

## **Ownership of Oil and Gas in Nigeria: A Need for Paradigm Shift?**

**J. Adams Adoga-Ikong<sup>1</sup>, Adaeze Favour Ibekwe<sup>2</sup>**

<sup>1</sup>Department of Public Law, Faculty of Law, University of Calabar, University of Calabar, Calabar, Nigeria

<sup>2</sup>Department of Jurisprudence and International Law, Faculty of Law, University of Calabar, University of Calabar, Calabar, Nigeria

Email: [adogaadams@gmail.com](mailto:adogaadams@gmail.com)

(Received: June -2021; Reviewed: July-2021; Accepted: August-2021;

Available Online: August -2021; Published: August -2021)



This is an open access article distributed under the Creative Commons Attribution License CC-BY-NC-4.0 ©2021 by author (<https://creativecommons.org/licenses/by-nc/4.0/>)

---

### **ABSTRACT**

Nigeria is one of the African's largest producers of crude oil. The current capacity of oil production stands between 250-300 million barrels per day. Unfortunately, the country has been and is being going through a lot of crisis especially in the oil producing areas of Nigeria, the reason being that the ownership of oil being in the hands of the state (Federal Government of Nigeria) right from the colonial era to date has brought a lot of dissatisfaction, ill or mistreatment, neglect and under development among the people where the oil is produced. There are various legislations in Nigeria including the present 1999 Constitution of the Federal Republic of Nigeria which confer the ownership and control of oil and gas in the Federal Government of Nigeria. This research is therefore, to examine these extant laws that confer ownership in the Federal Government and see if there are problems vis-à-vis the various agitations by the indigenes of the oil producing areas and see if there will be a need for paradigm shift in the ownership. This will be done by looking at other jurisdictions where oil is produced and if possible to suggest the best practice rule for Nigeria for a peaceful environment in the oil producing areas of Nigeria.

**Keywords:** Nigeria; Oil and gas; Ownership.

---

### **INTRODUCTION**

In Nigeria, ownership of oil and gas has been in the hands of the Federal Government (colonial and post-colonial Nigeria) (Archibong et al., 2017; Adoga-Ikong 2019). When the colonial masters arrived Nigeria, they brought their laws which applied to Nigerians in all aspects of our lives including economic life. In order to have a firm grip of our resources, they introduced various laws including the mineral oils ordinance, which confer the ownership and control of all oil minerals on lands and beneath the lands including the waters of Nigeria in the hands of the crown (Adoga-Ikong & Inyang 2017). This continued till our independence, and even after the independence, the various laws in this area all confer ownership and control in the

Federal Government of Nigeria. As a result of this, there have been dissatisfactions, agitations, violence among others in Nigeria especially in the oil producing areas of the country over the laws that confer ownership of oil and gas in the Federal Government to the exclusive of the states and the oil producing communities. These come in form of protests, declarations, negotiations and violence.

This work therefore seeks to look at the various legislations conferring ownership of oil and gas in the Federal Government right from the colonial era to date. Also to look at the various agitations for individual or local communities ownership of this product and see if there is a need for paradigm shift in Nigeria.

## MEANING OF OWNERSHIP GENERALLY

Generally, ownership means or can be described as power of enjoyment to determine the use of which the thing is to be put or deal with or even to destroy it as the owner pleases (Adoga-Ikong 2017). In *Joseph Abraham & Anor v. IshauOlorunfunmi & Ors*, the Court of Appeal per Niki Tobi JCA (as he then was) stated that 'ownership connotes the totality of or bundle of rights of the owner over and above every other person or thing' (Onyi-Ogelle 2017).

Dias on his part defines ownership as 'consisting of an innumerable number of claims, liberties, powers and immunities with regard to the thing owned' (Run 1985). Salmond on the other hand defines ownership to mean 'the relation between person and any right that is vested in him. That which a man owns in this sense is in all cases a right' (Adoga-Ikong, 2017). Finally, ownership therefore 'connotes a complete and total right over a property'. In Nigeria, oil and gas is owned by the state. Unlike in America and some other jurisdictions where ownership of oil and gas is by individual, or state as the case may be.

## THEORIES OF OWNERSHIP OF OIL AND GAS

- a. **Absolute Ownership Theory:** This theory is well recognized in the states of Texas, Pennsylvania, and Arkansas of the United States of America. The theory states simply that petroleum is capable of being owned in fee simple. That the owner of a piece of land is regarded as the owner of the petroleum lying underneath the lands. He is not a co-owner even when the reservoir straddles lands each owned by different persons (Altun et al., 2019).
- b. **Qualified Ownership Theory:** This theory is practiced in the states of California and Indiana of the United States of America. This theory states that petroleum cannot be owned until it is captured and reduced into possession (Suryandari & Andhika 2020). In other words, the land owner is said not to have title to the oil and gas in situ because of the fact that he cannot be divested by drainage without consent and without liability on the part of the person causing the drainage (Suryandari & Andhika 2020). All the land owners over a common reservoir are designated as collective owners with equal rights to take oil from the reservoir. They do not have title to the specific oil underneath their respective lands over and above each other, but rather equal rights (Suryandari & Andhika 2020).
- c. **The Non-ownership Theory:** This theory states that petroleum is not capable of ownership since it is fugacious in nature. This means that it is a substance that moves from one underground layer to another thus, cannot be possibly trapped and reduced into possession like any other commodity (Wright et al., 2021). The state practicing this is the state of

Oklahoma in the United States of America. (This theory is closely related to the qualified theory of ownership).

- d. **The Eminent Domain Theory:** This provides for the ownership right in the sovereign. In other words, this theory provides that the ownership of oil and gas is in the hand of the government or the state. This is the most prevalent system or theory of ownership of oil and gas. Nigeria is a good example of this theory of ownership. In practice of this type of theory, the right of ownership and control is enshrined in the country's constitution (Coleman & Klass 2019).

## **OWNERSHIP OF OIL AND GAS IN NIGERIA (STATUTORY PROVISIONS)**

The British colonial administration in Nigeria enacted some laws dealing with mineral oils, specifically on the question of ownership (Aladeitan 2012). Historically therefore, there existed pre-1914 legislations on mineral oils, but it is generally believed that the major colonial statute on mineral oils was the 1914 Mineral Oils Ordinance (Aladeitan 2012). This legislation was enacted to regulate oil exploration and exploitation activities in Nigeria. However, there was no provision in the law dealing with ownership of oil. This was a snag in the legislation which gap was filled by Section 3(1) of the 1916 Ordinance (which was invariably replaced in 1945) by the Minerals Act. The provision of Section 3(1) states:

The entire property in and control of all mineral oils, in, under or upon any land in Nigeria, and of all rivers, streams and water courses throughout Nigeria is and shall be vested in the crown (state), save in so far as such rights may in any case have been limited by any express grant made before the commencement of this Act (Oladipo 2013, p. 200).

The 1914 Mineral Oils Ordinance was amended in 1925, 1950 and 1959. Under the provision of Section 2 of the 1925 amendment, 'mineral oil' which was earlier omitted was defined to include 'bitumen, asphalt and all other bituminous substances' (Raji & Abejide 2014). Interestingly, the 1950 amendment added a new section, whereby the Nigerian territorial waters were incorporated under the ambit of the 1914 Ordinance. By the 1959 amendment on the other hand, according to Ebeku, 'the legislative competence of Nigeria's federal legislature under the colonial constitution of 1959 was extended to cover the submarine areas of other waters on which the Federal Legislature may make legislation in future'. The 1963 Republican Constitution in Section 158(1) provides:

All property which immediately before the date of the commencement of this constitution, was held by the crown or by some other body or person (nor begin an authority for the crown) shall on that date, by virtue of this sub-section and without further assurance, vest in the president and shall be held by him on behalf of or, as the case may be, on the like trust for the benefit of the government of the federation; and all property which immediately before the date aforesaid, was held by that authority of the Federation on behalf of or in trust for the crown shall be held by that authority on behalf of, or as the case may be, on the like trusts for the benefit of the government of the federation (Oladipo 2013, p. 200).

The 1979 Constitution in its section 49(3) provides:

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 a manner as may be prescribed by the National Assembly.

The still born 1989 constitution similarly vested ownership of oil and gas in the federal government. The same situation was the case under the 1995 Draft Constitution. The present 1999 Constitution of the Federal Republic of Nigeria (as amended) in Section 43(3) provides:

Notwithstanding the foregoing provisions of this section, the entire property in, and the control of minerals, mineral oils and natural gas in, under or upon and 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 a manner as may be prescribed by the National Assembly.

Other legislations conferring ownership of oil and gas in the Federal Government are:

(a) The Petroleum Act - provides in Section 1,

(1) The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the state.

(2) This section applies to all lands (including land covered by water) which:-

a. Is in Nigeria; or

b. Is under the territorial waters of Nigeria; or

c. Forms part of the continental shelf.

(b) Exclusive Economic Zone Act- This legislation just like its sister Petroleum Act vests in the Federal Government of Nigeria exclusive rights with regards to exploration and exploitation of natural resources (oil inclusive) in respect of the seabed, the subsoil and superjacent waters of the Exclusive Economic Zone of Nigeria (Nadelson 1992).

Also, section 3(1) of the Mineral Act, gives supports to the above. The section provides; 'The entire ownership and the control of all petroleum in, under or upon any lands to which this section applies shall be vested in the state...' (Mobbs 2004).

## JUDICIAL PROVISION

To buttress the above statutory provision, the supreme court of Nigeria pronouncement in the case of Attorney-General of the Federation v. Attorney-General of Abia State & 35 ors is undoubtedly instructive here. The facts of this case is that, following the protests by the states within the Federation of Nigeria in respect of what has become known as 'resource control' the Federal Government of Nigeria in 2001 filed a suit at the Supreme Court against the 36 states of the Federation in which it sought an interpretation of the 'seaward boundary' of the littoral states within the Federation for the purpose of calculating the amount of revenue accruing to the Federation (Obutte & Idiaghe 2018). In another move, the eight (8) littoral states of Delta, Akwa-Ibom, Cross-River, Ondo, Rivers, Lagos, Bayelsa and Ogun further contented that their territories extend to the continental shelf and exclusive economic zone, and are therefore, entitled to not less than 13 percent of the onshore and off-shore natural resources in their lands and territorial waters. The Federal Government maintained that the natural resources located within the continental shelf of Nigeria are not derivable from the state of the federation. The Supreme Court thus affirmed the Federal Government's ownership and control of all natural resources within its territory, and also confirmed that the littoral states have no title to offshore resources (Akpan 2020).

## **BASIC ARGUMENTS FOR AND AGAINST STATE OWNERSHIP AND CONTROL OF OIL IN NIGERIA**

Despite the provisions of the constitution and other extant laws as well as the Supreme Court decision in *Attorney-General of the Federation v. Attorney-General of Abia State and 35 Ors*, there are arguments for and against the ownership of oil and gas in Nigeria (Obutte & Idiaghe 2018).

The first of the arguments in favour of state ownership is the work of Alagoa (Zuru 2009, p.46). According to him, ‘the Niger Delta has been built up over ten thousand years from sediments brought down through rivers Niger and Benue. Therefore since every part of the country has made a geological contribution to the sedimentary formation of the Delta, which produces oil and natural gas, it will only be fair to say that the resources shall belong to the entire federation... The trust is, in the present federal structure of the country, it is the federal government that should control the resources, this is what obtains in most countries...’. Supporting the above, Omorogbe has this to say

Some communities in the Niger Delta have attempted to assert right over the natural resources under their land notwithstanding the fact Section 44(3) of 1999 Constitution and Section 1 of the Petroleum Act 1969 clearly vest ownership in the Federal Government.

...in the interest of national unity, no particular tribe should be seen as having rights over natural resources under its land that are more than the rights of other tribes over natural resources located under the territories within which they are residing. Thus, where ownership is vested in the state, this should apply to all resources... (Omorogbe 2001, p. 149).

On the contrary, Ebeku arguing for individuals ownership after exploring ownership of land resources under the following – land, international labour organization, African charter on Human and Peoples’ Rights, Declaration of World conference to combat Racial Discrimination 1983 etc. has this to say. ‘On the provision of the constitution this is perhaps the most contentious provision of the Nigerian constitution today...’ (Butegwa 2012, p. 65). Atsegbua on the other hand said, ‘the need to adopt a tripartite system of ownership of oil and gas may provide a solution to the myriad of problems facing the oil producing communities of Nigeria (Bello 2021).

## **CONCLUSION**

Although certain legislations in Nigeria have provided for ownership and control of mineral oils in the hands of the federal government even right from the colonial era to date. Despite this, why have there been agitations, unrest violence, kidnapping and so many other vices in the oil producing areas of the country on the basis of ownership and control of ‘God given resources’ (oil and gas) by the people where the resources are endowed. Will there be a paradigm shift as it is popularly agitated for, can we still maintain the status quo? What happens on other jurisdictions?

One argument that will agitate the mind of every reader is the attitude of our legislators right from inception whether they are willing to actually amend the provision of the constitution. This is so because, after Nigeria got her independence in 1960, by 1968, when she had her republic, they had every opportunity to change the status quo in the 1963 Republican constitution but they did not. Again from 1963 to date, Nigerian legislators have not made any attempt to amend the provision of the constitution in that regard.

Looking at some other jurisdictions, where ownership is practiced, can't Nigeria remain to imbibe this continuously? In Canada for instance, the Supreme Court of Canada in *Re Continental shelf offshore Newfoundland*, held that Canada, rather than the province of Newfoundland has the right to explore for and exploit the mineral and other natural resources of the sea bed and subsoil of the continental shelf offshore that province. Despite this state ownership as practiced in Canada, it is not absolute there unlike Nigeria. Canada, United States and even Malaysia, there is an arrangement whereby a regional or state government would have a joint control of the resources.

In fact, in the case of Malaysia, a state may have the constitutional authority to grant a licence to a prospective investor subject of course to supervision of the Federal Government. In the United States, the absolute theory of ownership as practiced in the states of Arkansas, Pennsylvania and Texas is very much in place. This practice gives the states or even individuals rights to own and control the fund in their domain. Again the United States congress in 1953 enacted the submerged Lands Act which granted states interest in the resources of the territorial sea and the seabed beneath it.

This research is therefore concluded that, whether oil and gas is absolutely owned and controlled by the Federal Government or by the people where oil is produced. What matters is the peace and development to the people and Nigeria as a whole.

## REFERENCES

- Adoga-Ikong, J. A. (2017). *Oil and Gas Law in Nigeria*. Omas Production.
- Adoga-Ikong, J. A. (2019). An Appraisal of the attitude of Nigerian courts in oil and gas pollution cases. *International Journal of Law*, 5(5).
- Adoga-Ikong, J. A., & Inyang, E. B. (2017). Re-Echoing the Common Law Principles in Controlling Oil Pollution in Nigeria. *Calabar Journal of Public and International law*, 2.
- Adoga-Ikong, J. A., & Takim Otu, M. (2020). Customary law marriage practice in Nigeria: women and human rights. *Journal of social sciences research, The*, 6(3), 272-275.
- Akpan, M. (2020). Ownership and Control of Natural Resources in Nigeria: Rumor Vs. Reality. *American Journal of Law*, 2(1), 44-54.
- Aladeitan, L. (2012). Ownership and control of oil, gas, and mineral resources in Nigeria: between legality and legitimacy. *T. Marshall L. Rev.*, 38, 159.
- Altun, C., Tavli, B., & Yanikomeroğlu, H. (2019). Liberalization of digital twins of IoT-enabled home appliances via blockchains and absolute ownership rights. *IEEE Communications Magazine*, 57(12), 65-71.

- Archibong, J. E., Adoga-Ikong, J. A., & Endeley, P. I. (2016). 'The extent of Lawful Agitation for the ownership of Natural Resources in colonial and post-colonial'. 4<sup>th</sup> Annual Conference of Nigeria, Nigerian Association of Law Teachers.
- Bello, O. (2021). *The Dynamics of Nigeria's Oil and Gas Industry's Environmental Regulation: Revealing/Storying Neglected Voices and Excluded Lives of Environmental Encounters and Affects* (Doctoral dissertation, University of Westminster).
- Butegwa, F. (2012). Using the African Charter on Human and Peoples' Rights to Secure Women's Access to Land in Africa. In *Human Rights of Women* (pp. 495-514). University of Pennsylvania Press.
- Coleman, J. W., & Klass, A. B. (2019). Energy and Eminent Domain. *Minn. L. Rev.*, 104, 659.
- Mobbs, P. M. (2004). The mineral industry of Nigeria. *US Geological Survey Minerals Yearbook-2004*.
- Nadelson, R. (1992). The Exclusive Economic Zone: state claims and the LOS convention. *Marine Policy*, 16(6), 463-487.
- Obutte, P. C., & Idighe, L. (2018). Reclaiming Nigeria's Natural Resource Frontiers after AG Federation vs. AG Abia & 35 Ors. *SOAS LJ*, 5, 83.
- Oladipo, S. B. (2013). *Vision 20 2020 & The Menace of Vandalism*. Xlibris Corporation.
- Omorogbe, Y. (2001). *Oil and Gas Law in Nigeria*. Malthouse Press Ltd.
- Onyi-Ogelle, O. H. (2017). The legal regime for Nigerian gas. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 8(2), 151-160.
- Raji, A. O. Y., & Abejide, T. S. (2014). The British mining and oil regulations in colonial Nigeria c. 1914-1960s: an assessment. *Singaporean Journal of Business, Economics and Management Studies*, 51(1447), 1-14.
- Run, D. (1985). *Jurisprudence*. London: Butterworths.
- Suryandari, D., & Andhika, E. (2020). Corporate Governance Mechanism, Firm Size and Its Effects on Acceptance of Qualified Audit Opinion. *KnE Social Sciences*, 509-527.
- Wright, C., Scherer, H., Carter, K., & Bonnett, E. (2021). Creating a Universal 4-H Non-Ownership Livestock Project Record Book to Capture Impacts of Increased Agriculture Literacy and Life Skill Development.
- Zuru, A. (2009). *The Nigeria's upstream oil and Environmentalism: Government, the Niger Delta and oil multi-national oil industry*. Faith printers International.

