



## RESEARCH ARTICLE

### THE NIGERIAN FEDERALISM AND THE LEGALITY IN RESOURCE CONTROL: AN IMPLICATION FOR SUSTAINABLE DEVELOPMENT

<sup>1</sup>\*Morumda Mbula and <sup>2</sup>Dr. James Iliya. Abubakar

<sup>1</sup>Department of Public Administration, Thomas Moore, Institute of Technology, Bauchi

<sup>2</sup>Tafawabalewa University Teaching Hospital, School of Nursing Bauchi

#### ARTICLE INFO

##### Article History:

Received 27<sup>th</sup> August, 2018  
Received in revised form  
30<sup>th</sup> September, 2018  
Accepted 20<sup>th</sup> October, 2018  
Published online 30<sup>th</sup> November, 2018

##### Keywords:

Resource Control,  
Legality, Nigeria.

#### ABSTRACT

The human society from air to land and sea is stuffed with large catch of resources which men, with the utility of state's power do exploit. But, the exploitation of resources is not at the volition of any single individual rather, that of the state. From the Nigerian experience, the major factor which has determined the way in which resources are controlled is the issue of legality. This descriptive research seeks to build nexus between Nigerian federalism and the legality of resource control. The research adopts the natural law theory in its discourse. This research recommends a democratic resource control model which involves a more-strategic way of controlling resources in Nigeria by engaging the host-communities in the control process, by addressing their basic needs through a constructive democratic process. Rather than leaving them as spectators of public policy, the government should make host-communities participate in the governance and policy making process towards building effective resource control system in Nigeria.

*Copyright © 2018, Morumda Mbula and Dr. James Iliya. Abubakar. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution and reproduction in any medium, provided the original work is properly cited.*

#### INTRODUCTION

Ownership of resources has been given international recognition in a vast set international regimes from the United Nations General Assembly (UNGA) Resolution 1803 of 1962 to the Rio Declaration on environment and development of 1992; it has even been recognized to be a sovereign right of a nation. United Nations General Assembly 1803 of 1962 in article 1 provides that the right of the peoples and nations to the permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well being of the people of the state concerned UNGA, (1962). While Rio Declaration which follows in line with the stockholm conference provides in Article 2 that states have, in accordance with the charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their environmental and developmental policies and responsibilities to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of other areas beyond the limits of national jurisdiction stockholm conference, (1972). This also applies to Nigeria as a federal state.

**Concept of Federalism:** Nigerian federalism began as a concept of social and political organization evolved by reflective philosophers and political scientists.

*\*Corresponding author: Morumda Mbula,*

Department of Public Administration, Thomas Moore, Institute of Technology, Bauchi.

It is a political ideology that signifies a division of governmental powers between the national government and the constituent units which may well be states of provinces and or regions, as pointed out by (Ayode, 2014). However, be that as it may, to Daniel (2015), it means several varieties of political arrangement in Nigeria to which the term federalism has properly been applied. In spite of this confusion, we can still conceptualize federalism. For instance, federalism is a form of governmental and institutional structure designed to cope with the dual but equally difficult task of maintaining unity while preserving its diversity. Hence, the need for unity and the simultaneous preservation of diversity are central to federal arrangement. Kenneth, (2017) provided a cogent conceptualization of federalism; the federal principle, to him, is the method of dividing powers so that general and regional governments are each within a sphere, coordinate and independent. This definition is classic in the sense that it tries to stress formal institutional requirement such as constitutional delimitation of powers, bi-cameral legislature, independent electoral system for both levels of government, multi-party but preferably a two party system, a supreme court, among others. It is essential because these variables are presented in such a way as to constitute the defining characteristics of federalism. Frederick, (2016) believed that federalism is a process, it is not institutional or a design. Frederick argues that any particular design or pattern of competencies or jurisdiction is merely a phase, a short run view of continually evolving political reality.

To him, therefore, if so understood as the process of federalism, it will become apparent that federalism may be operating in both the direction of integration and differentiation. Consequently, federalism should be seen as a process by which unity and diversity are politically organized and these processes include political phenomena, persons, ideas and institutions put differently. This means federalism is a general principles of social organization and that the degree of federalism resides in a political system. In line with the above, Livingstone, (2010) concluded that; the essence of federalism lies not in the institutional or constitutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected. This means territorial demarcation of diversities is an important distinguishing characteristic of federal government. In fact, the diversity may be distributed in such a fashion that certain attitudes are found in particular territorial areas. For example, in Northern Nigeria, they may be scattered widely throughout the whole of the society, which is peculiar to Yoruba speaking people and Igbos scattered all round Nigeria. This shows that if people are grouped territorially or geographically, then the result may be a society that is federal. This shows that the notion of federalizing process is unhelpful if it is taken that there is a degree of federalism in all political systems.

**Concept of Resource Control:** By definition, resource control is “the way and manner the government’s revenue and democratic dividends are shared among the various tiers of government” (Kehinde,etal,2013). From the works of Itse, (2016) and Ike, (2015), resource control refers to the power and rights of a community or state to generate income by way or means of taxation of human and non-human substances within a given environment. Such ‘powers’ and ‘rights’ to initiate taxation process are however limited by law, especially in a federal system of government where the powers of the central government are superior to that of the subordinate and constituent states. In such systems as Nigeria, there are certain taxes which the constituent states do not have the legal right to collect. Such taxes are left for the central government, by law, to collect and coordinate.

Nevertheless, in such systems, the ‘derivation principle’, according to Omojuwa, (2010); and Dibua, (2006), empowers constituent states and subordinate governments to obtain some benefits from the income generated to the state from their lands for the community development. This is practiced in most democracies while it is still yet to be practiced in some others. The basic principle of resource control is the ability of a state government to exploit the natural resources of a state to the benefit of all (especially in a democratic state), such that every citizen, bonded by the state’s sovereignty and their allegiance to the state, has a benefit from the state’s resource. Resources can be reposed in various places. They range from forest (farm lands) to open lands, air space, landdepth resources (like oil and mineral resources), sea shores, waters among others. But for the sake of this study, it was focused to petroleum resource on the justification that it is the most pressing resource control issue in Nigeria.

Crude oil has been identified as the major stay of the Nigerian economy in recent years, producing the largest percentage of the National revenue. Crude oil in accounts for up to 95% of export revenue and about 80% of government revenue (Umeh, 2012). Furthermore, from 1956 when oil was first discovered in Nigeria in Oloibiri in Rivers State, the government of Nigeria has consistently maintained its efforts in harnessing petroleum products the best it can. With over 55 years of experience in oil exploration, Nigeria has got over 700 oil fields, 6400 oil wells, 1200 kilometres of pipelines, 10 export terminals, 22 petroleum storage depts., 280 flow stations, 10 gas plants, 4 refineries among others, (Umeh, 2012). From the foregoing, three things can be identified about resource control in Nigeria.

- Territoriality; First, to exploit resources, a state has to have the power reposed in it by the people whose land the resource belongs. This implies that it is practically impossible to exploit and control resources in a land which the state does not have territorial right over. This is the major cause of most boundary conflicts where glitches ensue over the ownership of border lands and waters. Conflict of this nature could be interstate or inter-continental struggle for land ownership, for instance, the Bakassi peninsula struggle between Nigeria and Cameroon. Resources are residential within a state’s territory and wherever the resource is, determines who owns it.
- Inexhaustibility; ‘Resource control’ does not stop at the exploration and exploitation of handy and available resources because resources are inexhaustible. States’ and governments’ responsibility in resource control is not all about pulling gains from the large cache of resources which were discovered by previous regimes. Resource control extends to the ability and capacity of the government of the states to discover new resources that were initially undiscovered and explore them to the benefit of the state. Here, emphasis is laid on economic diversification; this implies opening up more income streams for the country by discovering new resources within the state and exploiting them.
- Intangibility; the third factor is that, when talking about resources, it should not be limited to tangible substances. It has been traditional for scholars to limit their view to tangible resources. That may not be complete. Views should be extended to intangible resources like values and services.

Human beings possess abundant values and tactful potentials which, when effectively explored can be an economic value for the state. Just as oil, for instance, is tapped out of the soil, and used by the government to make wealth for the state’s benefit, so can human values.

**Concept of Legality:** Legality is a watch word in a democratic society. Meagher, (2014) noted that legality is instrumental in the protection of human rights and freedoms. This is literarily connected with the notion that the judiciary is the ‘last hope of the common man’. This can however be guaranteed in settings where there is judicial independence. Furthermore, the concept of legality deals with the consciousness of the law.

It should not be mistaken with ethics. Legality is a subject of the law and it is well established on the basic sections of the constitution. Legality does not stand on its own; it is built on the law. Ethics could be cultural or traditional understanding of what is good or bad. Study by Eskridge, (2014) observed that Legality establishes the rules of engagement in political relationships between the state, groups and individuals. In resource control, legality is a major determinant of 'who gets what, when and how'. Also, from the colonial era, we identified the significant use of laws in resource control. Laws were used to decide the stakes and apportion resources. The use of laws also transcended to the post-colonial regime and formed the threshold for decision making on issues of resource control (Eskridge, 2014).

### Resource Control In Time Perspective

**Colonial Era:** Crude oil exploration in Nigeria saw its first debut in the year 1956, in a local community known as Oloibiri, within which time Britain was totally in control of the Nigerian politics. The discovery of oil in Nigeria was sort of a mark of success which followed years of successive efforts to pull out oil from the soils of West Africa, engaged by some oil companies charged with that task. The entire activities of colonial Britain within the Niger Delta axis were centered on certain economic interests dating back to 1854, (Alameiyesiah, 2005). Furthermore, they were more interested in making economic benefits from exploiting the resources of the land than in state administration. And because of low level of education and low level of exposure of the African people, they were more or less left to operate very easily within the region. Legality and use of laws for resource control was introduced by the colonial regime. For instance, the 1914 Colonial Mineral Oil Ordinance, the 1916 Mineral Ordinance and the 1946 Mineral Act reposed the ownership and control of all the mineral substances to the Crown in London. The 1916 Mineral Ordinance states as follows:

The entire property in and control of the minerals, and 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, save in so far as such rights may in any case have been limited by the express grant made before the commencement of this ordinance (National Archive Enugu, NAE, 422/1916). For the time the colonial Britain was controlling resources in the Niger Delta, there was more of resource exploration than political administration. Even, the little gains made from Rubber and Palm fruits were majorly diverted to Britain and only very little attention was placed on the areas from where the resources were gotten. So, the colonial regime in Nigeria left a theatre of all odds for the Nigerian resource control system as constituent units and regions were placed in serious combat between themselves in order to obtain what they deserved. Not only that, the minorities were prominently obscured and not recognized during the colonial regime in resource allocation. The colonial era witnessed the gradual proliferation of resource control protests and agitations. In reaction, the regime set up committees to look into the up-surging conflicts which trailed resource control without providing a strong and lasting solution to them. For instance, according to Ejobowah, (2012) The Raisman Commission Report of 1958 provided the sharing order which gave up to 50% of the oil resource to the Niger

Delta region; while 30% went to the federal government, the remaining 20% went to the regional governments. We will discover here that although there were plenty regulations regarding resource control, they were more theoretical than practical. The laws which indicated how resources should be shared was never obeyed neither were such laws truly in favour of the people in the land. Summarily, during the colonial Nigeria, we could discover the silent existence of the three critical issues of conflict, politics and law bordering the issue of resource control. The complications arising from resource control were proliferated during the colonial but never went with the regime. (Journal of Good Governance and Sustainable Development in Africa (JGGSDA), 2016).

**Post-Colonial Era:** Resource control is important for the immediate community. Raji, (2013) observed that having gained a little bit of control of their own resource, following Independence, Nigerian political leaders were moved to make adjustments to the sharing order of the oil resource. Emphasis at that time was less on oil as there were reasonable successes recorded in other sectors, particularly agriculture. As time went by, crude oil exploration turned out to be the most profiting venture, and seemingly the easier way of making huge income; attention was switched over to crude oil at the detriment of other sectors because of its huge benefits. Furthermore, to make the resource beneficial to other sectors, the government adopted the federal character principle which by implication guaranteed every part of the country a fair share from the oil resource. In that case, resource control was aimed at making sure that no single region or tribe takes advantage of it land's wealth to jeopardize the unity of the country. Military intervention of 1966 posed a minor challenge to resource control in Nigeria "namely, the suspension of the people's rights and control over the entire land, the cancellation of the 50 percent revenue allocation to the Delta area, and neglect of the environment" (Raji, 2013). The Federal Military Decree no, 23 of 1966 vested resource control powers to the Supreme Military Council and the Federal Executive Council, downplaying the right of people to protest against government's decisions which appear unpleasant to them. The unstable power structure of the Nigerian State in the early post-independent era was equally a major challenge to resource control as government system was practically unpredictable. There were coups; there were counter coups. The military subverted democratic processes at will and the people of the Niger delta were left at the mercy of oil entrepreneurs who were barreling the interests of the corrupt politicians.(Federal Military Decree, 1966). The federal Government's Decree No. 9 of 1971 and the Land Use Act of 1978 were all tailored to managing the resource control crisis which proliferated in the post-independence era. But before then, the ills had long been done as negligence was still on the high side against the people of the Niger delta area. Subsequently, the democratic structure of the Nigerian state was getting more established and moored on the bedrock of constitutional development. This was somehow influenced by the state creation which intensified the concern of states and regions for development and democratic responsibility. Generally, the resource control process in the pre-colonial and post-colonial eras could be.(Land Use Act, 1979)

**The States That Make Up The Niger-Delta Region:** The following states which are the largest oil producing states in no particular order make up the 9 Federating states in the Niger-

Delta region of Nigeria. These states include; Akwaibom, Rivers, Delta, Bayelsa, Cross River, Ondo, Abia, Imo and Edo states. Akwaibom is currently the highest oil producing state in the Niger-Delta region (Mduawuchi, 2016).

#### **Legality In Resource Control In The Nigerian Federalism:**

Laws have manifested significantly in the resource control system of Nigeria, from the colonial to the post-colonial eras. It was observed that the place of laws in the ownership, exploitation and allocation of resources in Nigeria in our literature review. Such is still the case till now because the absence of laws brews a high hue of misunderstanding and catastrophe. So, to put things right in the understanding of people, law is needed. Now, the issue of legality points straight to the question of 'who owns the resources?' This Study lay greater emphasis on answering this question from the perspective of what the law says rather than what individual volitions hold. This is an important question because from our previous analysis, it was noted that resources are 'territorial'; in other words, it will be an elusive effort to struggle for resources which are out of the bounds of the one's territorial arena. Thus, in order to control, one has to own. Now, who owns Nigeria's resource?

The Petroleum Industrial Law, (2012) evidently states: "The entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters or which forms part of its continental shelf and the Exclusive Economic Zone, is vested in the government of the federation" (Petroleum Industrial Law, 2012, Section 2). This implies, that in the first place, the Niger Delta people are making illegal agitations as their request for control of petroleum resources do not have a legal background rather they are occasioned by presumptions. It was noted that the Ijaws and Ogonis in the Niger Delta like Dappa, Biriye, Nnimmo, Bassey, Ken-SaroWiwa and Asari Dokubo requested to be made stakeholders in the petroleum sector, to play a role in the production and distribution of oil revenue which is contrary to legality. They champion illegal agitations on individual and group basis (Itse, 2016). The conflicts in the Niger Delta Area is established on the on the ground of reasons of nonchalance by the government.

Each time conflict strikes, government doesn't address the root cause of the crisis, rather it will be busy reeling out decrees and taking harsh action against the people. (Horsfall, 2017). In legality, we conclude that both the government and the oil agitators are illegal in their engagements. The petroleum industrial law was enacted in 2012 by the federal government, empowering the government to own whatever belongs to the land; that does not in any way stifle the people's right to protest misuse of their lands. Rather, the government utilizes its legal superiority to oppress the people and sanction and punish them when they rise up to protest. The government is to be held responsible for the poverty and economic stagnation in the land. The government has the responsibility of providing basic infrastructure and public goods needed by the people to survive. But such has been absent. The governments fail to fulfil its side of the law from the platform whereupon the agitations and protests in resource control lay. So, law, in resource control is used as a tool to undemocratically persuade political control and that to personal gains and profits of political office holders.

Legality should not be discouraged but to the extent to which it has been wrongly applied is antithetical to basic interests and welfare of the people. Here, law is wielding huge weight on the people's liberty and right of choice.

**Theoretical Framework:** This study adopts the Natural law theory to explain the relationship between Nigerian federalism and legality of resource control. One of the most elaborate statements of natural law theory can be found in Aquinas who distinguished four types of law: eternal, divine, natural, and man-made. So, according to Aquinas, eternal law reflected God's grand design for the whole shebang. Divine law was that set of principles revealed by Scripture, and natural law was eternal law as it applied to human conduct. Man-made law was constructed by human beings to fit and accommodate the requirements of natural law to the needs and contexts of different and changing societies.

Also, according to Aquinas, the fundamental precepts of natural law were not only ascertainable (mere mortals like you and me could and did find them out) but self-evident. Therefore, they required no proof. They were, in Aquinas' terms, *per se nota*, known through themselves. Like his predecessor, Aristotle, Aquinas distinguished two kinds of reasoning: theoretical and practical. Human beings were capable of both sorts of reasoning. Theoretical reason was the capacity to apprehend certain truths, such as the truths of mathematics. Practical reason was the capacity to apprehend those principles guiding human conduct which tell us how we ought to live, what things we should value, what goods we should seek, and how we ought to order our lives. Like Aristotle, Aquinas believed that there were principles of practical reason and that they were no less fundamental than the principles of theoretical or speculative reason. Thus, for Aquinas, the principle of non-contradiction was as self-evident as the first and most fundamental principle of natural law Good is to be done and evil is to be avoided (Abate, 2012).

Also, like the principle of non-contradiction, the precepts of natural law were, according to Aquinas, general and unchanging. They were the same for everyone. But man-made or human law has to take the particularities of each human situation into account. Man-made law must adjust natural law to specific and often changing circumstances. Man made law is accommodating and changeable. Furthermore, there are areas of human conduct where natural law does not spell out the particular ways that human beings ought to behave themselves. Natural law does not dictate, for example, that we drive on the right hand side of the road. Human communities require a host of regulations simply in order to function (traffic and tax laws). But even these regulations are guided, albeit somewhat distantly, by natural law, therefore, by the requirement of natural law that health and safety be protected. Man-made law may, of course, conflict with natural law or fail to capture some fundamental feature. Aquinas argued that human laws that contravene natural law are "acts of violence," and "a perversion of law." Such laws he argued do not bind the conscience. They have no legal validity and cease, in this regard, to be law. Therefore, the consideration of this paper is limited to the context of 'Natural Law Theory' to argue that the agitations of the people of Niger-Delta are acts of violence that contravene and pervert the law.

## Conclusion

From the foregoing, it is clear that the resource control system in Nigeria is not having a positive impact on the lives of the people and that forms the basis for most resource conflicts in the country. There is a strong indication that things have gone absolutely wrong with the way resources are being controlled in Nigeria. But there can be a turnaround when there is an integrative action toward achieving democratic goals for the local communities. The problem is not bearing from the revenue generated from oil sales neither is it bearing from the dearth of resources. The problem is hinged on the negligence of the people by the government, mal-administration, waste of resources, exploitation of the common purse, looting of the revenue by public officials, corruption among others.

## Recommendation For Democratic Resource Control Strategy

This research recommends a Democratic Resource Control measure which should create a traction for what is need in resource control. A democratic agenda is one which seeks to engender democratic dividends by promoting cooperate participation in governance and patriotism of the citizenry. By democratic resource control, we mean a resource control measure which has a good thirst and identity and environment of the 'people'. This means that government and politics should be targeted at the welfare of the masses. Resource control measures should translate to 'bread and butter' for the Niger Delta people. Resource control measures should be substantiated, realistic and value-laden, contrary to the current situation. Here, the government should identify the democratic and environmental needs of the people and address them in the most democratic way that works for us because it is the government's responsibility to enhance activities that will promote democratic responsibility in the polity.

These communities pass through hardship, poverty, and live in the cruelest condition of life ever known in modern democracy. Added to this fact is the malignity of the oil companies who use the area for business without encouraging a better living standard around the area. These oil companies pay royalties to the government without encouraging development in the region by means of Cooperate Social Development. There are no blames on the oil companies for using the lands for oil business and exploration. Rather the killer-policies of the government is condemned. It is not the responsibility of the oil companies to provide public goods rather it is that of the government. The company's responsibility is to pay tax and service other industrial relations' demands of the Nigerian Industrial Law. Large swaths of arable lands are being abused by oil spillage and the instrumentality of governance which should legally address these issues is silent about them. That is incredibly wrong. The case of oil spillage of British Petroleum in 2010 at the Mexican Gulf is typical of what is expected of a democratic government. The United States government was firm and determined to fight for the welfare of its people. It took legal action against BP and a fine of \$211 million was levied on BP. The spillage in Mexican gulf lasted for 86 days which is about 3 months and did not claim any human life order than the lives of aquatic dolphins and sharks. The oil spillage in Niger Delta has lasted for more than 4 decades and has spoilt the natural means of survival, leading to a decline in life expectancy of the

people in the area occasioning agitations, destruction of lives and properties which are rather cumulative consequences of undemocratic resource control measures being used by the government of Nigeria. Our recommendation of a democratic resource control measure is statutorily dire, relative to the needs of Niger Delta people and in line with African tradition of 'social inclusion'. The people's welfare in the region should be considered and the government should provide basic social goods that will sustain livelihood, bring compensation to the people whose resources have been damaged in the process of resource exploration.

## REFERENCES

- Alamieyesigha, D. 2005. The Niger-Delta Crisis; Yesterday, Today and Tomorrow Lecture Paper delivered at the institute of African Studies, University of Ibadan.
- Ayode J. A. A., 2014. federal state Relationship; the Nigerian intergovernmental system. *Journal of Administration*.
- Daniel, E. T. 2015. *The land of Federalism; Theory and practice*. New York.: praeger Publishing House,
- Dibua, 2006. *Citizenship and Resource Control in Nigeria; The case of Minority Communities in the Niger-Delta*, African Spectrum Publishers.
- Ejobowah, 2012. Who Owns The Oil? The Politics of Ethnicity in The Niger-Delta of Nigeria, *Africa Today*.
- Eskridge, W. 2014. *Dynamic Statutory interpretation*. Harvard University Press, United States.
- Fredrick, C. 2016. Federalism is a Process; Trends of Federalism; A Theory of Federal Political Arrangement. *Public Education Paper No.7 Center For The Study of Federalism in Canada*.
- Ike, O. 2015. Nigeria's Oil Revenue and Oil Producing Areas, *Journal of Center For Energy Petroleum and Mineral Policy*.
- Itse, S. 2016. True Federalism, Resource Control and *The North, Vanguard Newspaper*, Lagos, Nigeria.
- Kehinde, A. Kola, B. & Gabriel, C. 2013. The Implications of Resource Control in Nigeria. Lagos, Nigeria *International Journal of Humanities and Social Sciences Invention, Vol. ii.*
- Kenneth, W. 2017. *Federal Government*; New York, Oxford University Press.
- Livingstone, D. M. 2010. The Advantages of Federalism; *Political Studies Quarterly Vol.10. January*.
- Meagher, D. 2014. *The Common Law Principle of Legality in The Age of Rights*. United States :Melbourne University Press,.
- National Archive Enugu (NAE), War Prof, CSO, Lagos, Mineral Ordinance 422/1996 Cited in Raji et al, (2013), *The Politics of Resource Control: Example of Niger-Delta Region, 1990s-2010*. Al-Hakim University, Ilorin, Nigeria.
- Omojua, 2010. *Resource Control and Federalism*. Ibadan, Nigeria: Heinemann Books Limited,
- Petroleum Industrial Law, 2012. *Ownership and Control of Petroleum Resources. Section 2, Page 13*. Federal Government of Nigeria Printing Press, Abuja Nigeria.
- Raji, L. Aaron, K. & David, W. 2013. *The Politics of Resource Control in Nigeria; Example of Niger-Delta Region 1990s-2010*. Al-Hakim University, Ilorin, Nigeria.