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International Law and the Ownership Structure of Petroleum Resources in Nigeria

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Abstract

The international legal regime of the ownership structure of petroleum resources has some influence on Nigeria's petroleum ownership structure. The paper examines the roles of the international legal regime on the ownership structure of petroleum resources in Nigeria. It discusses the influence of various international sea conventions like the United Nations Law of the Sea (UNCLOS), the Exclusive Economic Zone, Territorial Waters, and the Continental Shelf on the Nigerian ownership regime. The paper employed a doctrinal approach by using a qualitative research method and content analysis of relevant literature on the subject matter. Findings summarize that the international law regime has positively impacted ownership and control of petroleum resources in Nigeria even though there is a need to adopt mixed-ownership/control obtainable in other systems like the United States, Australia, and Canada to cool down fray nerves in the Niger Delta.

Keywords: Ownership, petroleum, sovereignty, international law



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1 Introduction

The concept 'ownership' refers to an almost complete or absolute right to real property limited only by law.⁹¹ Ownership can also be defined as 'the collection of rights allowing one to use and enjoy the property, including the right to convey it to others.'⁹² Ownership connotes the right to use, enjoy, and deal with the thing in any manner the owner wishes, including the right to sell, hire, dispose of the thing, and exclude others from using or interfering with the property.⁹³ Ownership has also been defined as 'the bundle of rights allowing one to use, manage, and enjoy the property, including the right to convey it to others'.⁹⁴ However, the owner's right is subject to the rule of law that the owner of a thing should not use it to disturb or interfere with the use of another person's property. Here the rights and duties of each individual are determined by existing norms and rules which form the basis of laws.⁹⁵ Lanre Aladeitan has observed that property rights were developed within legal systems to regulate and justify the exclusive right given to some individuals, groups, communities, or states to use and dispose of such resources.⁹⁶ This explains the importance attached to the property holder and his control, management, and use of the property.⁹⁷ Sometimes, the property right conferred on the individuals, groups, communities, or states is absolute ownership, while at other times, the right conferred is an interest less than ownership.⁹⁸

This paper appraises ownership structures available in some countries. For instance, states, especially the federal states, have employed mixed ownership in terms of control of the petroleum resources to cater to the interests of the component parts in the federation. In federal states like the United States of America (USA), Australia, and Canada, the federal government owns the petroleum resources found in federal government lands, while the component units are also allowed to own the resources (including petroleum) within their

⁹¹ R Megarry et al the law of real property, (4th ed. Stevens and sons limited, London, 1975), 13; Olong AMD, Land Law in Nigeria (2nd edn. Malthouse Law Books, Nigeria 2012) 1-2; Mailula DT Protection of petroleum resources in Africa: A comparative analysis of oil and gas laws of selected African states (PhD-dissertation University of South Africa 2013) 27.

⁹² OK Edu 'Ownership of oil and gas in Nigeria: Matters arising' (2007) 7 (1) the Constitution 17.

⁹³ Freehold Petroleum and Natural Gas Owners Association, about 'Owning' Petroleum & Natural Gas, 208, 1235 17th Ave SW, Calgary, AB T2T 0C2 <www.cancompany.org> accessed 7 October 2021.

⁹⁴ BA Garner The Black's Law Dictionary (10th ed. St. Paul Publishing, 2014) 146.

⁹⁵ OE Ojuokaiye "Oil and Gas Law I" (2011) Course Code: Law 411, National Open University of Nigeria (NOUN), Lagos 68. <www.nou.edu.ng/uploads/NOUN_OCL/pdf/Laws.pdf> accessed 7 December 2020.

⁹⁶ L Aladeitan 'Ownership and control of oil, gas, and mineral resources in Nigeria: between legality and legitimacy' (2013) 38 Thurgood Marshall Law Review 159 accessed 15 April 2021.

⁹⁷ L Aladeitan (n 6) 24.

⁹⁸ IO Smith Practical Approach to Law of Real Property in Nigeria 2nd ed. (Ecowatch, 2007), 3.

respective boundaries. Some incidences of private ownership can also be traced to these federal states. However, most African states, including Nigeria, adopt absolute ownership of petroleum resources by the federal/central governments. The paper will also examine the influence of international legal regimes on ownership of petroleum resources in Nigeria. The paper's final part will examine the appropriateness of absolute ownership of petroleum resources by the Nigerian state.

2 Ownership of petroleum resources

Ownership of petroleum resources (to be used interchangeably with oil and gas) has remained a topical issue in jurisdictions with abundant reserves of oil and gas, including the production of the same, throughout the world. It is topical because it defines the extent or plenitude of interests and rights that any person, individual, or body has over oil and gas. It has generated a lot of discussion and arguments amongst scholars and governments, the international oil companies, and the people's generality.⁹⁹ This is so because oil is a source of wealth and thereby plays a dominant role in nations' economies. The issue of who owns and controls oil resources has caused major disagreements in some instances, while certain theories have evolved to determine who owns and controls oil resources.¹⁰⁰ Ownership of oil and gas is further classified as 'Private Ownership' or 'State/Public Ownership' and, in some instances, a combination of both "Private and State Ownership." These typologies are discussed hereunder.

2.1 Public-Private Ownership of Oil and Gas resources

Private ownership essentially implies that the landowner on whose land the oil is found automatically owns the oil and gas found in it.¹⁰¹ The ownership structure is said to be entirely private when individuals are the owners of minerals found on their land. In jurisdictions where private ownership is recognized as a concept of property right, an individual can either raise the capital to exploit the oil or sell his rights to another individual or company with the necessary capital and expertise.¹⁰² It is important to note that the owner of such land can drill wells on his land to recover oil and gas on it, subject, however, to the regulatory framework governing the exploration and exploitation of the resources in the

⁹⁹ OE Ojuokaiye ;Oil and Gas Law I' (2011) Course Code: Law 411, National Open University of Nigeria (NOUN), Lagos 68. <www.nou.edu.ng/uploads/NOUN_OCL/pdf/Laws.pdf> accessed 7 December 2020.

¹⁰⁰ OE Ojuokaiye (n 9) 67.

¹⁰¹ PH Martin and BM Kramer Williams & Meyers Oil and Gas law § 202 (2012), cited in L Aladeitan (n 19) 167.

¹⁰² Williams and Meyers Oil and Gas Law (abr. 3rd ed. 2007) 1.

industry, for example, environmental pollution, health and safety of people, etc., the United States, Canada, and Australia are good examples of systems that allow private ownership of petroleum. These states allow public/state ownership of the resource once the resource is situated within the jurisdiction of the federal or state/component unit. The United States, Canada, and Australia's petroleum ownership structures are discussed hereunder.

2.1.1 The United States Example

In the American legal system, ownership of land brings with it ownership of all substances under the surface. The word 'land' in this instance includes not only the face of the earth but everything under it or over it. Based on this premise, therefore, private ownership of oil, gas, and other minerals has long been recognized in the American legal tradition.¹⁰³ The United States is a federal system that recognizes and allocates power to the Federal Government and the States. State laws are applicable to onshore oil and gas, while federal law applies to offshore oil and gas resources.

2.1.2 Canadian Example

In Canada, a right of ownership carries the right to develop or preserve resources.¹⁰⁴ The basic rule is that the ownership of land carries with it the right to extract non-renewable resources such as coal, minerals, and petroleum.¹⁰⁵ The emphasis here shall, however, be on petroleum resources. The State owns petroleum resources in Canada, although there are some instances of private ownership. For example, in respect of some lands in Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia, ownership of petroleum rights lies with private landowners (known as "freehold" lands).¹⁰⁶ Ownership of petroleum resources, as stated above, belong to the state, but it is shared between the Canadian National government (otherwise called the Crown or the Federal Government) and the provincial governments.¹⁰⁷ For instance, the provincial governments in Western Canada are owners of petroleum resources, the British Columbia, Prince Edward Island (PEI), and other provinces are also the

¹⁰³ E Duruigbo 'The Global Energy Challenge and Nigeria's Emergence as a Major Gas Power: Promise, Peril or Paradox of Plenty?' (2009) 21 GEO. INT'L ENVTL. L. REV. 395, 440 Citing Wieland P "Going beyond panaceas: Escaping mining conflicts in resource-rich countries through middle-ground policies" 20 N.y.u. Environmental law journal volume 209.

¹⁰⁴ Historical Canada 'Resource Rights' <www.thecanadianencyclopedia.ca/en/article/resource-rights/> accessed 23 June 2021.

¹⁰⁵ Historical Canada 'Resource Rights' (n 14).

¹⁰⁶ LLP Torys, R Deyholos and D Cuschieri 'Canada – Oil and Gas: A comparative Guide to the Regulation of Oil and Gas Projects' (2013) European lawyer reference series 1. <www.torys.com/insights/publications> accessed 23 June 2021.

¹⁰⁷ Ibid.

owners of petroleum resources in their territories¹⁰⁸ , whereas, in northern Canada and the offshore regions outside the provinces, the federal government enjoys such ownership.¹⁰⁹

2.1.3 Australian Example

Australia operates a federal system of government of six states and two self-governing territories. Australia was a former colony of Great Britain and thus had a common law system based on the English system meaning that much of Australian law is taken from case law and precedent.¹¹⁰ Similar to petroleum industries in other market-capitalist economies such as those in Western Europe and North America, the structure of the Australian petroleum industry is characterised by the involvement of private corporations, with an important regulatory role occupied by the federal and state governments in most aspects of the industry.¹¹¹ The power to make laws with respect to mining is determined by reference to the Constitution of Australia. The Constitution sets out all the matters that form the Federal government's exclusive jurisdiction, and all other matters are taken to be part of the jurisdiction of the state legislatures.¹¹²

The Government of Australia's involvement in the industry covers areas such as policy development, safety, and environmental regulation, investment facilitation, provision of infrastructure, releases of new exploration areas, and acquisition of regional geological data.¹¹³ The legal framework within which petroleum exploration and development occurs is a result of the division of responsibilities between the Commonwealth and the states/territories under the Constitution and inter-governmental agreements (in particular, the 1978-79 Offshore Constitutional Settlement).¹¹⁴ Each state and territory has its legislation, which regulates the exploration and extraction of minerals.¹¹⁵ The ownership of natural resources by the state is popular among the African states for example, Nigeria, Angola, Equatorial Guinea, Ghana, and Algeria.¹¹⁶

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ K Brennan et al. 'Mining law in Australia, Practical law' A Thomson Reuters Legal Solution <<http://uk.practicallaw.com/>> accessed 7 December 2020.

¹¹¹ Australia Energy Statistics and Analysis. *U.S. Energy Information Administration. (2007)* <https://en.wikipedia.org/wiki/Petroleum_industry_in_Western_Australia> accessed 7 November 2021.

¹¹² Section 51 of the Commonwealth of Australian Constitution Act, 2003.

¹¹³ K Brennan et al. (n 20).

¹¹⁴ '2007 Oil and Gas Review' (PDF). *Department of Mines and Petroleum (2008)* <https://en.wikipedia.org/wiki/Petroleum_industry_in_Western_Australia> accessed 7 December 2020.

¹¹⁵ Sections 59-74, Part 1.4, Offshore Petroleum Act, 2006.

¹¹⁶ EK Bribena Nigeria, oil and gas exploration and the Niger Delta question: A study in corporate social responsibility (2011) (PhD-dissertation North-West University, Mafikeng campus 2011) 1-356, 101.

2.1.4 Nigerian Example

Nigeria provides a classic example of state ownership of oil and gas. In Nigeria, Section 44(3) of the 1999 Constitution states that the:

entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall rest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The same provision is in the Petroleum Industry Act, 2021 to the effect that the entire ownership and control of all petroleum in, under, or upon any lands including and covered by water which is: (a) is in Nigeria or (b) is under the territorial waters of Nigeria, (c) forms part of the continental shelf; or (d) forms part of the Exclusive Economic Zone of Nigeria vests in the state.

Etikerentse criticised the present framework that does not accommodate any iota of control or semblance of participation in management by the natives of oil-and gas-producing areas, where not even a Commissioner of Petroleum Resources at the state level could exercise power granted in section 8 (1) (f) of the defunct Petroleum Act¹¹⁷ to order the suspension of operations so as to prevent danger to life or property.¹¹⁸

2.1.5 Angolan Example

The Angolan Constitution provides an excellent example of state ownership of oil and gas resources. Article 16, for instance, provides that: ‘The solid, liquid and gaseous natural resources existing in the soil and subsoil, in territorial waters, in the exclusive economic zone and the continental shelf under the jurisdiction of Angola shall be the property of the state...’¹¹⁹ The principal law that gave effect to the Angolan Constitution was the Amended Petroleum Activities Act of 2004. It established a National Oil Company named *Sonangol*. The National Oil Company has the mandate to exercise its powers to secure, from the oil industry, maximum benefits for the state.

Sonangol is comparable to the Nigerian National Petroleum Corporation (NNPC). It earns the government more than 90 per cent of its revenue. It performs both the roles of regulator,

¹¹⁷ Now Section 1 of the Petroleum Industry Act, 2021.

¹¹⁸ Section 8 (1) (f) of the Petroleum Act.

¹¹⁹ Article 16 of the Angolan Constitution, 2010.

concessionaire and commercial entity as an oil company. Therefore, it is a player and referee at the same time, giving rise to a conflict of interests. The conflicting roles of *Sonangol* as both the regulator and a player in the oil industry have been identified by Lwanda as one of its shortcomings of *Sonangol*.¹²⁰ However, unlike the Nigerian oil resources, which are mainly onshore, resulting in ethno-social conflicts (for example, in the Niger Delta), oil deposits in Angola are mainly offshore, thus minimizing the possibility of ethno-social or Community-International Oil Companies conflicts.¹²¹

3 The Influence of International law on the legal framework of oil and gas in Nigeria

The development of the law of the sea has been primarily influenced by two notions, namely, freedom of navigation on the one hand and restricted access on the other. And the interaction between these two opposing notions has resulted in the acceptance of two concepts as a compromise: the territorial sea and the right of innocent passage.¹²² For a long time, maritime states have usually asserted their sovereign jurisdiction over waters contiguous to their coasts up to a certain limit recognizing the right of innocent passage of the vessels of foreign states.¹²³ The *Cannon-shot* rule was accepted internationally as one league or three (3) miles from the shoreline, and that was the width of the portion of the sea that then became generally accepted as the area over which a coastal nation could exercise sovereign control.¹²⁴

However, in 1958 the territorial seas or waters limit was controlled by the Convention on the Territorial Sea and the Contiguous Zone that was signed in Geneva in 1958. It was agreed under the Convention that the sovereignty of a State extended beyond its land territory and its internal waters to a belt of sea adjacent to its coast described as the territorial sea and extended to the air space over the territorial sea as well as to its bed and subsoil.¹²⁵ However, this sovereignty was qualified by Article 1(2), which provided that the sovereignty must be exercised subject to the provisions of the Convention's Articles and to other rules of international law. The Convention provided for the normal baseline for measuring the breadth

¹²⁰ GC Lwanda "Oiling Economic Growth and Development: Sonangol and the Governance of Oil Revenues in Angola" Working Paper (Series No.21) of the Development Bank of Southern Africa 14.

¹²¹ K Alexander and S Gilbert "Oil and Governance Report: A Case Study of Chad, Angola, Gabon, and São Tomé É Príncipe" 11 <www.ethicsworld.org> accessed 8 January 2017.

¹²² K Agyebeng, 'Theory in Search of Practice: The Right of Innocent Passage in the Territorial Sea' (2005), Cornell Law School Graduate Student Papers. Paper 9 <<http://scholarship.law.cornell.edu>> accessed 21 April 2021.

¹²³G Etikerentse Nigerian Petroleum Law, (2nd edn, Dredew publisher, Lagos 2004) 6. See also the right of innocent passage in Section III of Part I of the 1958 Convention.

¹²⁴ G Etikerentse (n 33) 11.

¹²⁵ Part 1, Section I, Articles 1(1) and 2 of Convention on the Territorial Sea and the Contiguous Zone 1958.

of the territorial sea as the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state.¹²⁶

The Convention provided that the contiguous zone could not extend beyond twelve miles from the baseline from which the breadth of the territorial sea was measured over which a coastal state could exercise jurisdiction.¹²⁷ However, a coastal state could exercise control to enforce its territorial sea rights further and comply with its municipal laws and regulations.¹²⁸ To avoid conflict of interest among states, the Convention also provided that where the coasts of two states were opposite or adjacent to each other, neither of the two states was entitled to extend its contiguous zone beyond the median line, every point of which was equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two states was measured unless there was an agreement between them to the contrary.¹²⁹

The law of the sea of 1958 had a tremendous influence on the off-shore area covered under Nigerian oil and gas law. In 1958, an international conference was held in Geneva on the Territorial Sea, the Contiguous Zone, and the Continental Shelf. This conference directly influenced the 1959 amendment to the Mineral Oils Act of 1914. The 1959 amendment was to enable Nigeria to take advantage of the Geneva Convention's provisions. For example, Article 2 of the Geneva Convention on the Continental Shelf 1958 gave a sovereign coastal state the right to exercise control over the exploration and exploitation of the natural resources of its continental shelf.¹³⁰ The concepts of Territorial Waters and Continental Shelf will be discussed hereunder.

3.1 Territorial Waters

Nigeria's territorial waters before 1967 covered the area of a three-nautical miles. Still, due to the influence of international law of the sea, it was increased to twelve-nautical miles off the coast of Nigeria.¹³¹ In the exercise of her sovereignty and ownership of oil and gas over territorial water resources, Nigeria enacted some Acts. For example, section 5 (1) of the Territorial Waters Act¹³² preserved and maintained the grants earlier made in oil exploration

¹²⁶ See Article 3 of the 1958 Convention.

¹²⁷ Article 24 (1) and (2).

¹²⁸ See Part II Article 24(1) (a) and (b) of the 1958 Convention.

¹²⁹ Article 24 (3).

¹³⁰ G Etikerentse (n 33) 10.

¹³¹ Going by section 2 of Article 3 of 1982 UNCLOS the breadth of the territorial sea is measured from low-water mark or these award limits of the inland waters up to 12 nautical miles. See Section 1(1) of the Territorial Waters Act Cap 428 Laws of Federation of Nigeria 1990 and available at Cap T5 LFN 2004.

¹³² Cap 428 Laws of Federation of Nigeria 1990 and available at Cap T5 LFN 2004.

of areas covered by Nigerian territorial waters. Likewise, sections 2 (3) of the Oil in Navigable Waters Act,¹³³ section 7 of the Oil Terminal Dues Act,¹³⁴ section 1 (1) of the Petroleum Act, section 2 of the Exclusive Economic Zone Act,¹³⁵ section 1 (3) of the Offshore Oil Revenues (Registration of Grants) Act,¹³⁶ section 18 (1) of the Interpretation Act¹³⁷ and the provisions of section 44(3) of the 1999 Constitution affirmed the ownership and control of oil and gas by the Federal Government of Nigeria.

There was, however, a controversy between the Federal Government and the eight littoral states of Akwa-Ibom, Bayelsa, Rivers, Cross-River, Ondo, Delta, Ogun, and Lagos on the ownership, control, and management of petroleum located in the off-shore areas of Nigeria, in the case of *Attorney General of the Federation v. Attorney General of Abia State and Ors.*¹³⁸ In that case, the plaintiff¹³⁹ contended that the southern (or seaward) boundary of each of the eight littoral States was the low-water mark of the land surface of such State or the seaward limit of inland waters within the State, as the case so required. The Federal Government maintained that natural resources located within Nigeria's Territorial Waters, Exclusive Economic Zone, and the Continental Shelf of Nigeria were not derivable from any State of the Federation, while each littoral state claimed that its territory extended beyond the low-water mark onto the Territorial Waters and even onto the Continental Shelf and the Exclusive Economic Zone. They maintained that natural resources derived from both onshore and offshore were derivable from their respective territories. Each was entitled to the "not less than 13 per cent"¹⁴⁰ allocation as provided in the proviso to subsection (2) of section 162 of the 1999 Constitution.

The plaintiff prayed the Apex Court to determine the seaward boundary of a littoral state within the Federal Republic of Nigeria to calculate the amount of revenue accruing to the

¹³³ Cap 337 Laws of Federation of Nigeria 1990 and available at Cap O6 LFN 2004.

¹³⁴ Cap 339 Laws of Federation of Nigeria 1990 and available at Cap O8 LFN 2004.

¹³⁵ Cap 116 Laws of Federation of Nigeria 1990 and available at Cap E17 LFN 2004.

¹³⁶ Cap 336 Laws of Federation of Nigeria 1990 and available at Cap O4 LFN 2004.

¹³⁷ Cap 192 Laws of Federation of Nigeria 1990 and available at Cap 123 LFN 2004.

¹³⁸ *Attorney General of the Federation v Attorney General of Abia State and Ors.*, No. 2 (2002) 6 NWLR Pt 764 at 542.

¹³⁹ That was the Attorney-General of the Federation (AGF) representing the Federal Government of Nigeria.

¹⁴⁰ Per Ogundare J.S.C in *Attorney general of the Federation v. Attorney general of Abia State and Ors* No. 2 (2002) 6 NWLR Pt 764 at 542. By this principle "not less than thirteen per cent" of the revenue accruing to the Federation Account directly from any natural resource shall be payable to a State of the Federation from which such natural resources are derived. For a State to qualify for this allocation of funds from the Federation Account, the natural resources must have come from within the boundaries of the State, that is, the resources must be located within that State.

Federation Account directly from any natural resources derived from that state under section 162 (2) of the Constitution of the Federal Republic of Nigeria 1999.¹⁴¹

The Supreme Court of Nigeria affirmed that the Federal government had the exclusive right of ownership, control, and management of petroleum located in the offshore areas of Nigeria. This decision of the Supreme Court generated controversy between the Federal and the State Governments. However, in 2004, a ‘political solution’ was found to the problem. The solution was the abolition of the offshore/onshore dichotomy in calculating the revenue derivable from the natural resources available for sharing under section 162 (2) of the 1999 Constitution.

3.2 The Continental Shelf

The continental shelf refers to the land masses that project from the continental land mass into the ocean.¹⁴² It is that portion of the sea bed or ocean floor that lies beyond the territorial sea of a littoral state. It is usually up to a depth of 200 metres and forms a geographical and geological prolongation of the continental land mass.¹⁴³ Before the 1958 Geneva Convention, the terminology became popular among maritime states at the end of the Second World War. At that time, maritime states unilaterally reserved to themselves the ownership and control of the oil and natural resources that lay in the geological formations and faults of the submarine continental extensions of their states.¹⁴⁴ The United States President Truman’s Proclamation in 1945 of his country’s sovereign jurisdiction and control over the natural resources of the sub-soil and seabed of the continental shelf beneath the ‘high sea’ contiguous to the US coast gave a boost to the claim of maritime states to their continental shelves as it was known before the 1958 Geneva Convention.¹⁴⁵ The claim of these states was eventually incorporated into the Articles of the Geneva Convention. Article 1 of the Geneva Convention 1958 defined the Continental Shelf as:

- (a) Seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 metres or,

¹⁴¹ See a similar US case of *United States v. State of California*, 332 US 19, 24-25; US Reporter 1658, 1661, the US Supreme Court, per Black J.

¹⁴² S Sourish ‘Principle of Delimitation of Continental Shelf Areas between States’ (2013) *The International Law Annual* <<http://spilmumbai.com/uploads/article/pdf>> accessed 22 April 2021.

¹⁴³ G Etikerentse (n 33) 12; Article 76 of the Convention. See also the definition of Continental Shelf offered by the Commission on the limits of the Continental Shelf (CLCS)

<www.un.org/depts/los/clcs_new/continental_shelf_description.htm> accessed 22 April 2021.

¹⁴⁴ See the Treaty relating to the Submarine Areas of the Gulf of Piras between the U.K. and Venezuela (1942) UKTS10.Cmd 6400.

¹⁴⁵ See Department of State Bulletin, No. 327, 30 September 1945, pp. 485 and *American Journal of International Law* (Supp. 45).

beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas;

- (b) The seabed and subsoil of similar submarine areas adjacent to the coasts of islands.¹⁴⁶

The definition in Article 1 of 1958 was based on the exploitability of the natural resources of the said areas instead of depending upon the conventional geological definition, which referred to the seabed and subsoil of the submarine zones next to the coast but not within the territorial sea that extends to a depth of 200 metres or beyond that limit, to where the depth of the superjacent waters admitted of the exploitation of the natural resources in those areas.¹⁴⁷ The phrase ‘beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas’¹⁴⁸ is said to be ambiguous because there is a mechanism that can be used to mine resources from the ocean bed which could be from a depth exceeding 200 metres. It is important to state that the Convention included the islands in its paragraph (b), which hitherto had not been contemplated.

In the North Sea Continental Shelf case between the German Federal Republic, the Netherlands, and Denmark in 1969, the International Court of Justice (ICJ) was called upon to determine the rules that would be applied in delimiting continental shelf boundaries.¹⁴⁹ The Court held that the rights and privileges of the littoral state concerning the area of the continental shelf that formed a natural continuation of its territory merged into the sea which existed *ab initio*. This was because of the littoral state’s autonomy over the land and, as an addition to it, in an exercise of sovereign rights for exploring the seabed and exploiting its natural resources. With respect to the delimitation of the continental shelf between States with opposite or adjacent coasts, Article 83 provided that delimitation shall be effected by agreement based on international law, as referred to in Article 38 of the Statute of the International Court of Justice, to achieve an equitable solution.¹⁵⁰

The 1982 UNCLOS now provides that the continental shelf of a coastal State shall comprise the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout

¹⁴⁶ See Article 1 of the Convention on Continental Shelf of 1958 held also in Geneva.

¹⁴⁷ Article 1 of the 1958 Convention. It is now measured at 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance; see Article 76 of Part VI of 1982 UNCLOS.

¹⁴⁸ Article 1 of the 1958 Convention.

¹⁴⁹ ICJ Reports, 1969 3, 39; 41 ILR 29, 68.

¹⁵⁰ United Nations Convention on the Law of the Sea, 1982

www.un.org/Depts/los/convention_agreements accessed 23 April 2021.

the natural prolongation of its land territory. This is said to extend to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.¹⁵¹

In summary, the Convention in its Article 77 recognized the sovereign rights of the coastal State over the continental shelf for exploring it and exploiting its natural resources.¹⁵² These rights are said to be exclusive in that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state. And these rights do not depend on occupation, effective or notional, or on any express proclamation of the coastal states.

Pursuant to the United Nations' Law of the Sea provisions expressed above, section 1 (2) (c) of the Petroleum Act 1969 and later the Offshore Oil Revenues Act of 1971 No. 9 made copious references to the fact that ownership of and title to petroleum beneath the territorial waters and in the continental shelf areas was vested in the Federal Government of Nigeria. The Nigerian Continental Shelf was defined by the Petroleum Act as:

the sea bed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth no greater than 200 metres (or, where its natural resources are capable of exploitation, at any depth) below the surface of the sea, excluding so much of those areas as lies below the territorial waters of Nigeria.¹⁵³

Sections 1 and 3 of the Petroleum Industry Act, 2021 empowers the Federal government of Nigeria to exercise ownership and control by which she could grant exploration and exploitation licenses and oil mining leases as well as enter into production sharing, joint venture, and other beneficial contracts with oil companies in Nigeria.

3.3 The Exclusive Economic Zone

Under the United Nations Convention on Law of the Sea 1982,¹⁵⁴ the Exclusive Economic Zone (EEZ) is an area adjacent to the territorial sea. This is, however, subject to the specific legal regime established in Part V of the Convention, under which the rights and jurisdiction

¹⁵¹ See Article 76 of the 1982 UNCLOS.

¹⁵² UNCLOS Article 77 of the 1958 Convention. This is also provided for in the same Article 77 of 1982 UNCLOS.

¹⁵³ The Interpretation Section – Section 15(1) of the Petroleum Act Cap. P10 LFN 2004.

¹⁵⁴ UNCLOS 1982 Part V Article 55.

of the coastal state and the rights and freedoms of other states are governed by the relevant provisions of the Convention. It stated further that the EEZ should not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. According to Article 56 (1) (a), the coastal state has sovereign rights for exploring and exploiting, conserving, and managing the natural resources, whether living or non-living, of the waters, superjacent to the seabed and of the seabed and its subsoil, and regarding other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds.¹⁵⁵

In Nigeria, the concept was legislated upon in 1978 by the Exclusive Economic Zone Act;¹⁵⁶ an area of 370.65 kilometres seaward from Nigerian coasts has designated a zone over which it could exercise certain sovereign rights in relation to the conservation or exploitation of the minerals and living species of the seabed, subsoil, and the superjacent waters. Nigeria reserves the right to regulate the zone by establishing artificial structures, installations, and marine scientific research.¹⁵⁷ The 1999 Constitution (as amended) gave ownership and control of the resources found in that zone to the Federal Government in Section 44 (3) of the Constitution (as amended).

4 Ownership and the issue of resource control in Nigeria

There is no controversy about absolute ownership of petroleum resources by the Nigerian state, both sections 44 (3) of the 1999 Constitution and section 1 of the Petroleum Industry Act, 2021 are clear on the fact that the Federal Government owns the resources. The law states that all mineral resources (including petroleum resources) under the soil, whether onshore or offshore areas of a geographical area called Nigeria, belong to the Federal Government.

This position of the law notwithstanding, the people of the Niger Delta have been clamouring for resource control. They have been advocating for a change in the ownership structure to reflect what obtains in the United States of America and other federal systems that operate a similar government system as Nigeria.

It has been argued that the Federal Government should control the petroleum resources, but the revenue should be shared on a 50-50 basis between it and the oil-producing State

¹⁵⁵ Article 56(1)(a) of the convention.

¹⁵⁶ Now contained in Cap 116 Laws of Federation of Nigeria 1990 and available at Cap E17 LFN 2004.

¹⁵⁷ G Etikerentse (n 33) 15.

Government to ensure the development of infrastructural facilities for an improved socio-economic condition of the people of the areas affected by the unavoidable consequences of crude oil exploitation. The revenue-sharing formula under the 1960 Independence and 1963 Republican Constitutions was 50% to the regions when cocoa beans, groundnuts, and coal were exported from the Western, Northern, and Eastern Regions, respectively.¹⁵⁸

In response to the yearnings of the Nigerians in the Niger Delta, the National Assembly in August 2021 enacted the Petroleum Industry Act, which among other things, seek to improve transparency in the industry, improve the environment and improve the lives of the people in the oil-producing communities. The Act in sections 251 and 252 provides for Host Communities needs assessment and development plan intending to improve a lot of the inhabitants of the Niger Delta. In addition, the National Assembly approved 3% of revenue derivable from petroleum for the remediation and development of the environment and people of Niger Delta.

5 Conclusion

This paper concludes that the international legal regime greatly impacts the ownership structure of petroleum resources in Nigeria. It helps the Nigerian government to claim the resources within its boundaries as dictated by international legal regimes. For instance, the Exclusive Economic Zone, Continental Shelf, and the Territorial sea limit Nigeria's claims to offshore petroleum resources. However, the paper advocates for mixed ownership of petroleum resources as it is obtainable in most federal states to cool the frayed nerves in the Niger Delta region of Nigeria.

¹⁵⁸ Personal communication by way of an interview in Amassoma area of Bayelsa State on 7 February 2017.