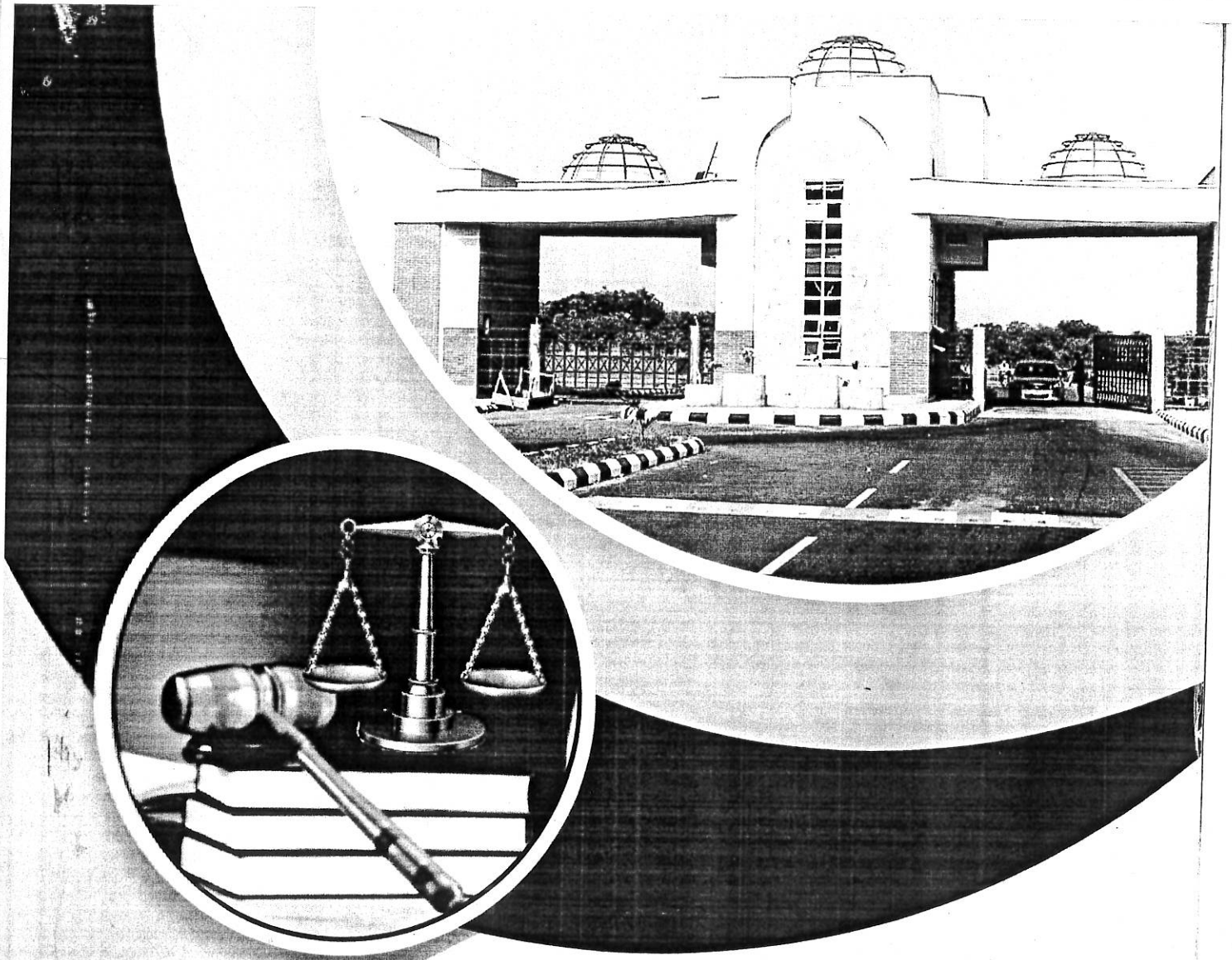


KWASULJ

KWASU LAW JOURNAL

Volume 2, No.1, 2021

A Publication of the Faculty of Law
KWARA STATE UNIVERSITY, MALETE



KWASULJ

VOL.2, NO. 1, 2021

ISSN: 2672-4332

This Journal may be cited as
Kwasulj, Vol. 2, NO. 1, 2021

All rights reserved. No part of this journal should be reproduced, stored in any retrieval system or transmitted in any form or by any means in whole or in part without the prior written consent of the copyright owner

A Publication of the Faculty of law
Kwara State University, Malete-Ilorin, Nigeria
http:journals.kwasu.edu.ng/index.php/law/index

EDITOR-IN-CHIEF

Prof. Abiodun Amuda-Kannike SAN

DEPUTY EDITORS

Assoc. Prof. Yahya Duro Uthman Hambali

Assoc. Prof. Hammed Adekunle Hanafi

Dr. Oyesola Olufemi Animashaun

ASSOCIATE EDITORS

Dr. Khafayat Yetunde Olatinwo

Halimat Tope Akaje (Mrs)

Mikaeel Ahmed Mohammed

SECRETARY

Kamaldeen Olaitan Salman

EDITORIAL BOARD

Prof. Abiodun Amuda-Kannike SAN	**Dean of Law (Chairman)**
Prof. Najeem Adeyemi Ijaiya	**Kwara State University, Malete, Nigeria**
Prof. Kayode Ibrahim Adam	**University of Ilorin, Ilorin, Nigeria**
Prof. Kola Odeku	**University of Limpopo, South Africa**
Prof. Kareem Olatoye	**Lagos State University, Ojo, Nigeria**
Prof. Abdurazaq Alaro	**University of Ilorin, Ilorin, Nigeria**
Prof. Olaide Abass Gbadamasi	**Osun State University, Ifetedo, Nigeria**

CONTENTS

Effective Enforcement of Environmental Sanitation Laws: A Tool for Eradicating Open Defecation in Nigeria
Halimat Tope Akaje 1-13

Application of Alternative Dispute Resolution to the Resolution of Environmental Disputes in the Niger Delta Region
Oluwayemi Oluwadunsin Ogunkorode 14-25

Online Arbitration as a Mechanism for Settlement of E-Commerce Disputes
Abiola Adekunle Saheed 26-38

An Analysis of the Right of a Private Person to initiate and Prosecute Criminal Proceedings in Kwara State
Abubakar Shehu Ahmad Tijani & Abdulrazaaq Adelodun Daibu 39-47

Space Resources and Developing Nations: The Innuendo of Parallel Benefits
Olatinwo Khafayat Yetunde 48-57

Donor Anonymity and Right of Access to Personal Origins in Nigeria: A Critical Analysis
Obadan A. Abibu 58-68

Examining the Powers and Limitations of Company Directors and Officers
B.S. Shoroye 69-79

Challenges of Taxing the Informal Sector in Nigeria
Olariyike Damola Akintoye 80-93

Examination of Taxation of Employment Income under the Personal Income Tax Act
Isau Olatunji Ahmed 94-103

Should Petroleum Profits Tax in Nigeria be in the Exclusive or Residual Legislative List?
Oyesola Animashaun 104-115

Analysis of the Legal Frameworks for Combating Cyber Crimes: A Tool for Economic Development in Nigeria
Olajobi Olusola Joshua 116-131

CONTENTS

The Regulation of Armed Conflict through Means and Methods of Warfare 132-14
Amade Roberts Amana

Securing Sustainable Development through Reform of Anti-Corruption Strategies in Africa: A Peep into the New Partnership for Africa's Development 143-15
Hanafi Adekunle Hammed

Unfair Prejudice Petition and Protection of Company's Interest Under the Companies and Allied Matters Act (CAMA) 2020 158-16
BS. Shoroye

Application of Corporate Personality Doctrine under the Nigerian Corporate Law and Shari'ah 170-18
Ahmed A. Muhammed-Mikaaeel

Liability for Medical Negligence under Islamic Law 182-19
Ibrahim Yahya Abikan & Fatai Abdul Tijani

Analysis of Misconception of Nature of Dissolution of Nikāḥ at the Instance of Wife under Islamic Family Law 198-20
AbdulWahab Muhammad Jamiu Elesin

Legality of the Right to Self-Defence under Islamic Law 207-21
Kamaldeen Olaitan Salman

A Critical Appraisal of Judicial Attitude Towards Judicial Corruption in Nigeria 214-22
Ibrahim Shuaib & Halima Jimada

Should Petroleum Profits Tax in Nigeria be in the Exclusive or Residual Legislative List?

Oyesola Animashaun*

Abstract

The issue of the legislation and the collection of taxes on natural resource is usually contentious in any political entity, more so in a federation of many nationalities with various cultures, aspirations, religions, mores and geographies. This article looks at the Nigerian statutes and did a comparative analysis with other jurisdictions on whether the collection of the petroleum profit tax should be a federal or a regional affair. The article found that there are varied formula adopted in levying and collecting of natural resources taxes; and that each state improvised to suit its own peculiarities. The article advanced reasons why the levying and collection of the tax should still be a federal affair, but with certain qualifications.

Keywords: Resource control, Petroleum Profit Tax, Niger-Delta, Exclusive Legislative List, Concurrent Legislative List and Residual Legislative List.

1. Introduction

Every government needs funds to meet its expenditure and such revenue could be generated from many sources. However, taxation is a major and stable means of generating the required revenue for public finance. The aphorism of Steinmo is apt here: where he stated that 'Governments need money. Modern governments need lots of money. How they get this money and whom they take it from are two of the most difficult political issues faced in any modern political economy'.[1] The need for fund becomes more complicated with the running of a federal system and a very expensive presidential system of government.[2] This is further compounded by the wasteful manner in which the government at each level is being run and the entrenched corrupt practices.[3]

---

*Ph.D., BL, ACTI, Senior Lecturer, Department of Business and Private Law, Faculty of Law, Kwara State University, Malete, Nigeria. Email: oyesola.animashaun@kwasu.edu.ng. Tel: 0803 833 4466.

[1] Sven Steinmo Taxation and Democracy (Yale University Press 1993) 1.

[2] P.A.O Oluyede and D.O Aihe, *Cases and Materials on Constitutional Law in Nigeria* (UPL 2006) 538, 539; Funke Aboyade, 'Ex-CJN, Alfa Belgore, advocates parliamentary system to tackle corruption' *The is Day Newspaper* (4 Aug. 2008) <http://allafrica.com/ stories/2008 08050596 .html accessed 23 March 2018.

[3] United Nations Office on Drugs and Crime *Corruption in Nigeria: Patterns and Trends Second Survey on Corruption as Experienced by the Population* United Nations Office on Drugs and Crime and the National Bureau of Statistics 2019) 5-112; Kola Odeku and Oyesola Animashaun, 'Poverty, Human Rights and Access to Justice: Reflections from Nigeria' (2012) 6 (23) *African Journal of Business Management* 6760- 6761; OO Adeyemi , ST Akindele, OS Abubakar, and KV Olugbemi, 'The Manifestation of Corruption in Nigeria: A Critical X-ray of Some Selected Development' (2012) 2 (4) *IJPSS* 1; Adeyemi O.O, 'Corruption and Local Government Administration in Nigeria. A Discuss of Core Issues' (2012)1(2) *European Journal of Sustainable Development* 183; Human Right Watch Aug 17, 2010; Premium Times June 21 2013, Nigeria Ranked 139th out of 176 countries on corruption-2013 Corruption Perception Index Transparency International www.informal.on.ng.com.2012/05/massive-corruption-at-all-levels-of-the-Nigerian-government-us-report.accessed 03 March 2020; Michael M. Ogbeidi 'Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis' *Journal of Nigeria Studies* (2012) 1 (1) 1-25; S Lodha, 'Fighting Corruption: A Comparative Study of Civil Society Mutative for Freedom of Information in Nigeria and India' (2007) 2(2) Madhya Pradesh *Journal of Social Science;* I Junaid 'Speaker of the House of Representative stated that President G.E Jonathan encourages corruption in Nigeria Premium Times (Lagos Dec 9 2013)';See the chronicles of Nigerian politician lifestyle http://www.transparencyng.com/index.php/news-categories/145-society/5342-the-flamboyant-lifestyles-of-nigeria accessed on 23 July 2018.; Pat Utomi 'Politicians, lifestyle and the Nigerian

The distinct aspect of federalism, which differentiates it from other systems of government, is the allocation of powers between the different tiers of government. This usually leads to complexities and overlapping of authorities with the attendant problems. The complexities inherent in a federal state are numerous. It is magnified by the feelings that the region laying the proverbial 'golden egg' is sidelined and marginalized in the scheme of things. Furthermore, until 1992, efforts by the federal government to address the special developmental of the mainly marshy environment of Niger Delta were minimal. However, the agitation of the indigenes of the oil producing communities led to the official response of the federal government in creating a special agency charged with the development of the area. Thus, the Oil Mineral Producing Area Development Commission (OMPADEC) and the Niger Delta Development Commission (NDDC), was established in 1992 and 2000 respectively. Notwithstanding, section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, which provides that the President may recommend for the payment of not more than thirteen percent of revenue based on derivation, the proponents of resource control still feel that this palliative is inadequate.

Nigeria is a forced amalgamation of different peoples into a single collectivity.[4] This problematic past has now given birth to a troubled present and an uncertain future with regards to the issue of ownership, legislation and taxation of petroleum resources, among other issues. Thus, the oil producing states are advocating for resource control, which vests ownership and absolute control of petroleum resources, including the levying and collection of the appropriate taxes in the affected states. The antagonist of this stance, predominantly from Northern Nigeria, unequivocally maintained that petroleum resources are national heritage, the proceeds of which must be used by all, without taking into cognizance the detrimental effect of oil exploration in the affected region.[5] This contention has led to protest, unrest and militancy in the oil producing areas, which was ameliorated in part by military engagement, cash payments and inducements, scholarship and bursary schemes, amnesty and other palliative programmes by the Federal authorities for the militant youths and the general populace.[6] In the light of the discussions above, the article examine the applicable laws with regards to levying and collecting of taxes on petroleum resources in Nigeria. The article analyses similar laws on natural resources in other jurisdictions, thereby making appropriate recommendations.

2. Historical Survey

The different tiers of government in Nigeria and the populace in the face of the dwindling oil revenue[7] and the glut in the international oil market became more innovative and aggressive. The revenue drive is due to the legitimate societal infrastructural needs and the maintenance of the political elites and their cohorts' profligate lifestyle, which made for an impoverished populace. Poverty and lack of amenities is acute in the Niger Delta region.[8] In addition to the aforementioned factors, climate change and environmental degradation encountered in the oil producing areas led to agitation for resource control and

---

condition'<*http://www.Nigeriavillagesquare.com/articles/pat-utomi/politicians-lifestyle-and-the-nigerian-condition.html* accessed on 23 July 2018.

Shehu Shagari, *Beckoned to Serve: An Autobiography* (Heinemman Educational Books Nig. Plc., 2001); Obafemi Awolowo, *Awo: The Autobiography of Chief Obafemi Awolowo* (Cambridge University Press, 1960).

Shehu Shagari, *Beckoned to Serve* (n 4).

Daniel Adetoritse Tonwe and Iro Aghedo, Amnesty for Sustainable Peace and Development in Nigeria's Niger Delta Region: Panacea or Palliative? (2013) 15 (5-6) *Journal of Sustainable Development in Africa* 223-238; Cyril Obi and Siri Aas Rustad Oil and insurgency in the Niger Delta Managing the complex politics of petro-violence in Cyril Obi and Siri Aas Rustad ed., (Zed Books, 2011).

Imran Ibrahim 'The rise of the militants forced production to nose dive to 700,000 barrels per day from 2.5 million' *The Guardian* (Lagos 3 November, 2013) 40.

This region produces and accounts for almost all the known oil reserves in Nigeria.

militancy.[9] This paradox of deprivation in the oasis of riches created the problem of resistance of the locals to the national government. The oil rich Niger Delta is the major source of oil revenues for Nigeria. It accounts for about 96 percent of Nigeria's foreign earnings, and it is one of the poorest and least-developed areas in the country.[10] The agitation took many dimensions from the separatist movements which was the first attempt at secession ~~in~~ from the Nigerian federation, led by Isaac Adaka Boro, in 1966;[11] to the rise of ethnic militias, like the Egbesu Boys, the Ijaw Youth Council, and the Niger Delta Volunteer Forces;[12] and civil unrests- typified by the the Ogoni uprising.[13] The milder agitation strategies include the demand for creation of more states,[14] autonomy and resource control;[15] and litigation over resource control.[16]

The power of the regional government to legislate on and collect tax on natural resources was highly enhanced in the first republic, but that power became curtailed by statutory provisions and the Military Command Structure. The military viewed as strange, an Act which prevents the superior officer (the Head of State) from exercising the powers conferred on an inferior officer (a State Governor) after the Military takeover in 1966. This arrangement continues to be the norm with minor modifications till date. Individuals and groups from the oil producing states and South Western Nigeria are advocating for the return to the pre-1966 era, that is, calling for fiscal federalism much to the chagrin of the others especially politicians and activists from the defunct Northern Region.[17] The position of ex-President Shehu Shagari on the issue is instructive. He stated that 'the principle of derivation which seem logical when most revenue came from agriculture was not wholly plausible in a predominantly oil economy, oil is God's bounty and a common national heritage. It should be put to national purpose'.[18] The former are advocates of state rights while the latter are for federal cause. These two groups constantly clash on the issue of fiscal allocation thereby transforming simple decisions into a difficult or complex politicized battle.[19] The extravagant lifestyle of the elected and selected officials, the environmental degradation and the dearth of modern infrastructure in the oil rich Niger Delta make the call for resource control to become more persistent.[20] This forms the crux of whether petroleum profit tax should be a federal or state (regional) issue.

---

[9] Itse Sagay, 'Nigeria: Federalism, the Constitution and Resource Control' (Paper Presented at the Fourth Sensitisation Programme Organised by the Ibori Vanguard, Lagos, 25 May 2002) <http:/www.wcdo.org/niger delta/essays/resource control/sagay.accessed 07 July 2020.

[10] Ibid.

[11] Olayemi Akinwumi, *Conflicts and Crises in Nigeria: A Political History since 1960* (LIT Publishers 2004); Daniel Omoweh, *Politics of Environmental Degradation in the Niger Delta: A Historical Perspective* (Yomi Akinyeye ed, Dandwon Press 2003).

[12] Wale Adebanwi, *Democracy and Violence: The Challenge of Communal Clashes* (Adigun Agbaje, Larry Diamond, and Ebere Onwudiwe eds. University Press 2004) 11.

[13] E Eghosa, 'The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State' (1995) 94 (376) *African Affairs* 325-344.

[14] Ibid. 334

[15] Ibid 334; Akinwumi 2004 (n 11).

[16] J Shola Omotola 'From the OMPADEC to the NDDC: An Assessment of State Responses to Environmental Insecurity in the Niger Delta, Nigeria' (2007) 54 (1) *Africa Today* 73-89; J Shola Omotola, 'Federalism and Uneven Development: The Nigerian Paradox (2002) 2(1) *Ilorin Researcher* 21-32; *AG of the Federation v AG of Abia State & ors* (2002) 6 NWLR (pt. 764) 562

[17] TU Abu, *Federalism, Democracy and the Challenges of Nation Building in Nigeria* (Wuam and Orngu eds, Dalila Publishers 2014) 383.

[18] Shehu Shagari, *Beckoned to Serve: An Autobiography* (HEB 2001) 201-202.

[19] A.A Ikein and C Briggs-Anigboh, *Oil and Fiscal Federation in Nigeria: The Political Economy of Resource Allocation in a Developing Country* (Ashgate-Aldershot 1988) 3.

[20] Pat Utomi 'Politicians, Lifestyle and the Nigerian Condition' (Nigeria Village Square, 12 March 2014) <http://www.nigeriavillagesquare.com/articles/pat-utomi/politicians-lifestyle-and-the- nigeriancondition.html

3. Conceptual Clarification

In this section, the keywords, such as tax, resource control, Exclusive Legislative List, Concurrent Legislative List, Niger Delta, and residual powers, -shall be discussed in the context in the words are used in this paper. Tax is a stipulation of the law and must be exercised pursuant to a legislative authority.[21] Tax is considered a civic duty of natural and juristic persons.[22] Apart from the correction of market imperfection, the following provides the *raison d'etre* for taxation- the need for governments to: raise revenue; redistribution of wealth; management of the economy and to affect behaviour.[23] Resource control however refers to the power and rights of a community or state or a regional government, to own and control the available natural resources in the locality, thereby exercising sovereignty by means of taxation on the said resource. Such 'powers' and 'rights' to initiate taxation process are however circumspect by law, especially in a federal system of government, like Nigeria where the powers of the central government are superior to that of the constituent states in designated area. [24]

Exclusive legislative list refers to the list that the National Assembly alone has the power to legislate on. Such item usually includes the armed forces, defence, nuclear energy, currency citizenship etc.[25] Specific taxes were mentioned in the Part I Second Schedule to the 1999 Constitution (Exclusive Legislative List). Concurrent Legislative List [26] are those legislative powers which are shared by both the federal and state governments, both may act or intervene, but in case of any conflict, the laws of the national assembly prevail over that of the state. [27] "Residual powers," are those that are left to, or designated to the states. In other words, everything that is, "left over". [28]

The Niger Delta is the southernmost part of Nigeria. It refers to the delta of the Niger River sitting directly on the Gulf of Guinea on the Atlantic Ocean. It consists of nine coastal states, which include: all six states from the South-South geopolitical zone, which are Rivers, Cross Rivers, Akwa- Ibom, Bayelsa, Delta, and Edo; one state and two states from South West (Ondo) and South East (Abia and Imo) geopolitical zones respectively. [29] These states constitute the oil producing states in Nigeria.

---

accessed 19 March 2018; Rotimi Fasan 'Diezani Alison-Madueke's plea for mercy' http://www.vanguard ngr.com/2015/11/diezani-alison-maduekes-plea-for-mercy/ accessed 30 March 2018; T Agbor 'The Minister of Petroleum Resources is to face the House of Representatives Committee for spending a whopping 3.1Bilion Naira for Chartered Plane' *The Tribune* (Lagos 21 March 2014) 23.

MT Abdulrazaq, *Principles and Practice of Nigerian Tax Planning and Management* (Batay Law Publications 1993); Karibi-Whyte A.G, *Interpreting and Understanding Nigeria Tax legislation* (Oluwole Akanle ed, Nigerian Institute of Advanced Legal Studies 1991) 85; MN Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria* (Nolix Publications 2008) 6; See also *Michigan Employment Sec. Commission v Patt* 4 Mich. App. 244, 144 NW 2nd 663-665.

Abiola O Sanni, 'An Examination of the Significance and Objectives of Taxation in Nigeria' (1997) 8(18) The Advocate-International Journal of Law Students Society OAU Ile-Ife 32.

MT Abdulrazaq, *Revenue Law and Practice in Nigeria* (3rd ed. Malthouse Law Books 2015) 1-2.

Emmanuel U Shebbs and Ray Njoku, 'Resource Control in Nigeria-Issues of Politics, Conflict and Legality as Challenge to Development of the Niger Delta Region' (2016) 3 (3) *Journal of Good Governance and Sustainable Development in Africa.*

Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 4.

Part II of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999.

Constitution of the Federal Republic of Nigeria,1999 (as amended) s. 4(5).

Elton E. Richter, 'Exclusive and Concurrent Powers in the Federal Constitution' (1929) 4 *Notre Dame L. Rev.* 513.

C. Michael Hogan, "Niger River M. McGinley (ed.), *Encyclopedia of Earth* (National Council for Science and Environment, Washington DC 2013).

4. The Legal Basis of Petroleum Profits Tax in Nigeria

The discovery of oil in commercial qualities at Oloibiri in 1956 and the commencement of operation by Shell Petroleum, operating as "Shell D'Arcy" which had been exploring for oil in the Niger Delta region, since 1937. This discovery of oil in commercial quantity led to the enactment of the first Petroleum Profits Tax legislation known as Petroleum Profits Tax Ordinance No. 15 1959.[30] The Ordinance was replaced by the Petroleum Profits Tax Act,[31] which applies throughout the federation.[32] Although taxation of mineral resource and petroleum products are not expressly stated in the 1999 Constitution, Item 59 of Part 1 to the Second Schedule to the Constitution give the exclusive power to the federal government. This is the tax levied on companies that explore and prospect petroleum. Taxation of Petroleum Profits is imposed by section 8 of the Petroleum Profits Tax Act[33] thus: 'There shall be levied upon the profits of each accounting period of any company engaged in Petroleum operation during the period, a tax to be charged, assessed and payable in accordance with the provisions of this Act.' Petroleum operation pursuant to the Act is:

The winning or obataining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account bya any drilling, minning, extracting or any other operations or process not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operation incidental thereto and any sale of or disposal of chargeable oil by or on behalf of company.[34]

The upstream sector, which involves prospecting, drilling and extraction of oil, is governed by two main fiscal regimes, joint ventures (JV) and the production sharing contract (PSC).[35] Petroleum Profit Tax is a special levy applicable to companies drilling, prospecting or exploring for oil. All other operators in the downstream involving in refining, transporting and marketing are taxable under the Companies Income Tax Act.[36] Petroleum Profits Tax Act is basically designed for the JV regime rather than the more recent PSC regime. The JV regime in Nigeria was associated with poor funding, due to the imbalance in the financial capacity of the different Joint Venture Partners, especially the Nigerian government which has other pressures on its resources. This led to the reduction in oil operation and consequential loss of revenue.[37] In the bid to overcome the afore-mentioned challenges, enhance the country's oil reserve and improve the economy of the country, Production Sharing Contract (PSC) was introduced as a policy for the exploration of the country's petroleum resources.[38] This led to the promulgation of the Deep Offshore and Inland Basin Act,[39] drawn up to address the inconsistencies between Petroleum Profits Tax Act and PSC practice to make it amenable to taxation. Another Act, Section 104(1) of the Local Content Act establishes the Nigerian Content Development Fund in order to implement Nigerian content development in the oil and gas industry. Specifically, section 104(2) provides that 'the sum of one percent of every contract awarded to any operator, contractor, subcontractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigerian oil and gas industry

[30] Okauru-Omoigui I (ed.), *A Comprehensive of Tax History of Nigeria* (FIRS 2012) 224.
[31] Cap P13, LFN 2004.
[32] Constitution of the Federal Republic of Nigeria, 1999. as amended) s. 315.
[33] Cap P13 LFN, 2004.
[34] Petroleum Profits Tax Act, Cap P 13, LFN 2004, s. 2.
[35] James Abere, 'Taxation of Petroleum Sharing Contract: Salient Issues Arising from the Application of Petroleum Profit Tax Act' (2013) 18(6) NTN 1-12.
[36] Cap C21 LFN 2004.
[37] Blackfairs Production Sharing Contract in the Nigerian Oil and Gas Sector https://www.hg.org/legal-articles/production-sharing-contract-in-the-nigerian-oil-and-gas-sector-21398.
[38] Ibid.
[39] Deep Offshore and Inland Basin (Production Sharing Contracts) Act, 1999 Cap D3 LFN 2004.

shall be deducted at source and paid into the Fund'. Failure to deduct or remit the 1 percent is an offence liable upon conviction to fine of 5 percent of the project sum or cancellation of the project.[40] This is another sort of levy, although it is tax deductible. Similarly, Land Use Act vests all lands in a state, in the Governor of the state, subject to the provisions of the Act, i.e. all land comprised in the territory of each State (except land vested in the Federal Government or its agencies).[41] Also, section 44 (3) of the Constitution of the Federal Republic of Nigeria, 1999 and Item 39 Schedule II of the Exclusive Legislative List vest the control and management of the natural resources on the federal government. The import of citing the Land Use Act and the constitutional provisions is that the resource control agitators maintain that all land irrespective of the availability of natural resources should be absolutely vested in the state governments. They maintained that the legislating and collection of taxes on these resources should be the affected state's issue and such state will pay an agreed sum to the federation account as maintenance and equalization fund.

5. Petroleum Tax as a Federal Tax: Argument For and Against

The oil producing states, the indigenes of these states and the radical proponents are agitating for resource control while others, especially the Northern elites are vehemently against this. The radical proponents of resource control [42] are demanding for the control of the whole petroleum resources to be vested in the producing states and the states would pay contributions to the federation accounts. In addition, that, the states should have the exclusive right to legislate on issues such as the natural resources in their respective jurisdiction, although the federal may set a minimum standard for the whole federation.[43]

The moderate proponents are agitating for 50 percent derivation as obtainable under the 1960 and 1963 Constitutions. Section 140 of the 1960 and 1963 Constitutions made provision for the sharing of the proceeds of all minerals, thus 'there shall be paid by the Federal Government to a Region, a sum equal to fifty percent of the proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region and any mining rents derived by the Federal Government from within any Region'. The continental shelf of a Region was deemed part of that Region. The proponents of resource control also proposed that section 162 (1) of the 1999 Constitution be amended to accommodate 50 percent derivation as against the current 13 percent provided for in the Constitution. It is pertinent to mention that contention between the oil producing states as to the ownership of oil wells is common place. In *Attorney-General Rivers State v Attorney-General, Akwa Ibom State and AGF and ors.*,[44] the Supreme Court held that the agreement between the parties on sharing of the offshore oil wells via a political solution initiated by the President, is binding on the parties, therefore enforceable. Their Lordship held that the agreement is a fair deal between the plaintiff and the 1st defendant because it shared the disputed 172 oil wells equally between the plaintiff and 1st defendant. The political demarcation is contrary to the 2004 technical delimitation of the maritime boundary between the plaintiff and 1st defendant which placed all the 172 oil wells in the territory of the plaintiff. As a result of the technical demarcation, the plaintiff alone received the revenue attributable to the oil wells by way of the derivation principle contained in section 162 of the 1999 Constitution. The states bordering Akwa- Ibom, that is, Rivers and Cross Rivers are thus deprived of revenue accruable from derivation.

The import of this narrative is to prepare the groundwork for the likely schism and problems that is likely to occur if the legislation and collection of petroleum profit tax is vested in the states.

---

[40] Ibid, s.68.

[41] Land Use Act,1978 Cap L5 LFN 2004, ss. 1 & 49.

[42] Sagay, I.E, 'Nigerian Constitutions, Operation of Federalism and the South-South Zone' https://dawodu.com/sagay2.htm accessed 13 October 2020.

[43] Ibid.

[44] SC.27/2010 (SC 8th March 2011.)

Some commentators posited that the unwillingness to raise the allocation from 13 percent is due to the fact that the oil producing communities are in the minority.[45] This agitation for resource control provokes violence, reduced oil production, kidnapping of oil and allied workers, oil pipeline vandalization and sabotage. This then stimulates inquiries and research into modes and methods of fairer allocation of the taxing powers with regards to natural resources, taking into consideration that the oil regions suffer certain hazards resulting from exploitation and drilling of oil. Such hazards include gas flaring, acid rain, climate change and oil spill with carcinogenic and other catastrophic consequences for human, flora and fauna.[46] The pertinent questions to ask therefore are: is the current practice adequate to compensate the oil producing areas, taking the other states in the federation into consideration? Does the Nigerian practice conform to the best practice in federal states, taking its peculiarities into consideration? In what ways could the agitation of the oil producing states be assuaged in the Nigerian Federation?

6. Legislation on Natural Resources and Tax Collection in other Jurisdictions

The above questions bring us to the practices in other sovereignty states, the attendant problems and its solution. In all the countries of the world, irrespective of their level of development, natural resources are concentrated in certain regions/provinces or areas. Such areas usually advocate for the total control of their resource while other regions in the same polity take the position that the country is an entity and the gain from the natural resources be shared by all the constituent units.[47] The North Sea oil accounted in large part to the bid of Scotland succession plan, especially as orchestrated by the Scotland National Party (SNP). The SNP's slogan in making an economic case for independence is "It's Scotland's oil".[48] Scotland already had its own legal and education system. After devolution, it has become responsible for many areas, including justice, policing and courts, local government, taxes including income tax, stamp duty and air passenger duty. The powers of the Scotland Parliament in the UK were extended in 2012, and again after the 2014 referendum on Scotland's independence.[49] Similarly, Katanga province in the Democratic Republic of Congo (DRC) in 1960, led by a local politician, Moise Tshombe and supported by foreign mining interests, seceded from the newly independent Congo mainly due to the control of its abundant natural resources.[50]

---

[45] F Omotoso, 'Nigerian Fiscal Federalism and Revenue Allocation Formula for Sustainable Development in Niger Delta' (2010) 5(3) *Journal of the Social Sciences* 246-253.

[46] AT Ott, 'Benzene pollution - a health risk in Gulf BP Oil drilling disaster ' http://www.laleva.org/eng/2010/05/benzene_pollution__a_health_risk_in_gulf_bp_oil_drilling_disaster. html accessed 5 January, 2021; MS Prasad. and K Kumari, 'Toxicity of Crude Oil to the Survival of the Fresh Water Fish *Puntius sophore* (HAM.)' (Wiley-Vch Verlag GmbH & Co. KGaA, Weinheim 1987) http://onlinelibrary.wiley.com/doi/10.1002/aheh.19870150106/abstract;jsessionid=48C8F967E631C32040226DF 3D1 6674B3 .f03t01 accessed 5 March, 2021.

[47] Shagari (n 4) 201-202; See also Aliyu Babangida 'Resource Control Calling Northerners Leeches can Create Trouble' http://www.informationng.com/2014 /07/resource-control-calling-northerners-leeches-can- create-trouble-aliyu.html accessed 12 January 2018; Niyi Odebode, John Ameh, Fidelis Soriwei, Sunday Aborisade, Segun Olatunji and Simon Utebor 'ACF backs northern governors on revenue allocation review ...says Niger Delta huge allocation is injustice' *The Punch* (Lagos 28 February 2012).

[48] Paul Butcher and Dorothy Livingston Scottish Independence And Currency: Choices, Issues and 22 April 2021 https://www.herbertsmithfreehills.com/ latest-thinking/scottish-independence-and-currency-choices- issues-and-implications.

[49] Civil Service, Devolution: Factsheet https://assets.publishing.service.gov.uk/government/ uploads/system/ up loads/attachment _ data/file /770709/DevolutionFactsheet.pdf accessed 26 February 2022.

[50] Britannica, Katanga: Historical State-Africa https://www.britannica.com/place/Katanga-historical-state- Africa accessed 26 February 2022.

After the end of the secession bid in 1963, the region reintegrated into the Congolese republic, while some rebel leaders took refuge in Angola. In 1977 they unsuccessfully invaded Zaire (as the DRC was then called) from Angola, and unrest continued into the late 20th century.[51] The Nigerian- Biafran Civil War of 1967-1970 could not be divorce from the control of oil which was found in commercial quantity in Eastern Nigeria. [52] Similarly, Acen region in Indonesia is rich in oil and gas resources,[53] and Bougainville in Papua New Guinea which was generating at least 40 percent of the national budget is rich in copper and other natural resources[54] have attempted secession. In addition, the conflict between Sudan and South Sudan cannot be divorced from the control of enormous oil resources in the latter's province. South Sudan secession bid was successful and it is currently a sovereign country. It is important to note here that real and perceived marginalization with regard to the collection and distribution of natural resources proceeds accounted in most part for succession bids. Some of these bids such as the South Sudan's are successful while others are either unsuccessful or did not pass the agitation stage.

Pakistan is a federation of four regions. The federal government legislates on, collects and administers royalties on oil, gas development surcharges and hydro-electric profit. Thus, it has the power to levy tax on natural resources other than agriculture.[55] The Constitution provides that the net profits (after the deduction of cost of collecting the tax) from these taxes is allocated to the province where the well, head of gas or hydroelectric power is situated. [56] This constitutional mandate has been violated incessantly by the partisan interpretation of the constitution over the years[57] and the use of different prices of gas to calculate royalty and development surcharge on gas for Balochistan province to the detriment of the latter in both cases.[58]

Indonesia though a unitary state is endowed with considerable and diverse natural resources like Nigeria but, the centralization of power by the national government despite the sharing of some of the proceeds with the sub-national governments, led to fracas, disenchantment and agitation. Thus, Indonesia's decentralization process was largely driven by persistent agitation and demands for greater regional autonomy, some bordering on secession. Not unlike Nigeria, areas in Indonesia rich in timber, petroleum, and other natural resources were (are) at the forefront of this agitation. Therefore, Law 22/1999 on Regional Governance and Law 25/1999 on Fiscal Balancing between the central and regional governments were enacted in May 1999 to devolve some powers to the provincial *(propinsi)*, municipalities (*kota*) and district (*kabupaten*) governments.[59] Most of Indonesia's district governments were however, ill-

---

Ibid.

Kairn A. Klieman, U.S. Oil Companies, the Nigerian Civil War, and the Origins of Opacity in the Nigerian Oil Industry, (2012) The Journal of American History, 155-165.

M Sumarto, 'The Proper Role of Government in Natural Resource Management in Indonesia' in *The Role of Public Administration in Building an Harmonious Society.* (Asian Development Bank Network of Asian- Pacific School and Institutes of Public Administration and Governance, 2006) 477; Rodd McGibbon, Secessionist Challenges in Aceh and Papua: Is Special Autonomy the Solution? (Policy Studies, 2004) 1 - 266.

N Haysom and Sean Kane 'Negotiating Natural Resources for Peace: Ownership, Control and Wealth- Sharing' (Paper Presented at Henry Dunant Centre for Humanitarian Dialogue, 2009) 7.

Article 161 Constitution of the Islamic Republic of Pakistan.

Ibid.

Mohammed Khan, Intergovernmental Transfers: Prospects and Issues (2006) *Lahore Journal of Economics* 41.

Ibid.

C Barr and others (ed), *Decentralization of Forest Administration in Indonesia: Implications for Forest Sustainability, Economic Development and Community Livelihoods* (CIFOR 2006) 1-15.

prepared to assume this newly imposed responsibility. This was due to inadequate preparation of the sub-national government, lack of guidance and institutional support from the central government. Other limiting factors include weak institutional structures, dearth of quality manpower and inadequate technical capabilities.[60] This led to the enactment of Law 41/1999 and Regulation 34/2002 to re-consolidate the central government's hold on the natural resources. However, the position of the sub-national government is not as bad as it was before dis-centralisation. Government Regulation 25/2000 specifically divides government responsibilities between the national and provincial governments on a sector-by-sector basis.[61]

Taxing powers on natural resources differ in different jurisdictions. In Pakistan the power to tax, to administer and collect tax on natural resources is vested in the federal authorities and the Constitution mandates the net profit to be transferred to the province where the resource is located but the federal government is always duplicitous in dealing with the affected provinces. In the U.S natural resources may be vested in an individual, corporate personality or the state.

In Bolivia, the departments (subnational governments) receive 67 percent of all royalties, and 33 percent of the collections of the new tax on the direct income from hydrocarbons (DIH).[62] Municipalities also receive 27.6 percent of the collections of DIH. In Colombia, all royalties from oil are allocated to subnational governments; partly on a direct derivation basis and distributed more specifically as follows 47.5:12.5 and 8 percent of royalties goes to producing departments, municipalities and the ports respectively. The remaining 32 percent goes to the National Royalties Fund.[63] Experts working on Latin American taxation,[64] reveal that much devolution has been done compared with the previous era and that a lot of fund is now available to the subnational government by way of transfer or autonomous taxation. Thus Argentina grants royalties of up to a maximum rate of 12 percent collected to oil- producing provinces.[65] Brazil's share of royalties exceeding certain set value is distributed as follows- 52.5, 15, and 7.5 percent to producing states, producing municipalities, and adjourning municipalities respectively. The remaining 25 percent is the federal government's share. Furthermore, there is a general allocation formula by which net revenue on resource proceeds[66] are distributed: 40, 10 and 50 percent to producing states, producing municipalities and the federal ministries respectively. Offshore royalties are distributed thus: 22.5, 22.5 and 7.5 percent to littoral states, littoral state municipalities and transporting municipalities respectively. The remaining fund is shared thus 7.5 percent is transferred to Special Funds (*Fundo Especial)* to be distributed to all states and municipalities and 40 percent to the federal government.[67]

Peru's unitary system,[68] prescribes that 50 percent of income and rent generated from mining, gas related, fishing and forestry activities are distributed to regional, province and district governments. The subnational governments' fifty percent share (which is now 100 percent subnational income) is allocated among the subnational governments thus: 10:25:45 and 20

[60]Ibid, 46.
[61]Ibid, 41.
[62]*Ley de Participación Popular, 1988.*
[63]Law 141 of 1994.
[64]Ahmad and Brosio (n 50) 22.
[65]*Ley de Federalización de Hidrocarburos* 24.145.
[66]After the deduction of investments costs, taxes and royalties.
[67]Law 9478 of 1997; Law 7990 of 1989.
[68]Law 28258 of 2004

percent to the district, province, regions and universities located in the region where the resource is exploited respectively.[69] The central government retains the remaining fifty percent.

6.1. Lessons from other Jurisdictions

haring of natural resources proceeds is probably the most contentious issues in inter-governmental relations across the world.[70] Claims by producing areas to retain most of the rent extracted within their borders generate conflicts with the central government, creating regional tension and feeding centrifugal or secessionist trends in producing regions. The cases of Scotland in the UK, Katanga province in the DRC and Bolivia is instructive.[71] The study of other jurisdictions shows that natural resources are concentrated in certain regions/provinces or areas. Such areas usually advocate for the total control or that a certain percentage of the revenue derived from their area be remitted back to the area. The inability of the national government to accede to the demands of the sub-national governments usually lead to strife, militancy and sometimes secession bids. It shows that in both the federal and unitary systems studied, the national governments levy and collect national resources taxes, with the singular exception of the United States. In the US, ownership of natural resources depends on who owns the land. The land could be vested in individuals, corporations or the governments. Each level of government levies and collects taxes based on its own laws.

In Pakistan the federal government legislates on, collects and administers taxation on natural resources, but the net profits (after the deduction of cost of collecting the tax) is allocated to the province where the natural resources are situated. In federal states of Latin America, such as Argentina and Brazil the norm is for the national government to collect and send a significant percentage back to the subnational governments where the natural resources are domicile. The unitary Latin American states of Bolivia, Colombia and Peru adopt a similar stance whereby the substantial allocation is conceded to subnational governments, partly on a direct derivation basis. Actually, Easton observed that the wide devolution of powers in Latin America is making the federal states more federal and unitary state less unitary.[72]

The lessons that could be learned by Nigeria from the jurisdictions studied is that- first, natural resources revenue issue could be tricky and there is no size that fits all. In other words, each state must fashion its own laws and distribution pattern based on its own peculiar situation. Second, a substantial portion of the revenue derived from a territory must be returned to the territory in order to avert civil unrest and secession bids. Third, irrespective of the system of government, whether unitary or federal, a wide devolution of power is necessary to contain agitation and separatist bids as observed in cases such as Scotland vis-a-vis the UK. Fourth, the federating units studied are financially viable, for instance Pakistan is a federation of four regions. Nigeria's thirty six states are artificially created with only a few that is financially viable thus most states depend on the monthly allocation accruable from the oil proceeds. There is a need to merge these artificially created states into six viable regions using the boundaries of the geo-political zones. There will be three regions each in the Northern and Southern parts of Nigeria. The article thereby recommend that 40 percent of the net derived

---

E Ahmad and G Brosio, 'Political Economy of Multi-Level Tax Assignments in Latin American Countries: Earmarked Revenue versus Tax Autonomy' IMF Working Paper WP/08/71 March 2008, 21; Peru 'Peru as Far as the eye can see' http://americasquarterly.org/ charticles/natural-resource-extraction-chile-peru-colombia/pdf/PERU .pdf accessed 25 April 2021.

Ahmad and Brosio, (n 69).

Ibid.

Kent Easton, Federalism Vs. Decentralization in Latin America. 50 Shades of Federalism. http://50shadesof federalism.com-case-studies/federalism-vs-decentralization-latin-america/ accessed 27 February 2022.

revenue should be availed the regions where natural resources are being exploited. The 40 percent is a modification of the 50 percent revenue granted the regions in the Nigeria first republic (1960-1966). The remaining 60 percent should be kept in the federation account and distributed between the federating regions and the federal government based on an agreed formula. The article also maintains that the levying and collecting of petroleum profit tax should continue to be a federal affair based on the reasons given in the section below.

7. Federal Legislation on Natural Resources and Tax Collection in Nigeria: To Be or Not To Be?

Nigerian economy is heavily dependent on oil revenue.[73] My position is that the power to tax and collect petroleum profit tax should be vested in the federal government for the following reasons, among others. Giving the control to tax to the states will make splinter groups fighting for control, which may destroy the fragile unity holding the country together and destroy the oil producing communities. The case of *Attorney-General Rivers State v Attorney-General, Akwa Ibom State and AGF and ors.*,[74] whereby states are fighting one another on the boundary issues and location of oil well is instructive. Second, to guarantee the contractual obligation of the Multi-National Companies (MNC) by different state governments with varied rules in Nigeria will be an ordeal.[75] Third, the fate of states with no or little natural resource is better imagined. Thus, there is a need for equity in such a way that both oil producing and non-oil producing region will be treated fairly in the allocation of oil proceeds.

Fourth, the Federal Government is the one that guarantees the continued existence and maintenance of the infrastructure necessary for oil prospecting exploration and marketing. Thus, inter-state movement of petroleum products could become an ordeal with each state trying to extract their 'own pound of tax flesh', which may lead to anarchy. Fifth, it could lead to civil war and further growth of ethnic militia as currently witnessed or something akin to the situation in Somali, whereby the state has failed and different warlords are in charge of different area of the country. Sixth, the fate of the local governments within the same state that are not producing oil is better imagined. The non-oil producing local governments may be discriminated against with regards to derivation allocation. Seventh, some oil producing states may become too powerful at the expense of the federal government, thus making the prospect of secession getting higher. Lastly, with the current 13 percent derivation, are the oil producing state better off commensurately with their enhanced revenue portfolio? The answer is a definite no. However, one must reiterate that the Federal Government of Nigeria also do not have much to show for decades of over centralisation of the affairs of the country and collection of huge petroleum profit tax, among other high yielding taxes, for many decades.

8. Conclusion

The article concludes that legislating and collection of taxes on natural resources in Nigeria should be a federal issue based on the reasons given above, however, there should be special arrangements for the host area or region where the natural resource is derived, in this case, petroleum. The position of this article is that the states (regions) producing the natural resource,[76] should continue to enjoy derivation allowance adjusted up to 40 percent of the net derived revenue. The article also advocate for the re-organization of the federation by reducing

---

[73] AA Onaolapo, HT Fasina and TA Adegbite 'The Analysis of the Effect of Petroleum Profit Tax on Nigerian Economy' (2013) 1(1) *Asian Journal of Humanities and Social Sciences* 25-26.

[74] SC.27/2010 (SC 8th March 2011.)

[75] C Odetunde, 'Resource Control: Legal Action, Arbitration or Mediation?' http://www.nigerdeltacongress .com/articles/resource_control%201.htm accessed 1 April 2018.

[76] Natural resources in my contemplation includes HEP generation, Ports, Forest Products and similar items.

the number of the states to six, based on the geo- political zones, in order to reduce overhead costs and for effective utilization of the available resources. For instance, the cost of maintaining political office holders and several unviable, artificial states and local government areas incapable of sustaining itself will be reduced to the barest minimum. The federal government should also make special provisions for the land rights of the indigenous people who depend on the land for their livelihood. Similarly, there is the need for the different governments in Nigeria to specially note that most petroleum resources are not renewable, capable of contributing to global warming and the production of environmental degradation such as acid rain. Thus, concerted effort must be expended in enacting laws and policies capable of ameliorating the impact of toxic materials on the host communities.