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Articles

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Hemen Philip Faga
Ebonyi State University, Abakaliki, Nigeria
ORCID: 0000-0001-5162-011X
hemenfaga@ebsu.edu.ng

Rita Abhavan Ngwoke
Igbinedion University, Okada, Edo State, Nigeria
ORCID: 0000-0001-6539-036X
okpeahior.rita@iuokada.edu.ng

The Niger Delta Agitation for Resource Control: Making Sense of Common Law Private Property Ownership Principles in the Management and Control of Oil Resources in Nigeria

Agitacja na rzecz kontroli zasobów w delcie Nigru. Rozumienie zasad dotyczących własności rzeczy na gruncie common law w zakresie zarządzania i kontroli zasobami ropy naftowej w Nigerii

ABSTRACT

The agitation for resource control in Nigeria's Niger Delta region has frequently snowballed into violence and militancy. Although the demand for resource control borders on the transfer of ownership and management and control of the processes of exploitation of crude oil found abundantly in the region, the exact parametres of the demand are not defined by the agitators. This paper examined the various variants of resource control demanded by the different groups of agitators in the Niger Delta. It particularly argued that the common law private property ownership principles of *Cuius est solum, eius est usque ad coelum et ad inferos*, and *Quic quid plantatur solo, solo cedit* be adopted to transfer ownership of natural resources, including crude oil to the indigenous inhabitants of the oil rich Niger Delta region in line with the principles of true federalism. The paper recommended the

CORRESPONDENCE ADDRESS: Hemen Philip Faga, PhD, Senior Lecturer, Faculty of Law, Ebonyi State University, Abakaliki, Ebonyi State, Nigeria, and Visiting Associate Professor, Faculty of Law, Admiralty University of Nigeria, Delta State, Nigeria; Rita Abhavan Ngwoke, PhD, Senior Lecturer, College of Law, Igbinedion University, Okada, Edo State, Nigeria.

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restructure of the Nigerian federal system to devolve more powers to the states and repeal of certain existing laws that inhibit the rights of the people to own land and natural resources beneath those lands, which belong to them, their ancestors and children yet unborn.

Keywords: resource control; private property; ownership; common law; oil; Niger Delta

INTRODUCTION

Nigeria is Africa's leading oil producer with a production capacity of 2.2 million barrels (350,000 m^3) per day.[1] Its oil reserves are estimated to be as much as 37.0 billion barrels.[2] This oil resource is largely concentrated within the Niger Delta region of the country, which alone accounts for almost 95% of the country's foreign exchange earnings, about 65% of her budgetary revenues, 83% of her national wealth, and 80% of the country's Gross Domestic Product (GDP).[3]

Despite the enormous wealth this product has given to Nigeria, it has also fuelled the divisive politics of exclusion, which centres on the questions of who owns or should own the product, how surface access to production sites should be facilitated, in terms of ownership of land resources, and the deleterious effect of production on the lives of the people. The controversies these questions have generated are exacerbated by the enactment of several legislations that have contributed to the sustenance of the instability in the Niger Delta region. Some of these legislations include provisions of the 1999 Constitution of the Federal Republic of Nigeria, the Petroleum Act,[4] the Oil Pipelines Act,[5] the Oil in Navigable Waters Act,[6] and the Land Use Act.[7]

In this paper, we intend to scrupulously analyse and re-visit the issue of ownership of both natural resources entrapped beneath the land and land itself within the Nigerian context, which is the fulcrum of the endless agitation and instability in the Niger Delta. We view the issue of ownership from the common law theories of ownership, *Cuius est solum, eius est usque ad coelum et ad inferos*,[8] and *Quic*

[1] See OPEC, Annual Statistical Bulletin, *Nigeria Facts and Figures*, 2015, www.opec.org/opec_web/static_files_project/media/downloads/publications/ASB2015.pdf [access: 3.04.2021].

[2] *Ibidem*.

[3] *Ibidem*.

[4] Petroleum Act 1969 (Now Cap. P10 Laws of the Federation of Nigeria LFN, 2004).

[5] Oil Pipelines Act 1956 (Now Cap. O7 LFN 2004).

[6] Oil in Navigable Waters Act 1968 (Now Cap. O6 LFN 2004).

[7] Land Use Act 1978 (Now Cap. L5 LFN 2004).

[8] "To whom belong the soil it is his, even to Heaven, and to the middle of the earth", loosely translated to mean that "the owner of the land is the owner of everything built upon the land and everything below the surface".

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quid plantatur solo, solo cedit,[9] to anchor our argument for a populist notion of ownership of nature's wealth and equitable distribution of resources in Nigeria.

Our analysis of the question of "ownership" of both oil resources and land is synchronised under two perspectives. First, it raises the question of who owns (or should own) these resources between the federal and state governments of the Niger Delta region. Second, it raises the same question as to the ownership of these resources between either the federal government or state governments of the region and the people (inhabitants of the region). Part two of this paper explains the Niger Delta environment, the prevalence and volume of oil exploration in the region and the benefits such exploitation has brought to the Nigerian nation over the period from independence up until now. Part three deals with the issue of the Niger Delta people and agitations for resource control progressively over the years. Part four delves into the crux of our argument for the interpretation of ownership of oil and gas from a common law perspective, using the theories of *Cuius est solum, eius est usque ad coelum et ad inferos* and *Quic quid plantatur solo, solo cedit*. Part five is the conclusions.

THE NIGER DELTA, CRUDE OIL EXPLORATION AND THE NIGERIAN STATE

The Niger Delta is located in the southernmost region of Nigeria. It makes up 7.5% of the Nigerian land mass, traversing over 70,000 km square.[10] The area is bounded in the south by the Atlantic Ocean and the Republic of Cameroon, in the west by Ogun, Oyo and Kogi States, in the north by Ebonyi, Enugu, Anambra, Benue and Kogi States, and in the east by Benue State and the Republic of Cameroon. The Niger Delta is made up of Abia, Akwa Ibom, Bayelsa, Cross River, Delta Edo, Imo, Ondo and Rivers states.[11] The population of the area is estimated to be above 31 million people, accounting for over 23% of Nigeria's total population.[12] The region is made up of more than 40 ethnic groups, with about 250 different dialects, amongst which Efik, Ibibio, Annang, Oron, Ijaw, Itsekiri, Igbo, Urhobo, Yoruba,

[9] Meaning that "the owner of the land is the owner of everything built upon or affixed to the land".

[10] I. Okonta, O. Douglas, *Where the Vultures Feast: Shell, Human Right and Oil*, London 2003, p. 18.

[11] *Ibidem*. See also V.T. Jike, *Environmental Degradation, Social Disequilibrium, and the Dilemma of Sustainable Development in the Niger Delta of Nigeria*, "Journal of Black Studies" 2004, vol. 34(5), pp. 686–701.

[12] See *Niger Delta*, www.en.m.wikipedia.org/wiki/niger_delta [access: 8.11.2021].

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Bini and Kalabari are the major ethnic groups.[13] The region is blessed with one of the finest ecosystems in the world, the highest concentrations of biodiversity on earth.[14] It is comprised of numerous flora and fauna, with a viable arable plane that is a citadel of agricultural activities.[15] The ecological zone is predominantly lowland rainforest, mangrove swamp forests, freshwater swamps, and coastal barrier islands.[16] The inhabitants are mainly fishers and farmers.

Above all the other attributes alluded to the Niger Delta region is the fact that it is the treasure base of the nation, and houses 60% of Nigeria's total oil fields, which represents the country's oil fields that are basically on-shore.[17] This region has since 1960 when Nigeria gained political independence from the colonial masters remained the lifeline of the country's economy as a result of Nigeria's progressive gravitation towards a single commodity market in crude oil. Though, oil was first discovered in Nigeria, in the then Southern Protectorate, in the year 1908 by the Nigerian Bitumen Company (a German company), it was not until 1956 that the first discovery of the commodity in commercial quantity was made.[18] Before this time, Nigeria had an agrarian economy.[19] In 1960, for instance, Nigeria was the world's highest exporter of cocoa, the country had a viable agro-economy spanning from the groundnut pyramids, beans and millet of the north and cocoa, oil palm, coal and fish of the south.[20]

However, despite the huge prospects of the country to diversify its economy after the discovery of crude oil, it is argued that the advent of the petroleum industry actually dwindled the fortunes of Nigeria.[21] This is indeed a classic case of the

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[13] I. Okonta, O. Douglas, *op. cit*., p. 10. See also U. Etiosa, A. Matthew, *Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria*, Community Research and Development Centre Nigeria (CREDC) Nigeria 2007, no. 6.

[14] O.A. Asimea, A. Aigbe, *The Impact of Oil and Gas Exploitation on Forestry Resources in the Niger Delta*, [in:] *Book of Reading in Forestry, Wildlife Management and Fisheries*, eds. A.A Aiyeloja, H.M. Ijeoma, Lagos 2011, p. 133.

[15] J.S. Omotola, *The Next Gulf? Oil Politics, Environmental Apocalypse and Rising Tension in the Niger Delta*, 2006, www.accord.org.za/publication/the-next-gulf [access: 5.04.2021], pp. 3–31.

[16] N. Zabbey, B.B. Babatunde, *Overview of Environmental Pollution and Toxicology*, [in:] *Book of Reading in Forestry*..., p. 110.

[17] See F.O. Fagbohun, *Dividends of Democracy of the Rural Population: The Case of the Niger Delta in Nigeria*, [in:] *Fresh Dimensions in the Niger Delta Crisis in Nigeria*, ed. V. Ojakorotu, Delray Beach 2009, p. 208.

[18] See Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, Index: AFR 44/017/2009, www.amnesty.org/download/Documents/44000/afr440172009en.pdf [access: 5.04.2021], p. 11.

[19] See T. Mogues, *Agricultural Public Spending in Nigeria*, Washington 2008, https://ebrary.ifpri.org/digital/collection/p15738coll2/id/13441 [access: 4.04.2021].

[20] *Ibidem*.

[21] See A. Onduku, *The Lingering Crisis in the Niger Delta: Field Work Report*, 2001, http://52.31.122.192/library/find-materials/journal-of-peace-conflict-and-development/NIger-Delta.

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curse associated with massive oil production by a country.[22] Apart from neglecting other viable sectors of the economy to concentrate solely on oil revenues, it is also suggested that the oil industry actually heralded and has continued to sustain the monumental administrative and political decadence, which have persistently stunted growth in the country and clogged the wheels of development.[23]

Today, the entire Niger Delta land mass is inundated with oil fields, covering over 1,500 communities in the region, which account for at least three-quarters of Nigeria's oil production.[24] This has turned in billions of dollars to the Nigerian state over the period since independence in 1960.[25] Currently, it is estimated that about 2 million barrels of crude oil are pumped out of the Niger Delta each day,[26] giving the government between the US $ 20–100 million daily.[27] Shell Petroleum alone has about 159 oil fields and 275 flow stations carved out of the fragile Delta ecosystem.[28] The total number of oil wells drilled in the region is estimated to be over 5,000, representing about 31,000 km² of physical land.[29]

The over-dependence on oil production in Nigeria has resulted in the dominance of the product as the central commodity in the Nigerian economy, providing over 80% of government revenues, 90% of foreign exchange earnings, and 40% of GDP. Thus, oil revenues are central to the functioning, growth and development of every facet of the Nigerian nation. Indeed, every major stride Nigeria has made since the

pdf [access: 5.04.2021], p. 3. See also A. Mahler, *Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta*, GIGA Research Programme (Violence & Security) Working Paper 2010, no. 120, p. 5; ANEEJ, *Oil of Poverty in the Niger-Delta*, A publication of the African Network for Environmental and Economic Justice, 2004, p. 14.

[22] See Amnesty International, *Nigeria*..., p. 9.

[23] R.M. Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis*, London 1993. See also J. Sachs, A. Warner, *The Curse of Natural Resources*, "European Economic Review" 2001, vol. 45(4–6), pp. 827–838.

[24] See I. Okonta, O. Douglas, *op. cit*.

[25] See H.T. Ejibunu, *Nigeria's Niger Delta Crisis: Root Causes of Peacelessness*, "EPU Research Papers" 2007, no. 7, p. 6; International Crisis Group, *Nigeria: Want in the Midst of Plenty*, Africa Report no. 113, 19.07.2006, p. 1; G. Wurthmann, *Ways of Using the African Oil Boom for Sustainable Development*, 2006, www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00806226-EN-ER-WP-84.PDF [access: 9.03.2021].

[26] See G.M. Bubou, A.C. Brent, C. Tredoux, *Towards Assessing The Social Sustainability Performance of the Petroleum Industry in the Niger Delta Region of Nigeria*, "South African Journal of Industrial Engineering" 2009, vol. 20(1), p. 119.

[27] See A. Onduku, *op. cit.*, p.3.

[28] See T. O'Neill, *Curse of the Black Gold: Hope and Betrayal in the Niger Delta*, 2007, www.daniellazar.com/wp-content/uploads/the-curse-of-black-gold.doc [access: 3.03.2021].

[29] See Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), *Niger Delta Natural Resources Damage Assessment and Restoration Project Scoping Report*, 2006, www.iucn.org/sites/dev/files/import/downloads/niger_delta_natural_resource_damage_assessment_and_restoration_project_recommendation.doc [access: 4.04.2021].

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1970s is tied to the revenue accruing from oil.[30] However, despite the benefits of crude oil production, the region that produces it remains the most backward in the country,[31] and the inhabitants live in abject poverty.[32] The United Nations Development Programme (UNDP) describes the region as suffering from "administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict".[33] Majority of people in the Niger Delta have no access to clean water or health care;[34] indeed, that the poverty in the region contrasts with the wealth generated by oil in the country, has become one of the world's starkest example of the "resource curse".[35] According to T. Makgabo, Cable Network News (CNN) anchorman for "Inside Africa" 2007, the Niger Delta "is a region where time seems to have stood still and where people live the most meager of existences, leaving them bitter and angry from not having benefited from the black gold that makes Nigeria Africa's largest producer".[36]

The fact that the people of the Niger Delta have not benefited from oil wealth is only one part of the story. The second and most unfortunate part is the deleterious effect the exploitation of crude oil has had on people's wellbeing. Widespread and unchecked activities related to the oil industry have pushed many people in the Niger Delta deeper into poverty and deprivation, fuelled conflict and led to a pervasive sense of powerlessness and frustration. The multi-dimensional crisis is driven by the actions of the security forces and militant groups, extensive pollution of land and water, corruption, corporate failures and bad practice, and serious government neglect.[37]

For the people of the Niger Delta, environmental quality and sustainability are fundamental to their overall wellbeing and development. According to UNDP, more than 60% of the people in the region depend on the natural environment for their livelihood.[38] For many, the environmental resource base, which they use for agriculture, fishing and the collection of forest products, is their principal or sole source of food.[39] Pollution and environmental damage, therefore, pose significant risks to their survival

[30] See A. Mahler, *op. cit*., p. 14. See also O. Ajiboye, J. Jawando, W. Adisa, *Poverty, oil exploration and Niger Delta crisis: The response of the youth*, "African Journal of Political Science and International Relations" 2009, vol. 3(5), p. 224.

[31] See G.M. Bubou, A.C. Brent, C. Tredoux, *op. cit*., p. 120.

[32] See H.T. Ejibunu, *op. cit*., pp. 11–12.

[33] United Nations Development Programme, *Niger Delta Human Development Report*, 2006, http://hdr.undp.org/sites/default/files/nigeria_hdr_report.pdf [access: 3.04.2021].

[34] *Ibidem*.

[35] See Amnesty International, *Nigeria…*, p. 9.

[36] T. Makgabo, CNN, *Inside Africa: Current Events on the Africa Continent*, 2004, http://edition.cnn.com/TRANSCRIPTS/0410/02/i_if.01.html [access: 5.04.2021].

[37] Amnesty International, *Nigeria…*, p. 9.

[38] United Nations Development Programme, *op. cit.*, p. 74.

[39] *Ibidem*.

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and basic human rights.[40] According to a study carried out by a team of Nigerian and international environmental experts in 2006,[41] the Niger Delta is "one of the world's most severely petroleum-impacted ecosystems". They stated: "The damage from oil and gas operations is chronic and cumulative, and has acted synergistically with other sources of environmental stress to result in a severely impaired coastal ecosystem and compromised livelihoods and health of the regions impoverished residents".

While oil spills and gas flaring are the most frequently referenced forms of oil-related pollution in the Niger Delta, there are in fact several other ways in which the oil industry has continued to harm the environment, such as disposal of wastes and effluents, dredging, drilling, and seismic activities.[42]

THE NIGER-DELTA AGITATION FOR RESOURCE CONTROL

Having considered the physical state of the Niger Delta region, it is worth to note that the monumental backwardness, poverty, and especially government policies and attitude towards the region have laid the groundwork for popular agitations for economic autonomy, which sometimes lead to sporadic armed conflicts and other forms of violence. Apart from the excessive poverty and deleterious activities associated with oil exploitation discussed above, several other important explanations are given for the unrest and volatility in the Niger Delta. For instance, unemployment is a major concern in the region, which has had a tremendous and adverse impact on peace and stability.[43] As a result of poor management of the oil industry, especially the downstream sector,[44] the entire industry employs only 35,000 people directly or indirectly,[45] of which less than 5% are inhabitants of the Niger Delta.[46]

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[40] *Ibidem*.

[41] Nigerian Conservation Foundation, *op. cit*.

[42] See A. Sinden, *An Emerging Human Right to Security from Climate Change: The Case against Gas Flaring in Nigeria*, [in:] *Adjudicating Climate Change: Sub-National, National, and Supranational Approaches*, eds. W.C.G. Burns, H.M. Osofsky, Cambridge 2008, p. 3; T. O'Neill, *op. cit.*; D. Farah, *Nigeria's Oil Exploitation Leaves Delta Poor, Poisoned*, "Washington Post" 2001, A22 (March 18). See also I. Okonta, O. Douglas, *op. cit*., pp. 61–63; The Climate Justice Programme & Environmental Rights Action/Friends of the Earth Nigeria, *Gas Flaring in Nigeria: A Human Rights, Environmental, and Economic Monstrosity*, 2005, www.climatelaw.org/media/gas.flaring/report/gas.flaring.in.nigeria.html [access: 10.11.2021].

[43] See H.T. Ejibunu, *op. cit.*, p. 16.

[44] Energy Administration Information, *Country Analysis Briefs – Nigeria*, www.eia.doe.gov/emeu/cabs/Nigeria/pdf.pdf [access: 5.11.2021], p. 4.

[45] See Amnesty International, *Oil in the Niger Delta*, www.amnesty.org/pages/nga-031105-action-eng [access: 15.11.2009].

[46] E. Hutchful, *Oil Companies and Environmental Pollution in Nigeria*, [in:] *Political Economy of Nigeria*, ed. C. Ake, London 1985. See E. Kaniye, *Niger Delta Oil, Development and the New*

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Another source of frustration and therefore agitation by the Niger Delta people is the progressive reduction of revenue allocated to the region from crude oil production since independence.[47] It is noted that the percentage of oil revenues refunded to the producing regions was almost 100% between 1953 and 1959.[48] The 1960 Constitution pegged it at 50%,[49] which was in place until 1970 when the Gowon administration reduced it to 30%.[50] Subsequently, the Aboyade Technical Committee during the Murtala/Obasanjo administration reduced the amount refundable by 5%, the Shagari administration by 20%, and under the Buhari military government, derivation was as low as 1.5%.[51] In fact, some writers speculate that derivation actually hit an all-time low of 0% before the Babangida administration fixed it at 1% and later increased it to 3%, where it remained until the coming into effect of the 1999 Constitution of the Federal Republic of Nigeria.[52] Under the present Nigerian Constitution, 13% of revenue accruing to the federal government from oil produced from any state of the federation is to be paid back to it.[53]

To add salt to injury of the dwindling revenue from oil resources to the Niger Delta was the expropriation of their lands by the government, which not only defined their lives and culture, but also was a source of wealth.[54] As far as the people of the region were concerned, ownership of land bequeaths everything associated with it, including natural resources found therein.[55] Indeed, this accounts for the cooperation they gave to the Nigerian government and Multinational Oil Corporations (MNOCs) prior to the promulgation of the Land Use Decree 1978 notwithstanding the statutory ownership of natural resources by the state. Their participation in the process of management and control of land was sufficient interest in the exploitation

Development Initiative: Some Reflections from a Socio-Legal Perspective, "Journal of Asian and African Studies" 2008, vol. 43(2), pp. 300–303.

[47] A. Mahler, *op. cit*., p. 16.

[48] See A.E. Ogbuigwe, *The Law and Environment: The Niger Delta Challenge*, "Port Harcourt Law Journal" 1999, vol. 4, p. 94.

[49] Section 134 of the 1960 Constitution. See also Section 140 of the 1963 Republican Constitution.

[50] See Decree no. 13 of 1970. See generally H.P. Faga, *Taming the Tiger in the Niger Delta; The Role of Law in the Niger Delta Question: Whither?*, "Akungba Law Journal" 2008, vol. 1(2), p. 306.

[51] See *The Niger Delta: Phoenix of Nigerian Democracy, Vanguard Book Series*, "Vanguard Newspaper" 2000 (January 22), p. 27.

[52] See A.E. Ogbuigwe, *op. cit*., p. 94. See also United Nations Development Programme, *op. cit.*

[53] Section 162 of the 1999 of the Constitution of the Federal Republic of Nigeria 1999, as amended 2011, Cap. C.23 LFN 2004, hereinafter: CFRN.

[54] Traditionally, land is spiritually and structurally interwoven with the lives of the people of the Niger Delta region of Nigeria. See E. Kaniye, *Oil and the Niger Delta People: The Injustice of the Land Use Act*, "Centre for Energy, Petroleum and Mineral Law Policy Journal" 2001, vol. 9, p. 9.

[55] *Ibidem*.

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of crude oil to fulfil the aspirations of environmental justice.[56] In other words, even though the ownership of the oil was vested absolutely in the federal government, the communities owned the land beneath which the resources were situated and therefore reserved several beneficial rights, among which was the right to negotiate directly with oil companies concerning land use issues, such as rent, lease, tenure and compensation.[57] The Act is described as the "most dramatic of the barrage of pro-oil statutes".[58]

A critical look at the pattern of agitation in the Niger Delta reveals a tripodal trajectory. First, there is the agitation by independent federating units (states)[59] in the region against the federal government in what is popularly known as the struggle for "resource control". Second, there is agitation by the people of the region against the federal government and its oil interest in the region, which is expressed in the form of militancy, often elevated to a small scale war (insurgency) with sundry acts of sabotage, guerrilla tactics, asymmetric methods and demand for self-determination. Third, there is agitation by the people of the region against MNOCs operating in the region for environmental justice and protection of their human rights and livelihood, which has transcended national remedial enforcement methods. In this section, we shall consider the first and second levels of agitation, which are indeed inseparable, although conceptually, each presents a unique pattern of agitation.

The struggle of the Niger Delta region for "resource control" began with the unsuccessful attempt in 1966 by Isaac Adaka Boro to secede from Nigeria and form the Niger Delta Republic.[60] Ever since the rebellion was crushed, the attitude of every successive campaign of agitation in the region has shifted from the bid to acquire sovereignty and political independence, to seeking internal economic autonomy and participatory self-determination.[61] This can be gleaned from the

[56] See A. Obiora, *Symbolic episodes in the quest for environmental justice*, "Human Rights Quarterly" 1991, vol. 21(2), p. 466, 477. See also G. Mbamalu, C. Mbamalu, D. Durett, *Environmental Justice Issues in Developing Countries and in the Niger Delta*, Paper delivered at the International Conference on Infrastructure Development and the Environment, Abuja, Nigeria, 10–15 September 2006, p. 5.

[57] R.T. Ako, *Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice*, "Journal of African Law" 2009, vol. 53(2), p. 301.

[58] See K. Omeje, *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria*, Durham–London 2006, p. 47.

[59] The Niger Delta states, comprised of Rivers state, Delta state, Belyesa state, Edo state, Abia state, Ondo state, Akwa Ibom state, Imo state and Cross Rivers state.

[60] See generally I. Okonta, O. Douglas, *op. cit*., p. 10 (the main objective of the rebellion was to excise the region from Nigeria; secession).

[61] A. Ako, *The Struggle for Resource Control and Violence in the Niger Delta*, [in:] *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence*, eds. C. Obi, S. Rustad, London 2, p. 46. See also R.T. Ako, O. Omiunu, *Amnesty in the Niger Delta: Vertical Movement Towards Self-determination or Lateral*, pp. 86–99.

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creed/charter declaration of all the major ethnic affiliations in the region.[62] For instance, the Kaiama Declaration made by the Ijaw nation in 1998 states: "All lands and natural resources (including mineral resources) within the Ijaw territory belong to the Ijaw communities and are the basis of our survival. […] We cease to recognise all undemocratic decrees that rob our peoples/communities of the right to ownership and control of our lives and resources, which were enacted without our participation and consent. These include the Land Use Decree, 1978 and the Petroleum Decree of 1969 and 1991, the Lands (Title Vesting, etc.) Decree no. 52 of 1993 (Osborne Land Decree), the National Inland Waterways Authority Decree no 13 of 1997, etc.".[63]

Thus, at the forefront of the struggle for resource control, are the people of the Niger Delta, signified by the large participation of the ordinary Deltans in the various ethnic affiliates that adopted the declarations.[64] However, the resource control agenda was later hijacked by the elites/elders and local/state authorities in the region, thereby raising the agitation to a more legalistic and constitutional issue, albeit with a substantially altered agenda.[65] The problem with the resource control argument is the lack of clarity regarding the meaning and nature of the phrase. The people of the Niger Delta through the various declarations have expressed their understanding of the phrase to mean that all natural resources, including land and minerals found on the land or beneath it, must be totally controlled and managed by the people themselves or the communities in whose land the resources originate.[66] For instance, a former governor in one of the Niger Delta states gave his notion of resource control when he stated thus: "Resource control means that if I as a Bini man goes to Kebbi state and finds gold, the resource should belong to me and not the state or the federal government. All I owed the federal government is to pay taxes and royalties. The same principle should apply if a Kano man comes to Edo,

[62] See Ogoni Bill of Rights, www.waado.org/nigerdelta/RightsDeclaration/Ogoni.html [access: 6.01.2009]. See also the Akaka Declaration of the Egi People, the Oron Bill of Rights (1999), the Warri Accord, Resolutions of the First Urhorobo Economic Summit (1998), the Ikwerre Charter of Demand, the Demands of the First Niger Delta Indigenous Women's Conference (1999) and the manifesto of the Non-Governmental Organization (NGO), the Niger Delta Community Defence Law Foundation (CD-LF). See generally H.T. Ejibunu, *op. cit*., p. 10–11.

[63] Kaiama Declaration, 11 December 1998, http://ijawcenter.com/kaiama_declaration.html [access: 9.10.2010].

[64] See C. Obi, *Youth and the Generational Dimensions to Struggles for Resource Control in the Niger Delta: Prospects for the Nation-state Project in Nigeria*, 2006, www.codesria.org/IMG/pdf/Cyril_Obi.pdf [access: 4.03.2021], p. 30.

[65] See O. Douglas, *A Community Guide to Understanding Resource Control*, 2001, www.waado.org/nigerdelta/essays/resourcecontrol/Guide_Douglas.html [access: 4.04.2021]; B. Joel, *Niger Delta Youths Dump Resource Control*, "Sunday Punch Newspaper" 2000 (February 24).

[66] O. Douglas, *op. cit*.

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Delta or Bayelsa and strikes oil. He only pays royalties and taxes to the state or the federal government".[67]

Indeed, one of the founding fathers of the country, Chief Obafemi Awolowo had commented that "the benefit of resource control should accrue to the individuals and not the state, following the principles enunciated by Adams Smith in the *Wealth of Nations*".[68] Thus, the struggle for resource control, which began as a populist movement for reconstruction of the polity became hijacked by the political elite after 1999 turning the momentum into a constitutional periphery-centre struggle for devolution of political and economic power, autonomy and true federalism.[69] In the heat of the struggle, the governors of the south-south zone (Niger Delta states) met and defined the boundaries of what they meant by "resource control" as: "The practice of true federalism and natural law, in which the federating units express their right to primarily control the natural resources within their borders and make agreed contributions towards maintenance of common services of sovereign nation-state in which they belong. In the case of Nigeria, the federating units are the 36 states and the sovereign nation is the Federal Republic of Nigeria".[70]

At the level of periphery-centre struggle for resource control, the first issue attacked by the governors of the Niger Delta federating units was the so-called onshore/offshore dichotomy as basis for calculating the 13% derivation principle provided in the Constitution of the Federal Republic of Nigeria 1999.[71] The 1999 Constitution unlike the 1960 and 1963 Constitutions of the country, failed to stipulate the criteria for application of the derivation principle provided under it.[72]

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[67] The governor was Lucky Igbinedion of Edo state. See D. Dafinone, *Resource Control: The Economic and Political Dimension*, 2001, www.waado.org/nigerdelta/essays/resourcecontrol/dafinone.html [access: 5.04.2021].

[68] *Ibidem*. See also X. Salai-i-Marta, A. Subramanian, *Addressing the Natural Resource Curse: An Illustration from Nigeria*, "IMF Working Paper" 2003, no. 03/139.

[69] See E.E. Osaghae, A. Ikelegbe, O.O. Olarinmoye, S.I. Okhomina, *Youths Militias, Self Determination and Resource Control Struggles in the Niger-delta Region of Nigeria*, Dakar 2011; O. Douglas, *Discussion*, [in:] *The Niger Delta Question*, ed. T.N. Tamuno, Port Harcourt 1999, p. 66. See also A. Utuama, *The Niger Delta Crisis: The Legal Dimension*, [in:] *Fresh Dimensions in the Niger Delta Crisis…*, pp. 19–20; idem, *Challenges of Democracy and the Rule of Law*, www.nigerdeltacongress.org (access: 21.08.2010].

[70] E.M. Ojameruaye, *Quo vadis (Oil) Resource Control in the Niger Delta?*, 2010, www.waado.org/nigerdelta/essays/resourcecontrol/ojameruaye.htm [access: 21.02.2021].

[71] The derivation principle is provided in Section 162 (2) of the Constitution. It provides: "[…] the president […] shall table before the National Assembly proposals for revenue allocation from the federation account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density; provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than 13% of the revenue accruing to the federation account directly from any natural resources".

[72] See Section 134 (6) and Section 140 (6) of the 1960 and 1963 Constitutions respectively.

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Under these past Constitutions, the derivation principle was calculated to include revenue derived from the continental shelf contiguous to each particular region where oil was produced.[73] Thus, such offshore territories were deemed to belong to the territory of the region (now states) for the purpose of calculating the derivation principle. This helped to put substantial funds in the hands of the regions at that time. However, because of the non-inclusion of such similar clause in the 1999 Constitution, derivation was initially calculated based on only natural resources derived from onshore territories of the oil producing states. Thus, as a result of the very high reliance on offshore oil production in Nigeria since 1999, derivation based on such dichotomy led to an abysmal reduction in the revenue base of the Niger Delta states, effectively reducing the derivation principle to only 8% of the original 13% provided in the Constitution.[74]

Following agitation by states of the Niger Delta for a larger share of federal funds through the derivation principle, the Federal Government instituted an action against the federating states in the Supreme Court of Nigeria to determine the seaward boundaries of littoral states in the country, in order to determine if they were entitled to revenue derived offshore from oil production. The Supreme Court in the case of *Attorney-General of the Federation v. Attorney-General of Abia State and 35 Others*[75] (*Resource Control* case) finally declared that the littoral states (including the Niger Delta states) had no claims to resources within the continental shelf of the country.[76] This decision further aggravated the agitation and contributed to the initial increase in violence and restlessness in the Niger Delta region, as the communities that are affected by the effect of oil production (whether onshore or offshore) regarded this as another assault on their right to self-determination and control of their natural resources.[77] At this stage, a political resolution of the impasse became imperative to assuage the discontent of the littoral states, and eventually, the National Assembly enacted the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004, which finally laid that phase of agitation to rest.[78]

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[73] See H.P. Faga, *op. cit*., p. 308.

[74] See E.M. Ojameruaye, *op. cit.*

[75] (2002) FWLR [Pt. 102] 85.

[76] *Ibidem*, per Ogundare JSC 91-97.

[77] See H.O. Yusuf, *Oil on troubled Waters: Multinational Corporations and Realising Human Rights in the Developing World, with Specific Reference to Nigeria*, "African Human Rights Law Journal" 2008, vol. 8(1), p. 88.

[78] Section 1 (2) of the Act (Act no. A89, 2004) provides that "as from the commencement of this Act, the 200 metre water depth isobaths contiguous to a state of the federation shall be deemed to be part of that state for the purpose of calculating the revenue accruing to the federation account from the state pursuant to the provisions of the constitution of the federal Republic of Nigeria 1999, or any other enactment". See E.M. Ojameruaye, *The Off-Shore/On-Shore Oil Dichotomy Abolition*

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The next phase of the periphery-centre struggle for resource control was the thunderous outcry for the convention of a Sovereign National Conference that would bring together delegates from all ethnic nationalities in the country to agree on mutually beneficial terms of the union of the Federal Republic of Nigeria. The Niger Delta governors hoped that such a conference would recommend devolution of both political and economic power to the state governments and therefore realize their ultimate aim of achieving complete control and management of the oil sector. Despite the initial opposition and suspicion of the Federal Government towards the merit of such conference, it did a clever *volte-face* on the issue but instead convened what it called the National Political Reform Conference, with a substantially limited mandate.[79] The delegates from the Niger Delta region laid their demands before the conference but were eventually made to abandon the hard stance for absolute control of the natural resources found in their territory, for the less favourable increase of the derivation principle.[80] Thus, the initial demands of the Niger Delta states of 25% derivation principle with a progressive increase to 50% in 5 years were utterly rejected by the conference, and rather a 17% derivation was recommended amongst other solutions, to tame further agitations from the region.[81] Despite their protestation and dramatic walkout from the conference, it eventually concluded without them.[82]

It turned out that the National Political Reform Conference, just like earlier attempts by the federal government to address the Niger Delta question was a ruse, as recommendations of the conference were never implemented. Rather, the Obasanjo administration continued its attacks against militants who had stepped up violence in the region as a direct consequence of the failure of the conference[83] and purportedly inaugurated the Council on Socio and Economic Development of Coastal States of the Niger Delta in early 2006. The Council was given a nine-point mandate, which never materialized until the tenure of the administration expired in 2007.[84] Under the then Yar'Adua/Goodluck administration, no significant attitudinal change was effected on the part of government with respect to agitations in the

Act: Matters Arising, 2004, www.nigerdeltapeoplesworldcongress.org/articles/offshoreonshore_oil.pdf [access: 5.04.2021].

[79] The Conference had no mandate to substantially restructure the Nigerian polity by the adoption of a new constitution. See S. Ofehe, *Resource Control Set to Tear Nigeria Apart*, 2005, https://onlinenigeria.com/columnists/ad.php?blurb=110 [access: 4.03.2021].

[80] E.M. Ojameruaye, *Quo vadis*…

[81] See E. Amaize, *Resource Control: Anger Everywhere*, "Vanguard Newspaper (Nigeria)" 2005 (July 3).

[82] See R. Singer, *The state of Nigerian democracy*, 2006, http://dawodu.com/singer1.pdf [access: 18.06.2009].

[83] See N.B. Najibo, B. Nwiline, *Relative Deprivation and Hostage-Taking in Nigeria's Niger Delta Region*, [in:] *Fresh Dimensions in the Niger Delta Crisis*…, p. 55, 88.

[84] See E.M. Ojameruaye, *Quo vadis*…

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Niger Delta, except that a different approach was adopted. Though the government extended an olive leaf to the militants rather than matching their violence with state force,[85] however instead of implementing the myriads of recommendations made by previous Commissions, it opted to establish the Niger Delta Technical Committee,[86] which has turned out to be another subterfuge.[87] The Amnesty programme of the administration has almost altogether collapsed[88] and hostilities have resumed principally between Movement for the Emancipation of the Niger Delta (MEND) and the Joint Military Task Force (JTF) in the region.[89]

It appears that notwithstanding the amnesty programme and the emergence of former President Goodluck as Nigeria's president (being an indigene of the Niger Delta),[90] the root causes of the Niger Delta agitation are yet to be addressed, and notwithstanding that the violence in the Niger Delta has subsided, the issue of resource control is yet to receive adequate attention.

Although much of our discussion so far has dwelled on the first level of agitation between the federating units (states) in the Niger Delta region and the federal government of Nigeria, the agitations have a significant correlation with the second level of struggle between the people of the Niger Delta region and the federal government. First, the agitation for resource control has always been a populist movement before the elites and state officials in the Niger Delta hijacked it. Thus, the struggle has remained under the vigilant eyes and active participation of the people, especially the militant youths in the region who continued to reward positive progress and cooperation, with relative calm and encumbrance or sabotage with violence. However, the populist notion of resource control held by the people is diametrically different from the elitist struggle. The people of the Niger Delta region have denounced claims of the various federating state governments to the proceeds of oil resources found

[85] *Ibidem*. See also C. Obi, S. Rustad, *Conclusion: Amnesty and Post-Amnesty Peace, Is the Window of Opportunity Closing for the Niger Delta?*, [in:] *Oil and Insurgency in the Niger Delta…*, p. 204.

[86] E.M. Ojameruaye, *Quo vadis…*

[87] See D. Kio-Lawson, J.B. Dekor, *Militancy Crises and the Challenge of Rural Development in Post Amnesty Rivers State, Nigeria*, "World Environment" 2014, vol. 4(1), pp. 33–41.

[88] A. David, M.O. Ufiem, *Ethnic and Regional Violence in Nigeria: Implications for National Security*, "Journal of Politics and Law" 2014, vol. 7(3).

[89] See Jamestown Foundation, *No End in Sight: Violence in the Niger Delta and Gulf of Guinea*, "Terrorism Monitor" 2013, vol. 11(5); IRIN, *Analysis: Niger Delta still Unstable Despite Amnesty*, www.irinnews.org/report/94306/analysis-niger-delta-still-unstable-despite-amnesty [access: 11.11.2015].

[90] The former President Goodluck Jonathan is an indigene of Otuoke in Bayelsa State, which forms part of the Niger Delta region of Nigeria He served as Nigerian Vice President (May 29, 2007 – February 9, 2010), Acting President (February 9, 2010 – May 5, 2010) and President (May 5, 2010 – May 29, 2015). For biography of former President Jonathan see A. Mckenna, *Goodluck Jonathan*, [in:] *Encyclopaedia Britannica: Goodluck Jonathan*, 2015, www.britannica.com/biography/Goodluck-Jonathan [access: 5.04.2021].

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beneath their lands due to the gross inability of states and local governments in the region to utilise funds accrued to the region from the derivation principle over the years for development and progress. There is evidence of serious mismanagement and misappropriation of these funds by government officials in the region, which has stunted development and left the people in perpetual penury.[91]

According to some analysts, between 1999 and 2007 about NGN 3 trillion was allocated to the Niger Delta region either through the derivation principle or allocation to the Niger Delta Development Commission (NDDC).[92] Even though a massive 70% and 22% of this fund went to states and local governments respectively, and only a paltry 8% went to the NDDC, nothing of significance was achieved in terms of execution of major project by these two arms of government put together, compared to the achievements of the NDDC within the period.[93]

It appears that the people of the Niger Delta do not agree with their elites, states and local governments in the region on what should define the populist struggle for resource control in terms of the meaning of the phrase and who should eventually manage and control the vast oil reserves in the region if the struggle should succeed. There is evidence that the people's notion of "resource control" is inextricably knitted with their ancestral use and ownership of the lands beneath which the "black gold" is found. Thus, from a populist viewpoint, the struggle is classified as a quest for "communitisation"[94] rather than the venal attempt of the region's political elite to perpetuate the *status quo* under the guise for enthronement of true federalism.

Notwithstanding, there is yet to be a definite consensus amongst the people on how the demand for resource control should be implemented to guarantee the involvement of the people in both the management and control of the vast oil reserves beneath their lands. For instance, E.M. Ojameruaye (himself from the Niger Delta region) supports the idea of "joint ownership" of crude oil resources in the Niger Delta, but opines that the mode of joint ownership should be restricted to the communities alone.[95] According to him, the joint ownership should be spread between the federal government, the mineral producing states/local governments, and the

[91] See generally I. Sagay, *Ownership and Control of Nigerian Petroleum Resources: A Legal Angle*, [in:] *Nigerian Petroleum Business: A Handbook*, ed. V.E. Eromosele, Lagos 1997, pp. 176–186. See also A. Otite, *Niger Delta Ruling Elite and the Under-Development of the Niger Delta Region of Nigeria*, [in:] *Fresh Dimensions in the Niger Delta Crisis…*, pp. 164–167.

[92] See N.B. Najibo, B. Nwiline, *op. cit.*, p. 64. See also S. Omotola, *op. cit*.

[93] N.B. Najibo, B. Nwiline, *op. cit.*, p.65.

[94] See the statement of Oronto Douglas, one of the signatories to the IYC Kaiama Declaration and deputy director of Environmental Rights Action (ERA) where he stated that "communitisation is the final frontier in resource control advocacy and realization. It is based on community self-sufficiency and control in all matters relating to our communities and its ultimate aim is the reclaiming of the misappropriated resources and its return to communal rebuilding and repositioning agenda for our people". See B. Joel, *op. cit*. See generally C. Obi, *op. cit*., p. 41.

[95] See E.M. Ojameruaye, *Quo vadis…*

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communities where the resources are exploited, through the allocation of shares and equity holdings in mineral producing ventures.[96] Other writers have contributed in shaping the debate on the nature of arrangement that would best express the character of resource control suitable for the people of the Niger Delta should the struggle succeed. F.O. Ayodele-Akaakar seems to favour the USA–Canada model for application in Nigeria, where a dual system of ownership exists in some states of the U.S. in which the landowner owns mineral rights of onshore areas while the states and the federal government own minerals in/on public lands including offshore areas.[97] In Canada on the other hand, the provinces (states) have complete title to petroleum resources *in situ* on property within their territory while federal policy is only focused on the consumption and trade aspects of the oil industry.[98]

X. Salai-i-Marta and A. Subramanian on the other hand introduced an interesting argument for an entirely new model of redistribution of oil wealth among citizens of the country rather than a strict resource control archetype for the Niger Delta.[99] They believe that resource control may not after all be the solution to the increasing violence in the Niger Delta, but a more enduring model for redistribution of wealth, repair of environmental damage and provision for future generations.[100]

EXPLORING THE COMMON LAW PRIVATE PROPERTY PRINCIPLES IN THE NIGER DELTA QUESTION

Despite the clarity in Nigeria's statute books on who owns petroleum on the one hand,[101] and on the other hand, in who land is vested,[102] the question of ownership and control of both crude oil and land remains a divisive factor in the Nigerian polity. Like most OPEC countries,[103] Nigeria operates a centralised state owner-

[96] *Ibidem*.

[97] See F.O.Ayodele-Akaakar, *Appraising the Oil & Gas Laws: A Search for Enduring Legislation for the Niger Delta Region*, "Journal of Sustainable Development in Africa" 2001, vol. 3(2), pp. 11–2. See also idem, *Oil and Gas – the Issue of Ownership and the Nigerian Situation*, "FJRSB (FIDA Journal)" 1999, no. 2, p. 61.

[98] *Ibidem*.

[99] X. Salai-i-Marta, A. Subramanian, *op. cit.*, pp. 20–21.

[100] *Ibidem*, pp. 19–20 (arguing that a permanent fund should be created by cutting back on the production capacity at a particular percentage, to cater for the needs of future generations and issues of environmental degradation).

[101] See Section 44 (3) CFRN. See also *South Atlantic Petroleum Ltd v. Minister of Petroleum Resources* (2006) 10 CLRN 122. (Nigeria).

[102] Section 1 (1) of the Land Use Act Cap. L6 LFN 2004.

[103] See, e.g., Libya, Venezuela, Saudi Arabia, Iran, Kuwait, the Arab Gulf countries, Algeria and Angola. For more information on OPEC nations and their modes of oil ownership, visit www.opec.org/opec_web/en/about_us/25.htm [access: 10.11.2021].

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ship of petroleum resources although this is not without criticism. Proponents of this model of ownership rely on the UN Resolution 1803 of 1962 (on permanent sovereignty of states over their natural resources) to argue that the federal government alone has the responsibility to ensure equitable distribution of oil wealth to all Nigerians. They argue that vesting ownership and control of oil resources in federating states would most certainly lead to the development of few strong states that may resort to intimidation of other federating states or even the federal government, which would threaten political and economic stability.[104] On the need to ensure implementation of the World Bank's operational policy on indigenous peoples' connection to their land and natural resources, proponents of state ownership argue that no particular ethnic group in the Niger Delta can claim indigeneity above others and therefore, the need to restructure the ownership pattern in their favour does not arise.[105]

Advocates of decentralised state ownership of oil resources, on the other hand, argue that Nigeria should adopt a mode of ownership that resonates with its socio-political diversity and peculiarities as a nation. They refute the claims that federal ownership is needed to protect equal development of the country because, since independence in 1960, the central government has been controlled by one region, which has criminally neglected the Niger Delta that produces 80% of the nation's wealth.[106] They contend that the UN Resolution 1803 of 1962 did not prescribe any particular mode of ownership for nations, and that the resolution was concluded only to prevent external control of a state's resources. They also embraced the report of the Working Group of Experts under the African Commission on Human and Peoples' Rights (ACHPR) on Indigenous Populations/Communities in Africa[107] to argue for special treatment of the entire Niger Delta peoples as indigenous peoples notwithstanding their diverse tribal affiliations.[108] Finally, they argue that diversification of ownership is necessary to promote healthy competition among

[104] N. Usman, *The Rights of Indigenous Peoples and Mineral Resource Development: Global Trends and the Nigerian Question*, PhD Thesis, Dundee 2003, p. 142; A.I. Chukwuemerie, *New Dimensions in Commercial and Oil and Gas Laws*, Port Harcourt 2007, pp. 682–735.

[105] Y. Omorogbe, *Oil and Gas law in Nigeria*, Lagos 2001, pp. 146–151.

[106] See C. Nwapi, *A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria*, "Journal of African Law" 2009, vol. 54(2), pp. 184–211.

[107] See African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, adopted by the African Commission at its 34th Ordinary Session*, November 2003, www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/AfricanCommissionbookEnglish.pdf [access: 19.09.2019].

[108] African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities. Adopted by the African Commission at its 28th Ordinary Session*, November 2005, www.iwgia.org/images/publications/African_Commission_book.pdf [access: 5.04.2021]. Also to note that the African Commission on Human and Peoples' Rights in the case of *Centre for Minority Rights Development (Kenya) and Minority*

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the various federating states in Nigeria[109] and that centralised federal ownership has led to monumental corruption.[110]

These opposing views of centralised vs. decentralised state ownership of oil resources[111] are tampered by a third perspective of private ownership, which is rooted in the common law private property ownership principles.[112] Essentially, the state-ownership theory confers title in oil and gas on the state irrespective of who owns the land, whereas the private ownership theory (which is hinged on the principles of *Cuius est solum, eius est usque ad coelum et ad inferos*, and *Quic quid plantatur solo, solo cedit*), posits that "the owner of a tract of land acquires title to the oil and gas which he produces from wells drilled thereon, although it may be proved that part of such oil or gas migrated from adjoining lands […] the owner of land under which oil and gas lie is the absolute owner of them in place in the same manner and to the same extent as is the owner of solid minerals".[113]

D.T. Mailula argues that even in systems where the private ownership theory operates, the state owns oil and gas much like other private owners because it is only entitled to petroleum underneath State lands in the same way as individuals.[114] This theory of ownership often referred to as "absolute ownership", "Texas" or *ad coelum* theory, dates back to the Roman medieval era[115] although it has been criticized in

Rights Group International on behalf of Endorois Welfare Council v. Kenya (276/2003) recognised the right of indigenous people in Africa.

[109] *Ibidem*.

[110] *Ibidem*.

[111] Centralised state ownership is practiced by countries like Nigeria, Libya, Venezuela, Saudi Arabia, Iran, Kuwait, the Arab Gulf countries, Algeria and Angola, while decentralised state ownership is found in the USA, Canada and Australia. See W.T. Onorato , J.J. Park, *World Petroleum Legislation: Frameworks that Foster Oil and Gas Development*, "Alberta Law Review" 2001, vol. 39(1), pp. 73–74.

[112] This is obtainable in the states of Texas, Louisiana, Montana, North Dakota, Oklahoma, and South Dakota in the USA. See E.E. Smith, J.S. Dzienkowski, *A Fifty-Year Perspective on World Petroleum Arrangements*, "Texas International Law Journal" 1989, vol. 24, p. 5. See also J.G. Sprankling, *Owning the Center of the Earth*, "UCLA Law Review" 2008, vol. 55(4), p. 1002; D.T. Mailula, *Protection of Petroleum Resources in Africa: A Comparative Analysis of Oil and Gas Laws of Selected African States*, LL.D Thesis, Faculty of Law, University of South Africa, 2013, http://uir.unisa.ac.za/bitstream/handle/10500/13610/DT%20Mailula%20LLD%20Thesis%20%27PROTECTION%20OF%20PETROLEUM%20RESOURCES%20IN%20AFRICA%27.pdf%20-%20Adobe%20Acrobat%20Pro.pdf?sequence=1&isAllowed=y [access: 17.01.2021]., p. 33.

[113] A. Al-Qasem, *Principles of Petroleum Legislation: The Case of a Developing Country*, London 1985. See the case of *Kankakee County Bd. of Review v. Prop. Tax Appeal Bd*., 871 N.E.2d 38, 52 (Ill. 2007), where the Supreme Court of Illinois, USA, held that "the owner in fee owns to the center of the earth". See also the Supreme Court of Iowa in *Orr v. Mortvedt*, 735 N.W.2d 610, 616 (Iowa 2007).

[114] D.T. Mailula, *op. cit*.

[115] See W. Blackstone, *Commentaries on the Law of England*, p. 18, as referred to in D.T. Mailula, *op. cit.*, p. 34.

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modern times. The first criticism hinges on the fact that petroleum is fugacious or migratory in nature and therefore, difficult to determine ownership *in situ*.[116]

The second loophole in this theory is the fact that petroleum is not only available onshore, but there is a large deposit of petroleum resources offshore (within the continental shelf and Exclusive Economic Zones [EEZ] of nations) where no individual can claim ownership save a nation State.[117] The third flaw has to do with the transposition of the limitation of ownership and control of the airspace (made possible by advances in technology), into ownership of subterranean resources (including hydrocarbon) owned by individuals.[118] In the case of *United States v. Causby*, the US Supreme Court developed an exception to the *ad coelum* principle above the land surface when it held that "to recognize such private claims to the airspace would clog these highways, [and] seriously interfere with their control and development in the public interest".[119]

In order to circumvent the lapses of the absolute ownership theory, the Supreme Court of the State of Pennsylvania in the US developed the qualified ownership theory in the case of *Westmoreland & Cambria Natural Gas Co. v. DeWitt*[120] when it held that oil and natural gas were much like "fugitive wild animals". Thus, "just as a wild animal cannot be owned by an individual until it has been captured, petroleum cannot be owned by any person until he has captured it" under the private ownership rule of capture.[121] In 2008, the Supreme Court of Texas upheld the theory in the case of *Coastal Oil & Gas Corp. v. Garza Energy Trust*[122] when it reasoned that the rule "gives a mineral rights owner title to the oil and gas produced from a lawful well bottomed on his property, even if the oil and gas flowed to the well from beneath another owner's tract. The rule of capture is a cornerstone of the oil and gas industry and is fundamental both to property rights and to state regulation".

In order to determine the most appropriate person or institution entitled to ownership of oil resources in Nigeria, it is imperative first to determine who actually owns land in the real operation of law in Nigeria. This would enable us to apply the common law principles of *Cuius est solum, eius est usque ad coelum et*

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[116] *Ibidem*.

[117] See Parts 5 and 6 of UNCLOS 1982 (on the EEZ and Continental Shelves). See also the case of *Attorney-General of Federal of Nigeria v. Attorney-General of Abia State & Ors.* [2002] 6 NWLR (Pt. 764) 542.

[118] See J.G. Sprankling, *op. cit*., p. 1022, 1029.

[119] *United States v. Causby* 328 U.S. 256 (1946).

[120] 18 A. 724 (Pa. 1889).

[121] See D.T. Mailula, *op. cit.*, p. 35. See also N. Ely, *Legal History of Conservation of Oil and Gas: A Symposium Source*, "Harvard Law Review" 1940, vol. 53(6), pp. 1070–1074, 1071; H. Lauterpacht, *International Law Reports*, Cambridge 1989, p. 814; T. Riley, *Wrangling with Urban Wildcatters: Defending Texas Municipal Oil and Gas Development Ordinances against Regulatory Takings Challenges*, "Vermont Law Review" 2007, vol. 3(2), p. 351.

[122] 05-0466 (Tex. 8-29-2008) as cited in D.T. Mailula, *op. cit*.

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ad inferos[123] and *Quic quid plantatur solo, solo cedit*[124] to resolve the problem of ownership. Indeed, at common law, land is made up of the surface of the soil or the earth surface, including everything naturally growing or attached to the surface, everything inside the sub-soil, the air space above the soil, and things artificially attached to the soil.[125] These common law principles have been judicially recognized as established principles of Nigerian land law by the Supreme Court, in the celebrated case of *Otogbolu v. Okeluwa*.[126] Thus, there is a presumption at common law that a landowner also owns all minerals on or beneath the surface of that land,[127] with the only exception of royal metal (silver and gold) situate on public or private land, which is regarded as the property of the crown.[128] Individual owners of land retained their ownership of mineral resources (petroleum inclusive) under the common law doctrine (save for the Royal metals).[129] According to W. Blackstone: "Whatever is in a direct line between the surface of any land and the centre of the earth belongs to the owner of the surface as is every day's experience in the mining countries. So that the word 'land' includes not only the face of the earth, but everything under it, or over it".[130]

These common law principles were brought into Nigeria as part of the received English law. Section 18 (1) of the Interpretation Act of 1945,[131] imported the common law meaning of land in Nigeria. The section defines land as the earth's surface and everything attached to the earth or permanently fastened to anything that is attached to the earth and all chattels real.

The lawyer's question, therefore, is who the actual owner of land in Nigeria is. The nearest statutory answer remains section 1 of the Land Use Act 1978 (LUA)[132] that provides thus "subject to the provisions of this Act, all lands comprised in the territory of each state of the federation are hereby vested in the Governor of the 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".

By virtue of this provision, state governors now hold all land within the territory of each state of the federation in trust for the benefit of all Nigerians. It, therefore,

[123] Loosely translated to mean that "the owner of the land is the owner of everything built upon the land and everything below the surface".

[124] Meaning that "the owner of the land is the owner of everything built upon or affixed to the land".

[125] A.J. Bradbrook, *The Relevance of the Cujus est Solum Doctrine to the Surface Landowner's Claims to Natural Resources Located above and Beneath the Land*, "Adel. L.R." 1988, no. 11, p. 464.

[126] (1981) 6-8 S.C. 99 at 146.

[127] A.I. Chukwuemerie, *op. cit*.

[128] *R. v. Earl of Northumberland* (Case of Mines) (1568) 1 Plowden 310, 75 Eng. Rep. 472.

[129] M.W. Hunt, *Mining Law in Western Australia*, Lechhardt 2001, p. 34.

[130] W. Blackstone, *An Analysis of the Laws of England*, Oxford 1756.

[131] Cap. I23 LFN 2004.

[132] Cap. L6 LFN 2004.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
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means that the trustee (in this case, the governor) has the right to manage, control and use the trust property against all persons except the beneficiary. It equally means that the right of management and control is bestowed on him, as legal owner on behalf of the equitable owner.[133] When section 1 LUA is read together with section 44 (3) of the 1999 CFRN (as amended), which vests ownership of mineral resources on the federal government, the contradiction is absolutely clear: land is vested in the state governor, while mineral resources found therein is vested in the federal government. According to G. Angaye, "the logic that one owns the land and another owns the oil extracted from beneath the land is Nigerian logic or illogic propounded by parochial logicians. If crude were found under 'the big tree' eminent jurists would have inserted the enabling section in the 1999 Constitution to read 'any oil found under any big tree belongs exclusively to the owner of a big tree".[134]

There is no doubt that this system runs contrary to the principles of *Cuius est solum, eius est usque ad coelum et ad inferos* and *Quicquid platatur solo, solo credit*.[135] It is also against the principle of true federalism, which requires the federating units to control their natural resources.[136] On the strength of these principles, it is highly illogical to provide that one owns land and another owns the thing buried inside, as section 1 LUA and section 44 (3) of the 1999 CFRN has purportedly done.

Going by the natural order of the owner of land claiming not only surface rights but also the right to the sub-soil and its riches, it would certainly be logical to argue that federating states in Nigeria should have the right to ownership of natural resources by virtue of all lands being vested in state governors. This disposition may, however, run a serious risk of fallacy because the wordings of section 1 LUA did not confer absolute ownership of lands in the territory of federating states on the governor but such land is vested in him only as a trustee. Although under the

[133] I. Abdulkarim, *Trust Law and the Administration of Real Property in Nigeria*, "International Journal of Advanced Legal Studies and Governance" 2011, vol. 2(1), p. 229.

[134] G. Angaye, *Who Owns Papa's Land and Oil in Nigeria?*, 2002, www.nigerDeltacongress.com/garticles/who_owns_papas_land_and_oil [access: 5.04.2021].

[135] Note that we are not ignorant of the purport of Section 45 of the Interpretation Act 1945 which is to the effect that all Received English Laws (Common Law inclusive) are subject to local circumstances and enactment, and such local enactment may "expressly repeal or by implication render such English Law impotent". See *Salubi v. Nwariaku* (2003) 20 W.R.N. 53. Per Ayoola, J.S.C. at 66. See also J.O. Asein, *Introduction to Nigerian Legal System*, Lagos 2005, p. 112. It therefore connotes that where an English Law is in conflict with an existing Statute or Statutes, such English law is void to the extent of its inconsistency. See Section (1) of CFRN; *INEC v. Musa* (2003) 10 W.R.N. 1 per Ayoola, J.S.C., pp. 40–41; *Momoh v. Senate of the National Assembly* (1981) 1 N.C.L.R. 21. However, our contention is that Nigerian Laws on ownership of Petroleum and Land use have threatened the survivor of the Nigerian state and have failed to meet the human security of Nigeria. It has worked more hardship on the Niger Delta people than good, hence our call for a reversal of the *status quo*.

[136] E. Eko, *Towards the Review of the Land Use Act, Land Use Policy and Administration*, 2004, as cited in K.O.N. Onu, *A Critical Appraisal of the Legal Regime of Ownership of Petroleum and Land use in Nigeria*, LL.B Project, Faculty of Law, Ebonyi State University, 2010, p. 50.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
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common law, the trustee is the legal owner of the trust property while the beneficiary is the equitable owner, the nature of the trustee's ownership is limited to possession, management and control, which does not confer absolute ownership *in personam*.[137] There is no doubt that the true owners of trustee property remain the beneficiaries and in this case, the valid holders of right of occupancy, especially those claiming as aborigines on the land.[138] The LUA does not dispossess the aborigines of their ancestral lands, but only confers a cosmetic right of trustee on the governor by deeming all prior owners of land as holders of valid right of occupancy with all the pre-existing powers of ownership except the radical title and the power of the governor to acquire land for public purposes.[139] Thus, for all intent and purposes, the LUA does not deprive individual landholders of the use of their lands, although as beneficiary of a trustee, the individual landholder may no longer deal with the land as he wishes without the approval of the trustee.[140] Certainly, the interest of beneficial individual landholders is not subservient to the trustee, but instead operates more like a co-owner of the land.[141]

Despite the consequences of divesting the radical title in land from the individual, family or community owners,[142] if the *ad coelum* principles were to apply in determining who owns the natural resources beneath the land, both the individual landholder and the state government may lay equal claim to ownership as a result of the trust created by the LUA. This potentially diminishes the quest to find the owner of land as a precursor to resolving the resource control debacle in the event of a successful campaign against the federal government (by creating a trust in the land tenure system, the LUA further convolutes who the true owner of land is in Nigeria). Although it appears that the resolution of the resource control debate depends more on determining the ownership question (first, ownership of land and

[137] See I. Sandor, *The Legal Institution of the Trust in the Economy and Law of Eastern European Countries*, "European Scientific Journal" 2005, vol. 11(10), pp. 141–142.

[138] J.F. Fekumo, *Does Land Use Act Expropriate? – A Rejoinder*, "Journal of Private & Property Law" 1988, vol. 8/9, pp. 15–18; T. Otubu, *Land Reforms and the Future of Land Use Act in Nigeria*, "Nigerian Current Law Review" 2010, vol. 3, pp. 139–140.

[139] See sections 34 and 36 LUA; T. Otubu, *op. cit.*, p. 136–137; I.O. Smith, *Practical Approach to Law of Real Property in Nigeria*, Lagos 1999, pp. 70–71. See also A. Otubu, *The Land Use Act and Land Administration in 21st Century Nigeria: Need for Reform*, "Afe Babalola Univ. J. Sust. Dev. & Pol'y" 2018, vol. 9(1), pp. 99–100; O. Duru, *Nationalization, Expropriation or Confiscation: A Critical Overview of the Pro and Contra Arguments Regarding the Effect of the Land Use Act on Land in Nigeria*, 2012, www.ssrn.com/abstract=2157273 [access: 25.09.2019].

[140] See sections 21 and 22 LUA. See alsoJ.S. Omotala, *Does the Land Use Act Expropriate?*, "Journal of Private & Property Law" 1985, vol. 3, p. 6; A.K. Otubu, *The Land Use Act and Land Ownership Debate in Nigeria: Resolving the Impasse*, "Ife Law Juris Review" 2015, vol. 3, pp. 14–18.

[141] A.A. Utuama, *Nigerian Law of Real Property*, Lagos 2012, pp. 264–265; S.A. Osamolu, O.T. Oduwole, C.O. Oba, *Real Property Law and Conveyancing Practice in Nigeria*, Abuja 2008, p. 82.

[142] A.K. Otubu, *op. cit*., p. 14.

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second, ownership of oil), the matter may indeed be resolved without necessarily constructing the argument around "ownership". Ultimately, it is immaterial who owns natural resources (including crude oil and land) if the management and control of the processes of exploitation of resources are spread among the stakeholders: the federal government, the federating state governments, and the aboriginal individual, family or community landholders. The agitation for resource control is more about meaningful participation of the inhabitants of oil-producing areas in the exploitation processes that guarantee a good livelihood and healthy environment than it is about ownership of crude oil *simpliciter*.[143]

In this regard, Nigeria could borrow a cue from the Canadian system where federating regional governments own the bulk of crude oil produced in Canada, except offshore oil reserves, which the federal government owns.[144] However, oil found in designated aboriginal lands belongs to the aborigine population who decide for themselves how to exploit it.[145] Still, the federal government controls exclusively regulation of the entire oil and gas industry, involving pipelines or power lines that cross provincial or international boundaries, tolls and tariffs, environmental standards and the import and export of energy.[146] A similar arrangement could work in Nigeria where the federal government owns all crude oil and natural resources in Nigeria while the federating state governments and the aborigine communities, families and individuals share ownership of all lands in the country, so that the latter is fully integrated in all decisions regarding exploitation on their lands.

The current level of participation of the aboriginal communities, families and individuals allowed by the extant laws in the exploitation of crude oil in Nigeria is abysmally low to satisfy international human rights standards and the desire of the inhabitants of oil-producing areas to share in the development process as stakeholders. The constitutional 13% derivation principle regarding proceeds of crude oil required to be paid back to the governments of oil-producing states is certainly commendable but still falls short of the giant stride needed to ensure inclusion of the Niger Delta inhabitants (oil-producing region) in the exploitation of their natural resources. The derivation principle benefits those in government at the federating

[143] ILO/ACHPR, *Nigeria: Constitutional, Legislative and Administrative Provisions Concerning Indigenous Peoples*, Geneva 2009, pp. 18–22.

[144] See A.L.C. de Mestra, *Reference Re Ownership of the Bed of the Strait of Georgia and Related Areas and Reference Re Newfoundland Continental Shelf*, "Mcgill Law Journal" 1985, vol. 30, p. 293.

[145] W. Hamley, *Resource Development and Aboriginal Rights in the Canadian Northlands*, "The London Journal of Canadian Studies" 1995, vol. 11, pp. 82–85; B. Gallagher, *Resource Rulers: Fortune and Folly on Canada's Road to Resources*, Toronto 2012. See also *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.

[146] See M.C. Moore, *An Energy Strategy for Canada*, 2015, www.policyschool.ca/wp-content/uploads/2016/03/anenergystrategyforcanada.pdf [access: 5.04.2021]. See also W. Konaszczuk, *Cybersecurity Threats in the Sectors of Oil, Natural Gas and Electric Power in the Context of Technological Evolution*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), p. 339.

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state level more than the inhabitants of the areas where crude oil is extracted who are most affected by the impact of exploitation. Thus, in order to address the second level of agitation for resource control involving militant activities of different youth groups in the Niger Delta against the federal government interest (oil installations) and multinational oil companies, what is needed is the commitment to implement internal self-determination.

To achieve this, section 44 (3) of the 1999 Constitution and section 1 of the Petroleum Act should be amended to reflect the true meaning of the federalism which Nigerians want and also reflect the meaning of the maxims *Cuius est solum, eius est usque ad coelum et ad inferos*, and *Quic quid plantatur solo, solo cedit*. In essence, we recommend that Nigeria should adopt a hybrid ownership system in which the State (both federal and federating states) and individual landholders own petroleum resources in Nigeria. Whereas the federal government retains absolute ownership of offshore petroleum resources, onshore ownership should be based on ownership of land *in situ*. The government should levy taxes on revenue derived from onshore oil exploitation rather than take over the oil. Until this is done, we are still far from *uhuru* of restiveness and injustice in Nigeria. There cannot be peace in the midst of injustice. Do justice and peace will naturally flow.

CONCLUSIONS

We conclude by urging the government to look towards the jurisprudence of the common law private property ownership principle in resolving the Niger Delta issue. There can never be peace in the midst of injustice. F.C. von Savigny had noted that "the law grows with growth and strengthens with the strength of the people and finally dies away as the nation loses its nationality".[147]

Nigeria must equally allow its laws to grow with the people. Since society is always forward-looking, the law as an instrument of social change should be progressive. The laws that deserve change as we recommended should, therefore, be changed. This is because some of them are now mere imposition, which cannot be sustained for so long in the face of popular quest for a change. The will of the people at the end will normally win over force however brutal it may be.

[147] F.C. von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence*, 1831, http://docenti.unimc.it/luigi.lacche/teaching/2018/18657/files/texts-to-study-preparing-for-the-exam/Savigny%20Of_the_vocation_of_our_age_for_legislati.pdf [access: 23.01.2021], p. 27.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 17/11/2026 06:35:48

REFERENCES

Literature

Abdulkarim I., *Trust Law and the Administration of Real Property in Nigeria*, "International Journal of Advanced Legal Studies and Governance" 2011, vol. 2(1).

Ajiboye O., Jawando J., Adisa W., *Poverty, oil exploration and Niger Delta crisis: The response of the youth*, "African Journal of Political Science and International Relations" 2009, vol. 3(5).

Ako A., *The Struggle for Resource Control and Violence in the Niger Delta*, [in:] *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence*, eds. C. Obi, S. Rustad, London 2011.

Ako R.T., *Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice*, "Journal of African Law" 2009, vol. 53(2).

Ako R.T., Omiunu O., *Amnesty in the Niger Delta: Vertical Movement Towards Self-determination or Lateral Policy Shift?*, "Afe Babalola University: Journal of Sustainable Development Law and Policy" 2013, vol. 1(1).

Al-Qasem A., *Principles of Petroleum Legislation: The Case of a Developing Country*, London 1985.

Amaize E., *Resource Control: Anger Everywhere*, "Vanguard Newspaper (Nigeria)" 2005 (July 3).

ANEEJ, *Oil of Poverty in the Niger-Delta*, A publication of the African Network for Environmental and Economic Justice, 2004.

Asein J.O., *Introduction to Nigerian Legal System*, Lagos 2005.

Asimea O.A., Aigbe A., *The Impact of Oil and Gas Exploitation on Forestry Resources in the Niger Delta*, [in:] *Book of Reading in Forestry, Wildlife Management and Fisheries*, eds. A.A Aiyeloja, H.M. Ijeoma, Lagos 2011.

Auty R.M., *Sustaining Development in Mineral Economies: The Resource Curse Thesis*, London 1993.

Ayodele-Akaakar F.O., *Appraising the Oil & Gas Laws: A Search for Enduring Legislation for the Niger Delta Region*, "Journal of Sustainable Development in Africa" 2001, vol. 3(2).

Ayodele-Akaakar F.O., *Oil and Gas – the Issue of Ownership and the Nigerian Situation*, "FJRSB (FIDA Journal)" 1999, no. 2.

Blackstone W., *An Analysis of the Laws of England*, Oxford 1756.

Bradbrook A.J., *The Relevance of the Cujus est Solum Doctrine to the Surface Landowner's Claims to Natural Resources Located above and Beneath the Land*, "Adel. L.R." 1988, no. 11.

Bubou G.M., Brent A.C., Tredoux C., *Towards Assessing The Social Sustainability Performance of the Petroleum Industry in the Niger Delta Region of Nigeria*, "South African Journal of Industrial Engineering" 2009, vol. 20(1).

Chukwuemerie A.I., *New Dimensions in Commercial and Oil and Gas Laws*, Port Harcourt 2007.

David A., Ufiem M.O., *Ethnic and Regional Violence in Nigeria: Implications for National Security*, "Journal of Politics and Law" 2014, vol. 7(3).

Douglas O., *Discussion*, [in:] *The Niger Delta Question*, ed. T.N. Tamuno, Port Harcourt 1999.

Ejibunu H.T., *Nigeria's Niger Delta Crisis: Root Causes of Peacelessness*, "EPU Research Papers" 2007, no. 7.

Ely N., *Legal History of Conservation of Oil and Gas: A Symposium Source*, "Harvard Law Review" 1940, vol. 53(6).

Etiosa U., Matthew A., *Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria*, Community Research and Development Centre Nigeria (CREDC) Nigeria 2007, no. 6.

Faga H.P., *Taming the Tiger in the Niger Delta; The Role of Law in the Niger Delta Question: Whither?*, "Akungba Law Journal" 2008, vol. 1(2).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 17/11/2026 06:35:48

Fagbohun F.O., *Dividends of Democracy of the Rural Population: The Case of the Niger Delta in Nigeria*, [in:] *Fresh Dimensions in the Niger Delta Crisis in Nigeria*, ed. V. Ojakorotu, Delray Beach 2009.

Farah D., *Nigeria's Oil Exploitation Leaves Delta Poor, Poisoned*, "Washington Post" 2001, A22 (March 18).

Fekumo J.F., *Does Land Use Act Expropriate? – A Rejoinder*, "Journal of Private & Property Law" 1988, vol. 8/9.

Foundation J., *No End in Sight: Violence in the Niger Delta and Gulf of Guinea*, "Terrorism Monitor" 2013, vol. 11(5).

Gallagher B., *Resource Rulers: Fortune and Folly on Canada's Road to Resources*, Toronto 2012.

Hamley W., *Resource Development and Aboriginal Rights in the Canadian Northlands*, "The London Journal of Canadian Studies" 1995, vol. 11.

Hunt M.W., *Mining Law in Western Australia*, Lechhardt 2001.

Hutchful E., *Oil Companies and Environmental Pollution in Nigeria*, [in:] *Political Economy of Nigeria*, ed. C. Ake, London 1985.

ILO/ACHPR, *Nigeria: Constitutional, Legislative and Administrative Provisions Concerning Indigenous Peoples*, Geneva 2009.

International Crisis Group, *Nigeria: Want in the Midst of Plenty*, Africa Report no. 113, 19.07.2006.

Jamestown Foundation, *No End in Sight: Violence in the Niger Delta and Gulf of Guinea*, "Terrorism Monitor" 2013, vol. 11(5).

Jike V.T., *Environmental Degradation, Social Disequilibrium, and the Dilemma of Sustainable Development in the Niger Delta of Nigeria*, "Journal of Black Studies" 2004, vol. 34(5).

Joel B., *Niger Delta Youths Dump Resource Control*, "Sunday Punch Newspaper" 2000 (February 24).

Kaniye E., *Niger Delta Oil, Development and the New Development Initiative: Some Reflections from a Socio-Legal Perspective*, "Journal of Asian and African Studies" 2008, vol. 43(2), **DOI: https://doi.org/10.1177/0021909608091974**.

Kaniye E., *Oil and the Niger Delta People: The Injustice of the Land Use Act*, "Centre for Energy, Petroleum and Mineral Law Policy Journal" 2001, vol. 9.

Kio-Lawson D., Dekor J.B., *Militancy Crises and the Challenge of Rural Development in Post Amnesty Rivers State, Nigeria*, "World Environment" 2014, vol. 4(1), **DOI: https://doi.org/10.5923/j.env.20140401.04**.

Konaszczuk W., *Cybersecurity Threats in the Sectors of Oil, Natural Gas and Electric Power in the Context of Technological Evolution*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), **DOI: http://dx.doi.org/10.17951/sil.2021.30.4.333-351**.

Lauterpacht H., *International Law Reports*, Cambridge 1989.

Mahler A., *Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta*, GIGA Research Programme (Violence & Security) Working Paper 2010, no. 120.

Mbamalu G., Mbamalu C., Durett D., *Environmental Justice Issues in Developing Countries and in the Niger Delta*, Paper delivered at the International Conference on Infrastructure Development and the Environment, Abuja, Nigeria, 10–15 September 2006.

Mestral A.L.C. de, *Reference Re Ownership of the Bed of the Strait of Georgia and Related Areas and Reference Re Newfoundland Continental Shelf*, "Mcgill Law Journal" 1985, vol. 30.

Najibo N.B., Nwiline B., *Relative Deprivation and Hostage-Taking in Nigeria's Niger Delta Region*, [in:] *Fresh Dimensions in the Niger Delta Crisis in Nigeria*, ed. V. Ojakorotu, Delray Beach 2009.

Nwapi C., *A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria*, "Journal of African Law" 2009, vol. 54(2), **DOI: http://dx.doi.org/10.1017/S0021855310000045**.

Obi C., Rustad S., *Conclusion: Amnesty and Post-Amnesty Peace, Is the Window of Opportunity Closing for the Niger Delta?*, [in:] *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence*, eds. C. Obi, S. Rustad, London 2011.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 17/11/2026 06:35:48

Obiora A., *Symbolic episodes in the quest for environmental justice*, "Human Rights Quarterly" 1991, vol. 21(2).
Ogbuigwe A.E., *The Law and Environment: The Niger Delta Challenge*, "Port Harcourt Law Journal" 1999, vol. 4.
Okonta I., Douglas O., *Where the Vultures Feast: Shell, Human Right and Oil*, London 2003.
Omeje K., *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria*, Durham–London 2006.
Omorogbe Y., *Oil and Gas law in Nigeria*, Lagos 2001.
Omotola J.S., *Does the Land Use Act Expropriate?*, "Journal of Private & Property Law" 1985, vol. 3.
Onorato W.T., Park J.J., *World Petroleum Legislation: Frameworks that Foster Oil and Gas Development*, "Alberta Law Review" 2001, vol. 39(1), **DOI: https://doi.org/10.29173/alr509**.
Onu K.O.N., *A Critical Appraisal of the Legal Regime of Ownership of Petroleum and Land use in Nigeria*, LL.B Project, Faculty of Law, Ebonyi State University, 2010.
Osaghae E.E., Ikelegbe A., Olarinmoye O.O., Okhomina S.I., *Youths Militias, Self Determination and Resource Control Struggles in the Niger-delta Region of Nigeria*, Dakar 2011.
Osamolu S.A., Oduwole O.T., Oba C.O., *Real Property Law and Conveyancing Practice in Nigeria*, Abuja 2008.
Otite A., *Niger Delta Ruling Elite and the Under-Development of the Niger Delta Region of Nigeria*, [in:] *Fresh Dimensions in the Niger Delta Crisis in Nigeria*, ed. V. Ojakorotu, Delray Beach 2009.
Otubu A., *The Land Use Act and Land Administration in 21st Century Nigeria: Need for Reform*, "Afe Babalola Univ. J. Sust. Dev. & Pol'y" 2018, vol. 9(1), **DOI: https://dx.doi.org/10.4314/jsdlp.v9i1.5**.
Otubu A.K., *The Land Use Act and Land Ownership Debate in Nigeria: Resolving the Impasse*, "Ife Law Juris Review" 2015, vol. 3.
Otubu T., *Land Reforms and the Future of Land Use Act in Nigeria*, "Nigerian Current Law Review" 2010, vol. 3.
Riley T., *Wrangling with Urban Wildcatters: Defending Texas Municipal Oil and Gas Development Ordinances against Regulatory Takings Challenges*, "Vermont Law Review" 2007, vol. 3(2).
Sachs J., Warner A., *The Curse of Natural Resources*, "European Economic Review" 2001, vol. 45(4–6).
Sagay I., *Ownership and Control of Nigerian Petroleum Resources: A Legal Angle*, [in:] *Nigerian Petroleum Business: A Handbook*, ed. V.E. Eromosele, Lagos 1997.
Salai-i-Marta X., Subramanian A., *Addressing the Natural Resource Curse: An Illustration from Nigeria*, "IMF Working Paper" 2003, no. 03/139.
Sandor I., *The Legal Institution of the Trust in the Economy and Law of Eastern European Countries*, "European Scientific Journal" 2005, vol. 11(10), **DOI: https://doi.org/10.19044/esj.2015.v11n10p%25p**.
Sinden A., *An Emerging Human Right to Security from Climate Change: The Case against Gas Flaring in Nigeria*, [in:] *Adjudicating Climate Change: Sub-National, National, and Supranational Approaches*, eds. W.C.G. Burns, H.M. Osofsky, Cambridge 2008.
Smith E.E., Dzienkowski J.S., *A Fifty-Year Perspective on World Petroleum Arrangements*, "Texas International Law Journal" 1989, vol. 24.
Smith I.O., *Practical Approach to Law of Real Property in Nigeria*, Lagos 1999.
Sprankling J.G., *Owning the Center of the Earth*, "UCLA Law Review" 2008, vol. 55(4).
The Niger Delta: Phoenix of Nigerian Democracy, Vanguard Book Series, "Vanguard Newspaper" 2000 (January 22).
Usman N., *The Rights of Indigenous Peoples and Mineral Resource Development: Global Trends and the Nigerian Question*, PhD Thesis, Dundee 2003.
Utuama A., *The Niger Delta Crisis: The Legal Dimension*, [in:] *Fresh Dimensions in the Niger Delta Crisis in Nigeria*, ed. V. Ojakorotu, Delray Beach 2009.
Utuama A.A., *Nigerian Law of Real Property*, Lagos 2012.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 17/11/2026 06:35:48

Yusuf H.O., *Oil on troubled Waters: Multinational Corporations and Realising Human Rights in the Developing World, with Specific Reference to Nigeria*, "African Human Rights Law Journal" 2008, vol. 8(1).

Zabbey N., Babatunde B.B., *Overview of Environmental Pollution and Toxicology*, [in:] *Book of Reading in Forestry, Wildlife Management and Fisheries*, eds. A.A. Aiyeloja, H.M. Ijeoma, Lagos 2011.

Online sources

African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities. Adopted by the African Commission at its 28th Ordinary Session*, November 2005, www.iwgia.org/images/publications/African_Commission_book.pdf [access: 5.04.2021].

African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, adopted by the African Commission at its 34th Ordinary Session*, November 2003, www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/AfricanCommissionbookEnglish.pdf [access: 19.09.2019].

Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, Index: AFR 44/017/2009, www.amnesty.org/download/Documents/44000/afr440172009en.pdf [access: 5.04.2021].

Amnesty International, *Oil in the Niger Delta*, www.amnesty.org/pages/nga-031105-action-eng [access: 15.11.2009].

Angaye G., *Who Owns Papa's Land and Oil in Nigeria?*, 2002, www.nigerDeltacongress.com/garticles/who_owns_papas_land_and_oil [access: 5.04.2021].

Dafinone D., *Resource Control: The Economic and Political Dimension*, 2001, www.waado.org/nigerdelta/essays/resourcecontrol/dafinone.html [access: 5.04.2021].

Douglas O., *A Community Guide to Understanding Resource Control*, 2001, www.waado.org/nigerdelta/essays/resourcecontrol/Guide_Douglas.html [access: 4.04.2021].

Duru O., *Nationalization, Expropriation or Confiscation: A Critical Overview of the Pro and Contra Arguments Regarding the Effect of the Land Use Act on Land in Nigeria*, 2012, www.ssrn.com/abstract=2157273 [access: 25.09.2019].

Energy Administration Information, *Country Analysis Briefs – Nigeria*, www.eia.doe.gov/emeu/cabs/Nigeria/pdf.pdf [access: 5.11.2021].

IRIN, *Analysis: Niger Delta still Unstable Despite Amnesty*, www.irinnews.org/report/94306/analysis-niger-delta-still-unstable-despite-amnesty [access: 11.11.2015].

Kaiama Declaration, 11 December 1998, http://ijawcenter.com/kaiama_declaration.html [access: 9.10.2010].

Mailula D.T., *Protection of Petroleum Resources in Africa: A Comparative Analysis of Oil and Gas Laws of Selected African States*, LL.D Thesis, Faculty of Law, University of South Africa, 2013, http://uir.unisa.ac.za/bitstream/handle/10500/13610/DT%20Mailula%20LLD%20Thesis%20%27PROTECTION%20OF%20PETROLEUM%20RESOURCES%20IN%20AFRICA%27.pdf%20-%20Adobe%20Acrobat%20Pro.pdf?sequence=1&isAllowed=y [access: 17.01.2021].

Makgabo T., *Inside Africa: Current Events on the Africa Continent*, 2004, http://edition.cnn.com/TRANSCRIPTS/0410/02/i_if.01.html [access: 5.04.2021].

Mckenna A., *Goodluck Jonathan*, [in:] *Encyclopaedia Britannica: Goodluck Jonathan*, 2015, www.britannica.com/biography/Goodluck-Jonathan [access: 5.04.2021].

Mogues T., *Agricultural Public Spending in Nigeria*, Washington 2008, https://ebrary.ifpri.org/digital/collection/p15738coll2/id/13441 [access: 4.04.2021].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 17/11/2026 06:35:48

Moore M.C., *An Energy Strategy for Canada*, 2015, www.policyschool.ca/wp-content/uploads/2016/03/anenergystrategyforcanada.pdf [access: 5.04.2021].

Niger Delta, www.en.m.wikipedia.org/wiki/niger_delta [access: 8.11.2021].

Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), *Niger Delta Natural Resources Damage Assessment and Restoration Project Scoping Report*, 2006, www.iucn.org/sites/dev/files/import/downloads/niger_delta_natural_resource_damage_assessment_and_restoration_project_recommendation.doc [access: 4.04.2021].

O'Neill T., *Curse of the Black Gold: Hope and Betrayal in the Niger Delta*, 2007, www.daniellazar.com/wp-content/uploads/the-curse-of-black-gold.doc [access: 3.03.2021].

Obi C., *Youth and the Generational Dimensions to Struggles for Resource Control in the Niger Delta: Prospects for the Nation-state Project in Nigeria*, 2006, www.codesria.org/IMG/pdf/Cyril_Obi.pdf [access: 4.03.2021].

Ofehe S., *Resource Control Set to Tear Nigeria Apart*, 2005, https://onlinenigeria.com/columnists/ad.php?blurb=110 [access: 4.03.2021].

Ogoni Bill of Rights, www.waado.org/nigerdelta/RightsDeclaration/Ogoni.html [access: 6.01.2009].

Ojameruaye E.M., *Quo vadis (Oil) Resource Control in the Niger Delta?*, 2010, www.waado.org/nigerdelta/essays/resourcecontrol/ojameruaye.htm [access: 21.02.2021].

Ojameruaye E.M., *The Off-Shore/On-Shore Oil Dichotomy Abolition Act: Matters Arising*, 2004, www.nigerdeltapeoplesworldcongress.org/articles/offshoreonshore_oil.pdf [access: 5.04.2021].

Omotola S., *The Next Gulf? Oil Politics, Environmental Apocalypse and Rising Tension in the Niger Delta*, 2006, www.accord.org.za/publication/the-next-gulf [access: 5.04.2021].

Onduku A., *The Lingering Crisis in the Niger Delta: Field Work Report*, 2001, http://52.31.122.192/library/find-materials/journal-of-peace-conflict-and-development/NIger-Delta.pdf [access: 5.04.2021].

OPEC, Annual Statistical Bulletin, *Nigeria Facts and Figures*, 2015, www.opec.org/opec_web/static_files_project/media/downloads/publications/ASB2015.pdf [access: 3.04.2021].

Savigny F.C. von, *Of the Vocation of Our Age for Legislation and Jurisprudence*, 1831, http://docenti.unimc.it/luigi.lacche/teaching/2018/18657/files/texts-to-study-preparing-for-the-exam/Savigny%20Of_the_vocation_of_our_age_for_legislati.pdf [access: 23.01.2021].

Singer R., *The state of Nigerian democracy*, 2006, http://dawodu.com/singer1.pdf [access: 18.06.2009].

The Climate Justice Programme & Environmental Rights Action/Friends of the Earth Nigeria, *Gas Flaring in Nigeria: A Human Rights, Environmental, and Economic Monstrosity*, 2005, www.climatelaw.org/media/gas.flaring/report/gas.flaring.in.nigeria.html [access: 10.11.2021].

United Nations Development Programme (UNDP), *Niger Delta Human Development Report*, 2006, http://hdr.undp.org/sites/default/files/nigeria_hdr_report.pdf [access: 3.04.2021].

Utuama A., *Challenges of Democracy and the Rule of Law*, www.nigerdeltacongress.org (access: 21.08.2010].

Wurthmann G., *Ways of Using the African Oil Boom for Sustainable Development*, 2006, www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00806226-EN-ERWP-84.PDF [access: 9.03.2021].

Legal acts

Constitution of the Federal Republic of Nigeria, 1999.

Land Use Act 1978 (Now Cap. L5 LFN 2004).

Oil in Navigable Waters Act 1968 (Now Cap. O6 LFN 2004).

Oil Pipelines Act 1956 (Now Cap. O7 LFN 2004).

Petroleum Act 1969 (Now Cap. P10 Laws of the Federation of Nigeria LFN, 2004).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 17/11/2026 06:35:48

Case law

Attorney-General of Federal of Nigeria v. Attorney-General of Abia State & Ors. [2002] 6 NWLR (Pt. 764) 542.
Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (276/2003) (Kenya).
INEC v. Musa (2003) 10 W.R.N. 1 at 40–41.
Kankakee County Bd. of Review v. Prop. Tax Appeal Bd., 871 N.E.2d 38, 52 (Ill. 2007).
Orr v. Mortvedt, 735 N.W.2d 610, 616 (Iowa 2007).
R. v. Earl of Northumberland (Case of Mines), (1568) 1 Plowden 310, 75 Eng. Rep. 472.
Salubi v. Nwariaku (2003) 20 W.R.N. 53 at 66.
South Atlantic Petroleum Ltd v. Minister of Petroleum Resources (2006) 10 CLRN 122. (Nigeria).
United States v. Causby 328 U.S. 256 (1946).

ABSTRAKT

Agitacja na rzecz kontroli zasobów w regionie delty Nigru w Nigerii często przeradza się w przemoc i wojnę. Chociaż postulat kontroli zasobów łączy się z kwestiami przeniesienia własności oraz zarządzania i kontroli procesów wydobycia ropy naftowej występującej w dużych ilościach w regionie, dokładne parametry tych żądań nie zostały określone przez agitatorów. W niniejszym artykule analizie poddano różne warianty kontroli zasobów, której domagają się różne grupy agitatorów w delcie Nigru. W szczególności podkreślono, że zasady dotyczące własności prywatnej, wynikające z *common law*: *Cuius est solum, eius est usque ad coelum et ad inferos* oraz *Quiquid plantatur solo, solo cedit*, powinny zostać zastosowane do przenoszenia własności zasobów naturalnych, w tym ropy naftowej, na rdzennych mieszkańców bogatego w ropę regionu delty Nigru, zgodnie z zasadami prawdziwego federalizmu. Autorzy zalecają restrukturyzację nigeryjskiego systemu federalnego w kierunku przekazania większych uprawnień stanom i uchylenia niektórych istniejących praw, które ograniczają prawa ludzi do własności ziemi i zasobów naturalnych znajdujących się pod powierzchnią gruntów należących do nich, ich przodków i jeszcze nienarodzonych dzieci.

Słowa kluczowe: kontrola zasobów; własność prywatna; własność; *common law*; ropa naftowa; delta Nigru