

## Constitutional provisions and control of national resources in Nigeria: Implications for national cohesion

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### Abstract

The paper aims to examine the constitutional provisions and control of national resources in Nigeria with a focus on the Petroleum Act and Petroleum Industry Bill. It also examines the implications of constitutional provisions and control of national resources on national cohesion. Oil (Petroleum) remains major revenue earner for the government of Nigeria and as such can be regarded as a major national resource in Nigeria. The methodology adopted in this study was the secondary data source and historical method. It was discovered that constitutional provisions like that of the Petroleum Act has over the years vested the entire ownership and control of national resources (especially Oil) to the Federal Government of Nigeria and this has led to resource control agitation by littoral states and other southern states of Nigeria. The paper recommends that the constitutional provisions like that of the petroleum Act that vested the entire ownership and control of national resources like oil to the federal government should be reviewed and amended by the national assembly to give room for states to partner with the federal government in the control of national resources and federal government should urgently address the agitation for resource control in Nigeria through the means of national dialogue to avoid militarised conflict and the disintegration of Nigeria.

**Keywords:** Constitutional provisions, Petroleum Act, National resources, National cohesion and Nigeria

### 1. Introduction

Nigeria as a country is richly endowed with natural resources deposits, which are located in different states of the country. The natural resources which are mainly found in Nigeria include: Oil and gas (Rivers, Cross River, Akwa Ibom, Delta, Edo, Imo, Abia and Bayelsa), Coal (Enugu), Cocoa (Ondo, Oyo and Cross River), Iron ore (Ajaokuta, and Aladja), Ignite (Asaba), Tin (Jos), Salt (Abia and Ebonyi), Rubber (Cross River, Delta and Edo), Marble (Igbeti), Lead Zinc (Abakaliki and Ogoja), Limestone (Sokoto, Ewekoro, Ukpilla and Abeokuta), Gold (Sokoto and Illesha). These natural resources as identified above also show the different states and places in Nigeria where they are located or found. From all these natural resources identified above, oil and gas remains a major revenue earner for the government of Nigeria and as such can be regarded as a major national resource in Nigeria. This is because Oil and Gas ownership and control is entirely vested in the Federal Government of Nigeria. In Nigeria, “the oil and gas sector accounts for about 35 per cent of gross domestic product, and petroleum exports revenue represents over 90 per cent of total exports revenue” (Organisation of the Petroleum Exporting Countries (OPEC). This figure however supports the above assertion that oil and gas is a major revenue earner and national resource in Nigeria.

There are constitutional provisions which are relevant to the control of national resources in Nigeria. These provisions deal on the modalities and laws on how national resources such as Oil (petroleum) should be controlled and who should control these resources. The central question of this paper is how and who controls national resources such as oil (petroleum) in Nigeria? The Petroleum Act is a reference point when discussing constitutional provisions and control of national

resources such as Oil (petroleum) in Nigeria. The Petroleum Act is “an act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on- shore and off- shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental there to” (Petroleum Act, 1969) <sup>[1]</sup>. The Petroleum Act vested the entire ownership and control of all petroleum in, under or upon any lands to the state (the state in this case means the Federal Government of Nigeria). The Petroleum Act (1969) <sup>[1]</sup> Section 1(1) states that the entire ownership and control of all petroleum, under or upon any lands to which this section applies shall be vested in the state”. And Section 4 (1) of the same, Petroleum Act (1969) <sup>[1]</sup> states that “no person shall import, store, sell or distribute any petroleum products in Nigeria without a licence granted by the Minister”. This section however is a provision on the control of petroleum products which is a major national resource in Nigeria.

The above provisions of the Petroleum Act which vested the entire ownership and control of petroleum (Oil) to the federal government of Nigeria has tremendous implications for national cohesion. One of such implications is that constitutional provisions and control of national resources in Nigeria has led to resource control agitations by littoral states and other southern states which has negative consequence on national cohesion. This can result in the disintegration of the Nigerian state if resource control agitations and the constitutional provisions that vested the entire ownership and control of national resources like Oil (Petroleum) to the federal government is not given crucial attention.

However, this paper aims at understanding constitutional provisions and control of national resources in Nigeria with a

focus on the Petroleum Act and Petroleum Industry Bill. It also examines the implications of constitutional provisions and control of national resources on national cohesion.

### 1.1 Statement of Problem

In Nigeria, constitutional provisions and control of national resources are major challenges confronting the Nigerian state. The constitutional provisions like that of the Petroleum Act of 1969 which vested the entire ownership and control of national resources like oil (petroleum) to the federal government of Nigeria has generated great controversy and agitation by littoral states and other southern states where these national resources especially oil (petroleum) are located and exploited. To solve the above problem, there is the present introduction of the Petroleum Industry Bill (PIB) to the National Assembly as an attempt to reform the oil sector and the constitutional provisions that vested the entire ownership and control of national resources like oil (petroleum).

In spite of the attempt at reviewing the constitutional provisions the problem of control of national resources remains unsolved. The question now is can the PIB resolve the problem of control of national resources like oil (petroleum) in Nigeria? It is in view of the above question that this paper aims at understanding constitutional provisions and control of national resources in Nigeria with a focus on the Petroleum Act and Petroleum Industry Bill and also examines the implications of constitutional provisions and control of national resources on national cohesion with a view to proffer recommendations to the problem.

### 1.2 Conceptual Framework

For the proper understanding of this paper, a conceptual framework is adopted to explain constitutional provisions and control of national resources in Nigeria. This is the Concept of Resource Control.

Before one can conceptualise the term 'resource control', it is first and foremost pertinent to define the term 'resource'. "The word "resource" can simply be interpreted to mean the wealth, supplies of goods, raw materials, minerals, etc., which a person or a country has or can use for development or production" (Adesopo and Asaju, 2014:281) <sup>[1]</sup>. What then is the concept of 'resource control'?

According to Orobator, Ifowodo and Edosa (2005:44) "resource control as the concept implies simply means control of natural resources under normal circumstances should be the responsibility of the indigenes of the area where the resources are naturally deposited but is not so in this part of the world". In another perspective, Adesopo and Asaju (2004:281) <sup>[1]</sup> asserts that "in Nigeria context, the term "Resource Control" means the right of a community to a measure of control of its natural resources, the usage relating to crude oil". By this they meant that "Resource Control is all about the demand by the littoral states and other southern states of Nigeria (where the nation's resources are derived) to be allowed to be controlling /managing the revenue accruing from the oil and other natural resources in line with the tenets of true federalism" (Adesopo and Asaju, 2004:281) <sup>[1]</sup>. Resource control creates an avenue for component states to control its resources derived from such component states. "By this, each state would have a full control of its resources and contribute an agreed percentage towards the maintenance of common services of the government at the centre as the case was in the first republic and as it is being

practised in the places like Canada, Switzerland, France, and even United States of America where Nigeria copied her system of governance" (Adesopo and Asaju, 2004:281) <sup>[1]</sup>. It can be stated that "resource control is a burning issue of discourse in Nigeria today" (Egom, 2006). Resource control agitations calls for more attention as it has been a major subject in many political discourse and debate. As Adesopo and Asaju (2004:281) <sup>[1]</sup> rightly opined that "the agitation has become a major subject of debate today, especially since the Supreme Court's Judgement on the politicised on-shore/off-shore dichotomy". It can be stated that in Nigeria, "resource control is a movement championed by south- south state governors (spearheaded by Chief James Ibori, governor of Delta State (1999- 2007) in protest to allow state control the resources in their various states and pay taxes to federal government" (Edafejirhaye and Edafejirhaye, 2008:98) <sup>[3]</sup>. Furthermore, it can also be stated that "expectedly, the Governors of the 17 southern states rose from its third summit in Benin City, the Edo State Capital, March 27, 2001, and proclaimed its preference for fiscal Federalism based on the principles of national interest, need and derivation" (Dafinone, 2001) <sup>[2]</sup>. Thus "its communiqué at the end defines resource control as 'the practice of true federalism and natural law in which the federating units express their rights to primarily control the natural resources within their borders and make agreed contribution towards the maintenance of common services of the government at the centre'" (Dafinone, 2001) <sup>[2]</sup>.

The concept of resource control is however relevant and crucial to this present study. This is because the entire ownership and control of crude oil (petroleum) which is a major national resource in Nigeria has been vested to the central or federal government, this is why littoral state and other component states of southern Nigeria has now adopted an agitation for resource control. This concept however explains that littoral states and other southern states of Nigeria where these national resources like oil (petroleum) are derived should be allowed to control their resources and pay a certain percentage to the centre. This is regarded as one of the tenets of true federalism. This is because, "put together, resource control is an indication of the practice of true federalism" (Okolo and Akpokighe, 2014:102) <sup>[8]</sup>.

However, the concept of resource control can be said to be a crucial concept when explaining constitutional provisions and the control of national resources in Nigeria.

## 2. General Discussion

This section is a general discussion with an overview of Petroleum Act as well as control of national resources in Nigeria with a focus on Oil (petroleum) resource. It also discusses an attempt at oil sector reforms with a focus on the Petroleum Industry Bill (PIB) and its implications for national cohesion.

### 2.1 An Overview of Petroleum Act and Control of National Resources in Nigeria: A Focus on Oil (Petroleum) Resource

The petroleum Act commencement date was on 27<sup>th</sup> November, 1969. The petroleum Act is an Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off- shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental thereto. The Petroleum Act has sixteen

(16) sections and four (4) schedules. However, Sections 1 and 4 are very important to this study. Section 1 is on vesting of petroleum in the state, etc. And Section 4 is on control of petroleum products.

Over the years, in Nigeria, the control of National resources like oil (Petroleum) has been solely vested in the central (federal) government. There are constitutional provisions especially that of the Petroleum Act that vested the entire ownership and control of oil which is a major national resource to the State (the state in this case is the central or federal government of Nigeria). As, Section 1(1) of the Petroleum Act explains this fact and states that, “the entire ownership and control of all petroleum, under or upon any lands to which this section applies shall be vested in the state” (Petroleum Act, 1969) <sup>[11]</sup>. This section of this Act however deprived littoral states and other southern states of ownership and control of their Oil (Petroleum) resource. This section of the Petroleum Act that vested the ownership and control of oil in the central government did not give any consideration to states in the federating unit to control the resources in their various states. This has led to resource control agitations especially from southern and littoral states where these oil explorations take place.

In retrospect, it can be argued that “the British administered the country initially mainly from the proceeds from oil palm trade derived largely from the then Eastern Region” (Dafinone, 2001) <sup>[2]</sup>. Thus “derivation was not given any prominence” (Dafinone, 2001) <sup>[2]</sup>. It can further be argued that “when groundnuts and tin from the North and cocoa and rubber from the West became major earner of revenue, derivation, to use the words of Dr. S. J. Cookey in his report, ‘was catapulted into a major criteria for the allocation, thus underscoring the linkage between regional control of the political process and the dominant criteria for revenue allocation at any given time’” (Dafinone, 2001) <sup>[2]</sup>. Thus, “this linkage was further underscored when, following the increasing importance of petroleum derived mainly from the Eastern States (now Niger Delta) as a revenue yielding source, derivation was again de-emphasised” (Dafinone, 2001) <sup>[2]</sup>. The point however is “that the exclusive federal jurisdiction over a natural resources apply only to oil and gas, and not to cocoa, palm oil, hides and skin, bitumen, marble, etc” (Dafinone, 2001) <sup>[2]</sup>. The above is the basis of argument for resource control agitation. On the other hand, over the years, “agitation for resource control and a larger share of the oil revenue by the oil- producing states came under strong criticism, particularly from the non- oil-producing states in the North and South- West, who accused them of having access to wealth at the expense of others” (Raji, Grundlingh and Abejide, 2013:9) <sup>[13]</sup>. Thus “the argument by the opponents of increased derivation for the Niger Delta states is anchored on the thesis that, any increase will impoverish the non- oil producing states” (Natufe, 2005) <sup>[7]</sup>.

## 2.2 Oil Sector Reforms in Nigeria: A Focus on the Petroleum Industry Bill

There has been an attempt at oil sector reforms in Nigeria. There has been the recent introduction and consideration of a bill to the National Assembly known as the Petroleum Industry Bill (PIB). It can be asserted that “at the centre of the reform initiative is the Petroleum Industry Bill (PIB)” (Omotoso, 2010:333) <sup>[9]</sup>. This is because “the Petroleum Industry Bill, when passed into law, is expected to rewrite Nigeria’s decades-

old relationship with its foreign oil partners, altering everything from the fiscal framework for offshore oil projects to the involvement of indigenous firms in the sector and bringing the industry in line with global trends and standards” (Omotoso, 2010:333) <sup>[9]</sup>.

The Petroleum Industry Bill (PIB) is still before the National Assembly for consideration and enactment into law. In the opinion of Omotoso, “essentially, the reform seeks to transform the Nigerian National Petroleum Corporation (NNPC) from its present status as a ‘guardian’ of Government Oil and Gas Assets into an integrated, international commercial oil and gas corporation driven by revenue generated and profit oriented motives” (Omotoso, 2010:333-334) <sup>[9]</sup>. The Petroleum Industry Bill (PIB) is a major oil sector reforms, if enacted into law by the National Assembly will restructure and transform the Nigerian National Petroleum Corporation (NNPC) and the Nigerian oil industry in varying dimensions. That is “the PIB seeks to streamline operations in the nation’s oil and gas industry such that the major tasks of policy, regulation, commercial operations and national assets management are carried out by separate public entities as opposed to current conflicting roles by the NNPC” (Omotoso, 2010:334) <sup>[9]</sup>.

According to Omotoso (2010:334) <sup>[9]</sup> “the successful restructuring of the industry is expected to lead to the emergence of separate institutions with clearly defined roles as follows.

- 1 1 Policy body (namely; National Petroleum Directorate)
- 2 4 Regulatory agencies (namely; National Petroleum Inspectorate, Petroleum Products Regulatory Authority, National Assets Management Agency and National Frontier Exploration Services)
- 3 1 Commercial centre (namely; Nigerian National Petroleum Company Limited)
- 4 1 Research and Development centre (namely; National Petroleum Centre)
- 5 2 Fund organizations (namely; Petroleum Technology Development Fund, and Petroleum Equalisation Fund”

The major achievement that is expected of the PIB is very clear and simple. The achievement will be that “the reform covers the desire to achieve optimum utilization of the country’s gas potentials” (Omotoso, 2010:334) <sup>[9]</sup>. It can be stated that “in this vein a National Gas Master Plan was initiated to meet the challenges of connecting the country’s abundant gas resources base to the huge domestic and export markets” (Omotoso, 2010:334) <sup>[9]</sup>. It can be argued that “it has been expected that the PIB, would respond and fill the gaps in existing laws such as the Petroleum Act of 1969 <sup>[11]</sup> but despite its seeming comprehensive nature, the PIB is an incremental duplication of many unresolved environmental issues in many previous and existing law” (Environmental Rights Action/Friends of the Earth Nigeria and Oil watch Nigeria, 2012:5) <sup>[5]</sup>. It can also be argued that “one of the highlights in the draft Bill (at the time of preparation of this brief) is the provision for the establishment of a Host Community Development Fund” (Environmental Rights Action/Friends of the Earth Nigeria and Oil watch Nigeria, 2012:5) <sup>[5]</sup>. It has been discovered that “if passed into law, ten percent of net profits of oil companies could be given to oil bearing communities” (Environmental Rights Action/Friends of the Earth Nigeria and Oil watch Nigeria, 2012:5) <sup>[5]</sup>, this the case of the PIB.

However, this further attempt at oil sector reforms like the introduction of a draft Bill to the National Assembly known as the Petroleum Industry Bill (PIB) it is discovered that this bill if passed into law will not adequately resolve the problems of constitutional provisions like that of the Petroleum Act (1969)<sup>[11]</sup> and control of national resources especially oil (petroleum) due to the foresight that the PIB did not provide for the full control of national resources like oil to be fully controlled by states where these resources are located.

### 2.3 Implications for National Cohesion

The promulgation of Petroleum Act of 1969<sup>[11]</sup> by the then Gowon administration which vested the entire ownership and control of national resources especially oil (petroleum) to the Federal Government of Nigeria was intended solely for the purpose of promoting national cohesion. Constitutional provisions like that of the Petroleum Act that vested the entire ownership and control of national resources especially oil (petroleum) to the Federal Government of Nigeria has a tremendous implication especially as regards national cohesion. The implication is that the constitutional provisions that vested control of national resources like oil to the Federal Government of Nigeria has led to resource control agitations by southern and littoral states of Nigeria, which if not carefully resolved can result in the disintegration of the Nigeria state.

The present Petroleum Industry Bill before the national assembly does not cover much aspect of control of national resources like that of the Petroleum Act of 1969<sup>[11]</sup> in Nigeria which vested the entire ownership and control of national resources to the federal government of Nigeria which has also resulted in resource control agitation by littoral and other southern states of Nigeria where these resources are located and exploited.

### 3. Discussion of Findings

The findings of this study are very crucial because it is thought provoking and remains critical as it can result in more agitations. This study however reveals that constitutional provisions like that of the Petroleum Act has over the years vested the entire ownership and control of national resources especially Oil (Petroleum) to the Federal Government of Nigeria and that this has led to resource control agitation by littoral and other southern states of Nigeria. By resource control they meant that each component state should control its resources and revenue derived thereof and pay a certain percentage to the centre. This resource control agitation is a recurring issue and a major issue confronting federalism in Nigeria. Resource control has been seen by its proponent as a basic tenet of true federalism as it is obtainable in developed countries like the United States of America (USA) etc.

#### 3.1 Summary, Conclusion and Recommendations

In summary, oil and gas remains major revenue earner of the government of Nigeria and as such can be regarded as a major national resource in Nigeria, because Oil and Gas ownership and control is entirely vested in the Federal Government of Nigeria. This study has been able to critically analyses constitutional provisions with a focus on the Petroleum Act and the control of national resources in Nigeria with a view to explaining its implications for national cohesion. It is discovered in this paper that constitutional provisions like that of the Petroleum Act has over the years vested the entire

ownership and control of national resources (especially Oil) to the Federal Government of Nigeria and this has led to resource control agitation by littoral states and other southern states of Nigeria.

Conclusively, oil resource which has been a major national resource in Nigeria as a result that oil is major revenue earner of the government of Nigeria, its control and ownership has generated immense controversies between the central government and oil producing/ littoral states of Nigeria. These controversies have led to the clamour or agitation for resource control by littoral and oil producing states in Nigeria. These agitations have tremendous implication for national cohesion. This is because if these agitations are not properly addressed it is capable of disintegrating the Nigerian state.

#### 3.2 This paper recommends that

- For a law to stand the test of time, it must be open to constructive criticisms and review from time to time to give room for the prevailing circumstance or event. For this major reason the constitutional provisions like that of the petroleum Act that vested the entire ownership and control of national resources especially oil (petroleum) to the Federal Government of Nigeria should be reviewed and amended by the national assembly to give room for states to partner with the federal government in the control of national resources especially oil.
- Federal government should urgently address the agitation for resource control in Nigeria through the means of national dialogue to avoid militarised conflict and disintegration of the Nigerian state.

However, if the above recommendations are carefully implemented by the Nigerian government it will effectively address the problems of constitutional provisions and control of national resources in Nigeria.

### 4. References

- 1 Adesopo AA, Asaju AS. Natural resource distribution, agitation for resource control right and the practice of federalism in Nigeria. *J Hum. Ecol.* 2004; 15(4)277-289.
- 2 Dafinone D. Resource control: The economic and political dimensions. *Urhobo Historical Society*, 2001. Retrieved from [www.waado.org/nigerdelta/essays/resource control/Dafinone.html](http://www.waado.org/nigerdelta/essays/resource%20control/Dafinone.html) on June 22, 2016.
- 3 Edefejirhaye V, Edefejirhaye E. *Effective public relations and sustainable development in Niger Delta*. Orerokpe: Egbosun Press, 2008.
- 4 Egom PA. Resource control: The problem & solution. *Nigeria Village Square*, 2006, February 11. Retrieved from [www.nigeriavillagesquare.com/forum/articles-comments/3037-resource-control-problem-solution.html](http://www.nigeriavillagesquare.com/forum/articles-comments/3037-resource-control-problem-solution.html) on June 23, 2016.
- 5 Environmental Rights Action/Friends of the Earth Nigeria and Oilwatch Nigeria, 2012.
- 6 Making policies work: Between environmental policies and environmental protection. A Policy Brief by Environmental Rights Action/Friends of the Earth Nigeria and Oilwatch Nigeria, 1-14.
- 7 Natufe OI. Resource control and federalism: A reply to Mobolaji Aluko, 2005. *DAWODU.COM*, June 30. Retrieved from <https://dawodu.com/natufel.htm> on June 22, 2016.

- 8 Okolo PO, Akpokighe OR. Federalism and resource control: The Nigerian Experience. *Public Policy and Administration Research*, 2014; 4(2):99-109.
- 9 Omotoso F. Nigeria and the challenges of the Niger Delta crisis. Ibadan: Netview Books. Organisation of the Petroleum Exporting Countries (OPEC) Nigeria facts and figures, 2010. Retrieved from [www.opec.org/opec\\_web/en/about\\_us/167.htm](http://www.opec.org/opec_web/en/about_us/167.htm) on September 11, 2015
- 10 Orobator E, Ifowodo F, Edosa E. (Ed.) Federal state & resource control in Nigeria, 2005.
- 11 Benin F. Parker Publishing Company. *Petroleum Act*. 1969, 27.
- 12 Raji AOY, Grundlingh L, Abejide TS. The politics of resource control in Nigeria: Example of Niger Delta Region, 1990s-2010. *Kuwait Chapter of Arabian Journal of Business and Management Review*, 2013; 3s(2):1-18.