

Petroleum Ownership and Administration in Nigeria Under the PIA 2021: Distilling Realities From Legal Rhetoric

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Abstract

Controversy over the ownership, administration, and control of petroleum resources in Nigeria remains unresolved, particularly in light of the environmental degradation and social exclusion experienced by host communities in oil-producing regions. Although Nigerian law formally vests petroleum ownership in the Federal Government, persistent agitation in the Niger Delta suggests that this state-centric model has failed to secure legitimacy, equity, and stable petroleum governance. This article aims to examine the legal and theoretical foundations of petroleum ownership in Nigeria and to assess whether the Petroleum Industry Act 2021 (PIA) signals a meaningful shift from absolute state control toward a more inclusive governance model. Using doctrinal legal research and a comparative approach, the study analyses constitutional provisions, statutes, judicial decisions, international legal principles, and selected ownership models in the United States, Canada, and the United Kingdom. The study finds that the long-standing state ownership model in Nigeria has generated persistent conflict because it centralises legal control while excluding host communities from meaningful participation and benefit-sharing. It further finds that comparative practice in other jurisdictions demonstrates more flexible arrangements in the allocation of ownership rights, administrative authority, and resource benefits. The article's novelty lies in its argument that the recognition of Host Communities under the PIA 2021 marks the emergence of a mixed or inclusive ownership logic within Nigeria's petroleum governance framework, even though the constitutional language of federal ownership remains formally unchanged. The article concludes that sustainable petroleum governance in Nigeria requires a clearer legislative framework that consolidates host community participation, strengthens benefit-sharing arrangements, and aligns legal ownership with the practical realities of resource administration.

KEYWORDS: *Administration and Control; Constitution; Natural Resources; Ownership; Petroleum*

Introduction

Petroleum refers to hydrocarbons and related substances which exists in strata in its natural form and includes crude oil, natural gas, condensate and mixtures of any of them including bitumen and coal.¹ Petroleum is a major component of natural resources with which Nigeria is endowed. It comprises in the generic name of mineral resources which are naturally gifted to mankind for comfortable existence.² The term ‘Petroleum is used interchangeably with natural gas and crude oil. Petroleum originates as a Latin word which means ‘rock oil!’³ Edu conceives that petroleum in the circumstances could take be identified as asphalt, pitch, bitumen or tar is a thick flammable, yellow-to-black mixture of gaseous, liquid and solid hydrocarbons that occurs naturally beneath the earth’s surfaces.⁴

Mineral resources may be categorised according to their natural state. Hence petroleum resources which comprise in the combination of natural⁵ or associated gas,⁶ and mineral oils are jointly designated as mineral resources together with solid minerals. The status of petroleum in Nigeria’s economic matrix, particularly in respect of wealth creation has subjected the ownership and administration of the mineral resource to political, socio-cultural and legal controversies – with critical players pushing for some level of control or vested interests in the governance of the mineral resource.

Determination of ownership or title is paramount in all matters pertaining to control. Ownership alone confers authority to use and disuse. Salmond postulates that ownership constitutes a bundle of rights.⁷ According to Salmond, ownership may exist as a tangible relationship between a person and the right vested in him as well as in an incorporate form.

In *March v Alabama*,⁸ the court states that ownership does not always mean absolute dominium. He further identified full ownership as “a right indefinite in point

¹ Section 318 of the Petroleum Industry Act 2021 (PIA).

² L. Aladetan, ‘Ownership and Control of Oil, Gas and Mineral Resources in Nigeria: Between Legality and Legitimacy’, *Thurgood Marshall Law Review*, 38 no. 159 (2013):160.

³ U. G. Ehirim, ‘Legal Regulations and Remedies of Dredging Activities in the Nigerian Extractive Industry: Delta State in Perspective’ A Thesis Submitted in Partial Fulfilment of the Requirement for Award of the Degree of Doctor of Philosophy [Ph.D] in Law to the Delta State University Abraka, August 2024, 40.

⁴ O. K. Edu, ‘Ownership of Oil and Gas in Nigeria: Matters Arising’, *The Constitution – A Journal of Constitutional Development*, 7 no. 1 (2007): 62 – 3.

⁵ Y. Oke, *Nigerian Energy and Petroleum Industry Law*, (2nd edn. Princeton & Associates Publishing Co. Ltd, 2023): 358.

⁶ U. Udok and E. B. Akpan, ‘Gas Flaring in Nigeria: Problems and Prospects’, *Global Journal of Politics and Law Research* (2017): 26; A. G. Aregbe, ‘Natural Gas Flaring – Alternative Solutions’, *World Journal of Engineering and Technology* 5, (2017): 140.

⁷ P. J. Fitzgerald, *Salmond on Jurisprudence*, (12th edn. Universal Law Publications P. Ltd, 2013): 256, 259.

⁸ *March v Alabama* [1946] 326 U.S. 501, 506.66 S.Ct 276, 278.

of user, unrestricted in point of disposition and unlimited in point of duration”.⁹ Ownership may define the legal right which an individual enjoys within a legal system that guarantee ultimate degree of formal control over a particular resource or thing. The term ‘ownership’ is capable of a wide range of meanings.¹⁰ Ownership may not be tantamount to ‘control’ or desired benefits to the owners of the natural resources, it nevertheless determines the level of control and accruing benefits to critical stakeholders. For the purpose of this paper, ownership is conceived to include the ultimate power to use, to enjoy and to disuse a property freely. Ownership connotes the totality of or bundle of rights of the owner over and above every other person or thing.¹¹

Consequently, ownership of petroleum resources in Nigeria resides with the Federal Government of Nigeria (FG) which legally enjoys “the maximum degree of formalised control over ...” natural or mineral resources in Nigeria.¹² The Federal Government design of ownership of mineral oils is one of colonial antiquity with neo-colonialistic design. Section 3(1) of the Minerals Ordinance of 1964 vests control of all mineral oils in Nigeria in the Crown (State) which may grant licences to persons interested in working the oil.¹³ The foregoing statutory provision has been perpetuated in Nigeria by succeeding legislations with contemporary variations. Section 44 (3) Constitution of the Federal Republic of Nigeria 1999 (CFRN) Nigeria elaborates on the ownership of all minerals in Nigeria by the FG as well as define the FG’s exclusive control over such resources.¹⁴

The focal point of agitations by indigenous peoples of the Niger Delta in Nigeria is the wealth accruing from the mining of petroleum. The clamour for indigenous control of natural resources underlines most struggles around the globe.¹⁵ Although there is no unity among scholars on what should be the precise definition of indigenous people,¹⁶ Oke posits that the Chiapanacos, the Secoyas, the U’wa, the

⁹ V. C. Arinze, ‘An Assessment of the Meaning of Context of Ownership and the Role of the Legal System in its Determination: Prospects and Challenges’, *Nnamdi Azikiwe University Journal of Commercial and Property Law* 9, no. 2 (2022): 96 – 105.

¹⁰ See Barrons (Legal Guide) Law Dictionary by Steve. II. Giffis, 357.

¹¹ J. A. Adoga-Ikong and A. F. Ibekwe, ‘Ownership of Oil and Gas in Nigeria: A Need for Paradigm Shift’ *Pinisi Discretion Review*, 5 no. 1 (2021): 21 - 22.

¹² Item 39 and 41, Schedule II, Exclusive Legislative List of Constitution of the Federal Republic of Nigeria 1999 (CFRN).

¹³ See also, Section 158 of the 1963 (Republican) Constitution of the Federal Republic of Nigeria. Section 1(1) of the repealed Petroleum Act of 1969 replaced ‘Crown’ with ‘State’ which means the Federal Government of Nigeria.

¹⁴ s. 44 (3) of the CFRN.

¹⁵ See, A. Adoga-Ikong and P. T. Beson, ‘The Right of the Indigenous People over Their Natural Resources: The Nigerian Situation’, *Predestinasi*, 14 no. 1 (2021).

¹⁶ C. C. Intania, ‘Constitutional Provisions about Indigenous People in Indonesia and Brazil: Lessons Learned’ *Juris Gentium Law Review*, 8 no. 1 (2021).

Sumatrans, the Cofan and the Huaorani are among the peoples, movements and entities that have struggled to control petroleum resources within their natural environments.¹⁷ The agitations by indigenous people over control of their natural resources underpins the irreconcilable perceptions of the indigenous people on the one hand and the government on the other hand. According to Soelistyowati, the government exercises absolute right over land and mineral resources whereas the indigenous people contend that the relationship between humans and the earth, water, space and natural resources is a legal relationship controlled by property rights.¹⁸ The contention of the indigenous people situates within their innate or autochthonous rights which attach to the legal communities prior to the evolution of the modern state.¹⁹ Within Nigeria, the campaign for non-state ownership of natural minerals, particularly petroleum was championed by the Ogoni and Ijaw ethnic nationalities and anchored on International Customary Law.²⁰

The Ijaw faith in the certainty of the administration of their natural wealth for their community good sustained the “Niger Delta Resource Control” struggle for more than a decade in Nigeria. The 1962 United Nations Resolution declared the right of peoples and nations to permanent sovereignty over their natural wealth and resources for the development and well-being of the state (people) concerned.²¹ To this extent, Okon argues that the customary permanent sovereignty by the state with regards to the mineral resources within its territory has assumed the status of customary international law.²²

The United Nations (UN) Resolution birthed the evolution of diverse models of administration of petroleum resources around the world. Nigeria’s compliance to the UN resolution on natural resource administration is state-centric. The position of the FG is fortified by the Supreme Court of Nigeria’s landmark decision in *Attorney-*

¹⁷ Oke, *Petroleum Industry Law*: 35 – 36.

¹⁸ Soelistyowati, ‘Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle’ *Jambe Law Journal*, 7 no. 1 (2024):152 – 153.

¹⁹ L. D. Rahayu and R. Simarmata, ‘Rekonstruksi Politik Hukum Pengakuan Masyarakat Adat Di Indonesia’ (Universitas Gadjah Mada, 2023).

²⁰ Civil Liberties Organization [CLO], *Ogoni Trials and Travails*, (CLO, 1966):1 – 2; Y. Oke, ‘Right-Based Approach to Energy Resources Governance in Nigeria’ *The Journal of Public Law, University of Lagos*, 2 (2013): 53 – 78; See Art. 21 of the African Charter. See also, Art. 47 of the ICCPR, and Art. 25 of the ICESCR.

²¹ Resolution No. 1803 (XVII) of the United Nations General Assembly, December 14, 1962; C. C. Ohurougu, ‘Applying Human Rights Approach to Governance and Development: Signpost for Nigeria’, *Bill Law Series* 1 no. 1 (2013):21-22.

²² E. E. Okon, ‘The Legal Aspect of Ownership and Control of Natural Resources in Nigeria’ in O. Daudu *et al* (eds.), *Contemporary Issues in the Administration of Justice, Essays in Honour of Justice Atinuke Ige* (Lagos: Treasure Hall Consult, 2001): 194.

General of the Federation v Attorney-General of Abia State and 35 Others (No. 2).²³ Notwithstanding the Supreme Court's decision, which erased whatever recognition was left for indigenous peoples who are natural hosts to the natural resources, the operators of the petroleum industry have not had quiet environment. The strict application of the statutory and adjectival laws pertaining to petroleum ownership in Nigeria endangered the lives and properties of operators,²⁴ and resulted in the depletion of production output capacity. The result is the recognition of the critical stake of the host communities by the enactment of the Petroleum Industry Act 2021(PIA).

The PIA suggests a paradigm shift in the hitherto winner-takes-all state-centric ownership model operative in Nigeria to an emerging inclusive, accommodative, benefit-sharing ownership model currently nursing the fragile peace in the Niger Delta. The uniqueness of this research is the significance of the eventual recognition of the stakes of host communities in the oil and gas operations by the PIA which the laws have over the decades suppressed. Previous literature on the ownership and control of petroleum and other natural resources in Nigeria have dwelt the law prior to 2021 and the various push by the host communities for recognition.

Method

This research employs a normative juridical approach that examines the legal framework governing petroleum ownership and administration in Nigeria, particularly in relation to the Petroleum Industry Act (PIA) 2021 and the constitutional provisions regulating natural resource governance. The study relies primarily on doctrinal legal analysis of primary legal materials, including constitutional provisions, statutes, judicial decisions, and international legal instruments such as United Nations resolutions on permanent sovereignty over natural resources. These materials are complemented by secondary sources including academic literature, journal articles, and scholarly commentaries addressing theories of natural resource ownership and petroleum governance.

To enrich the analysis, the research adopts a comparative legal approach by examining selected petroleum ownership models in other jurisdictions, including the United States, Canada, and the United Kingdom. The comparative framework focuses on identifying differences and similarities in the allocation of ownership rights, administrative authority, and benefit-sharing mechanisms in natural resource governance. Through this doctrinal and comparative analysis, the study seeks to evaluate the extent to which the Nigerian petroleum governance regime reflects evolving international principles of inclusive resource administration and host community participation.

²³ *Attorney – General of the Federation v Attorney-General of Abia State and 35 others* (No. 2) [2001] 11 NWLR 689.

²⁴ L. Aladeitan, 'Ownership and Control'.

Administration Of Petroleum: Theories And Principles

The UN laid the foundation for nations to own and administer natural resources within their geographical boundaries,²⁵ several legal theories have evolved to justify ownership models practised by different countries in attempt to own and control their natural wealth. Agada conceives that the diverse theories of ownership of natural resources bear similar features²⁶ as they all define the legal relationship and entitlements over natural resources. Though these theories have overlapping boundaries, Oke posits that the Qualified Ownership and Absolute Ownership theories are most prominent.²⁷

The question of ownership, particularly of petroleum resources was a contentious issue in the eighteenth century because of the fugacious manifestation of petroleum oils. It was difficult to define ownership with such ‘acclaimed’ owner being capable to prevent or mitigate his losses in the property. It was impossible to tie petroleum to a particular owner because of its migratory qualities. The definition of ownership of petroleum became *sui generis* as a principle of law, that is, *cuius est solum, ejus est usque ad coelom et ad inferos* (the owner of the surface owns everything from the skies to the centre of the earth)²⁸ which was applied to ownership and title disputes could not adequately address petroleum ownership rights. The quest for legitimate title over petroleum resources has defied national boundaries to become a joker in international trade and global power politics as it is generally the case that ‘he who owns the oil will own the world, for he will rule the sea by means of the heavy oil, the air by means of the ultra-refined oils and the land by means of petrol and the illuminating oils’.²⁹ The theories of ownership of petroleum are examined anon.

1. The Absolute Ownership Theory

The Absolute Ownership Theory is founded on the ancient land law principle of *Quic Quid Plantatur Solo Solo Cedit* which translates into the principle that whoever owns land owns everything underneath it. This theory identifies the actual right of a person in a property which is freely transferable, alienable and inheritable. It is a legal justification for legal framework for the protection of the rights of indigenous people to customary land and natural resources.³⁰ The principle implicates that since petroleum resources is underneath the soil, the title to land is inclusive of the rights of the land owner in the circumstances. The theory is also known as ownership-in-place

²⁵ Resolution No. 626 (VII) of the United Nations General Assembly, December 21, 1952.

²⁶ J. Agada, ‘A Critical Appraisal of the Theories of Ownership and Control of Petroleum and Other Natural Resources in Nigeria’ *MUNFOLLJ*, 1 (2021): 110.

²⁷ Oke, ‘Ownership of Petroleum’:38.

²⁸ T. Okonkwo, ‘Ownership and Control of Natural Resources under the Nigerian Constitution 1999 and its implications for environmental Law and Practice’, *International Law Research*, 6 no. 1 (2017): 163.

²⁹ A. Nikiforuk, *The Energy of Slaves: Oil and the New Servitude* (Greystone Books, 2012).

³⁰ G. Efrianto, ‘Registration of Ownership Rights Over Customary or Customary Land Based on Law No. 5 of 1960 Concerning Basic Regulations on Agrarian Principles’ *International Journal of Social Service and Research* 3, no. 7 (2023): 1665 – 75.

in the United States of America (US). This Ownership theory was conceived to mean that ‘a landowner owns a corporal possessory interest (akin to a fee simple) in the substances beneath his land, by the rule of capture’.³¹ The theory was tested in the landmark case of *Brown v Humble Oil & Refining Co.*³² where the court held that, ‘Owing to the peculiar characteristics of oil and gas, the foregoing rule of ownership of oil and gas in place should be considered in connection with the rule of capture.’ Consequently, in *Bernard v Monongabela Natural Gas Co.*³³ the court in refusing to restrain drilling by an adjoining land owner alleged to be draining oil from the plaintiff’s underground oil reservoir held that plaintiff’s remedy was self-help in drilling his own well’. This theory, also identified as Texas theory does not apply in Nigeria where land is defined to exclude mineral resources.

2. The Qualified Ownership Theory³⁴

This theory postulates that petroleum cannot be owned unless and until it is captured and constrained in possession. Every land owner has some correlative rights to the petroleum in a common reservoir underneath his land. Title to petroleum therefore can be validly claimed by such a land owner who has indeed come across the mineral and extracted it.³⁵ This theory lends credence to the principle that equity does not help the indolent.³⁶ Consequently, where petroleum is found in the land of a person who has no knowledge of such mineral deposits and has taken no steps to harness the resources, a claim of ownership would fail under this theory. It is analogous to the maxim of capture or a proprietary right akin to *profit a prendre* under common law³⁷ or servitude right to natural resources in Scotland.³⁸ The theory evolved from the principle of *Ferae Naturae* (wild animals) which in comparison with petroleum resources are migratory and may only be owned upon capture and possession. In *Westmorland and Cambria Natural Gas Co v De Witt*,³⁹ the Supreme Court of Pennsylvania in adumbrating on the theory of capture held that:

“Hydrocarbons, like wild animals but unlike other minerals, have tendency and the power to escape even against the will of its owner and to continue to be his

³¹ R. E. Hardwicke, ‘The Rule of Capture and its implications as applied to Oil and Gas’, *Texas Law Review* (1935) 401.

³² *Brown v Humble Oil & Refining Co* [1935] Tex. S. C 83 S. W (2d) 935 – 940.

³³ *Bernard v Monongabela Natural Gas Co.* 216 Pa. 362, 65 A. 801 [1906]: Y. Omorogbe, *Oil and Gas Law in Nigeria* (1st edn. Malthouse Law Books, 2001): 32.

³⁴ S. 18 of the Interpretation Act, Laws of the Federation of Nigeria 2004.

³⁵ O. Philip, ‘Ownership of Oil and Gas in Nigeria’. <https://ssrn.com/abstract=3636423>

³⁶ D. Bonik *et al*, ‘Equitable Principle and Equity in Terms Assuring Justice: A Partial Connectivity with Aristotle’s Observation’ (2021). <https://www.researchgate.net>.

³⁷ W. Bell, ‘Untangling the Complexities: Profits *a Prendre*’ *Lexology* (2023). <https://www.lexology.com>.

³⁸ B. Clark, ‘Migratory Things on Land, Property Rights and a Law of Capture’, *Electronic Journal of Comparative Law* (ECJL) 6, (2002).

³⁹ *Westmorland and Cambria Natural Gas Co. v De Witt*, 1718 A 724 [1889].

property only while within the area subject to his control, but when they migrate to other areas or fall under the control of other persons, that title to the previous owner disappears”.

Thus, the land owner may deploy any means within legitimate boundaries to ‘capture’ his petroleum deposits in so far as such means is lawful and would not prejudice the interest of other land owners to access the common pool. Ownership in the circumstances is qualified by capture. In *Manufacturers’ Gas & Oil Co. v Indiana Natural Gas & Oil Co.*,⁴⁰ plaintiff alleged that defendant by use of pressure pumps increased the natural flow of petroleum into its wells and in violation of Indiana law. The United States Supreme Court distinguished ownership of petroleum from ownership of underground water declaring the former as private property right while the latter is a public right. Consequently, so long as plaintiff remained on his own land and deployed technology to acquire petroleum asset, he obtains exclusive right without liabilities when he asserts dominion and control by actual possession of the petroleum resources.⁴¹ Atsegbua reckons that the qualified ownership theory of petroleum resources has long been discredited in America where it originated from and do not apply to Nigeria.⁴² This is because under the Land Use Act,⁴³ the putative land owner is only entitled to surface rights’. Access to petroleum resources is prohibited by law, without licence from the Federal Government of Nigeria.⁴⁴

3. The Non-Ownership Theory

This principle, also described as the “Non-Qualified Ownership Theory” postulates that there is no specific owner to petroleum Oil and gas until such is produced, captured, extracted and controlled. Oke conceives that even in the ‘non-ownership’ concept, the right to produce, capture or extract petroleum resources is circumscribed to persons who own lands with petroleum deposits in pursuance of their inherent capacity to drill on their land.⁴⁵ Consequently, the owner of an already mined mineral has no existing rights to possess petroleum *in situ*, except the right to search for, develop and produce it.⁴⁶ In affirming this theory, the court held in *State v Ohio Oil Co.*⁴⁷ that title to natural gas does not vest on any private owner until it is captured and brought into possession just as fish in a stream of water is owned by no particular

⁴⁰ *Manufacturer’s Gas & Oil Co. v Indiana Natural Gas Oil Co.* 155 Ind. 461, 57 N.E 915 [1990].

⁴¹ *Ohio Oil Company v Indiana* [1990] 44 L. ED. 729.

⁴² L. Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (2nd Edn. New Era Publications, Benin City 2004).

⁴³ s. 1 & 2 of LUA Cap L5 LFN 2004. See also, s. 44(3) of the CFRN.

⁴⁴ ss. 70 – 71 of the PIA, s. 115(1) of the PIA.

⁴⁵ Oke, *Petroleum Industry Law*: 41.

⁴⁶ US Legal, ‘Non-Ownership Theory: Law and Legal Definition.’ <https://www.definitions.uslegal.com>.

⁴⁷ *State v Ohio Oil Co.* 49 N.E 809, 812 [1898].

person but the person who harvested it. Oil well is in the circumstances likened to the fisherman's fishing net the content of which legitimately rests in the fisherman.

In *Rich v Donaghey*,⁴⁸ the Supreme Court of Oklahoma agreed with this theory by refusing the claim of absolute right or title to petroleum resources. The strict application of the theory may lead to absurdity where lessee takes lease of a land without petroleum which is later discovered.⁴⁹ Where there is split title which implicates that reversionary rights and surface right reside with different persons, the person who worked the oil becomes the owner having extracted it from his property or a property "over which he has authority."⁵⁰ The Non-Ownership Theory gained traction in the US and Canada in the earliest centuries of discovery of petroleum because of the fugacious nature of petroleum. Hardy contends that the idea of free migration or self-transmission which underpins the theory and its servitude analogy is unsustainable in contemporary times.⁵¹ Advancement in technology informs the possibility of tapping and de-mobilising the fluidity of oil and gas in a reservoir until the reservoir is tapped. Also, the public policy of sustainable development, accountability and public utility which is prioritised over and above private property rights justifies the abandonment of the theory for corporate ownership.

4. Islamic Ownership Theory

This ownership model is popularised by Islamic teachings on wealth of nations and political engagements from the early 1970s. The Islamic teachings on the idea of petroleum commons derives from the belief that petroleum resources beneath the lands constituting Islamic territory belongs to the global Muslim community (Ummah) and cannot be appropriated either as state or private property. One of the postulations under this theory is that petroleum oil, being a resources straddled in the sub-soil, is a gift from Almighty *Allah* for common good of the *Ummah*.⁵² To this extent, the State or Caliphate as the case may be has the discretion to directly extract the resources, or license or contract out the mining so long as all proceeds from the sales of the petroleum product are kept in the same treasury (Bait al-Mal) with the distributive title re-enforces redistributive fairness and income transfers as canons of Islam. It is observed that Saudi Arabia, a leading Islamic State endorses the eminent

⁴⁸ *Rich v Donaghey* [1918] Okla, S.C, 3 A.L.R 352, 355.

⁴⁹ *Anderson v Amoco* [2004] 3 SCR 4, 36.

⁵⁰ *Borys v CPR and Imperial Oil Limited* [1953] 7 W.W.R (NSO 550 - 51).

⁵¹ G.W. Hardy III, 'Public Policy and Terminability of Mineral Rights in Louisiana,' *Louisiana Law Review*, 26 no. 4 (1996): 734.

⁵² L. I. Nwokike, 'Addressing the Environmental Rights of the Niger Delta States through Federal Government's Social Responsibility,' *NAUJILJ* 12, no. 2 (2021): 150.

domain ownership theory which the Ministry of Energy, Industry and Mineral Resources.⁵³

The foregoing theory is in its literal construction is fraught with internal inconsistencies. This is because it negates the Islamic teachings on individual ownership of properties as distinct from state or common property. Private administration of oil wells in core Islamic states reveals the unpopular nature of this theory even among Islamic states. The presumption that imputes Islamism to everyone for the purpose of taking benefit of this theory is sweeping and unsustainable.

5. The Dominal Ownership Theory

This concept vests all petroleum ownership rights in the sovereign which is determined by the prevailing political structure. The philosophy stems from the idea of permanent sovereignty over natural resources (PSNR).⁵⁴ PSNR as a doctrine of resource-trusteeship resonates with petroleum governance in the CFRN, the PIA and other statutes in Nigeria. The concept of PSNR has become a norm of International Law⁵⁵ with the status of *jus cogen*.⁵⁶ Article 1 of the Resolution 1803 (XVII) of the UN in 1962 enacts ‘the right of peoples and nations to absolute control of their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state.’⁵⁷

The Dominal Ownership Theory is otherwise referred to as the eminent domain or state ownership theory anchored upon the absolute power of a sovereign to rule or control people and things within its jurisdiction.⁵⁸ Ownership of Petroleum resources by the State is popular with countries like Iraq,⁵⁹ Algeria, Equatorial Guinea, Ghana, Nigeria and Angola.⁶⁰

The opposite of state ownership model is the private ownership model which grants a landowner all benefits of his land including rights over minerals beneath the land subject to compliance with applicable public regulations on such issues as

⁵³ R. Goswani, ‘Oil and Gas Regulation in Saudi Arabia: An Overview’, *Thomson Reuters Practical Law* (2019). <https://uk.practicallaw.thomsonreuters.com>.

⁵⁴ Y. Oke, ‘Impacts of International Law and Global Best Practices on Energy Resources Governance in Nigeria’, *University of Ilorin Law Journal* (2012): 156 – 180.

⁵⁵ Art. 1(2), and 55 of the UN Charter, 1945.

⁵⁶ East Timor’s Case (*Portugal v Australia*) [1955] ICJ Report 90.

⁵⁷ UNGA, Restitution 1803 (XVII), Dec 14 1962 was reinforced by UN General Assembly Resolution 2158 (XXI) 1966.

⁵⁸ A. Kabir, ‘The Creeping Effect of Transnational Investment Contracts and Arbitration on State Sovereignty’, *Bayero University Journal of Public Law* 1, no 1 (2009): 57.

⁵⁹ Article 1 of the Iraq Constitution, 2004.

⁶⁰ O. A. Ayodele, ‘International Law and the Ownership Structure of Petroleum Resources in Nigeria’, *Redeemer’s University Nigeria, Journal of Jurisprudence & International Law* (RUNJJIL) 2 (2022): 49.

environmental protections and taxation.⁶¹ The ownership rights of the sovereign in the circumstances is enshrined in the municipal constitution. Practically, most countries, including the US, retain permanent rights over their mineral deposits with variations punctuating their individual political trajectories.

6. The Trajectory of State Administration of Petroleum in Nigeria

The administration of petroleum resources in the present day Nigeria pre-dates the CFRN. Raji and Abejide posit that all petroleum deposits in Nigeria prior to Nigeria's independence in 1960 were expropriated by the Great Britain by the operations of the Oil and Mining Regulations of 1906 and 1907.⁶² These regulations were coveted by the FG upon Nigeria's independence. Thus, the Petroleum Act of 1969 re-enacted the FG's ownership rights in simple but more elaborate language.

In order to understand the manner of control which the State exercises over petroleum minerals in Nigeria, it is apposite to appreciate the terms 'Continental Shelf', 'Territorial Waters' and 'Exclusive Economic Zone' which have become critical indices in all discussions bordering on derivation and benefits from natural resources in Nigeria. Mudiaga-Odje posits that the principles of derivation under the CFRN⁶³ is evidence of co-ownership of the petroleum resources by Nigerian State and the people of Niger Delta in whose natural environment the oil straddles. According to Mudiaga-Odje, beyond the rhetoric of the absolute state ownership of petroleum resources in Nigeria, the twin interventions of the Chiks Commission in 1953 and Willink Commission in 1957 define compensations required for the sequestration of the actual ownership rights over the mineral oils deposits in the Niger Delta.⁶⁴ Ownership operates with inherent features of quiet possession and undisturbed enjoyment of property which features are completely absent in the FG's ownership claim when it excludes the oil bearing Niger Delta region. Ayodele posits that the 50% derivation formula under the 1960 and 1963 constitution was recipe for improved socio-economic condition of the oil bearing region at a time when the same formula applied to exports such as cocoa, groundnuts and coal which came from Western, Northern and Eastern regions respectively.⁶⁵

⁶¹ E. Duruigbo, 'The Global Energy Challenge and Nigeria's Emergence as a Major Gas Power: Promise, Peril or Paradox of Plenty,' *Geo International Environmental Law Review* 21 (2009): 395, 442.

⁶² A. O. T. Raji and T. S. Abejide, 'The British Mining and Oil Regulations in Colonial Nigeria C. 1914 – 1960s: An Assessment' *Singaporean Journal of Business Economics and Management Studies* 2, no. 10 (2014): 63 – 66.

⁶³ Section 162(2) of the CFRN.

⁶⁴ A. Mudiaga – Odje, 'Oil Ownership Controversy: Landmass Doesn't Give Niger Delta Oil to North', *Vanguard* (Lagos, 29 June 2024). <https://www.vanguardngr.com>.

⁶⁵ O. A. Ayodele, 'Ownership Structure of Petroleum'.

Under the foregoing Constitutions of Nigeria the Continental Shelf was taken as contiguous to the littoral regions.⁶⁶ Upon the repeal of the derivation laws by Yakubu Gowon, the oil-bearing states became short-changed in the arithmetic of revenue sharing in Nigeria.⁶⁷ What constitutes continental shelf was extensively dealt with by the Supreme Court of Nigeria in *Attorney-General of the Federation v Attorney-General of Abia State (No. 2)*.⁶⁸ The crux of the suit is the determination of ownership rights and administration of mineral resources located off-shore of the littoral states. Derivation principles, especially as pertain to revenue from natural wealth accruing to the Federation Account to which section 162(2) of the CFRN relates, were raised in the case. The court found that Section 44(3) of the CFRN confers the FG with the rights to administer all mineral resources in Nigeria, to the exclusion of any other persons.⁶⁹ The Supreme Court thus defined the Southern boundaries of the littoral states to be ‘the low-water mark of the land surface thereof or the seaward limits of inland waters within the State in the case Cross Rivers State with archipelago of Islands’. The Supreme Court’s decision however, did not overrule earlier decisions which recognised exclusive fishing rights as well as riparian rights by the indigenous people over the rivers in the Niger Delta which rights they share with the FG as co-owners.⁷⁰ The realities of ownership which underpins the benefits accruing to oil bearing states in Nigeria exposed the practical unenforceability of the Supreme Court’s decision in *A-G, Fed v A-G, Abia* necessitating the legislative intervention of the National Assembly through the Off-Shore/Onshore Dichotomy Abolition Act 2004. The various interventions of the Nigerian Government over agitations for resource control in the Niger-Delta cannot be explained without reference to the realities of co-ownership of the petroleum minerals in Nigeria by the beneficiary states. These interventions peculiar to the oil bearing region are evident through agencies such as the Niger Delta Development Commission (NDDC),⁷¹ Ministry of Niger Delta Affairs (MNDA),⁷² Presidential Amnesty Programme (PAP) and the recognition of Host Communities under the PIA. The foregoing interventions and the 13% derivation reserved by the CFRN for petroleum bearing regions are salutary with prospects of improvement.⁷³ Nevertheless, it has been contended that the principles of derivation

⁶⁶ Section 134(6) and S. 140(6) of the 1960 and 1963 Constitutions of Nigeria, respectively.

⁶⁷ Onshore / Offshore Revenue Decree, 1971.

⁶⁸ *AG Federation v AG Abia* [2002] 6 NWLR (Pt 764) 542 – 905.

⁶⁹ M. Akpan, ‘Ownership and Control of Natural Resources in Nigeria: Rumour vs Reality’ *American Journal of Law* 21 (2020): 395, 442.

⁷⁰ *Elf Nig. Limited v Sillo* [1994] 4 NWLR (Pt 350) 258.

⁷¹ Funded with NDDC Levy of 3% of Total annual budget of oil producing companies. See Section NDDC Establishment Act 2004

⁷² Between 2008 and 2022, the MNDA has handled a budget of N584.6 Billion. See Statistics on budget. <https://budgetoffice.gov.ng/nbi/app/index.php/budget-documents>.

⁷³ Section 32(b), item N of the CFRN which sets out duties of the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC).

may not have the desired effect until the actual owners of the expropriated resources are restored to their heritage.⁷⁴

Under Nigeria's federal structure, fiscal federation dictates that federating states should exercise appreciable control of their revenue sources as they do over land by the Land Use Act 2004.⁷⁵ In the US's federal system, petroleum bearing states such as Texas, Wyoming and others control their resources without federal or neighbouring states' interferences. The federating 'cantons' in Switzerland absolutely administer their mineral resources for the well-being of their various cantons. The Quebec Province of Canada sought the management of its natural wealth in as the case of Niger Delta States in Nigeria. The Canadian authorities granted substantial independence over control of resources to the Provinces' to douse their agitations. The Spanish government gave a wide latitude of autonomy to the people of the Basque region of the country to administer their natural wealth to calm their demand for self-determination. Nwokedi argues that devolution of economic powers characterises most federations in Asia, Europe and America.⁷⁶ Consequently, the current Nigerian arrangement may pass for repression of legitimate ownership rather than exercise of ownership rights.

7. Recognition of Host Communities under PIA

The appellation of 'host communities' aptly describes communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine.⁷⁷ They are the aborigines who may be identified as critical stakeholders, co-owners of the beneficial deposits of mineral oils and prime victims of the negative environmental impacts of petroleum extractive activities. Prior to the PIA, no laws in Nigeria recognised the critical stake of the host communities. The 13% derivation allowed to oil bearing states in Nigeria is paid directly to such states whose preferences often do not address the prevailing challenges of the host communities. The communities were left at the mercy of the multi-national entrepreneurs operating within through their environment. These operators attend to the demands of the host communities through the instrumentality of Global Memorandum of Understanding (GMOU) or Offshore Memorandum of Understanding (OMOU) as the case may be. The realities in the ownership structure of petroleum oil reveal the need for a joint and participatory community and stakeholders' approach to peacebuilding and conflict

⁷⁴ A. Mudiaga – Odje, '13% Derivation, Falling Crude Oil Prices and the Constitution', *Vanguard* (Lagos, 18 February 2016). <https://www.vanguardngr.com>

⁷⁵ U. V. Awhefeada, U. G. Ehirim and A. E. Abuza, 'Legal and Institutional Framework for the Regulation and Control of Extractive Activities in Nigeria: Sand Dredging in Perspective' *Jus Corpus Law Journal* 3, no. 1 (2022) pp. 386 -87.

⁷⁶ R. C. Nwokedi, *Revenue Allocation and Resource Control in Nigeria Federation* (Enugu: Snaap Press Limited, 2001) 123 – 6.

⁷⁷ Section 318 of the PIA

management.⁷⁸ Ajayi conceives that the government saw the huge gap created by the lack of a legislative framework which imposes host community benefit obligations as legal obligation that should be complied with rather than as a corporate social responsibility intervention of the oil and gas industry operators hence the elaborate nature of chapter three of the PIA.⁷⁹ Consequently, to guarantee quiet possession which should be inherent in ownership and undisturbed operation of petroleum enterprises, the developmental enterprises must be owned, managed by and driven by the host communities. The arrangement birthed a new layer of petroleum governance (separate from the existing tiers of government) which permeates directly to the grassroots.⁸⁰

The PIA mandates the settlor to incorporate a Host Communities Development Trust (the Trust) as a corporate entity.⁸¹ 3% of the annual operating expenditure of the preceding financial year in upstream petroleum operation is paid over to the trust which is constituted from among the representatives of the host communities.⁸² The remittances of operators are used to set up a fund to be known as the Host Communities Development Trust Fund (HCDTF). The entire idea of Host Communities Development Trust Fund gives a semblance of compliance by the FG to the salient reason for which people should exercise sovereignty over their natural wealth as enunciated in UNGA Resolution 1803, that is, for ‘the development and well-being of the people’ concerned. The well-being of the people attaches their God-given resources as HCDTF attaches to petroleum operators.⁸³ Failure to incorporate the Trust within the stipulated time is a ground for revocation of operating license of the settlor.⁸⁴ It is observed that the PIA creates a mind-set of co-ownership which fuels the vigilance over petroleum facilities as individuals would naturally place premium over the security of their personal property.

8. Petroleum Ownership Model in other Jurisdictions

The United States of America (US) is the world’s largest producer of hydrocarbons.⁸⁵ The US exhibits multi-dimensional ownership model. Land

⁷⁸ D. O. Haastrup, ‘Understanding the Host Community Aspects of the Nigerian Petroleum Industry Act (PIA) & Its MOU Nexus’, *Good Governance Africa* (Johannesburg, June 2022): 3.

⁷⁹ O. Ajayi, ‘Unbundling the PIA: Host Communities Development’ *Newsletter* (Lagos: March 2022):1.

⁸⁰ Section 234(1)(b) of the PIA.

⁸¹ A Settlor is a holder of an interest in a petroleum prospecting license or petroleum mining lease whose area of operations is located in or appurtenant to any community or communities. See s. 318 of the PIA.

⁸² Section 240 of the PIA.

⁸³ Section 237 of the PIA.

⁸⁴ A. Akinduyite, K. Anugwa and R. Eraga, ‘The Petroleum Industry Act and the Attempt at Addressing Host Community Restiveness’, *Tax Bites* (Lagos: 2022): 2. <https://www.pwc.com/ng>.

⁸⁵ Philip, ‘Ownership of Oil’, 7.

ownership in the circumstances implicates that whoever owns land owns both the surface rights and everything underneath and above it. This is the prevailing arrangement in Texas, Pennsylvania and Washington.⁸⁶ Private ownership model is practiced in the US subject to the rule of capture. In *Eliff v Texon Drilling Company*,⁸⁷ the court stated the law in the following words: ⁸⁸

...that the owner of a tract of land acquires title to the oil or gas which he produces from the well on his own land, even though part of the oil or gas may have migrated from the adjoining land.

The private ownership remains within the onshore domains, regulated by State laws. The Federal and State Governments own petroleum minerals on public lands as well as offshore zones.

Under the Canadian law, the Federal Government and the governments of the federating provinces exercise different levels of ownership over petroleum resources. Oke posits that a province has absolutely administer the petroleum minerals *in situ* on the land within its province and received royalties on the minerals. The province may by licence or instrument grant a freehold interest to any person who may then own complete title over the minerals underneath the land so granted or work and win the petroleum in compliance with the express terms of the grant. It follows therefore that administration and exploration of petroleum in Canada only flow from grant by the relevant province to such individual operators.⁸⁹ The provinces also design their individual ownership model following the Canadian law template. In Alberta, a surface right owner may differ from a mineral right owner over the same land. Surface rights ownership include ownership of sand and gravel but excludes petroleum minerals.⁹⁰ This arrangement is also obtainable in Columbia, Prairie and Saskatchewan.⁹¹ The Federal Government regulates consumption and trade aspects of the petroleum industry by necessary policies. The Canadian model aligns with what obtains in South Africa.⁹²

⁸⁶ Oke, 'Petroleum Industry Law,' 51.

⁸⁷ *Eliff v Texon Drilling Company* [1948], 146 Tex. 527, 210 S.W 2d 558. See also, *Stephen Country v Mid-Kanas Oil and Gas Company* [1923], 113 Tex. S.W 290, 29, A.L.R 566.

⁸⁸ Oke, 'Petroleum Industry Law,' 53.

⁸⁹ L.L.P. Torys, R. Deyholds and D. Cuschineri, 'Canada-Oil and Gas: A Comparative Guide to the Regulation of Oil and Gas Projects,' *European Lawyer Reference Series* (2013): 1. <https://www.torys.com/insights/publications>.

⁹⁰ See, 'About Mineral Ownership'. <https://www.energy.alberta.ca/AU/MO/pages/default.aspx>.

⁹¹ Ayodele, 'Ownership Structure of Petroleum', 39.

⁹² Okonkwo, 'Ownership and Control', 172.

Petroleum resources in the United Kingdom (UK) vests absolutely in the Crown who administers it through the Secretary of State for Energy.⁹³ The ownership model of natural resources in the UK confers title on the private landowner to include mineral substances underneath the soil, excluding Petroleum, Coal and Royal silver and gold. By the Continental Shelf Act of 1964 (UK), natural resources including petroleum which straddles within and beneath the seabed and beyond territorial waters belongs to the Crown. The UK model of ownership of natural resources shows great similitude with Nigeria with slight variation.

Conclusion

Ownership rights greatly influence the reaction of individuals and the state in respect of exploitation of natural resources. This paper has examined the petroleum model practiced in Nigeria and a few other jurisdictions which have impacted access to and administration of the natural wealth. The dominal or state ownership model to which Nigeria subscribes failed in its entirety leaving in its wake the seeming intractable agitations by oil bearing states/communities in Nigeria for control of their natural resources. It became obvious that all laws in Nigeria conferring ownership of minerals on the FG are mere rhetoric that fly in the face of pragmatism for their inability to bequeath quiet possession to the operators of the petroleum industry in Nigeria. The enactment of the PIA in 2021, which recognised the legitimate demands of the host communities as critical stakeholders has in reality birthed a “joint/mixed-ownership” model between the FG, the State Government and the host communities in the minerals administration in Nigeria as manifest in the benefit-sharing formula which dictates who gets what in the ‘joint venture.’ Thus, by experience and practice, Nigeria has evolved an ownership model peculiar to its national realities and unique from earlier models of ownership and administration of petroleum irrespective of the language of absolutism used in Section 44(3) of the CFRN and other extant Nigerian laws. It is hoped that this evolution would be streamlined by proper legislation in the near future.

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⁹³ T. Dainfith and G. Willoughby, *United Kingdom Oil and Gas Law* (Oyez, 1977); Petroleum Act 1998.

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