Federal Government and various oil companies, grew in quantum, therefore enabling the later to become wealthier. Significantly, in the midst of the jaundiced sharing formula tilted against the host communities, it is observed that the process of exploration and distribution of oil has also had environmental and social costs in the OHCs through leaks, oil spills and gas flaring.[14] Apart from the environmental pollution, oil exploration aggravates the already heavy pressure on land in one of Africa's most densely populated regions. Notwithstanding the foregoing challenges, there is a complex situation further confronting the Niger-Delta

[9] Boele *supra, at P*p. 76, 77
[10] *Ibid*.
[11] *Ibid*.
[12] *Ibid*.
[13] See Theodore Okonkwo and Uzuazo Etemire, "Oil Injustice" in Nigeria's Niger Delta Region: A Call for Responsive Governance, 8 *Journal of Environmental Protection*, (2017) p. 46.
[14] See Ibibia Lucky Worika, 'Environmental Law and Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa' (Anpez Centre for Environment and Development 2002) 36-39.

region, just like other parts of the country. It is the problem of greed on the part of the leaders. Most of the so-called Niger-Delta community leaders prefer to connive with the government and multinational oil companies (MOCs) operating in their areas to undermine the legitimate demand and agitation of the OHCs against the deplorable environmental degradation and neglect for its correction.[15]

The paper therefore strives to examine oil resource ownership under the current legal regime in Nigeria. The authors consider the merits of the current system in practice and the underlying basis for state and communal interest in oil resources. The paper further suggests a 'cooperative approach' to oil ownership in Nigeria involving the Federal Government, States and the OHCs. To achieve this, the investigation is divided into several parts. The part two describes the legal framework of oil ownership in Nigeria. Part three highlights the trending argument for Federal Government ownership of oil resources. Part four discusses the underlying basis for state and OHCs interest in oil resources. Part five focuses on cooperative ownership of oil resources among interested parties, and part six is the conclusion.

2. Nature of Ownership of Oil Resources in Nigeria

A number of reasons have been suggested as to why ownership of oil resources should be vested in the Federal Government.[16] One of such reason is that ownership and control of petroleum is an important political symbol in most developing countries.[17] Exclusive federal control permits the promulgation of uniform regulations in the oil industry.[18] Also, the Federal Government seems to be the only authority that can successfully pursue in collaboration with MOCs a policy that will not adversely affect Nigeria's foreign exchange position, same being a federal subject under the constitution.[19] Oil has proven to be of strategic importance to national life, and it is argued that it should be centrally controlled by the Federal Government in the interest of the nation.[20]

Supporters of Federal Government ownership of oil resources canvas the idea that the deposits of petroleum on land in Nigeria represent 'part of the National heritage' while those deposited in the maritime areas are subject to the sovereignty of the Federal

[15] Akume Albert, 'The Dimensions of Oil conflict and Impact on Nigeria's Federal Relations: A Review' (2014) 5 *Mediterranean Journal of Social Science*, 222, 224.
[16] M. A. Ajomo, 'The 1969 Petroleum Decree: A Consolidation Legislation, Resolution in Nigeria's Oil Industry' (1979) 1 *Nigerian Annual of Int'l Law* 57.
[17] *Ibid*.
[18] *Ibid*.
[19] *Ibid*.
[20] *Ibid*. at P. 58

Government under various international conventions consequently implying that, no matter where resources are found, they are to be centrally owned and controlled.[21] The huge capital outlay and high degree of technical expertise required in the petroleum industry, also appears to give credence to the point that it is the Federal Government that has the capacity to operate effectively in the oil and gas sector.[22] Private ownership of oil will also create enormous wealth for a few private individuals who might not apply such towards productive ends for national priorities but rather deepen class division.[23] The prevailing view of this school of thought is that contrary to private ownership, Federal Government ownership and control of petroleum resources will enhance national unity.[24]

Unfortunately, the Federal Government's exclusive ownership and control of oil resources has caused deep bitterness, resentment and a sense of majority oppression of the minority OHCs.[25] The continuing Federal Government ownership has in addition resulted in rebellions, revolts and calls by the oil producing areas for a change of status quo.[26] The states and OHCs – where so much oil dollar is being made – feel cheated as they suffer from a polluted and devastated environment that comes with the loss of their livelihoods (as farmers, fishermen and hunters), together with a lack of basic amenities.[27] It is also noted that central ownership and control have led to the emergence of a class of enormously wealthy individuals, and a gross mismanagement of the proceeds of oil and gas.[28]

On the other hand, the Federal Government sees itself as the rightful custodian of the natural resources for the benefit of all in the country. The Federal Government further views the activities of the protesting OHCs and the armed militias as acts of economic sabotage to the main source of national revenue and a challenge to its power in the Niger Delta. The activities of some of the armed groups are also interpreted as acts of criminality as well as a threat to national stability and security.[29] Since Nigeria is an oil-dependent nation, any act capable of resulting in the disruption of oil production is perceived a threat to the survival and wellbeing of the country. Community agitations and attacks on oil facilities is a threat to the business interests of the MOCs.

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[21] *Ibid*.
[22] *Ibid*.
[23] *Ibid*.
[24] *Ibid*.
[25] Itse Sagay, *Ownership and Control of Nigerian Petroleum Resources: A Legal Angle*, *in* Nigerian Petroleum Business: A Handbook (V. Eromosole ed.,) (Advent Communications Ltd 1997) 180.
[26] *Ibid*.
[27] *Ibid*.
[28] *Ibid*.
[29] *Ibid*.

Furthermore, MOCs home countries have become, especially post 9/11 terrorist attacks in the US and the growing presence of oil competitors from Asia (China and India) in Africa, quite concerned with the security threats posed by armed groups in the Niger Delta. This is mainly because armed attacks endanger the lives of oil workers (including foreign nationals), damage expensive oil installations, resulting in the disruption of oil exports, which is perceived as a threat to the energy security interests of oil-dependent global powers. There has been a policy of corporate oil support for repression of protests in the Niger Delta, even though the oil companies are often quick to claim that they do not interfere in local politics.[30] However, given the intensity of the attacks and the high stakes involved in oil production in the troubled region, oil companies have begun to increase engagement with some of the oil communities in social provisioning as an aspect of promoting cordial oil company-community relations.[31]

Looking at the ownership of oil structure in the United States, Canada and the United Kingdom, it is only the United Kingdom operating under a unitary system of government that vests ownership of mineral resources exclusively in the Crown or the central government. In both the United States of America[32] and Canada[33], which operates a federal system of government like Nigeria, ownership rights of the autonomous units—whether called states or provinces — are recognized. It is also the case that, within these federal systems, private ownership rights are recognized and protected.

Particularly, in the United States, oil and natural gas exploration and production is largely regulated by the state where the activity is taking place. The Federal Government also regulates the exploration and production on federal lands and in certain offshore areas. Generally, state property law sets out who holds the right to oil and natural gas produced (federal law may apply to land owned by the federal government and certain offshore

[30] Crosdel Emuedo, 'Oil Multinationals and Conflicts Construction in Oil-Host Communities in the Niger Delta' (2015) 9 (5) *African Journal of Political Science and International Relations* 174; Elias Courson, 'Movement for the Emancipation of the Niger Delta (MEND): Political Marginalisation, Repression and Petro-Insurgencey in the Niger Delta', Discussion Paper 47 (Nordiska Afrikainstitutet, Uppsala, 2009) 14 available online at: <https://www.diva-portal.org/smash/get/diva2%3A280470/FULLTEXT01.pdf> accessed 29 May 2023.

[31] Obi, *supra* note 3 at 107.

[32] For more discussion on ownership theories applicable to some US States, see J. M. MacIntyre, 'The Development of Oil and Gas Ownership Theory in Canada' (1969) 4 *U. Brit. Colum. L. Rev*. 245, 255; W. L. Summers, 'Property in Oil and Gas' (1919) 29 *The Yale Law Journal*, pp. 174-187; M. K. Woodward, 'Ownership of Interests in Oil and Gas', (1965) 26 *Ohio State Law Journal* 353, 358-360.

[33] Andre Plourde, 'Oil and Gas In The Canadian Federation' World Bank, 2–3 (2010) <http://siteresources.worldbank.org/EXTOGMC/Resources/336929126644562460 8/Framework_Paper_Canada2.pdf> accessed 20 March 2023. For more on the Canadian position, see, Robert D Cairns, 'Natural Resources and Canadian Federalism: Decentralisation, Recurring Conflict and Resolution, (1992) 22 *Publius: The Journal of Federalism* 55.

areas). While the particulars of state laws vary across the US, rights to oil and natural gas extracted from the ground are generally held by the surface landowner (unless these rights have been severed).[34] Oil pipeline construction is not federally regulated except for border crossings, which is understandably so.

In Canada, the regulation of oil and gas activities varies depending on the jurisdiction and nature of the development. Federal regulatory regulates inter-provincial and international trade and commerce, including the import, export and transport of natural resources. Regulatory authority over oil and gas production and environmental protection within provincial boundaries lies primarily with provincial governments, and each province has its own environmental laws. More importantly, ownership of oil resources in Canada is split between: the provincial Crown, the federal Crown, private freehold ownership and First Nations. The extent of private ownership largely depends on the time that the land was settled.[35]

3. Framework on Ownership of Oil Resources in Nigeria

The Constitution of the Federal Republic of Nigeria 1999[36] and section 1 of the Petroleum Industry Act[37] (PIA) vest ownership of petroleum in Nigeria in the government of the federation of Nigeria. Section 44 (3) of the 1999 Constitution provides as follows:

> Notwithstanding the foregoing provisions of this section, 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 of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

Section 44 (3) of the 1999 Constitution includes petroleum in the Exclusive Economic zone of Nigeria of which the ownership is vested in Federal Government. The Exclusive Economic zone of Nigeria is described under the Exclusive Economic Zone Act as an area extending from the external limits of the territorial waters of Nigeria up to a distance of

[34] The mineral interest in a property can be sold separately from the surface portion of property. Rights to oil and natural gas can also be split from each other, and so can rights to producing from different strata below the property. Mineral interest owners can typically reasonably occupy the surface property to extract oil and natural gas from the property.

[35] 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 owned.

[36] Cap C23 LFN 2004.

[37] Petroleum Industry Act (2021 No. 6)

200 nautical miles from the baselines from which the breadth of the territorial waters of Nigeria is measured.[38] Provision is made in case of treaties or agreements between Nigeria and neighbouring littoral states. The subsection states that subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral State, the delimitation of the Exclusive Economic Zone between Nigeria and any such State shall be the median or equidistance line.[39] Subsection (3) of the very same section is to the effect that "the median or equidistance line" means the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial waters of Nigeria and the State concerned is measured.

The Nigeria's Exclusive Economic Zone Act appears to be so broad as to include the continental shelf. This may explain the muteness of the 1999 Constitution on the question of the continental shelf in the provision vesting ownership of oil and gas on the Federal Government of Nigeria.[40]

To further enshrine absolute ownership of oil and gas resources in the Federal Government, legislative powers over mines and minerals, including oil fields, oil mining, geological surveys and natural gas are exclusively vested in the National Assembly.[41] A deeper consideration of the PIA would show the strong commitment of the Federal Government in retaining ownership of oil and gas. Section 3 (1) (g) (h) of the PIA empowers the Minister of Petroleum Resources, a functionary of the Government of the Federation, to grant to persons, as specified, who are eligible for such a grant. The prescribed instruments and the operations proper by them include; licence, to be known as an oil exploration licence, to explore for petroleum; a licence, to be known as an oil prospecting licence, to prospect for petroleum; and a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum.

In support of the above, reference is made to the case of *South Atlantic Petroleum Ltd v Minister of Petroleum Resources*,[42] where the Federal High Court held that petroleum resources in Nigeria, on the basis of the above laws, are vested in the Federal Government. Interested persons are granted licenses or leases to explore, prospect or mine oil and gas.

[38] Section 1(1) Exclusive Economic Zone Act Cap E17 LFN 2004
[39] *Ibid*. section 1(2).
[40] P. N. Oche, *Petroleum Law in Nigeria*, (Heirs Great Commission 2004) 29
[41] See para 39 of the Second Schedule to the 1999 Constitution.
[42] (2006) 10 CLRN 122

A recent innovation introduced by the PIA is the inclusion of Chapter 3 dealing with Host Communities Development which focused on the fostering of sustainable prosperity within host communities, the provision of direct social and economic benefits from petroleum operations to host communities, the enhancement of peaceful and harmonious co-existence between licensees or lessees and host communities, and the creation of a framework to support the development of host communities.[43] The PIA provides for the creation of a Host Communities' Development Trust (HCDT) whose source of funding shall be 3% of the actual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities in addition to donations, gifts, grants and honoraria, and profits and interests accruing to the fund.[44] The creation of the HCDT is quite commendable and is an avenue to ensure that host communities benefit from the resources found in their region/location.

However, the exclusive right enjoyed by the Federal Government over oil resources remains a subject of controversy in Nigeria. The combined effect of the laws considered above operates to vest effective control of land and oil resources in the federal government.[45] The law recognizes the rights of the occupiers to the surface interests, and provides for payment of compensation to such holders, in the event that their land is required for mining or other public purposes.[46] The basis of computation of such compensation is a source of controversy, as no account is taken of the minerals/oil found on such land in determining the worth of the land and the compensation payable. In conferring ownership of all mineral resources in Nigeria on the Federal Government, the Constitution also provides for payment of not less than 13% of the revenue accruing from such resources to the state in which the minerals are found. This invariably leads to a brief discussion on the vexed issue of resource control.

In *Attorney General of the Federation v the Attorney General of Abia State & ors (No2) (2005)* the ownership, control and management rights of the Federal Government of Nigeria over the mineral resources located in the offshore areas of Nigeria was recognized to the exclusion of the states.[47] The important question answered in this case involving

[43] Section 234 (1) PIA
[44] Section 240 (2) and (3) PIA
[45] Kaniye Ebeku, 'Oil and the Niger Delta People: The Injustice of the Land Use Act' (2001) (9) *Centre for Energy, Petroleum and Mineral Law Policy Journal*
< http://www.dundee.ac.uk/cepmlp/journal/html/vol9/vol9-14.html> accessed 27 May 2023
[46] Section 44 (1) CFRN 1999; Section 47(2) Land Use Act 1978, Cap L5 LFN 2004; and Section 11(5)(a) Oil Pipelines Act, Cap O1, LFN 2004
[47] (2002) 6 NWLR, [Pt. 746] 542

resource control rights was whether ownership right over mineral resources located in offshore of the eight littoral states of Akwa Ibom, Bayelsa, Cross-River, Delta, Edo, Lagos, Ondo and Rivers vest in the littoral states or in the Federal Government. The Supreme Court affirmed the exclusive resource control and ownership rights of the Federal Government by virtue of the provision of section 44 (3) of the 1999 constitution.[48]

One plausible argument for the Federal Government's ownership of oil resources is that these resources in or upon any land in Nigeria is viewed by the federal government as public goods exploited for public use.[49] This position would be deemed unacceptable to the OHCs. One settled point nevertheless is that under the current Nigerian legal regime on oil ownership, the Federal Government as statutory owner have tried to confer benefits on communities through various bodies such as the NDDC and the Niger Delta Ministry and lately with the creation of the HCDT without much success.[50]

4. Foundation for 'State and Communal Interest' in Oil Resources in Nigeria

Oil pollution, extreme poverty, high levels of youth unemployment, pollution, perceived discriminatory employment practices against locals by oil companies, socioeconomic and political marginalisation and neglect by successive administrations constitute the main grievances by states and local communities against the oil companies and federal government ownership of oil resources. These complaints have a long history and are connected to the view of ethnic minority groups in the Niger Delta that they are cheated out of a fair share of oil revenues by a Federal Government dominated by larger (non-oil producing) ethnic groups, which in partnership with MOCs exploit their region. Taking advantage of a favourable post-Cold War discourse on environmental and minority rights, the Niger Delta resistance movements in the 1990s framed their protests and demands in political and environmental terms.

[48] However, sequel to the judgment, the Onshore/Offshore Dichotomy Abolition Act 2004 was passed leading to an increase in revenue accruing to the littoral states under the principle of derivation from Offshore natural resources located 200 metres dept isobath contiguous to the state.

[49] Wilson Akpan, 'Oil, People and the Environment: Understanding Land-Related Controversies in Nigeria's Oil Region', (2010) <http://www.codesria.org/IMG/pdf/akpan.pdf> accessed 29 May 2023.

[50] Alphonsus O. Isidiho and Mohammed Sabran, 'Challenges Facing Niger Delta Development Commission (NDDC) Projects in Imo State and Niger Delta Region in Nigeria' (2015) 5 (6) *International Journal of Humanities and Social Science* 37; Fidelis Paki and Kimiebi Imomotimi, 'Oil and Development Deficit in Africa: The Failure of Intervention Agencies in Nigeria's Niger Delta' (2011) 2(8) *International Journal of Business and Social Science*, 133; Kaniye S. Ebeku, 'Niger Delta Oil, Development of the Niger Delta and the New Development Initiative: Some Reflections from a Socio-Legal Perspective' (2008) 43 *Journal of Asian and African Studies* 399.

The current municipal regulatory regime governing ownership of oil resources explained above, have caused more damage to Nigeria as a whole. It is on the basis of the above that resort will be had to international law. Several theories of international law such as sustainable development theory, permanent sovereignty over natural resources, and right to sustainable development, provide justifications for state and local community ownership of oil resources.

4.1 Sustainable Development Theory

Sustainable development as a concept emerged in the second half of the last century.[51] The Brundtland Report of the United Nations Commission on Environment and Development defines sustainable development as, "development that meets the need of the present without compromising the ability of future generations to meet their own needs."[52] It is significant that the Brundtland Report's definition was accepted and formalized at the United Nations Conference on Environment and Development at Rio de Janeiro in 1992.[53] Emphasizing the notions of fairness and inter-generational equity, the Commission maintained that sustainable development provides "successive generations [with] not only man-made wealth but also natural wealth…in adequate amounts to ensure continuing improvements in the quality of life."[54]

The concept of sustainable development was recommended as a guiding principle to governments and private enterprises, encouraging all countries to pursue policies aimed at sustainable and environmentally sound development.[55] Although sustainable development was first applied to the environment, what we now have today is an expanded scope that has been reaffirmed by the United Nations to encompass three interdependent and

[51] Anna Buslowska, 'Sustainable Development – Attempt of the Evaluation in the Light of the Theory of the Austrian School of Economics' (2014) 9 *Journal of Strategic Innovation and Sustainability* 59.
[52] Report, 'Our Common Future,' WCED (1987) 43
[53] Since the release of *Our Common Future*, over 70 competing definitions of sustainable development have been offered by academics and policy analysts. Economists David Pearce and Jeremy Warford, two major voices on sustainable development, argue that these competing definitions largely fall into two categories. The first is the strong definition of sustainability regime in which the natural resource base is not allowed to deteriorate. Other advocates of sustainable development fall under the weak definition of sustainability and are describing regimes in which the natural resource base would be allowed to deteriorate as long as biological resources are maintained at a minimum critical level and the wealth generated by the exploitation of natural resources is preserved for future generations, who would otherwise be 'robbed' of their rightful inheritance. Unfortunately, both strong and weak definitions of sustainable development pose problems. See Jerry Taylor, 'Sustainable Development A Dubious Solution in Search of A Problem', Policy Analysis, No. 449, 26 August 2002.
[54] *Report of the World Commission on Environment and Development* UN GAOR 96th Plen mtg, UN Doc A/Res/42/187(1987) 1 <http://www.un.org/documents/ga/res/42/ares42-187.htm> accessed 12 March 2017; See Rosalind Malcolm, *A Guidebook to Environmental Law*, (Sweet & Maxwell 1994) 12.
[55] Malcom, *Ibid.*

mutually reinforcing pillars; economic development, social development and environmental protection.[56]

This theory assumed that development should meet the needs of the present without compromising the ability of future generations to meet their own needs. Oil and gas resources are not ends in themselves, but means to an end. The central tenet of this theory is that the future generation of host communities is an important consideration in the allotment and protection of interests in oil resources. Many oil companies have embraced the Brundtland Commission definition of sustainable development, mixing business strategy with economic, environmental and social progress.[57] Today, the United Nations specified that protecting and managing the natural resources base for economic and social development are overarching objectives of, and essential requirements for, sustainable development.[58] The legal regime regulating resource exploitation is crucial in encouraging sustainable development of petroleum resources.[59] The central element of the legal regime for petroleum activity is the regulation of the granting of licences and concessions for the development of that resource.[60]

Within the concept, several principles exist, the most prominent being: the principle of common but differentiated responsibility; the principle of inter- and intra-generational equity; the principle of sustainable use; and the precautionary principle.[61] The principle of intergenerational equity is important in discussing the consideration of sustainable exploration of non-renewable resources in the interest of key players in oil and gas.

The principle of inter-generational equity is concerned with how much of a State's endowment of a resource each generation consume, and how much should be retained for

[56] See, *World Summit Outcomes*, [48] UN GAOR 60th sess. UN Doc A/60/L.1 (2005), 48.
[57] Jacqueline Lang Weaver, 'Sustainable Development in the Petroleum Sector' (2003) in Adrian Brad brook and Richard L Ottinger (eds.), *Energy Law and Sustainable Development* (2003) IUCN Environment Policy and Law Paper No. 47, 45. See also, Tina Hunter, 'Legal Regulatory Framework for Sustainable Extraction of Australian Offshore Petroleum Resources, A Critical Functional Analysis', Dissertation for the degree philosophiae doctor (PhD) at the University of Bergen, April 2010, 51; G. Winter: 'A Fundament and Two Pillars – The Concept of Sustainable Development 20 Years after the Brundtland Report' in H. C. Bugge & C. Voigt eds., *Sustainable Development in International and National Law*, (Groningen, 2008), pp. 27-28.
[58] Hunter, supra, at P. 56
[59] Allen K Kneese, 'The Economics of Natural Resources' (1988) 14 *Population and Development Review* 281, 284-285
[60] Hunter, *supra* note 57 at 53.
[61] International Law Association: 'New Delhi Declaration: The Principles of Law Relating to Sustainable Development of April 2, 2002 – The 70th Conference of the International Law Association, held in New Delhi, India', *reprinted in: International Environmental Agreements: Politics, Law and Economics*, vol. 2, no. 2, 2002, pp. 211-216.

future generations in such a way that they are not disadvantaged.[62] In general, the principle of inter and intra-generational equity ensure an equitable distribution of responsibilities and resources among the world population, for present and future generations.[63] There are competing views disagreeing on what exactly needs to be sustained for the next generation, and what intergenerational obligations, if any, intergenerational sustainability imposes on the current generation. One line of argument holds that sustainability requires that future generations be left no worse off than earlier ones,[64] and others argue that the needs and entitlements of contemporaries should be weighed against the obligations of sustainability for the future generations.[65] All this clash of view calls for a balance, one that may be difficult to agree upon entirely.

Economic challenges can arise where extraction depletes a State's natural resource that cannot be replaced.[66] Accordingly, the focus of resource extraction in sustainable development is optimising the extraction of the petroleum to ensure that as much of the resource is recovered. A major issue here is how to balance the commercial imperatives of the companies that extract the petroleum and the aims of the State in the development of the petroleum resources. This can be successfully addressed through the regulatory framework. In regulating petroleum extraction a State is required to balance the needs of the participants notably the MOCs, using technology and regulation to maximise the amount of petroleum recovered from a field, whilst still remaining, particularly for the host communities, an attractive province for oil companies.[67]

It is crucial that the non-renewable resources or rapidly depleting resources be converted to a renewable source of wealth in order to secure the sustainable development of petroleum resources.[68] Therefore, it is essential to convert the wealth generated from non-

[62] Robert Solow, 'On the Inter-generational Allocation of Natural Resources,' (1986) 88 (1) *Scandinavian Journal of Economics* 141. International Law Association: 'New Delhi Declaration: The Principles of Law Relating to Sustainable Development of April 2, 2002 – The 70th Conference of the International Law Association, held in New Delhi, India', pp. 213-214; S Dasgupta and T Mitra, 'Intergenerational Equity and Efficient Allocation of Exhaustible Resources' (1983) 24 (1) *International Economic Review* 133, 133.

[63] Principle 2, Stockholm Declaration of the United Nations Conference on the Human Environment, UN – Doc. A/CONF. 48/14 (1972), *reprinted in* (1972) 11 ILM 1416; Art. 3(1), United Nations Framework Convention on Climate Change, May 9, 1992, 1771 UNTS 107, UN Doc. A/AC.237/18 (Part II)/Add.1

[64] John Pezzey, *Sustainable Development Concepts, An Economic Analysis* (1992) World Bank Environment Paper No. 2.

[65] Wilfred Beckerman, 'Economists and Sustainable Development: the OECD Report on Policies for Sustainable Development' (1997) 5 *World Economics* 1.

[66] John M Hartwick, 'Intergenerational Equity and the Investing of Rents from Exhaustible Resources' (1977) 67 (5) *The American Economic Review* 972

[67] Hunter, *supra* note 57 at 57.

[68] Jeffrey D Sachs, 'How to Handle the Macroeconomics of Oil Wealth,' in Macartan Humphreys, Jeffrey D Sachs and Joseph E Stiglitz (eds.) *Escaping the Resource Curse* (2007), 174-175

renewable resources rent to other forms of wealth for future generations.[69] This would require social, political and economic strategies and can be accomplished through the development of appropriate taxation strategies that adequately capture the value of the resource rent,[70] the establishment of sovereign wealth funds, and the investment of petroleum wealth in human. The theory of sustainable development and the principle of intergenerational equity are therefore significant in discussing the consideration of oil resource exploitation and ownership in the interest of OHCs who are stakeholders in oil and gas industry.

4.2 Permanent Sovereignty Over Natural Resources

Permanent Sovereignty over Natural Resources can be traced to the struggle for sovereignty over natural resources.[71] After the end of the World War II in 1945, many of the developing countries, unhappy with their economic condition began a move to contest the validity of concession agreements which their governments had entered into with foreign investors or were imposed during colonial times for exploration and exploitation of natural resources. The majority of these concession agreements were largely one-sided and they strongly favoured the interests of foreign investor.[72] These concession agreements accorded vast areas of acreage committed for long periods to a single company usually foreign. With this type of arrangement, little or no control was possessed by the sovereign over the multinational corporation's operations and host states participated merely on a royalty basis. It was as a result of this that the traditional concession agreements posed a threat to the host nation's permanent sovereignty over natural resources.[73]

On 14 December 1962, the UN General Assembly Resolution on Permanent Sovereignty over Natural Resources ('RPSNR') was adopted.[74] The RPSNR recognised the right of the host nation to nationalise and expropriate the property of the foreign investor, provided

[69] *Ibid*, at P. 180. This is because oil wealth is different from other sources of national income. The income stream from the extraction of oil is resource rent rather than return from reproducible capital.
[70] *Ibid*, pp. 178-180.
[71] See Mats Ingulstad and Lucas Lixinski, 'Raw Materials, Race, and Legal Regimes: The Development of the Principle of Permanent Sovereignty over Natural Resources in the Americas' (2013) 29 (1) *World History Bulletin* 34.
[72] *Ibid*
[73]The threat posed by traditional concession agreements have made them fall into disuse, giving way to new contractual forms such as production sharing agreements, risk service contracts, joint ventures and 'modern concessions' in particular. M. Sornarajah, *The Settlement of Foreign Investment Disputes* (Kluwer Law International 2000) 43.
[74] *RPSNR*, GA Res 1803 (XVII), UN GAOR, 17th sess, 1194th plen mtg, UN Doc A/RES/1803(XVII) (14 December 1962).

that appropriate compensation is paid. It asserted each country's rights to choose its own economic system and exercise sovereignty over natural resources. The UNGA adopted the Charter of Economic Rights and Duties of States (CERDS)[75] which included some clear cut novel provisions[76] such as preference for the laws and jurisdiction of the courts of the host nation for the settlement of investment disputes.[77] Moreover, the *RPSNR* includes reference to international law, while the Charter of Economic Rights and Duties ignores such a reference — which could be regarded as a move by developing countries to constrain the ability of foreign investors to rely on international standards in the event of expropriation of the investment.[78] These differences certainly help to explain why the Charter of Economic Rights and Duties was backed by a majority of developing countries.[79]

In the regime of international law, a country has sovereign right to exploit its own natural resources pursuant to its own environmental and developmental policies.[80] This however is limited by the way natural resources are managed to the extent that they have an obligation to respect the rights of other nations and not cause cross-boundary harm.[81] The right to permanent sovereignty over natural resources includes an element of both the right of self-determination and the principle of state sovereignty. It is also subject to the general limitations of the principle of state sovereignty under international law.[82] The right to permanent sovereignty does not exempt nations from the requirements of international law generally, nor does it specifically exempt nations from the rules of human rights law

[75] *Charter of Economic Rights and Duties of States*, GA Res 3281 (XXIX), UN GAOR, 29th sess, 2315th plen mtg, Agenda Item 48, Supp No 31, UN Doc A/RES/3281(XXIX) (12 December 1974) annex ('*Charter of Economic Rights and Duties of States*') ('*Charter of Economic Rights and Duties*').

[76] The *Charter of Economic Rights and Duties* affirmed in art 2(1): 'every state has and shall freely exercise full permanent sovereignty including possession, use and disposal, over all its wealth, natural resources and economic activities.'

[77] Article 2(2)(c) of the *Charter of Economic Rights and Duties* also recognised the right of each state to (emphasis added):

> Nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, *it shall be settled under the domestic law of the nationalizing State and by its tribunals*, unless it is freely mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

[78] Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press 1997) 103–109.

[79] The *Charter of Economic Rights and Duties of States* was adopted by 120 States voting in favour, 6 against (Belgium, Denmark, Germany, Luxembourg, UK, United States) and 10 abstentions.

[80] *Rio Declaration*, UN Doc A/CONF.151/26/Rev.1 (Vol.1), principle 2

[81] *Ibid*. See, also *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14, 72–3 [204] where the International Court of Justice ('ICJ') recognised a duty to undertake trans-boundary impact assessment as a duty under international law.

[82] Hersch Lauterpacht, *The Development of International Law by the International Court* (Stevens and Sons 1958) 324.

relating to management and governance of natural resources.[83] Flowing from this is the assumption that permanent sovereignty over natural resources comprises of a nation's duties and rights.[84]

"Peoples" are the beneficiaries of the right to permanent sovereignty.[85] The duty to use one's natural resources to improve the nation's progress and economic development serves at the same time as justification for many of the extensive rights connected to the principle.[86] The importance of this is that government's decision to authorise MOCs to operate in the natural resource sector in a nation's territory should be with a view towards benefiting the whole population.[87] Hence, the right to permanent sovereignty needs to be exercised 'for national development and [the] wellbeing of the people of the state concerned'.[88] A key way of carrying out the above and protecting OHCs rights will be to get the OHCs involved in the ownership of the oil resources.

4.3 Exercise of Right to Self Determination

The right to permanent sovereignty over natural resources could be a basis to legitimise the claims of non-state actors and communities in defining ownership and usage rights over the natural resources within a country especially when considered closely with the right to self-determination. The right to self-determination in this context is that of an internal nature since no country will support the breakaway of any of its component part. The right provides a legitimate legal basis to dispute the undue interference with and invasion of the land of indigenous people by economic exploiters. The right to internal self-determination of indigenous peoples is at the heart of the United Nations Declaration

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[83] See, for example, *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 20 March 1952, ETS No 9 (entered into force 18 May 1954), as amended by *Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 11 May 1994, ETS No 155 (entered into force 1 November 1998) art 1. This article recognises the right to property as a fundamental human right:

> Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

[84] Jona Razzaque, 'Resource Sovereignty in the Global Environmental Order' in Elena Blanco and Jona Razzaque (eds.), *Natural Resources and the Green Economy: Redefining the Challenges for People, States and Corporations* (Martinus Nijhoff 2012) 81, 83–90.

[85] *RPSNR*, UN Doc A/RES/1803, para 1. For further argument on the right of peoples' to their natural resources, See Jeremie Gilbert, 'The Right to Freely Dispose of Natural Resources: Utopia or Forgotten Right?' (2013) 31/32 *Netherland Quarterly of Human Rights*, 314-341.

[86] See Art. 1, UNGA – Res. 1803 (XVII), Permanent sovereignty over natural resources, Dec. 14, 1962, 17 UN – GAOR, Supp. No. 17, p. 15, UN Doc. A/5217.

[87] Antonio Cassese, *International Law*, (2nd ed., Oxford University Press 2005) 491

[88] *RPSNR*, UN Doc A/RES/1803, Para 1; This is reflected in some national constitutions which require that states use natural resources for the benefit of the people: see for example, *Constitution of Kenya 2010* (Kenya) art 69 (1) (h) (which requires the state to 'utilise the environment and natural resources for the benefit of the people').

on the Rights of Indigenous Peoples ('UNDRIP'),[89] adopted by the UNGA on 13 September 2007 after 20 years of difficult negotiations.[90] The UNDRIP states that,

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.[91]

UNDRIP recognises the rights of indigenous peoples not to be subjected to forced assimilation or destruction of their culture, not to be forcibly removed from their lands or territories and not to be relocated without their free, prior and informed consent.[92] The *UNDRIP* further recognises the right of indigenous peoples to participate in decision-making in matters that could impact their rights. This is to be given effect through representatives chosen by the indigenous people in accordance with their own procedures. Further to this, indigenous peoples' have the right to maintain and develop their own indigenous decision-making institutions. Some of the rights in UNDRIP form part of customary international law.[93]

The *ILO Convention 169*[94] recognises indigenous peoples' rights to land and natural resources.[95] The Convention also recognises indigenous land tenure systems and the right to consultation. Article 14(1) of *ILO Convention 169* affirms that "the rights of ownership

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[89] *UNDRIP*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex ('*United Nations Declaration on the Rights of Indigenous Peoples*').

[90] The Working Group on Indigenous Peoples started the negotiations on *UNDRIP* in the 1980s. The discussions were moved to the UN Human Rights Commission in the mid-1990s. *UNDRIP* was adopted by the Human Rights Council in 2006 and finally adopted by the UNGA on 13 September 2007. For a commentary: see generally Karen Engle, 'On Fragile Architecture: The UN *Declaration on the Rights of Indigenous Peoples* in the Context of Human Rights' (2011) 22 *European Journal of International Law* 141, 143–144. The UNDRIP was adopted by 144 countries, with 11 abstentions and 4 countries voting against it. Nigeria was amongst the countries that abstained from voting.

[91] *UNDRIP*, UN Doc A/RES/61/295, annex art 4.

[92] *UNDRIP*, UN Doc A/RES/61/295.

[93] Although resolutions of the UNGA are not legally binding, in this case the *UNDRIP* was adopted by so many states with so few objections and abstentions that it might very well attain the status of customary international law. Claire Charters., 'Indigenous Peoples and International Law and Policy,' (2007) 18 *Public Law Review*, 22, 34. The fact that Australia, Canada, New Zealand and the United States originally withheld their support for the *UNDRIP* suggests that it lacks the solid status necessary for the formation of customary international law and, even if it were considered as such, that those states might not be bound by it, as they could be regarded as 'persistent objectors.

[94] In 1957, the ILO developed and ratified Indigenous and Tribal Populations Convention, 1957 (No. 107), an international instrument dedicated to improving the living conditions of Indigenous peoples worldwide. In 1989, ILO Convention 107 was revised and renamed Indigenous and Tribal Peoples Convention, 1989 (No. 169). This convention is yet to be ratified by Nigeria.

[95] The earlier *ILO Convention 107* represented the first attempt to codify the international obligations of states with respect to indigenous and tribal populations, particularly with regard to land, territories and resources. However, it was been criticised for its integrationist approach: International Labour Organization, *Convention No 107* (2013) available at: http://www.ilo.org/indigenous/Conventions/no107/lang--en/index.htm. See also *Convention (No 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries*, signed 26 June 1957, 328 UNTS 247 (entered into force 2 June 1959) (note that this is no longer in force).

and possession of [indigenous peoples] over the lands which they traditionally occupy shall be recognized" and that measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Surprisingly, the Convention is silent on indigenous ownership of natural resources.[96] Remarkably, the Constitutional Court of South Africa has held that under indigenous law and by virtue of traditional occupation and use, ownership of subsoil and minerals may vest collectively in indigenous peoples.[97] Under the *African Charter on Human and Peoples' Rights* ('*African Charter*'), the collective rights of indigenous peoples to land and natural resources are also recognised.[98]

The vesting of sovereignty in the Federal Government does not prevent of itself the possibility of a right of ownership in another person or party. This point was made in the New Zealand case of *Ngati Apa, Ngati Koata & Ors v. Ki Te Tau Ihu Trust & Ors*, when indigenous community ownership of parts of the sea was considered.[99] The New Zealand Court of Appeal examined the concepts of sovereignty and ownership of the offshore seabed, distinguishing between territorial sovereignty vested in the Crown with respect to the foreshore and seabed of the territorial sea and the ownership rights of the Crown. The Court further held that any legislation conferring sovereignty on the Crown over offshore areas must be read subject to preservation of extant property rights.[100]

5. Prospect on Cooperative Ownership

All of the resource issues in the Niger Delta region can be summarized in one: ownership and control of the natural resource, oil. So far, ownership by the Federal government has wreaked havoc not only on the people of the Niger Delta but on the entire economy of the

[96] *ILO Convention 169* states, in art 15(2), that
[i]n cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples … before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. See also James Anaya, 'Indigenous Peoples' Participatory Rights in relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources' (2005) 22 *Arizona Journal of International and Comparative Law* 7, 10. See also Fergus MacKay, 'Indigenous Peoples' Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review' (2004) 4(2) *Sustainable Development Law & Policy* 43, 51

[97] *Alexkor Ltd v Richtersveld Community* (2004) 5 SA 460 (Constitutional Court of South Africa) 64

[98] *African Charter*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) art 21. See article 21 of the Charter. Nigeria has ratified this treaty.

[99] (2003) NZCA 117 (19 June 2003).

[100] The New Zealand Court relied on the Privy Council case of *Amodu Tijani v Secretary, Southern Nigeria* (1921) 2 AC 399 which held that the sovereign right of the Crown did not extinguish ownership rights under native law and custom.

nation. Centralized ownership in a sense has made the Federal government far from the negative effects of oil exploration and production. The effect of this is that the oil host communities continue to suffer from the way the oil industry is being run by the Federal government. Furthermore, environmental degradation in the Niger Delta region without adequate compensation and development of social infrastructure is bound always to result in violence.

Corruption exhibited in the current ownership model of oil resources suggests that a different approach needs to be followed. On the international plane, the various justifications for the protection of local communities or indigenous people in petroleum resources may include a right to development, economic self-determination, permanent sovereignty over mineral or natural resources and the rights of the local communities or people to benefit from the mineral resources, amongst others.[101] An example of an international convention that promotes the ownership and control of mineral resources is the Indigenous and Tribal People's Convention 1989.[102] Article 15 of the Convention provides for the rights of the people to participate in the management, use and conservation of mineral or natural resources. Also, the Convention states that when the State/country has ownership and control of the mineral resources, the government shall consult with the people before undertaking any exploratory activities in such communities.

Additionally, the African Charter on Human and Peoples Rights (African Charter), which has been domesticated into Nigerian law, bestows rights upon the people to own and control natural resources.[103] Article 21(1) provides, 'all peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.'[104] The proviso to article 21(4) added that State parties to the present charter are to undertake to eliminate all forms of

[101] Dunia Zongwe, 'The Legal Justifications for a People-Based Approach to the Control of Mineral Resources in the Democratic Republic of the Congo' Paper Presented at the Cornell Law School Inter-University Graduate Student Conference Papers Paper 12 (2008) <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1040&context=lps_clacp> accessed 10 March 2023.

[102] Supra, at note 97 Unfortunately, Nigeria has yet to ratify this Convention. By virtue of Section 12(1) of the Constitution of Nigeria, no treaty shall have force in Nigeria except such a treaty or convention that has been enacted into law by the National Assembly. Flowing from this premise, the Indigenous and Tribal People's Convention 1989 is not applicable in Nigeria.

[103] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004 [Cap A9] LFN 2004

[104] The African Commission on Human and Peoples have found the Nigerian government culpable of violations of Article 21 of the ACHPRs which provides for the rights of peoples to freely dispose of their wealth and natural resources among other violations against the Ogoni people of the Niger Delta Region. See F Coomans; The Ogoni Case Before the African Commission on Human and Peoples' Rights. International and Comparative Law Quarterly, 2003, 52(3), 749-760.

foreign exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources. In line with this line of thought, it will not be out of place to envision a system wherein a trust fund can be set up to save some of the wealth gotten from oil and gas and used for the good of the people of Niger Delta origin.

Nigeria is designated a federal state. True federalism entails that the federating units express their rights to primarily control the natural resources. This does not in any way exclude the component unit from making some form of contribution to the central government for running of general matters that concern all component states. An idea would be to create a OHC's based management board on oil and gas.[105] Nigeria can draw lessons from the ownership of oil resources in the United States or Canada where private ownership or component state ownership exist.[106]

In other to placate the desire of the Federal Government and the Niger Delta region over oil and gas ownership, and in furtherance of the desire to quench violence in the region and solve resource issues, exclusive ownership by the Federal Government will have to be qualified to provision of an equitable interest for the host state and communities.[107] What this means is that some form of beneficiary status will vest in the component host state and OHCs. As the owner of the oil resources the Federal Government will be in charge of the general framework for oil and gas resources, which include, making laws and regulation to govern operations in the industry. It will conclude agreements with international oil companies as well as monitor their activities. The processes guiding the sale and disposition of production flows will be of federal governance. There is no reason why the rules governing the development and production of oil and gas reserves should not fall under the control of provincial or state governments as seen in the United State model. The OHCs, being beneficial and equitable owners, should have a say in the operations of the industry and have their rightful share of the proceeds from the revenue derived from the resource.

[105] See Nosiku S Muyinda and Lee M Habasonda, Public Participation in Zambia- The Case of Natural Resources Management (Danish Institute for Human Rights, 2013) p. iii.
[106] Morakinyo A. Ayoade 'Sovereign Ownership of Offshore Nigerian Petroleum Resources' (2013) 1 *Journal of International Law and Diplomacy* 283-287
[107] *Ibid.* at P. 292, where Dr. Ayoade argued for a solution to oil ownership crisis that accords with domestic jurisprudence beyond strict legal ownership of oil resources by the sovereign state. The learned author held the view that the FG as trustee of the Nigerian people is obligated to put in place participatory administrative mechanisms that meet societal acceptance including host communities impacted by oil and gas development.

The recent PIA seemed to try to solve some of the issues surrounding the clamour for OHC's stake in oil revenue. However, Section 1 of the PIA still vests full ownership of oil resources in the Federal Government. It is expected that the Federal Government should divest itself of the exclusive right to ownership of these resources and include the component state, local government and OHCs. The 3% HCDT Fund is not sufficient for the OHCs and at best should be increased upward to reflect the OHCs important and incredible stake in oil resources. It is also important to note that the PIA is quite on the contribution of the midstream operators to the HCDT.

Furthermore, it is argued that there should be adequate compensation for individuals, families or communities on whose land oil is located; and adequate compensation where there is environmental degradation. Although there are a number of statutes that provide for compensation in matters relating to land or landed property acquisition and oil spillage, the existing legal framework is arbitrary, not clear and contradictory in some areas. This calls for revisiting of the legal framework guiding compensation practice in Nigeria. The one-off lump sum payment, which is usually insufficient has shown, it cannot prevent the impoverishment and other risks associated with expropriation of land for public purpose.[108]

6. Conclusion

It has been demonstrated the central role oil plays in the Nigerian economy. For this reason, the Federal Government guards the ownership and control of oil and gas resources, and does everything within its means to push aside other contenders. Much of the progress that the nation has made economically in the recent decades owes its existence to the oil economy.

Unfortunately, the Nigerian oil and gas ownership regime is skewed in favour of the Federal Government. The constitution and oil and gas laws place ownership and control of oil resources in the hands of the Federal Government which touts itself to operate a federal structure. Continuous Federal ownership and control have caused suffering for many Niger Deltans. This has led to environmental degradation, loss of means of livelihood, health problems and even death in the region. Furthermore, it has incentivized

[108] Nicholas K. Tagliarino, et al, Compensation for Expropriated Community Farmland in Nigeria: An In-Depth Analysis of the Laws and Practices Related to Land Expropriation for the Lekki Free Trade Zone in Lagos (2018) 7 (1) Land 23; O. M Bello and M. A. Olukolajo, Adequate Compensation as a Tool for Conflict Resolution in Oil Polluted Wetlands of Niger Delta Region of Nigeria, 3rd International Conference on African Development Issues (CU-ICADI 2016) 460.

militarization of the region and made violence thrive in a previously peaceful part of the country.

There is growing international consensus on the need for local participation in the control and ownership of oil and gas resources. This draws strength from certain international law principles and theories to wit: sustainable development principle, permanent sovereignty over natural resources, right to self-determination etc. Indeed certain jurisdictions such as the United States and Canada recognize component state/province, and private ownership of oil and gas resources. It is on this basis that argument is being made for a new approach to ownership and control of oil and gas resources in the Niger Delta. There is an urgent need for the Nigerian state to reconsider its exclusive ownership model and opt for a system where the rights of the states and OHCs will be considered and respected. There is the necessity to see the local communities as equity owners in the scheme of oil ownership and control.

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