

OWNERSHIP OF OIL AND CORRELATIVE RIGHTS OF LAND OWNERS IN NIGERIA

By

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Abstract

Petroleum as a natural resource is said to hold a prized place in the economy of nations. Exploration of petroleum is ultimately for the common good of man and the society at large. Ownership of petroleum in Nigeria accounts for acquisition for oil rights and exploration of oil in Nigeria. This date back to when the first oil was drilled at Oloibiri and was said to have marked the beginning or emergence of Nigeria as a major player in the global industry. The importance of petroleum resources is in its ability to drive the economy of nations whilst ensuring adequate compensation for the indigenous people as provided for in our statutory laws. Unfortunately, the government has failed in providing adequate mechanism in ensuring payment of fair and adequate compensation. Thus, the failure of on the part of the government in payment of adequate compensation has given rise to resource right agitation, vandalism of oil pipelines and sabotage in the oil producing states of Nigeria. Therefore, the reason that accentuated the urgent need for the examination of Nigeria ownership regime, its implication, including some of the correlative rights of land owners or occupiers.

Keywords: *Correlative Rights, Land, Nigeria, Ownership, Oil.*

1.0. Introduction

Ownership of natural resources including petroleum and/ or oil has been given international recognition in a wide set of international regimes and this includes the United Nation General Assembly (UNGA) Resolution 1803 of 1962, the Rio Declaration of the Rights of the People and Nations to the Permanent Sovereignty over their natural resources¹ and so on. This as provided however, must be exercised in the interest of their national development and of the well-being of the people of the state concerned as this is recognized as their sovereign rights.²

Ownership implies the general liberty to use, dispose, destroy or transfer the right in a property to others.³ Therefore, it is assumed that an owner may grant another person part or all his right

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¹ Empire Hechime Nyekwere, 'An Examination of Natural Resources Ownership in Nigeria' 2019 (JPLC) 22

² K. O Mbra

³ Yemi Oke, 'Nigerian Energy Resources Law and Practice: Oil and Gas Law' (Princeton and Associates Publishing Co Ltd 2019) 41

for a stipulated time period and still remain owner.⁴ According to some opinion jurist like Rose and Pierce, Property laws are not static and are therefore, subject to changes⁵. Rose, in his further contribution opined that the contours of ownership becomes further defined as issues arise and are resolved.⁶

However, we have different theories of ownership and there are Qualified Ownership theory, Absolute Ownership theory, non-Ownership theory, Domanial System or Eminent Domain Ownership theory and Islamic theory⁷. Thus, it is important to stressed that out of the afore – mentioned ownership theories, Nigeria practices eminent domain system or national system of ownership. The domanical system of ownership provides for the vesting of ownership rights in the sovereign and this is prevalent. In Nigeria, the Petroleum Act⁸, the Petroleum Industry Act⁹ the Constitution¹⁰, the Land Use Act¹¹ and the Exclusive Economic Zone Act¹² vest Ownership of natural resources, including petroleum in the government.

Obviously, petroleum production and exports accounts for 90% of the country's gross earnings¹³ and Nigeria has attained the status of a major oil producer, ranking 7th in the world in 1972 and has since grown to become one of the largest oil producing country in the world.¹⁴

In course of crude oil production and management, Nigeria has experienced lots of conflict situations from the producing areas of the Niger Delta. The reason for the said agitation is due to system failure, the centralized ownership which deprives the indigenous people of their agricultural lands, ecological threats due to pollution and the failure to pay adequate compensation.

Ordinarily, derogation of property right should be within the limit provided by the law and in the light of ownership of Petroleum resources, the government in order to ameliorate the

⁴ *ibid*

⁵ Carol M, 'A Preposition on Private Property, Public Rights and the New Legislation' 53 WASH & LEEL Rev.2

⁶ *Ibid*

⁷ Yemi Oke (n3) 53

⁸ Petroleum Act, 2004, S1

⁹ PIA, S

¹⁰ Constitution FRN 1999, S 44 (3)

¹¹ LUA 1978, S 11

¹² Exclusive Economic Zone Act 1978, S. 2(1)

¹³ A Akinrele, 'Nigeria Oil and Gas (OGEL 2005)67

¹⁴ Yemi Oke (n3) 54

attendant harshness in the national ownership system in Nigeria has therefore enacted some laws. This, indeed are in the form of correlative rights of land owners and / or occupiers.

This study is aimed at identifying the existing ownership structure in Nigeria, its implications and the laws provided to cushion the effect of our subjugating ownership system.

2.0. The Concept of Ownership

Ownership comprises of possessing rights of someone which is exercisable in respects of property. Thus, the owner of a property enjoys total rights of management and alienation over property and thus is not subject to right of another person.¹⁵ The owner exercises his right without permission. In general, ownership consists of an innumerable number of claims, liberties, powers and immunities with regard to the thing owned and the various claims which constitute the content of ownership.¹⁶

2.1. Theories of Ownership

2.1.1. Qualified Ownership Theory

This is recognized by the State of Pennsylvania. This theory does not accept that full ownership can be vested in oil and gas in situ. It holds the view that petroleum cannot be owned until it is captured and reduced to possession.⁶² This theory is derived from the concept of *Ferae Nature*.⁶³ The argument was discredited as false in North America where it was first propounded on the basis that there is no similarity between wild animals and petroleum. The contention in this theory is that though the respective land owner does not have title to the specific petroleum underneath their respective land, at best they have qualified title interest in the petroleum as one of collective owners.¹⁷ The Qualified Theory is practiced in some of the major oil and gas producing jurisdictions including the States of California, Oklahoma and Louisiana.¹⁸

2.1.2. Absolute Ownership Theory

The theory is often referred to as Texas theory as its been given wildest recognition in the State of Texas in the United States of America. It states that Petroleum (Oil and Gas) is capable of

¹⁵ Empire Hechime Nyekwere and Emenike, 'An Examination of Natural Resources Ownership Governance in Nigeria' *Journal of Property Law and contemporary Issues*, 2019 (JPLC) 20

¹⁶ *Ibid*, R. W. M. Dias, *Jurisprudence* (4th edn, Butterworks Publishing London, 1985) 5

¹⁷ OVC Okene, *Business Law in Nigeria* (Claxton & Derrick Ltd 2012) 2

¹⁸ *Ibid*

being owned in a fee simple and owner of a piece of land is taken as the owner of the petroleum lying underneath the land. It is a strict adherence to the maxim *Cujus est solum ejus est usque ad coelum et ad inferos* the fee holder owns oil and gas to the same extent he owns other non-fugacious minerals. In this regard, the land is taken to include everything down to the crux and up to the sky.¹⁹ This theory is weak and capable of being disputed, as oil and gas are fugacious substance and wanders from place to place beneath the surface of the earth. Oil and Gas may be remotely extracted or exploited with modern technologies, away from the place of its direct deposit.²⁰ “This rule provides that if the petroleum on an owner’s lands escapes and goes into the lands of another, his title by implication becomes extinguished.”²¹ One of the leading cases as it is applied in Texas is *Brown V. Humble Oil & Refining Co.*²²

2.1.3. Non- Ownership Theory

This theory states that petroleum is not capable of being owned since it is fugacious.²³ The non-ownership theory emphasizes that no person owns the crude oil until produced, extracted or captured and controlled. Also, the rights to produce or extract oil is limited to those persons who own or have the rights to drill on the land where the straddle of the crude is embedded.²⁴ This theory was applied in the case of *Rich v Donoghey*.²⁵

2.1.4. Domanial System or Eminent Domain Theory

The domanial law system provides for the vesting of ownership rights in the sovereign. This is the most prevalent system of ownership of minerals.²⁶ Practically, every country with exception of the United State retains sovereign rights over all mineral deposits. In several countries, the right is enshrined in their respective constitutions. In this situation the state has the option of exploring and exploiting its natural resources by itself or granting right to third parties on whatever condition it may deem suitable and appropriate.²⁷ This is the model being operated by Nigeria.²⁸

¹⁹ Yemi Oke (n3) 52

²⁰ Yemi Oke (n3) 52

²¹ *Ibid*

²² *Brown v humble oil & Refining Co* (1935) Tex Sc 83 S.W. (2d) 985 at 40

²³ Yemi Oke (n3) 52

²⁴ Yemi Oke (n3) 52

²⁵ *Rich v Donoghey* (1918) Okla Sc 3A . I. R 352 P. 355

²⁶ Yemi Oke (n3) 53

²⁷ Yemi Oke (n3) 53

²⁸ *Ibid*

2.1.5. Islamic Ownership Theory

This is called conception of Petroleum commons and has its root in Islamic economic theory and political practice since the 1970s.²⁹ It is based on the notion that Petroleum found beneath Islamic territory is the common possession of the worldwide Islamic community (Ummah) and consequently it is neither owned by state nor private community.³⁰ The theory makes a number of assumption and there are:

- First, from the Islamic perspective, since oil is a sub-soil resource, it is seen as a gift from Allah and hence for community good.³¹
- The second is based on redistributive of fairness. This is Islamic Ideology as an institution to aid a system of income transfer.
- The third principle of Islamic economics is based on the prohibition of waste and the concern for conserving scarce resources.³² Under this principle, oil would no longer be considered as state or corporate commodity to be sold to the highest bidder, and instead would be viewed as a common good whose conservation would be valuable in itself.³³

3.0. Legal Framework on Ownership of Natural Resources in Nigeria

It is a good emphasis to reiterate that the Federal Government of Nigeria owns, possesses and controls exclusively, the whole management, exploitation exploration and distribution of every natural resources situated in all the territories of Nigeria whether it is onshore, or offshore.³⁴ Thus, the following legislation governs Ownership of natural resources which includes petroleum in Nigeria.

3.1. Constitution of Federal Republic of Nigeria 1999 (as amended)

Section 44 (3) of the said constitution provides:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, minerals and oils and natural gas in, under or upon the territorial waters and the

²⁹ *Ibid*

³⁰ *Ibid*

³¹ *Ibid*

³² *Ibid*

³³ Yemi Oke (n3) 53

³⁴ Amah Emmanuel Ibiam, 'An Examination of the Contradictions in the Ownership of Land and Natural Resources of Land and Natural Resources in Nigeria Federation' (2017) *Journal of Law, Policy and Globalization*, 63, 229-237

Exclusive Economic Zone of Nigeria shall vest in the government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

From the above, the constitution vests ownership in the Federal Government and this in addition is provided under the Exclusive legislative list. The exclusive list comprises of corporation and regulation of corporate bodies, mines, minerals (including oil fields, oil mining, geological surveys and natural gas) taxation of incomes and export duties.³⁵

The Petroleum Act³⁶ also authenticates the Nigeria's Petroleum Resources and provides that the Federal Ministry of Petroleum Resources has the authority to grant and provides the Federal Minister of Petroleum Resources to give licenses (to Nigerian citizens or companies incorporated in Nigeria to embark on oil prospecting exploration, drilling, production, storage, refining or transportation related activities³⁷). Thus, by the Provision of Petroleum Act³⁸, the entire ownership and control of all petroleum in, under, or upon any land in Nigeria is vested in the state.

3.2. The Land Use Act 1978

Subject to the provision of this Act, all land comprised in the country in each state in the federation is hereby vested in the Governor of that state, and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.³⁹

3.3. Petroleum Industry Act 2021

The Petroleum industry Act was a bill initially proposed in 2008 and passed into law in 2021. The Act is aimed at harmonization of all the legislation and significantly restructure the industry, especially, the functions of the various agencies, to eliminate overlaps, make overwhelming reform, create new institution, privatization of the Nigerian National Petroleum Corporation (NNPC), transform the existing unincorporated joint ventures between the

³⁵ Wumi Iledare and Rotimi Suberu, 'Oil and Gas Resources in the Federal Republic of Nigeria, Conference on the management of Oil and Gas in Federal Systems, organized by the World Bank and Forum of Federations, March 3-4, 2010, L.. A. Atsegbua, *Nigerian Petroleum Law: The Acquisition of Oil Rights in Nigeria* (Prestine Nig. Ltd. 1993)

³⁶ LFN 2010, Cap P10

³⁷ *ibid*

³⁸ C. Chukwura, 'An Appraisal of the Legal Regime for Definition and Classification of Themes of Ownership of Mineral Resources in Nigeria, 285-286, *Empire Hechime et al* (n15) 26

³⁹ LUA 1978, s 1

multinational oil companies and the NNPC into incorporated and joint ventures. The Act retains the existing ownership structure and vest government with significant fiscal control through petroleum taxation. It is believed that this initiative will help to create a paradigm shift in a sector replete with regulatory and administrative overlap, mismanagement and under-productivity. One of the profound innovation of the Act is the commercialization of NNPC to enable compete with other national oil companies while ownership continues to vest in the government of Nigeria with power to enter into commercial oil venture dealings outside the country.⁴⁰

3.4. The Exclusive Economic Zone Act 1978

Sovereign and exclusive rights with respect to the exploration and exploitation of the mineral resources of the seabed, subsoil and superjacent and such rights shall be exercised by the federal government or by such minister or agency as the government may from time to time designate in that behalf either generally or any special case.⁴¹

3.5. The United Nation Convention of the Law of the Sea (UNCLOS) 1982

The coastal sovereign state has ownership, control and development of natural resources in the Exclusive Economic Zone (which Nigeria became a party in 1986), these rights are prevented from extending to interfere with the territory and territorial rights of neighboring states.⁴²

4.0. Implication of the existing Ownership of Petroleum Resources in Nigeria

It is good to state that the legislative powers over mines and minerals including oil fields, oil mining, geological surveys and natural gas are exclusively vested in the National Assembly. The effect of this provision is that only the National Assembly has the powers to legislate in respect of the subject matters. Thus, the existing ownership of oil structure has the following implications.

- i. The idea of ownership of petroleum resources does not permit private or individual ownership
- ii. Sovereign rights of Nigeria are exercised by the government according to the Petroleum Act, and the petroleum industry Act and other legislations.

⁴⁰ Yemi Oke (n3) 153

⁴¹ Exclusive Economic Zone Act 1978, s2 (1)

⁴² UNCLOS 1978, Art 2

- iii. The federal government exercises the resource rights based on the fundamental objectives of Nigeria enshrined in the constitution as the fundamental Principles and Directive Principles of State Policy to the intent that exploitation of natural resources in any form whatsoever for reasons other than the good of the community, shall be prevented in line with the UN Principle of Permanent Sovereignty.

Thus, with regard to our ownership structure as established, can it be rightly said that Nigeria Ownership structure is in line with the United Nations Principle of Permanent Sovereignty?

5.0. Challenges inherent in the Ownership Regime

The oil which are currently been exploited are found embedded mostly in areas inhabited by indigenous people. It is disappointing to note that most of these areas where the oil are exploited have some ugly features, which amongst them are difficult terrain and landscape, inaccessible roads which shows little or no government presence and governance, in effect, just a rudimentary presence. It has always been a big issue whenever a discovery is made by the indigenous people that the resources in these areas are worth more than previously believed and the areas previously limited by the government suddenly become occupied by the coercive powers of government and Trans-National corporations basically to capture the resources.

However, the fundamental objective of Nigeria, as contained under chapter II of the Constitution, that is Fundamental Objectives and Directive Principles of State Policy) is that exploitation of natural resources in any form whatsoever for reasons other than the good of the community, shall be prevented,⁴³ albeit the said provision is not justiciable. However, this is to say that the state has a duty to harness the energy resources of the nation for the good of all while also ensuring the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.⁴⁴

However, due to lapses on the side of the government as it is obvious that it is not living up to expectation. This predominantly has led to serious agitation for resource right while militancy is rampaging the oil producing area of the Niger Delta. According to the indigenous people of the oil producing area of the Niger Delta, their grievance is that 90% of the oil and gas revenue accruable to the federal government is generated from the Niger Delta with the community

⁴³ CFRN Chapter II, Fundamental Objective and Directive Principles of State Policy

⁴⁴ *Ibid*, Omeregbe Yinka (n64) 42

lands used mainly for the said exploration activities, with its antecedent oil spillages. These spillages are largely caused by drilling activities, transportation of oil, oil pipeline burst due to antiquated or poorly maintained pipes or by sabotage.⁴⁵ If the spill is on agricultural farmland, the crops and soil nutrient are destroyed thereby eroding the source of livelihood of the farmer.

When it spreads to the rivers and streams, it destroys aquatic lives which is the fisherman's source of livelihood. When it pollutes the water, it leads to the spread of disease and high mortality rate. Generally, exploration activities has occasioned loss of agricultural lands, loss of earnings and abject poverty in the Niger Delta region has become an old normal. The government on the other hand and apart from the proceeds it enjoys has continued to show care free attitude to the plights of the people, especially in major areas such as pollution of the environment. For example, 'Kpo Fire' resulting from illegal local refining is rampaging the area and causing health hazards including death and same has not been contained. Thus, in addition to lack of interest by the government, so many of our laws are moribund and few others are ineffective, for instance, NEASREA as an agency whose jurisdiction on monitoring of environmental pollution does not cover pollution caused by hydrocarbons, the non-challant attitude of government in reviewing or enacting laws that will reposition our legal institution is a serious bane to achieving some of our lofty objectives. Thus, further cause of serious agitation in the region is loss of farm lands or agricultural lands. The people contend that in Nigeria, one of the oil companies uses about 400 square kilometers of land²²¹ Most of this land areas are acquired for long term uses such as well sites, pipeline right of way, roads, housing, offices and waste disposal sites. Whilst others are temporarily for purpose such as seismic lines and temporary housing for drilling or construction work. With little variation, this statistic probably applies to other oil companies and it gives an insight into the degree of amount of forest lost and all these has caused conflict in the country where there is general outcry by the local communities on the state of their environment and the government continues to pay deaf ears to the plights of these people. Thus, it is reiterated such conflict situation that leads to militancy, even local community agitation that one time led to the execution of environmental activist, Ken Saro-Wiwa, a Noble Prize Nominee.⁴⁶

⁴⁵ Yinka Omeregbe, 'The Legal Framework for the Production of Petroleum in Nigeria' (*JENRL*) 42

⁴⁶ Gogo Kingston (n45) 35

Considering the above, the argument remains as to whether existing ownership regime in Nigeria oil industry offends the UN resolution principle of permanent sovereignty of nation state over their natural resources. However, some laws were enacted in order to ameliorates some of the harshness resulting from our Ownership regime. This is what is meant by corresponding rights of the indigenous people and the following laws are relevant to correlative rights doctrine and/or payment of compensation;

5.1. Land Use Act 1978

Section 1: All lands comprised in the territory of each state in the federation are hereby vested in the Governor of that State and such lands shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.⁴⁷

Section 28 LUA: 'It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest'. However, revocation can only be valid in the face of overriding public interest including but not limited to the purpose of exclusive government use, development for public good and on the grounds of preservation of public safety.⁴⁸

Section 29(2): provides that the affected persons shall be compensated but only the Governor can decide how much money each person can receive.⁴⁹

Section 29(3): Provides that 'If the holder or the occupier entitled to compensation is... a Community, the Governor may direct that any compensation payable to it shall be paid: (a) to the community; or (b) to the chief or leader of the community to be disposed by him on behalf for the benefit of the community in accordance with the applicable customary law; or (c) into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community.⁵⁰

Section 47(2) provides that: 'No Court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid under this Act.⁵¹

⁴⁷ LUA 1978, s 1, Gogo Kingston (n4) 79

⁴⁸ LUA 1978, s28

⁴⁹ LUA 1978, s 29 (2)

⁵⁰ LUA 1978, s 29 (3)

⁵¹ LUA 1978, s 47 (2)

5.2. Petroleum Act 1969

Petroleum Act Para 37, 1st Sch: Provides that, ‘the holder of an oil exploration license, oil prospecting license and oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface and other rights to any person who owns or is in lawful occupation of the licensed area or leased lands.’⁵²

5.3. Mineral Act 2007

By virtue of section 107 of the Mineral Act 2007, a holder of mineral title may, in addition to any other amount payable under the provisions of this Act and subject to a valuation report by a government licensed valuer, pay to the occupiers of land held under a State lease or subject the right of occupancy;

- a. Reasonable compensation for any disturbance of the surface rights of the owner or occupier any damage done to the surface of the land on which the exploration or mining is being or has been carried and
- b. In addition, pay to the owner of any crop, economic, tree, building or work damaged removed or destroyed by the holder of the mining title or by any of its agents or servants, compensation for the damage, removal or destruction of crop, economic tree, building or work.⁵³

From the above provisions, oil company that has obtained pipeline license or that has been granted concession license could apply to the governor to revoke the occupier’s interest right to enable the oil firm commence all necessary activities required for the smooth crude oil and gas business, in addition to pay fair and adequate compensation as required. This is the reason why Yemi Oke stated in his book that derogation from property rights must be within the exception allowable by the constitution and for this reason, the provision of the Land Use Act prescribing payment of compensation for revocation of title to land for public purposes is usually adopted or incorporated into other relevant enactments such as the above stated.⁵⁴

Under the Nigeria context, a practical analogy in application of correlative Right to warrant payment of compensation is as to whether the mining lease use of the land completely precludes or substantially impairs the existing use is to ask if the lessee’s drilling of Ubima bush, for

⁵² Petroleum Act 1969, 1st Sch. Para 3

⁵³ Mineral Act 2007, s107

⁵⁴ Yemi Oke (n3) 55

example, has affected farming rights of the people or whether areas held sacred by the community has been desecrated. What the above decision in the above stated case seeks to achieve is to make the government and the IOCs have respect and due regard to the concern of those who were living in the area before the exploration or pipeline activities. Thus, despite the fact that all lands belongs to the Federal Government and concession right is given to the IOCs to drill oil, there are also restrictions provided by the law.

For example entry by the lessee into sacred and restricted places among others, Example of restricted areas are as follows;

- i. any part set apart for use or appropriated or dedicated to public purposes
- ii. any part occupied for the purposes of government of the federation or state
- iii. any part situates within a township, town, village, market, burial ground or cemetery;
- iv. any part which is the site of or within fifty yards of any building, installation, reservoir, dam, public road or tramway or which is appropriated for or situate within fifty yards of any railway;
- v. any part under cultivation.

This is to say, in another practical term, that an oil company on acquisition of OPL. OEL or OML as the case may be, has right to enter into the community by that license but the acquired right of way does not guarantee the company's right of entry into any of the exempted places or spoiling anything on the surface while they find their way.

Examples of sacred or exempted places and cultural sites includes burial ground, juju or shrine of the community, churches⁵⁵ and so on. It is the right of the people to protect these places and objects of veneration. Thus, before entrance into such places there must be compensation valued and paid and the payment must commence at the point of entry. This is suggested should not be during exploration and prospecting stage and not when owner, occupier or the community involved are being relocated to an alternative accommodation or place. The law also provides that the IOCs or any indigenous company including the newly formed NNPC Limited Company must take their host community concerns into serious consideration in the company's decision making. If they were farmers, the oil company must find alternative farms

⁵⁵ Petroleum (Drilling and Production) Regulations, Regulation 17, Pipeline Act 2004, s16

for them⁵⁶, if their houses were broken down as a result of the use of the surface⁵⁷ the company is to pay for compensation for any interference with any way, work, building or plant or for the expenses incurred in the exploration of the area required for public purpose⁵⁸ and must also pay for crops damaged, economic trees or buildings damaged and so on. The oil companies must find alternative accommodation for them and compensate them as well.⁵⁹ Apart from the above, the Mining Act requires the oil companies prior to the commencement of any development activity within the leased area to conclude with the host community where the operations are to be conducted, an Agreement which is to be referred to as Community Development Agreement and other such Agreement that will ensure transfer of social and economic benefit to the community such as educational scholarship, apprenticeship, technical training, employment opportunity for indigenes of the community and so on to be entered into by writing.⁶⁰ Further, the Act provides for a review of the Community Development Agreement between the oil company and the community for every five years interval.⁶¹ Thus, the problem with the provision of the said review is the failure of the drafters to provide specified percentage for the review. It is suggested that such lapses can cause delay or stall work progress for a period of time in case of disagreement between parties on the percentage for such reviews. It is therefore advised that our law makers should review the said provision to avoid unnecessary frictions which the prevalent lapses can occasion.

Further, it is to be noted that the above common Law decision under contemplation provides that in carrying out drilling activities and other related matters in a given community the feelings and the opinions of the indigenous people must be reasonably accommodated in their decision making. The reason is to enable the people know what the company want to do and why they want to do it and the peoples benefit. This is one of the reasons for the promulgation of the Environmental Impact Assessment. The EIA Act was enacted in consideration of safety and protection of life and the environment. It provides that the company shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups opportunity to make comment on the environmental assessment of any given environmental activity and to have timely consultations with the affected state or local

⁵⁶ LUA 1978, s.33

⁵⁷ *Getty v Jones* (Supra)

⁵⁸ Mineral Act 2007, s 102

⁵⁹ Mineral Act 2007, s 112 (1) (2) (3)

⁶⁰ Mineral Act 2007, s 116

⁶¹ Mineral Act S. 116 (5)

government.⁶² The EIA Act as enacted helps to encourage people to have a say over operations going on in the communities, starting from the point of entry. The law provides for public notice⁶³ and hearing.⁶⁴ Thus, payment of money or compensation must be part of the hearing and this is what is called reasoning and factoring of the people's opinion in a public matter on issues that concerns them and to negotiate the terms and enter into the agreement prior to signing the land lease contract.

Unfortunately, in Nigeria, this is not always the case, this is because more often than not, the results of EIA are devoid of forum or public hearing and are largely concocted. This to a large extent is due to corruption and lack of proper monitoring by the institution saddled with the said responsibility.

Now, from the facts as stated, payment of compensation has been largely provided for including in the newly enacted Petroleum Industry Act, 2021 where the Act made provision for the incorporation of Host Community Trust, which is inclusive of the Trust Fund.⁶⁵ This is for the benefit of the host community and which the settlers must establish. The law further provides that the community Trust and Trust Fund shall be in respect for settlers operating in shallow waters and deep offshore, the littoral communities and any other community determined by the settlers shall be host communities for the purposes of the Act. It is further provided that failure by any holder of license or lease governed by the Act to comply with its obligations under this provision, after having been informed of such failure in writing by the commission or Authority as the case may be, may be ground for revocation of the applicable license or lease.⁶⁶ It is the contention in this dissertation that the word 'MAY' as used in the provision of the said statute does not connote mandatoriness and as such smack of treating such a serious issue with kid gloves. This probably might occasion compromise on the part of the settlers or companies with the knowledge that the punishment for failure to comply with the said provision is not 100% guaranteed. Further, it has been established in this dissertation that our oil industry laws provide for payment of fair and adequate compensation but unfortunately in practice it is not so. This is because of the provision of the Land Use Act denying the court the jurisdiction to entertain the issue of quantum of compensation to be paid. However, due to this lacuna in

⁶² EIA 1992, s11

⁶³ EIA 1992, s 9 (3)

⁶⁴ EIA 1992, s34

⁶⁵ Petroleum Industry 2021, s235

⁶⁶ Petroleum Industry Act 2021, s 38

our laws, it has afforded the IOCs opportunity to act with impunity on payment of fair and adequate compensation most especially during oil spills. This is against the tenets of UN Principle of Permanent Sovereignty including non-justiciability of the provision of the constitution on Fundamental Objectives and Objective and Derivative Principle of State Policy.

Thus, the case of *Farea v Shell PLC*⁶⁷ is instructive here. The fact of the case is in respect of a massive oil spill in Ogoni land in 1970 which negatively impacted on the farmlands, economic trees, and fishing waters and dislodgement of homestead. The case was filed in the high court due to attitudes of Shell Ltd in neglecting to carry out clean up of the affected areas in Ogoni land, the High court found for the plaintiffs and same decision was affirmed on appeal. It was held by the court that the basis for assessment of fair and adequate compensation under the Act is that such compensation should be adequate in order to restore the one that has suffered the damage the position he was before the damnum. The court further held that the amount of compensation that should be paid is the current market value of the property damaged, including interests and loss of earnings and use are also within the provision.

It is therefore, suggested that there should be a wholistic review of our existing ownership framework including the institutional framework for a reflection of international best practices. It is when this is done that the true expression will be given to the following importance of ownership, to wit:

6.0. Importance of Ownership

- i. Ownership gives a true sense of protection of individual property or right against dispossession, this is mostly by remedy that will guarantee a recovery of property right regarding nuisances or permanent destruction.⁶⁸
- ii. It also precludes the owner from claims incompatible with rights over property owned where the principle was applied by the Supreme Court of Nigeria as one of the five ways of proving ownership or title to land or landed property.⁶⁹
- iii. Ownership is a constitutional right and derogation from it must be within the laid down structure or procedure provided by the law.⁷⁰

⁶⁷ *Shell Petroleum Dev. Company v Ferrah* (1991) 3NWLR (Pt382) 148-192

⁶⁸ *Yemi Oke* (n3) 65

⁶⁹ *Idundun v Okumagba* (2000) 20 WRN 127

⁷⁰ *Yemi Oke*(n3) 55

iv. The Land Use Act stands as the reference statute in Nigeria for land use and management including where such lands are required for overriding public purpose with the antecedent compensation to be paid upon revocation of such lands.⁷¹

v. The Governor exercises utmost power as the custodian of land under Land Use Act and he shall be bound by a declaration that a piece of land is required for public purpose. the argument in this regard, is that revocation of land for overriding public interest, for example oil exploration and such declaration of overriding public interest should be based on payment of compensation equal the value of the land at the time. The reason is that adequate compensation would drastically reduce the glaring social injustice bedeviling our compensation regime.

7.0. Conclusion

It has been shown that oil or Petroleum as natural resources occupies a prized place in the economy of nations and that Nigeria practices eminent domain system of Ownership.

This is a system of ownership whereby the Federal Government by coercive statutes vest on the government all lands and minerals beneath the subsurface of all lands in Nigeria. Thus, the idea of vesting of ownership, control and management of natural resources including Petroleum is generally for the common good and benefit of the whole nation.⁷²

It is also a general nation that the vesting of Ownership of mineral (including oil and gas) in or upon any land in Nigeria is viewed by the state as public good and the activities of the government in the exploration and exploitation is simply a case of public use.⁷³

This is to say that majorly the mineral resources are held in trust on behalf of the Nigerian People by the Federal government for the benefit and development of the country.⁷⁴

However, it has become obvious from the general outcry that the said ownership system in practice in Nigeria has been a bane to the oil producing states of Nigeria.⁷⁵ There is resource right agitation among oil states and communities. Their clamor is centered on injustice and

⁷¹ *Ibid*

⁷² M. Otu, 'Resources control and Appraising Debates on True Federalism in Nigeria: Critical Perspectives and Political options. (2017) (2) (1) *Research Journal of Humanities*, Legal Studies and International Development, 95-115:110, Empire Hechime Nyekwere etal (n15) 38

⁷³ Empire Hechime Nyekwere etal (n15)38

⁷⁴ *Ibid*

⁷⁵ *Ibid*

deprivation. This has led to Pipe-line vandalization, blowing up to oil terminals and kidnapping.

However, it is also obvious that it is because of the above vices that some laws in the form of correlative rights were promulgated which were meant to ameliorate the harshness portend in our Ownership system. It is the contention that these laws as promulgated are festered with lapses that makes them inadequate and unable to fulfill the required objectives. It is therefore recommended that our oil industry laws should be reviewed and modified through constitutional amendment to include state ownership most especially the oil producing states of Nigeria.

The Federal Government should work in synergy with the state government and local government in order to fight environmental pollution persisting through illegal refining. Also, institutional agencies responsible for monitoring of the environment should equally be empowered statutorily and otherwise for the safety of lives of the citizenry.