

ISSN 1595 0298

**SOUTH SOUTH JOURNAL
OF CULTURE
AND DEVELOPMENT**

First Published June 1999 in the Kingdom of Lesotho

VOLUME 20 NO. 1 APRIL, 2018

**AN INTERNATIONAL MULTI-DISCIPLINARY
JOURNAL OF CULTURE AND DEVELOPMENT**

South South Journal of Culture and Development Vol. 20 (1) April, 2018 170

**RESOURCE CONTROL AGITATION IN NIGERIA
THE NIGERIAN FEDERATION: A
MISUNDERSTOOD PHENOMENON**

UWEM JONAH AKPAN

*Department of History & International Studies
University of Uyo*

&

EKAETTE UMANAH EKONG

*Department of History & International Studies
University of Uyo*

SUMMARY

The clamour for resource control has generated tremendous attention in Nigeria since 1999. However, in spite of the growing interest generated, there seems to be grey areas of this phenomenon which the majority of Nigerians have indeed not understood. In other words, resource control is a misunderstood phenomenon. Some people neither understand its meaning nor distinguish it from the principle of derivation. The largely wrong perception held about the subject matter may be the reason why most people narrowly equate the term with crude oil activities believing that resource control means an attempt by states in the oil-rich Niger Delta region to exclusively control the oil resources in their territories. On this premise, they have consistently opposed the idea and equate it as a ploy to break up the Nigerian polity. The twin concept of resource control and federalism complement each other even though they are often used independently, the

concepts are interchangeable. This is because true federalism guarantees resource control and resource control is an indication of true federalism. Adopting historical and comparative analytical methodologies, the paper examines the concept of resource control, its practice in pre-military Nigerian era and the benefits the practice could generate in the Nigerian federation.

INTRODUCTION

One of the major challenges confronting Nigeria in contemporary times is how to devise an equitable and generally acceptable revenue sharing formula for all the major stakeholders in the federation, especially, the 36 states, which are the component units of the federation. The apparent failure to devise one, in spite of several attempts in the preceding decades, has led to the increased friction in inter-governmental relations and the rising pitch of the demand for resource control by some communities and states in the federation, which have gone a long way to weaken the already tattered fabrics of the Nigerian federation, threaten the basis for national cohesion and unity and significantly constrain the foundations of stable growth and socio-economic development (Jega, 2007: 122).

The centrality of the idea of resource control is the revision of the current relations of fiscal centralism where the Federal Government is pre-eminent where the states would predominate. The crux of agitation is to explicitly restructure the Nigerian polity for the

political and economic empowerment of the states. The demand is for self-determination, equity and true federalism. Indeed, the demand for resource and its implication for Nigeria's federalism appear to be unavoidable and cannot be treated with a pinch of salt because it is the essence of the national question.

Within the context of the current agitation between states of the Nigerian federation and the Federal Government, resource control signifies the legal authority by states to manage natural resources within their territories in terms of defining the manner and mode of exploitation as well as the utilisation of the proceeds accruing thereto. As the study would reveal, the practice of resource control has been in vogue in other climes. How well and soon, Nigerians are able to address and resolve this challenge would substantially help in shaping the stability, viability and security of the Nigerian nation in the foreseeable future. This paper is a contribution to the on-going national debate on resource control and discusses the subject matter in a historical perspective using the framework of federalism and comparative analysis.

The Meaning of Resource Control

As noted already, the term resource control has become very popular in Nigeria but there has been no consensus on its real meaning. Osipitan (2004) has expressed the view that "within the context of the current contest between some states and the Federal Government of Nigeria, resource control signifies the legal authority by states to manage natural resources

within their territories in terms of defining the manner and mode of exploitation as well as utilisation of proceeds accruing thereto.

At the summit of the Governors of the South-South region of Nigeria, in Benin City, Edo State, on the 27th of March 2001, resource control was defined as the "practice of true federalism and natural law in which the federating units express the right to primarily control the natural resources within their borders and make agreed contributions toward the maintenance of the government at the centre (Odu, 2008:60).

According to Sagay (2001: 2), resource control involves three major components:

- (i) The power and right of a community-or state to raise funds by way of taxation on persons, matters, services and materials within its territory.
- (ii) The exclusive right to the ownership and control of resources, both natural and created within its territory.
- (iii) The right to customs duties on goods destined for its territory and excise duties on goods manufactured in its territory.

Sagay (2002: 2) adds that the central issue in the concept of resource control is beyond the quest for increased revenue from the proceeds of one's resources, but rather, it is the right of states and communities most directly concerned (that is the producing states and communities) to have a direct and decisive role in the exploration of, the exploitation and disposal of resources, including sales of the "harvested" resources. In terms of crude oil

production, he opines that it is those who live with the devastating consequences of greedy, cheap, crude, reckless and irresponsible exploitation practices and procedures, who must control the mode and management of commercial production in order to ensure an environmentally friendly production process, elimination of pollution, protection of the lands, forests, rivers and atmosphere. It is they who will insist on planned and controlled production to ensure the progressive replacement of the non-renewable resource, by a renewable product that is free of pollution and other environment hazards. Mere increase in revenue without control and management is short sighted and deadly and it condemns the peoples of the Niger –Delta to a present without a future.

Dafinone cited in Akpan (2006: 48), views resource control as a basic economic theory grounded in the fact that land, labour capital and entrepreneurship are factors of production. He notes that Adam Smith, an early economist outlined the concept in his book *The Wealth of the Nations*. Just as the price of labour is wages, capital has interest; entrepreneurship is driven by profit, while rent and royalties are rewards for land ownership. Rent is retention for the use of the original and indestructible properties of the soil. Whoever owns land expects some form of compensation from those hiring the very important factor of production. He points out further that the clamour for resource control from the Niger Delta perspective is a call for adequate compensation

by the Niger Delta oil producing states, a cry for the redistribution of the revenue allocation formula.

Odu also views the concept thus: Resource control refers to the possession by individuals, communities and states or the natural host (s) owner (s) of the right of ownership, control, use and management of land and natural resources in or on them. To fully contextualise the meaning of the above, it is essential that ownership is limited to the natural inhabitants of the geographical area bearing the resources. Also the control over resources must be assumed as an inalienable right. The demands for resource control, although at present mainly associated with the oil bearing communities of the Niger Delta region, is not limited to the control of oil resources, but extends to other kinds of natural resources located in different communities. The issue of resource control in Nigeria is an aspect of the national question that has its roots in the pre-independence period. The current demand follows series of unilaterally established formal instruments and legal enactments by the Federal Government, for the appropriation or the extinguishing of the rights of ownership and control of natural resources as against those agreed to by the founding fathers of the Nigerian

federation. There is a marked difference between resource control and the principle of derivation which is a way of assuaging loss of ownership and control of the exploitation and utilization of own geographically located resources (Odu, 2008: 61-62).

Attah (2005: 9) notes that resource control does not mean keeping 100 percent of revenue derivable from resources but it means keeping back what the constitution permits, but controlling the circumferences of the operation. He submits strongly that resource control is a compelling necessity for the practice of true federalism and that the concept can only be fully appreciated and understood under federalism. Drawing his backing from the scholarly opinion of Venkataranganya, he describes federalism as a constitutional system under which people of any particular territory are politically united in subjection to the control, not of one government supreme over them in all matters and for all purposes, but a number of governments, each supreme in a definite sphere of its own, free completely from possibilities of encroachment from the rest..

The concept implies that in all true federal arrangements, no level of government is subordinate to another, but rather, all tiers of government are co-ordinate, one , with another and financial subordination which can only exist in the absence of resource control makes mockery of federalism. Resource control to Attah is therefore, rooted in the

desire of some Nigerian patriots to promote the practice of true federalism as the most efficient means unbinding all sections of Nigeria from the shackles that have weighed them down since the first military misrule thus, ensuring the harnessing of the vast economic potentials of the nation towards rapid development (Attah, 2005: 10).

Attah (2005: 10) insists that resource control will develop skills and abilities, local content and entrepreneurship will also be substantially increased and encouraged. The environment will be better protected, the rage of the local communities will be assuaged, and peace and progress entrenched. He recalls that on the occasion of the signing of the Farm Out Agreement by the Akwa Ibom State Government, the Group Managing Director of the Nigerian National Petroleum Corporation (NNPC), appreciated the tangible effort of the deal, stressing that by the conservative estimate, 12,000 new jobs would be created and in addition between 100,000 to 150,000 barrels of oil will be added daily to national production. The tangible benefits are equally immeasurable. To this end, the assertion is that it could be great if Kaduna, Niger, Nasarawa, Bauchi and other states with rich mineral deposits could now embrace resource control, form their own states and indigenous companies and obtain federal licences to explore and exploit these mineral deposits that at the moment lie waste in the ground. That would be a glorious manifestation of resource control.

The desire of states in the federation of Nigeria to control and manage the natural resources located therein is not an attempt to seize the oil, but to participate in the process. By no stretch of imagination thereof can the concept of resource control be equated with crude oil only. It surpasses the same in a million fold. This is because resource control transcends the narrow confines of crude oil to include coal, hides and skin, tin, limestone, groundnut, rubber, cotton, palm oil and solid mineral on earth. Consequently, any state that is endowed with any of these resources should be empowered to control and manage same upon payment of taxes to the Federal Government. Above all, he adds that resource control will stimulate healthy competition between the states and eventually lead to even development of the country. New barriers would be broken, more resources would be discovered and managed for the benefit of the Nigerian federation (Okumagba, 2002: 491).

Mineral Resources Available in Each of the States of Nigeria and the Federal Capital Territory

State	Mineral Resource (s)
Abia	Gold, salt, kaolin, silica, limestone/zinc, oil and gas
Akwa Ibom	Crude oil, gas, kaolin, limestone, clay, limestone, lead/zinc, uranium, Salt, lignite
Adamawa	Bauxite, kaolin, bentonite, gypsum, magnesite, barites, bauxite
Anambra	Kaolin, salt, lead/zinc, clay, limestone, iron -ore, lignite, glass - sand, Phosphate, gypsum
Bayelsa	Crude oil, gas, clay, gypsum, limestone, uranium, manganese lignite, Lead/zinc
Bauchi	Phosphate, limestone, iron ore, columbite, molybdenum, tantalum, amethyst, gypsum, lead/zinc, uranium
Benue	Limestone, gypsum, salt, barites, fluorspar, iron ore, lead/zinc, marble, bauxite, barites, gemstone, oil and gas, coal clay

Borno	Diatomite, feldspar, soda ash, iron ore, clay, limestone, oil and gas, Gypsum, kaolin, bentonite
Cross River	Kaolin, limestone, salt, diatomite, clay, oil and gas, gypsum, uranium, Manganese, lignite, lead/zinc
Delta	Kaolin, silica, oil and gas, marble, glass-sand, clay, gypsum, lignite
Ekiti	Asbestos, molybdenum, tantalum, zircon, kaolin, feldspar, syenites
Edo	Kaolin, gypsum, marble, clay, iron ore, glass -sand, gold, dolomite, Phosphate, bitumen, oil and gas
Enugu	Limestone, iron ore, coal, gold, lead/zinc
Gombe	Limestone, marble, wolfram, gemstone, gypsum
Imo	Kaolin, limestone, salt, lead/zinc, lignite, phosphate, marcasite, Gypsum, oil and gas
Jigawa	Columbite, garnet, barites
Kano	Soda ash, tantalum, wolfram, pyrochlore, cassiterite, copper, glass-sand, gemstone, lead/zinc, antalite,
Kaduna	Feldspar, asbestos, marble, kynaite, iron ore, columbite, wolfram, tourmaline, ruby, sapphire, amethyst, sapphire, kaolin, gold, clay, serpentinite, sillimanite, mica,

	aquamarine, ruby rock, crystal, topaz, fluorspar, tourmaline, gerstone, tantalite
Katsina	Kyanite, Chromite, zircon, marble, salt, kaolin.
Kebbi	Salt, garnet, gold
Kogi	Feldspar, iron ore, kaolin, gypsum, coal, marble, dolomite, Talc, tantalite, limestone, gemstone, bitumen, gold, iron-ore, mica, Kaolin, gypsum, feldspar, coal, dolomite, tantalite, bitumen
Kwara	Talc, marble, silmanite, iron ore, cassiterite, columbite, -tantalite, Feldspar, mica.
Lagos	Silca, asbestos, oil and gas, glass - sand, bitumen, tar
Nasarawa	Asbestos, magnesite, aquamarine, beryl (emerald, aquamarine & hellodor), dolomite/marble, sapphire, tourmarine, quartz, amethyst (garnet, topaz) zircon, tantalite, cassiterite, columbite, ilmenite, Galena, iron -ore, baytes, feldspar, limestone, mica, talc, clay, salt.
Niger	Marble, talc, gold, iron-ore.
Ogun	Limestone, silca, phosphate, asbestos, kyanite, gold, feldspar, clay

Ondo	Silca, talc, columbite, molybdenum, bitumen, oil and gas, gemstone, Granite, clay, glass - sand, bauxite dimension stones, coal, kaolin Gypsum, feldspar
Oyo	Talc, marble
Plateau	Baytes, tin, bauxite, iron ore, molybdenum, zircon, emerald, rock Crystal, topaz, fluorspar, tourmaline
Rivers	Kaolin, limestone, silca, oil and gas, glass-sand, clay, marble, lignite
Sokoto	Limestone, phosphate, gypsum, salt, iron ore, chromite, kaolin, gold, limestone, silca -sand, clay, laterite, potash, flakes, granite,
Taraba	Bauxite, clay, kaolin, lead/zinc,
Yobe	Diatomite and soda ash
Zamfara	Phosphate, limestone, gold

Source: Odje, M.O. (2002). *The Challenge of True Federalism and Resource Control in Nigeria*. Lagos: Quadro Impressions Limited. pp. 510-511 and Odu, R.I. (2008). *Resource Control :Legal Right of Niger Delta Region of Nigeria?* Lagos: University of Lagos Press, pp. 64-65.

Resource Control in the Immediate Post-independence Nigeria

The 1960 Independence and 1963 Republican Constitutions enshrined fiscal federalism and

resource control. For instance, section 134(6) and 140(6) respectively ensured resource control. Similarly, the aforesaid sections considered the Continental Shelf where there are large mineral and petroleum deposits as part of the Region were same was situated for the purpose of 50 percent derivation. The regions were entitled to exclusively benefit from the Continental Shelf. Resource control is therefore not a new concept in Nigeria but a resuscitation of idea that was truncated by the military in the late 1960s.

However, following the incursion of the military into the nation's governance in 1966, the existing equitable principle of "true federalism" and resource control were altered and the nation tilted to a unitary system. According to Odje (2002: 82) some of the laws which the Federal Government has deliberately issued over the years to ensure its control of natural resources include:

Decree No. 51 of 1969

Decree No. 9 of 1971

Decree No. 6 of 1975

The Land Use Decree of 1978

Exclusive Economic Zone Act, Cap. 116 of the Federation, 1990 as amended by Act No. 42 of 1998

Oil Pipeline Act Cap. 333 of the Federation, 1990

Territorial Waters Act, Cap. 428, Laws of the federation, 1990 as amended by Act No. 1 of 1998

National In-land Water Ways Authority Act 13, of 1997

Mineral and Mining Act No. 34 of 1999

Section 44(3) of the 1999 Constitution

Item 39 on the Exclusive legislative List of the 1999 Constitution

An exhaustive analysis of the implications of these laws is not possible, but it appears that these artificial laws were designed by some individuals from the majority ethnic groups to checkmate the potentials of the people of the oil producing region. Consequently, the root of the problem can be linked with issue of national question, which could be summarised as the minimum desire which if met, will reasonably assuage the anxieties of the mineral bearing communities and ensure their commitment to the continued existence of the Nigerian nation.

The changes that have been made with respect to ownership of land, off-shore oil, revenue allocation etc. are major departures from the constitutional provisions operated when agriculture was the mainstay of the nation's economy. During that dispensation, none of the regions was unfairly discriminated against and none lacked the necessary funds with which to undertake projects and programmes beneficial to the people. They were also not deprived of the ownership of resources and revenues as is the case with the oil producing area today (Akpan, 2017: 94).

Legal Justification to Resource Control: A Comparative Analysis

The normative basis for the Federal Government's claim and control over natural resources found in the territories of the

nationalities/states in the Nigerian Federation are the constitution and other law by the provisions of which the central government is endowed with relevant powers. These legal instruments have their socio-political dimension and they cannot be considered sacrosanct to the detriment of some communities and people whose interest and aspiration have been suppressed through their implementation (Ibanga, 2002: 626).

Ibanga (2002: 627) also notes that the demand for resource control is founded on the right of the people for self-determination. The international human rights law concept initially derived from the moral and political imperatives of decolonisation with a focus to granting independence to colonial territories. This doctrine could also be viewed as representing the right of people within a country to a mechanism of governance that reflect their wishes and is protective of their needs and interests. He cites the 1960 United Nations General Assembly Declaration adopted on the granting of independence to colonial countries and people, the declaration states that "all peoples have the right to self-determination by virtue of which they are to freely determine their political status and freely pursue their economic, social and cultural development".

The 1966 International Covenants describe self determination as the "right of a people within a state to a government or machinery of political administration that reflects their wishes and right of a people or peoples organised as a state to freedom

from external domination. The first aspect identified above is applicable to the domestic situation in Nigeria in which peoples (Yoruba, Ibibio, Ijaw, Ogoni etc.) are agitating for the control of resources within their territories. In view of the fact that revenue accruing to the central government of Nigeria derived from mineral resources exploitation have been largely and unjustifiably mismanaged, the affected people now demand that they should take part in the process of exploitation which they exercised in their pre-Nigerian state right to control their land and resources in them (Ibanga, 2002: 628; Akpan, 2006: 65).

As explosive as the agitation for resource control may seem especially with regards to the nation's corporate existence, it is very likely that whenever resource control becomes a reality, non-oil areas particularly the Northern states may benefit more in the long-run than even the oil producing areas. This is because as the list of minerals in the respective states of the federation has shown, there are large solid mineral deposits across the nation in addition to other resources like million areas of fertile land, abundant food crops with possibilities of producing millions of tons of exportable cash crops, millions of cattle, sheep, goats, chicken and other products. Exploitation of these vast resources has either been abandoned or is given lackluster attention for a long time now by successive governments in Nigeria. It is instructive to note that there are many countries around the world, which are doing extremely well and in many cases doing better than oil-rich

Nigeria, but are not producing a single barrel of oil (Okumagba, 2002: 492).

Some African countries such as South Africa, Egypt, Ghana and Cote d'Ivoire, which are said to be enjoying higher quality of life and per capita income higher than what is obtainable in Nigeria, are not known to be oil producing states. Most of these countries depend almost exclusively on solid mineral like diamond, gold etc. as well as the exploitation of agricultural produce like groundnut, cotton, cocoa etc. which similarly have been abandoned in Nigeria. Mention must also be made of countries like Japan, Germany and France that have no oil but are rated among the richest and seven most developed countries of the world referred to as G7. The argument advanced based on the above fact is that even if the oil producing states were to assume exclusive control of the oil, states that do not have oil would still develop the resources available to them such as land and mineral resources (Okumagba, 2002: 493).

Okumagba (2002: 493) and Ndon (2006: 126) have extensively highlighted the need for the nation to diversify revenue generating base. They observe that the revival of the oil palm industry sector has become increasingly imperative in view of the dwindling economic situation. They link the abandonment of the oil palm industry to the oil boom and describe oil palm as an alternative to crude oil. This is because countries like Malaysia and Indonesia have successfully used this crop to boost their economies; hence, this becomes a clear challenge to Nigeria

which is reputed to have the largest resource of the oil palm tree. The resource if properly developed and managed could result in the reenactment of the "Malaysian magic". Before the emergence of the oil boom in Nigeria, Malaysia's revenue from oil palm exceeded Nigeria's revenue from crude oil and even the fact that at present, a litre of oil palm is higher than a litre of crude oil in the international market. Indeed, it could be recalled that Malaysia got its first oil palm seedling from Nigeria, at present; oil palm is the cornerstone of Malaysia's industrial growth. Driven by the desire to remain on top, Malaysia has developed about 3.2 million hectares of oil palm plantations, milling 9 million tons of oil palm with earnings of more than 57 million dollars from its export.

Just as the issue of resource control has generated a lot of controversy in Nigeria, it has also generated similar volatility in other countries of the world, whether developed or under developed. In most countries, it is the general practice to decentralise mineral resources development from the control of provincial governments and the resources from rents shared. A comparative analysis of resource control in Indonesia, Philippines and Malaysia and in most countries of the Economic and Social Commission of Asia and the Pacific (ESCAP) region shows that major development projects concerning metallic and non-metallic materials did not formerly bring economic benefits to the local people. Resistance to such development intensified with the occurrence of the Asian economic crisis which

reduced resource allocation to provincial authorities by the national government (Okumagba, 2002: 495).

In Indonesia and Philippines, the issues of decentralisation and revenue sharing are receiving attention as studies are being conducted on how to equitably share resource rentals such as royalties and rent payment for use of infrastructure. In Philippines, the legal instrument to decentralisation of resource rent revenue sharing is contained in the provisions of the Local Government Code of 1991, some of the problems of decentralisation include allocation of resources between Cities/Barangays and Provinces/Municipalities. While in Indonesia the government enacted two major laws in 1999, the law of regional autonomy and the law of inter-governmental fiscal relations. The first law grants extensive authority to 26 provinces in all matters including small-scale mining, except defence, foreign, judicial, monetary and religious affairs. The second law to be enforced by the government provides a specific share of revenue from oil and mining development to mineral resources (Okumagba, 2001: 495).

Further analysis is Malaysia's new mineral policy spells out how the national mineral policy replaced a combination of federal and state government laws. This resulted in the Federal Mineral Act, which defines the powers of the Federal Government and the State Mineral Enactment which delineates the powers and rights of the state governments in respect of the issuance of mineral

tenements, (Prospecting and exploration licences and mining leases) and provided a standard model. The Federal Government has continued to enhance federal-state coordination through the establishment of the National Mineral Council under the chairmanship of the Deputy Prime Minister. The framework which resulted in the entrenchment of some level of resource autonomy for the state is said to have led to the massive in-flow of foreign and local investment which could be a major incentive to Nigeria considering her present economic predicament (Ibanga, 2002: 628; Okumagba, 2002: 496).

Contemporary constitutional developments in Canada have further strengthened and widened provincial ownership and control of natural resources. In 1982, the Parliament of the United Kingdom passed the Constitution Act of 1982, which was based on proposals from the 10 Provinces and the Federal Government (the only exception being the Province of Quebec), changed aspects of the British North America's Act of 1867. The new law gave the Provinces greater control over natural resources and taxation (Lazarus, 1997: 41).

Lazarus (2002: 16) notes that each province, the legislature may exclusively make laws in relations to:

- (i) Exploitation of non-renewable natural resources in the Province.
- (ii) Development, conservation and management of non-renewable natural resources and

forestry resources in the province including laws in relation to the rate of primary production thereof, and

(iii) Development, conservation and management of sites facilities in the province for the generation of electric energy.

In other plural societies notably New Zealand and Australia, the conflict between state law and communal claims have led to some interesting judicial cases in which the pre-state right of the peoples have been recognised. In the celebrated Australian case of *Mabo vs. the State of Queensland* in 1991, the court decided, for the first time in Australian law, that a form of native title to land based upon indigenous law and custom could survive the transfer of sovereignty to the British Crown at colonisation. It recognised the right of a people based on anthropological claim which the concerned people had been denied for more than 20 years on the basis of enacted law (Ibanga, 2002: 628).

Ibanga (2002: 629) has also cited another landmark case from a foreign jurisdiction as the New Zealand's case of *Re-Marlborough Sounds* of 1997 in which a confederation of eight tribal peoples claimed that the foreshore and seabed of *Re-Marlborough Sounds* are Maori customary land and not subject to ownership or deposition by the Crown. The issue before the court in the case was whether, since the signing of the Treaty of Waitangi in 1840, Maori customary rights to the foreshore and seabed in and around the *Re-Marlborough Sounds* had been extinguished.

After reviewing an earlier relevant case of *Re-Ninety Mile Beach* of 1963, the court held that where a tribal people had not been expressly separated from their customary lands adjacent to the foreshore by statute of purchase, their customary rights remained intact. The court reached this decision after discountenancing the argument of the government that the customary rights of the tribal people had been extinguished by territorial Sea Contiguous and Exclusive Economic Zone Act of 1977, which provides in its section seven that:

Subject to the grant of any state or interest therein, (whether by pursuant to the provisions of any enactment or otherwise and whether made before or after the commencement of this Act), the seabed and submarine areas bounded, on the landward sides by the low water mark along the coast of the New Zealand including the coast of all islands and the seaward side by the water limits of the territorial sea of New Zealand shall be deemed to have vested in the Crown (Ibanga, 2002: 630).

A point to note is that some statutory provisions in Nigeria by which ethnic peoples have been denied their customary rights to their ancestral lands are couched in similar terms as the provision quoted above. In the case cited above, the "tribal" peoples argued that in order not for customary rights to be extinguished, the statute in question had to refer in

unequivocal terms to the extinction of such rights. Following an historical investigation of the relevant legislations, the court found that, the assumption of sovereignty (by the Crown in 1840), has in no way disturbed, diminished or extinguished any title or rights Maori may have had to the sea bed (Ibanga, 2002: 6 3 0)

Legal evidence shows that the Supreme Court had in 1965 upheld the natural rights of the inhabitants of tidal waters based on the principle of prior beneficial interest in spite of the provisions of Mineral Acts of 1946 Cap. 226, which states:

The entire property in and of all minerals in, under or upon any land in Nigeria, and of rivers, streams and water courses through Nigeria, is and shall be vested in the state (Cited in Odje, 2002: 68).

An examination of the United States of America's experience is relevant to Nigeria's situation because the USA is a federation of states, indeed, an older federation. Nigeria has a lot to learn from USA, a fact that underscored the decision during the Constituent Assembly proceedings that midwife the Second Republic to opt for the presidential system of government modelled after the American system. In the USA, the Outer Continental Shelf (OCS) has been the source of enormous oil and gas revenue. Consequently, it has continued to attract public and private interest so much that the 105th and 106th Congresses visited the OCS and introduced bills seeking funding for the Coastal State Impact

Land and Water Conservation Fund (LWCF) and wildlife programmes. Legislation introduced in the 106th Congress sought to capture half of the oil and gas revenue from the OCS for coastal states. The OCS is the federal portion of the Continental Shelf, extending outward from three nautical miles offshore to 200 mile territorial limit. Offshore lands within three nautical miles belong to the states, exception of Western Florida and Texas, where state lands extend to nine nautical mile line (Okpong, 2002: 156).

Okpong (2002: 157) also observes that the United States government enacted the Outer Continental Shelf Lands Act (OCSL) in 1953 as a response to the increasing interest in developing OCS oil and gas resources. OCL as amended was derived at providing orderly leasing for those mining rights, while affording protection for the environment and ensuring the federal and state government each receives fair value from the resulting production. Determining an acceptable division of revenue from the OCS between adjacent coastal states and the Federal Government has proven to be difficult. Although the OCS is a federal territory, coastal states argue that they bear the brunt of remediating environmental impact and infrastructural wear and tear accompanying the OCS oil and gas activity. Three states also harbour concern about rapid development in shore side communities possibly needed to support off-shore activity, concerns that are equally at the root course of the current agitation by the coastal states of Nigeria to control their resources

The history of disputes between the United States Federal Government and states over OCS revenues and the reluctance of Congress to appropriate authorised funds led to the introduction in the 105th Congress, the allocation of half of the OCS rents, royalties and bonuses to coastal states. This allocation has a parallel in the offshore revenue programme for production from Federal lands. Even with onshore revenues, 50 percent is allocated to the state in which the lease is located and 40 percent is earmarked for the reclamation funds, only 10 percent goes to the treasury (Okpong, 2002: 167).

While it is not being suggested that only 10 percent of off-shore revenues should actually go to the Federal Government of Nigeria, the United States situation contrasts with what is obtainable in Nigeria. In Nigeria, the Federal Government collects all oil mineral funds and distributes about 13 percent to the states from which the resources are derived. In the case of the off-shore "lands", the existence of unjust legislations makes it impossible for the Federal Government to benefit more. It is clear from the United States' experience that in order for the Federal Government to have a fair share of leasing in off-shore waters and territories, Congress had specifically passed the OCS Land Act of 1953, as amended. The essence of this act was to reserve some off-shore territory exclusively to itself. This is understandable as the law protects vested interest and rights, which can only be extinguished by very clear and unambiguous statutes. In Nigeria, the

reverse is the case, despite the fact that both the United States and Nigeria are generally regarded as common law jurisdiction. In Nigeria, the Federal Government simply assumes that it has exclusive propriety right over the off-shore land. Also, in the USA, the State of Alaska owns all the lands in the state currently producing oil and collects more than 1.1 billion dollars annually in royalties on production on its public lands. Local governments in several parts of America collect property taxes on deposit of natural resource (Okpong, 2002: 168).

In Canada, the Province of Ontario, Alberto and British Columbia have oil but they export their oil directly while the neighbouring provinces in Canada still imports oil from America and Mexico. This is the essence, and in fact the beauty of federalism and democracy. Of course, these oil-rich provinces pay adequate taxes and tariffs to the central government (Akpan, 2004: 130).

However, the opinion leaders from the Northern part of Nigeria do not appear to believe in the clamour for resource control. Their position is that resources of the country belong to all Nigerians irrespective of their state of origin. They argue further that the North has contributed to national development in the past through the production of food and cash crops without agitating for resource control. The Northern Governors Forum made up of the 19 Governors of the Northern part of the country also opines that the resource control is not practicable. According to them, instead of supporting the devolution of powers to the

states, they prefer the existing arrangement with a powerful centre but the federal government should be alive to its responsibilities. The fear is that the federating units could become very powerful and eventually decide to declare independence for themselves. This situation, they maintain, will threaten the peace and stability of the country. Thus, they prefer a Federal Government that will be strong enough to hold the country together (Akpan, 2004: 131).

CONCLUSION

As noted earlier, resource control and fiscal federalism are natural features of democracy and the moment they are subtracted from the system, what may be achieved is internal colonialism. Democrats are supposed to be champions of liberty, egalitarianism and equity, while despots are supposed to toe the line of oppression and forcible expropriation of the natural resources of people without commensurate compensation. When resource control becomes operational, it will spark off competition and development endeavours. If the federating units were independent nations, they would have still survived on their own. For instance, Plateau can survive with agriculture and tourism. With the exploitation of their solid minerals, it could embark on wonderful development projects. Why this has not happened yet is because every Nigerian looks up to the proceeds from petroleum for succor (Akpan, 2004: 132).

Akpan (2004: 132) notes that one way of complimenting resource control is for the Federal Government to act as the “father of all” and use the proceeds that are supposed to be paid as taxes from the federating units to beam development searchlight on states that are less endowed and less developed as a result of lack of funds. In other words, if the states of the South-South, because of their resources, are buoyant, and the states in the North-East are not rich, then the Federal Government should allocate more funds to the states of the North-East than the South-South. The expectation is that with superfluous resources, the South-South states can develop at a faster rate and allow a part of their resources (in form of tax) to be used to develop the North-East, in order to achieve the target of balanced development in the country.

There seems to be a dominant view however that the more financially autonomous or self sustaining the component units in a federation are, the more viable it is that it will survive over time. This perhaps explains why in most viable federations, some which have been discussed, the component units have high degree guaranteed source of financial autonomy even though some co-operation and assistance from the centre cannot be ruled out completely. That, in most cases is achieved through some measure of control over their resources. This tends to be the practice in the United States of America where mining, minerals and oil are largely properties of the states. This also seems to be the

case in Canada, where all lands, mines, minerals and royalties belong to several provinces (Okoko and Nna, 1997: 17).

This means that the ownership, control and management of resources and proceeds thereof, rest with the provinces rather than the central government. In addition, in view of the apparent sharp discrepancies in wealth between the oil producing and non-oil producing provinces in Canada, the oil rich provinces are allowed to sell their oil at OPEC's price in the international market. However, the Federal Government set a domestic price of about two third of OPEC's price for domestic sales while at the same time charging tax on all oil exports. It is the proceeds of such taxes that the Federal government subsidises the cost of oil in non-producing provinces. This system, if adopted in Nigeria will prove more viable and equitable than the present practice whereby the central government arbitrarily appropriates all resources from the oil producing minority states (Okoko and Nna, 1997,: 18).

Nigeria cannot pretend to operate federalism and democracy and at the same time be unitary in orientation. It has to toe the path of modern justice and equity. The revelation by some Niger Delta leaders creates some justification for the oil-producing states to continue in their agitation. According to Edwin Clark, the North-West, North-East and North-central contribute less than one percent to the national coffers. The South-East contribute 2.5 percent, the South-West contributes 3.6 percent, while the South-

South geo-political zone contributes 91.5 percent. He reasons also that it is therefore unjust for the areas that do not make any contribution to the national coffers to now decide what should be given to the owners of the resources while the reverse ought to be the prevalent norm. The South-South is therefore justified to demand for resource control, in the interim, have 50 percent of the contributions to the national treasury.

REFERENCES

- Abia, V.B.E. (2006). *Understanding Nigerian Government and Politics*. Lagos: Gofaflesh Publications.
- Achebe, C. (1983). *The Trouble with Nigeria*. Enugu: Fourth Dimension Publishers.
- Adeyiri, O. (2013). "Nigerian Federalism and the Challenges of Nation-Building: Issues, Problems and Prospects. *Nigeria at 50. Politics, Society and Development*. Sofela, B. Edo, V.O. and Olaniyi, R. O. (Eds.). Ibadan: John Archers Publishers.
- Akinyemi, A.B., Cole, P.D. and Ofonagoro, W. (1980). *Readings on Federalism*. Lagos: Nigerian Institute of International Affairs.
- Akpan, O. (2004). *First Among Equals. A Chronicle of Pioneering Efforts of Akwa Ibom in National Development*. Calabar: Saesprint (Publishers).
- Akpan, U.J. (2006). "The Resource Control Controversy and Federalism in Nigeria: 1954-

- 2004". M.A. Thesis, Department of History & International Studies, University of Calabar.
- Akpan, U.J. (2017). "The Restructuring Debate and the Nigerian Federalism: A Perspective". *Journal of Public Governance and Administration*. Vol. 1, No. 1.
- Alli, M.C. (2001). *The Federal Republic of Nigerian Army*. Lagos: Malthouse Press.
- Albert, O. (2003). "Federalism, Inter-ethnic Conflicts and the Northernisation Policy of the 1950s and 1960s". *Federalism and Political Restructuring in Nigeria*. Amuwo, K. et al (Eds.). Ibadan: Spectrum Books Limited.
- Asobie, H.A. (2001). "Centralising Trends in Nigerian Federalism". *Foundations of Nigerian Federalism: 1960-1995*. Eliagwu, J.I. and Akindele, R.A. (Eds.). Jos: Institute of Governance and Social Research.
- Atta, V.I. (2005). "Resource Control as a Panacea for Sustainable Peace". *Attah on Resource Control*. Ajayi, S. (Ed.). Lagos: Bangee Ventures.
- Dode, R. (2008). *Elements of Comparative Federalism*. Uyo: Nuclear Spin Publishers.
- Eke, P. P. (1989). "Nigeria's Emergent Political Culture". *Nigeria Since Independence. The First 25 Years. Volume V. Politics and Constitutions*. Ekeh, P.P. Dele-Cole, P. and Olusanya, G.O. (Eds.). Ibadan: Heinemann Educational Books (Nigeria).

- Eliagwu, J. I. (1985). "Nation Building and Political Development in Nigeria: the Challenge of Unity in a Hetrogenous Society". *Proceedings of the National Conference on Nigeria Since Independence. Volume 1, (Political Development)*. Atanda, J.A. and Aliyu, A.Y. (Eds.). Zaria: Gaskiya Corporation.
- Gana, A.T. (2003). "Federalism and the National Question in Nigeria: A Theoretical Exploration". *Federalism in Africa: Framing the national Question*. Gana, A.T. and Egwu, S.G. (2003). (Eds.). Eriteria: Africa World Press, Inc.
- Local Government Administration and Grassroots Democracy in Nigeria* Ibanga, M. (2002). Bases and Implications of Resources Control by States/Local Governments". Uya, O.E. and Okoro, J. (Eds.). Calabar: University of Calabar Press.
- Ihejiamaizu, E.C. and Egbe, B.O. (2001). *The Sociology of Traditional and Modern Political Administrative Systems and Some Contentious Issues in Contemporary Nigeria*. Calabar: Emmadex Ventures.
- ...(2006). *History, The Historian and The Nation. The Voice of a Nigerian Historian*. Ibadan: Heinemann Educational Book (Nigeria).
- Jega, A.M. (2007). *Democracy, Good Governance and Development in Nigeria*. Ibadan: Spectrum Books Limited.

- Lazarus (1997). "Resource Control in Federal States: A Comparative Analysis". *Nigerian Journal of Oil and Politics*.
- Mair, K. (2000). *This House Has Fallen*. London: Penguin Books.
- Ndon, B.A. (2006). *The Oil Palm. Economic Palms Series*. Lagos: Concept Publications.
- Odje, A.M. (2002). *The Challenges of True Federalism & Resource Control in Nigeria*. Lagos: Quadro Impressions Limited.
- Odu, R.I. (2008). *Resource Control: Legal Right of Niger Delta Region of Nigeria?* Lagos: University of Lagos Press.
- Okoko, K and Nna, J. (1997). "Federalism and Resource Allocation: The Nigerian Experience". *Nigerian Journal of Oil and Politics*.
- Okpeh, O.O. Jr. (2011). *The Post-colonial State, Leadership Challenges and the Governance Process in Nigeria. Nigeria at Fifty: Issues and Challenges in Governance, 1960-2010*.
- Okpong, E.U. (2002). *Niger Delta Region and the Politics of Onshore/Offshore Dichotomy*. Uyo: Faasco Management Consultancy.
- Okumagba, A. (2002). "Resource Control: A Bond of Unity and beneficial to All". *The Challenges of True Federalism & Resource Control in Nigeria*. Lagos: Quadro Impressions.
- Oladiyi, A. (2008). "Federalism, Resource Control and the Future of Democracy in Nigeria". *Challenges of Sustainable Democracy in*

- Nigeria*. Ojo, E.O. (Ed.). Ibadan: John Archers Publishers.
- Osadolor, O.B. (2003). "The Development of the Federal Idea and Federal Framework, 1914-1960". *and Political Restructuring in Nigeria*.
- Osipitan, T. (2004). "An Autochthonous Constitution for Nigeria: Myth or Reality". Inaugural Lecture Delivered at the University of Lagos, November 24.
- Sagay, I. (2002). "Nigerian Federalism & the Constitution – A Historic Perspective" www.restructuting.ng/nigeria-federalism-constitution-hisoric. accessed 11/8/17
- ... (2011). "Nigeria at 50: Gaudeamus Igitur". *Nigeria at Fifty: Issues and Challenges in Governance, 1960-2010*.
- Udokang, M. (2006). *Foundations to the Study of Government and Politics*. Lagos: Neutex Ventures.
- Ukpong, I.I. and Akpakpan, E.B. (Eds.). (1998). *The Nigerian Fiscal Federalism*. Uyo: Belpot (Nig.). Co.
- Umana, O.A. (2004). *First Among Equals: A Chronicle of Pioneering Efforts of Akwa Ibom in National Development*. Calabar: Saes print Publishers.
- Uwechue, R. (1991) *Africa Today*. London: Africa Books Ltd.
- Uzoigwe, G.N. (1996). "The Evolution of the Nigerian State: 1900-1914". *The Foundations of Nigerian Federalism: 1900-1960*.

