

An Examination of the Contradictions in the Ownership of Land and Natural Resources in Nigerian Federation

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Abstract

Ownership and control of land and natural resources, especially petroleum has been of great controversy in Nigeria. In fact the issue between states and federal government and even between governments and the communities who own the land has been one question that has continued to be the backbone of every controversy and mineral related disputes in Nigeria. This is because in Nigeria the ownership of mineral resources is vested in the Federal Government, while the lands in each of the states of Nigeria are vested on the government of the respective states. Also worthy of note is the effect of the Land Use Act; a federal enactment regulating land use by the states and vesting powers and functions in the state governors on the federal principle of state autonomy. Further the common law principle of *quid quid plantateur, solo solo cedit* is part and parcel of Nigerian law, yet while land is vested on Governors of the states on behalf of the people, natural resources affixed on the ground are vested on the federal government of Nigeria, a negation of this common law principle. This paper x-rays these varying and palpable contradictions in the Nigerian legal system and makes recommendations on the need for harmony and fairness in the distribution of land resources by the legal system.

Keywords: Federal, Natural Resources, Constitution, Ownership, Autonomy.

1.1 Introduction

The Constitution of the Federal Republic of Nigeria 1999 provides for a federal system of government. According to the Constitution¹ Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria. It further provides that 'Nigeria shall be a federation consisting of states and a federal capital territory'². The federating states, thirty six in all are spelt out in the Constitution³. The implication of these constitutional provisions is that the constitution of Nigeria enjoin the government machineries to adopt and practice federalism and federal principles. The Nigerian Supreme Court seemed to have accepted this position when the court stated:

By the doctrine of federalism, which Nigeria has adopted the autonomy of each government which presupposes its separate existence and it's independent from the control of other government, including the federal government is essential to the federal arrangement. Therefore each government exist not as an appendage of another government but as autonomous entity in the sense of being able to exercise its affairs free from direction by another government.⁴

In reality however the opposite has been the case as even the Constitution itself contains some provisions that run contrary to the ideas and principles of federalism. Many of her laws also infringes on this constitutional aspiration. Before we discuss some of these constitutional and legislative enactments let us first examine the meaning and scope of federalism as practiced in advanced federations.

1.2 Federalism meaning and nature

In theory a federation is said to consist of a state with a central government and a number of component units with autonomous power to conduct their affairs free from control or interference from others. According to Wheare⁵ the most prominent classical federalist theorist, federalism or federal principles denote; the method of dividing governmental legislative powers so that general (central) and regional (component) governments are each within a sphere coordinates: In the words of Appadorai⁶;

a federal state is one in which there is a central authority that represents the whole and acts on behalf of the whole in external affairs and in such internal affairs as are held to be of common interest and in which there are also provincial or state authorities with powers of legislation and administration

¹ See section (1) of the Constitution of Federal Republic of Nigeria 1999

² See section 2 (2) *ibid.*

³ See section 3 (3) *ibid.*

⁴ A.G. Ondo State v. AG. Federation (2002) 9 NWLR (Pt 772)222.

⁵ Wheare, K.C. *Federal Government*, New York: Oxford University Press, 1963 p. 10.

⁶ Appadorai, A. *The Substance of Politics*, New York: Oxford University Press, 1968, p. 495

within the sphere allotted to them by the constitution.

According to Daniel J. Elezar¹, a federation, denote a compound polity compounded of strong constituent entities and a strong general government each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers. The essential attribute of federalism is therefore the existence of two or more levels of government, that is, central government and government of the component units as well as the division and sharing of power, resources and functions between them in such manners as to ensure operational independence and autonomy in respect of the matters concerning each. In the view of T. N. Tamuno²; federalism is that form of government where the component units of a political organization participate in sharing powers and functions in a cooperative manner.

The underlying principle of federalism is that the power over matters of general concern to the nation as a whole should be given to the central government while the power over those matters that are peculiar to state locality or constituent units should be reserved to the states or the units. According to Nwabueze³, the power and resources sharing arrangement should be so weighed as to maintain a fair balance between the two authoritative levels of government. Federalism presupposes that the national and regional government should stand to each other in a position in a relation of meaningful independence arresting upon a balance division of power and resources.⁴

The independence required is not just independence with regard to power to regulate and execute such matters. It requires in addition independence with respect to resources or means necessary for the performance of its legislative and executive functions. Government vested with independent governmental powers over certain matters with no independent resources for carrying such functions has no real independence.⁵ Omaka⁶, commenting on the *unfederal* nature of the Environmental Impact Assessment (EIA) Act 1992 stated of federalism thus;

...the constituents units which are closer to the people must be allowed power, initiative and autonomy to achieve or work for the sustainable development of their territories by their own effort.

Thus federal constitutions as a matter of necessity gives rise to fiscal federation⁷, this is because in a country with a federal government its lower tiers of government, be it states, region or local government are deemed to be autonomous and enjoy some degree or medium of independence in their area of competence. They are therefore said to possess some sovereign powers provided in the federal constitution. It must therefore be noted that revenue rights of the components entities of Nigeria federation is one of the challenges facing Nigeria as a nation today⁸.

Given the fact that a federation is a creation of a State's Constitution, it may be argued that it is the State's Constitution that determines what federalism is. thus Niki Tobi J.S.C. (Rtd)⁹ attempted to distinguish between the 'best ideals' "which follows from the classical federalism as the case may be, with Nigeria's peculiar federalism, according to Niki Tobi;

Ideal federalism or true federalism is different from specific or individual federal constitutions of nations, which may not be able to achieve the utopia of that ideal federalism or true federalism but which in their own sphere are called federal constitutions...there is no universal agreement as to what is a federalism or a federal government...

Contrary to the conclusion of Niki Tobi, federalism has a distinct meaning and characteristics.¹⁰ Disagreement over the extent of powers and functions to be allocated or shared does not in any way undermine

¹ Elezar, D.J. *Federal System of the World*, A Hand Book of Federal, Confederal and Autonomy Arrangements; Harlow, Essex: Longman, 1994.p.3 JCPA online <http://www.jcpa.org/dje/books/fedsysworld-intro.htm> (accessed 12/3/14)

² See Tamuno, T.N. "Nigerian Federalism in Historical Perspective" in Amuwo, K. *et. al.* (Eds) *Federalism and Political Restructuring in Nigeria*, Ibadan: Spectrum Books Ltd, 1998, p.13.

³ Nwabueze, B.O., *How President Obasanjo Subverted Nigeria's Federal System*, Ibadan: Gold Press Ltd, 2007. p.402. Note however that the learned professor had earlier maintained a contrary view. See Nwabueze, B.O. *Constitutionalism in the Emergent State* UK: C. Hurst & Co. 1973.p.12

⁴ Nwabueze, B.O., *Nigeria under the Presidential Constitution*; *op.cit* p.182

⁵ Nwabueze B.O. *How President Obasanjo Subverted Nigeria's federal System*. *op. cit*.p.425

⁶ Omaka, C.A. "The Concept of Environmental Impact Assessment in Nigeria" *Ebonyi State University Law Journal* (2007) Vol.2 No.1, p.65

⁷ Ihebom G. O. C. "Fiscal Federalism in Nigeria: A Comparative Analysis" *IMSUCJCL* (2011) vol.1. No.1 p.46

⁸ *ibid*

⁹ *Olafisoye v. Federal Republic of Nigeria Olafisoye v. Federal Republic of Nigeria [2004] 4 NWLR (Pt 864) 580*

¹⁰ , B.O. Nwabueze, *The Presidential Constitution of Nigeria op.cit*.p.40, see also Nwabueze, *How President Obasanjo Subverted Nigeria Federal System op. cit.* p.65., I.E. Sagay, "Nigeria: the Unfinished Project" being lecture delivered in honor of late Justice Idigbe at University of Benin City, on Wednesday April 30,2008.

the basic principles and features of federalism. To borrow the words of *Wheare*,¹ to the extent to which any system of government does not conform to the federal *principle of autonomy* it has no claim to call itself federal.²

Examples of federal constitutions include that of the U S A, India, Canada, Australia, Switzerland, Nigeria etc. Having stated the above, let us proceed to consider the Nigerian legal frame work governing land and natural resources to see whether they conform to the federal principles as discussed above.

1.3 Land Ownership Regime in Nigeria.

Land ownership in Nigeria is governed by the Constitution of the Federal Republic of Nigeria 1999 as amended and the Land Use Act.³ It is important to note that land is not listed as an item under the Exclusive Legislative List or under the Concurrent List. Land is mentioned only by Part 11 of the Second Schedule to the Constitution where it was included as an incidental and supplementary matter under the Second Schedule. Therefore land falls under item 68 of the Exclusive Legislative List as an incidental matter or supplemental matter of which the National Assembly has power to make law there in following her law making powers with reference to the listed matters, from item 1 to item 67 of the same list.

However it is the provision of section 315 (5) and (6) that actually made land (with regard to the clear provisions of the Land Use Act⁴) an item under the Exclusive legislative list. For purpose of clarity, hereunder is a reproduction of the provisions of the said subsections of the Constitution;

(5) Nothing in this Constitution shall invalidate the following enactments, that is to say-...

(d) The Land Use Act;

And the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9(2) of this Constitution.

(6) Without prejudice to subsection (5) of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect as federal enactments and as if they related to matters included in the Exclusive Legislative List set out in part 1 of the Second Schedule to this Constitution.

The Land Use Act referred to by the Constitution is an Act of the National Assembly, a federal legislation. The said Act vested on the Governor of each state of the federation the ownership of all land comprised in the territory of the state. Section 1 of the Act provides;

Subject to the provisions of this Act ,all land comprised in the territory of each state in the federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.⁵

Following the provisions of the Land Use Act, the entire ownership of land in each state of the federation is vested in the Governor of the particular State. The implication of this provision is that the Land Use Act, notwithstanding that it is an enactment by the federal parliament of Nigeria has vested the management and distribution of lands located in each of the respective states of Nigeria on the individual state Governors of the states to however be managed on behalf of the people of Nigeria. The Act further stipulated the manner in which the Governors may carry out the functions and obligations imposed on them by the federal legislation.

The constitutional vesting of land on the states of the federation is no doubt in conformity with federal principle. However the pertinent question is whether the Land Use Act, being an Act of federal parliament does not encroach on state powers and autonomy in respect of land matters. In other words, does the constitutional vesting of legislative powers on land in the Federal Government conform to the cardinal principle of federalism

¹ K.C. Wheare stated "I have put forward uncompromisingly a criterion of federal government, the delimited and coordinate division of government function and I have implied that to the extent to which any system of government does not conform to this criterion, it has no claim to call itself federal." *op. cit*

² It has been stated that none of Wheare's critics have succeeded in either discrediting or providing an alternate construct of federalism. See Ofoeze, G. A. Federalism, a Comparative Perspective, Enugu, Chenglo Pub.,2000, 27

³ Land Use Act 1978, Cap. L5 L.F.N.2010

⁴ *Ibid.*

⁵ However, it is noteworthy that the import of subsections (5) and (6) of section 315 of the Constitution are not to cloth the Land Use Act with the status of a Constitution but rather to preserve it from being invalidated by a regular or ordinary legislative process and to provide a special method for any amendment or modification of its provisions. The Land Use Act may therefore be amended following the procedure in section 9(2) of the CFRN.1999. See *Nkwocha v. Governor Anambra State and ors* (1984) 6 SC 326, *Adisa v. Oyiwola* (2000)10 NWLR (Pt 674) SC 116.

of which the Constitution of Nigeria confesses?¹ This question is important because it is a cardinal principle of federalism that items such as land is most conveniently administered by local authorities rather than a center based administration which is most likely to be remotely connected to the locals.²

The other question is, can the Land Use Act being a federal enactment in the absence of constitutional conferment of powers, empowers and obliges the states' governments to execute its provisions and confer powers and duties to states contrary to the fundamental principles of federalism? These questions are absolutely pertinent for the very essence of federalism which is the autonomy of each tier of government within a federal arrangement³abhors such subordination of one government to another which cannot be reconciled with as it is predicated on the principle of mutual noninterference. In fact section 5(1) of the Constitution seems to buttress this point when in consonance with the principle of federalism it vested the execution of all federal legislations (the Land Use Act inclusive) on the Executive President of Nigeria. It would have been a different case if land was vested on each states of the federation by the constitution itself. Let us further consider the contradictions inherent in the ownership of natural resources especially petroleum in Nigeria.

1.4 Natural Resources Governance Regime in Nigeria

The Federal Government of Nigeria owns and controls exclusively, the management, exploitation, exploration and distribution of every natural resources situated in all the territories of Nigeria whether onshore or offshore. This is captured by section 44(3) (1) of the 1999 Constitution which specifically provides:

Notwithstanding the fore-going provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive Economic Zone of Nigeria shall vest in the government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The intent of this provision as we can glean from the expression "entire property in" is to vest ownership over these mentioned natural resources on the federal government. Also the National Assembly, the legislative arm of the Federal Government of Nigeria is vested with the exclusive jurisdiction to make regulatory enactment and to regulate through legislations; mines, and minerals including oil fields, oil mining, geological surveys and natural gas⁴.

Consequent upon this, the Petroleum Act 1969⁵, a federal legislation vested on the federal government of Nigeria the authority to own and control mineral resources both upon and underneath the territorial soil of Nigeria. These include natural resources located offshore⁶.

Having established the fact of current ownership of mineral resources in Nigeria at present, it is worth mentioning that this has not been the state of affairs prior to the enactment of the Petroleum Act⁷. In fact, the 1963 Republican Constitution entrusted exclusive legislative competence over mineral resources to the federal government but did not vest ownership in them on her, consequently the Federal Government was required by section 140(1) of the 1963 Constitution to pay to each Region ; (a) sum equal to 50 percent of proceeds of any royalty received by the federation in respect of any minerals extracted from that region and, (b) any mining rents derived by the federation during that year from that region⁸.

Worthy of note is the provision of Section 1(2) of the Minerals and Mining Act, 1999⁹ which provided to the effect that any land which harbors mineral resources underneath will be acquired by the Federal Government

¹ See Section 2 (2) of the Constitution which read in inter alia; "Nigeria shall be a federation..."

² Nwabueze, B.O., How *President Obasanjo Subverted Nigeria's Federal System*, op. cit. p. 402

³ *ibid*

⁴ Section 4(2), Item 39 of Part 1 in the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended.

⁵ Cap. P.10 Laws of the Federation of Nigeria 2010.

⁶ See *Attorney General Abia State v. Attorney General Federation*. (No. 1)(2002)11 NWLR (Pt. 725) 689 SC. Note however that by virtue of section 1(1) of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act, 2004, littoral States do have some interests (derivation) in offshore natural resources located within 200 metres water depth isobaths. In other words the Act provides that the two hundred metre water depth isobaths contiguous to a state of the Federation shall be deemed to be a part of that State for the purpose of computing the revenue accruing to the Federation Account from the State pursuant to the provision of section 162(2) of the 1999 Constitution.

⁷ *ibid*

⁸ The concept of state ownership of minerals in independent Nigeria was first expressed in 1969 when the Federal Military Government promulgated the Petroleum Decree, it has been opined that the vesting of petroleum in the Federal Government was a tactical means of thwarting the designs of the secessionist Eastern region of Nigeria. See Okolo, A. "The Political Economy of the Nigeria Oil Sector and the Civil War" *Quarterly Journal of Administration (1981) No.1 & 2 p.107*.

⁹ Cap. M12 Laws of the Federation of Nigeria 2010

of Nigeria in accordance with the provisions of the Land Use Act¹ and the Minister may, from time to time with approval of the President, designate such land as security land.²

The implication of these foregoing enactments is to grant natural resources and ownership of them to the Federal Government of Nigeria. However the federal government has the duty of sharing the income arising from this revenue among the components States of the Federation including the local government councils in accordance with the constitutional formula enshrined in sectioned 162 (2) of the Constitution.³ In fact, it is constitutionally mandatory on the part of the federal executive to distribute the proceeds arising from natural resources management and production among all the component parts of the country. It may thus be argued that, while the Federal Government controls these resources, the ownership lies with the component or the constituent units of Nigerian federation of whom the proceeds must as of right be shared, based on a stipulated formula⁴. Put differently, ownership of natural resources lies with the entire Nigerians as represented by the states and the local government councils irrespective of where these resources are produced while the control and management thereof are vested on the Federal Government. This position is supported by virtue of section 162 of the Constitution⁵ which provided for a distributable pool account. The government of the federation represented by the Revenue Mobilization and Fiscal Commission is the trustees of these proceeds from natural resources while the people represented by the states and the local government councils are the beneficiaries.

Again following the Offshore/Onshore Dichotomy Abolition Act, 2004⁶, even though the government at the centre maintained exclusive jurisdiction over offshore natural resources, the littoral states do have some interest (derivation) in offshore natural resources located within 200 meters water depth isobaths. Therefore the Act did not change ownership whether offshore or on shore as both are vested in and are controlled by the federal government although components states have some share in the proceeds based on the constitutionally stipulated 13% formula.⁷

This legal regime by which many enactments vested the federal government with the ownership and control of natural resources not only contradict the federal structure of Nigeria as a federation but appears clearly not to be working. We shall hereunder highlight these varying contradictions.

2.1 The Contradictions in the Nigerian Legal Governance of Land and Natural Resources as well as the Common Law principle of *Quic Quid Plantatur Solo Solo Cedit*.

2.1.2 The legal meaning of land: ‘Land’ in the most general sense, consists of the following;

1. The surface of the soil or the earth surface
2. Everything naturally growing or attached to the surface of the soil.
3. Everything inside the sub-soil.
4. The air space above the soil.
5. Things artificially attached to the soil.

Two Latin maxims are frequently employed to define “land”. These maxims are; “quic quid plantatur solo solo cedit” and “cuius est solum eius est usque ad coelum et ad iferos”.

The former means that whatever is attached to the ground becomes part of it, while the latter maxim denotes

¹ Land Use Act 1978, *ELF (Nig) Ltd v. Sillo (1994) 6 NWLR (Pt 350) 258 SC* Cap. L5 Laws of the Federation of Nigeria, 2010

² These provisions though apply with exception with regard to the rights of an individual to fish; the legal governance of mineral resources does not affect the common law right to fishing in tidal waters. Consequently, the inhabitants can claim in respect of the losses they may have suffered as a result of the pollution of the rivers, ponds etc. caused by oil spillage. Indeed, the owners of land adjoining, abutting or encompassing water ways are entitled not only to fish thereon but also to settle or erect structures and even extract rent from others seeking to use the land. See *S.P.D.C. v. Adamkve (2003) 11 NWLR (Pt. 832) 533 CA*. Unfortunately, the consequential effect of exploration and exploitation activities makes these common law rights ineffectual.

Another exception to the total power of the federal government over land that harbors mineral resources is when the mineral occurs in a sacred or venerated place. The Act prohibits the prospecting or mining on, in or under any area held to be sacred or to sanction the injury or destruction of any tree or other thing which is the object of veneration. Unfortunately, the power to determine whether any area is held to be sacred or whether any tree or other things is an object of veneration under the Act is to be decided by the Governor of the state whose decision is final. See *N.N.P.C. v. Sele (2004) 5 NWLR (Pt. 866) 379 CA*, *ELF (Nig) Ltd v. Sillo (1994) 6 NWLR (Pt 350) 258 SC*. See Fekumo, J.F., ‘Ownership and Control of Mineral and Mining Activities’ paper delivered at the National Workshop for the review of the Minerals Act, 1946 and Allied Legislation held on May 3-6 1993. The author herein advocates that traditional rulers should be consulted in the process of this determination and that rivers should be included in the list of venerable things.

³ See section 162(2), (3), CFRN *op. cit*.

⁴ See Amah, E.I. “A Critical Analysis of the Federal and States Taxing Power in Nigeria” *JCCL (2011) Vol. 1. pp. 65-66*.

⁵ 1999 C. F. R. N.

⁶ The Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act, 2004.

⁷ See *Federal Attorney General v. Attorney General of Abia State (No. 1) (2002) 11 NWLR (Pt.725) 689 SC*.

that the owner of a piece of land becomes the owner of the entire minerals on the lands surface as well as underneath same.¹ This principle was applied in the celebrated mining case of *Common Wealth v. New South Wales*².

The word “land” *prima facie* includes the soil, the building and the objects attached to the building³. In the case of *Otogbolu v. Okeluwa*⁴ this common law principle was applied to vest on the owner of a piece of land, the illegal structure built by an adjudged trespasser.⁵

On the other hand, the term land under customary law has a wide application. Land is not restricted to the common ground and the soil beneath, rather fixtures like building and trees standing on it are part of the land. Land has not only length and breadth but also volume for it extends upwards to infinity and downwards to the center of the earth. This principle is also in consonance with the common law maxims.⁶

In respect to things inside or underneath the sub-soil, gold and silver are exclusively vested in the crown as a Royal Prerogative. Therefore, at common law, he who owns the land owns everything in the land, above the land and below the land, subject to the exception of the Royal metal. So, the individual owner of land retains the ownership of mineral resource including petroleum. This common law principle has been adopted in Nigeria as part of Received English Law⁷.

The Land Use Act vested all parcels of land within a state of the federation on the Governor of the State within which the land is situated, to be managed by such state Governor for the benefit of all Nigerians. The effect of this legal provision is to make the Governor a trustee of the land on behalf of and for the benefit of all Nigerians. Therefore, it is submitted that the Governor holds all lands within the territory of each state of the federation on trust. By implication, the Governor is the trustee of the land of the people who are the beneficiaries. Susan. M. Weschler⁸, in her work on the duty of a trustee stated:

The implication of this trustee status is that the trustee has the right to manage, control and use the trust property. It equally means that the right to ownership is vested on him, not as owner though but on behalf of the owner.

This argument can derive support from the following provision of section 44(1) of the Constitution;⁹

No moveable property or *any interest in an immovable property shall be taken possession of compulsorily and no right or interest in any such property shall be acquired compulsorily in any part of Nigeria*¹⁰ except in a manner and for a purpose prescribed by a law that, among other things-

- (a) Requires the prompt payment of compensation there for; and
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria. (italics mine)

Most Constitutions including that of Nigeria prohibited compulsory acquisition of property without prompt and adequate compensation. The Constitution therefore acknowledges the inalienable rights of individual Nigerians to their immovable property. Ironically, section 33 of the Interpretation Act, after adopting the common law meaning of land as meaning the earth surface and everything affixed to the earth or permanently tightened to anything that is affixed to the earth and all chattels real, unfortunately, went further to expressly exclude minerals from the definition. In fact, the Act further expressly vested the ownership of all minerals on

¹ This latter maxim merely expresses the principle in the first maxim “*quic quid plantatur solo solo cedit*”. See section 3(3) of Interpretation Act 1945, Cap.123 LFN 2010

² (1923), 33 CLR 1 at 23 As early as the sixteenth century, the common law held that all gold and silver, whether situated on public or private land belonged to the Crown.

³ *Huddersfield Banking Company v. Lister* (1895) 2ch 274

⁴ (1981) 68 S.C. 99 at p.11

⁵ This common principle is however subject to some exceptions. These include that a tenant has right to remove at the end of his tenure his trade fixture (e.g. counter, shelves, batcher), ornamental or domestic fixture (e.g. flower, air conditioner, ceiling fan); and agricultural fixtures (e.g. poultry cage/pen, yam barn). Among resources underneath the earth surface, gold and silver were said to belong to the state. See *State v. Coffee*, 556 P.2d 1185, 1193, 97 Idaho 905., *Reynard v. City of Caldwell*, 55 Idaho 342, 42 p.2d

⁶ See; Ollenu, *Customary Law in Ghana*, cited in Okany, M.C., *Nigerian Law of Property*, 2nd Ed. Enugu, Fourth Dimension Publishers, 2000, p. 75.

⁷ See also the Property and Conveyance Law, 1959, section 2, which define land to include land of any tenure, building, or part of buildings (whether the division is horizontal or vertical or made in any other way), and other corporal hereditaments, and easement, right, privilege or benefit in, over or derived from land.

⁸ Cited in Ogunfunwa, A. A. “*The Land Use Act 1978; A Negation of the Principle of Federalism?*” in Olugbenga, O.O., et.al., (Eds) *Cross-Cutting Issues in Nigerian Law*, Lagos, Showers IMC Press, 2007 p 253.

⁹ See *Mitchell v. Mosley* [1914] 1Ch.438 26.

¹⁰ emphasize mine

the federal government.

The constitutionality of the Land Use Act is not in doubt as its validity can be traced to section 4 of the Constitution which apparently empowered the National Assembly to make law on land. However, a combined reading of Section 1 of the Land Use Act together with Section 44(3)¹ of the 1999 Constitution and section 33 of the Interpretation Act will manifest a clear contradiction. While land is vested on State Governors by virtue of the Act, the mineral resources beneath land surface is vested on the federal government of Nigeria.

Commenting on this conflicting ownership system Angaye² stated: “the logic that one owns the land and another owns the oil extracted from beneath the land is Nigerian logic or illogic propounded by parochial logicians....” It is therefore submitted that this system runs contrary to the principle of “*quic quid plantatur solo solo cedit*” on the one hand and the principle of federalism on the other hand.³ It is a contradiction that under the 1999 Constitution of Nigeria, land falls under the exclusive legislative list even though it is vested on the state governor.

This glaring conflict and contradiction has led to incessant disputes between the federal government and the states governments of the south- south oil producing states over the ownership and control of natural resources located within their respective state territories, known as “resource control dispute”.⁴ The federating units of Nigeria have been calling for a method of resource control that is humane and equally based on the principle of federalism. There is therefore a need for legal reform so as to restructure the country to conform to a truly federal state. Such reform would engender stability and strengthen Nigerian federation.

2.2 Nigerian Federalism, Ownership of Land and Natural Resources; the Way Forward

Without doubt federalism holds the key to a stable and stronger Nigeria. True federalism has not been practice in Nigeria and this explains her onerous challenges till date. We have hereunder proffered some recommendation that will solve these problems associated with land and mineral ownership regime under the Nigerian federation. These recommendations are to be effected through constitutional restructuring.

2.2.1 Control of land: Land ownership shall be constitutionally vested in the various states governments and the communities. States shall have the legislative power to control and manage land within its territorial jurisdiction for the benefit of its communities. Let every community control every mineral resource under their land, lease it to the state government and vice versa depending on the applicable tradition in the area. Issues of land tenure, land use and control should all be left to the States. State/Community control over land will require that the 1999 Constitution as well as the Land Use Act be amended and this will reduce the tension between the Federal and the States governments over the issue of land.

2.2.2 Fiscal federalism/resource control: It is suggested that state ownership and control of natural resources be constitutionally adopted. Tax over these resources shall however be made by the States to the Federal Government. Such constitutional amendment will be in line with Fiscal federalism and at the same time put an end to the constant agitation of the oil communities. This will further conform to the common law principle in the maxim; *quid quid plantatur, solo solo cedit*.

2.2.3 Reduction of the number of the federating units or states/regionalism: Viability shall be the determinant factor in state creation. Therefore the existence or creation of a state shall be determined by a minimum amount or percentage of revenue each can produce. Component states that cannot produce enough should be subsumed into a more viable one. Alternatively we can go back to regionalism since each region may be capable of catering for itself⁵.

2.2.4 Revenue allocation: As a result of the foregoing proposals especially on land use and natural resource control and fiscal federalism it is clear that there will be misappropriate revenue accruable to various sections of the society. However, this may not lead to uneven development; it merely means that each state shall develop at its respective pace. However, to ease and assist the less economically viable states, there shall be provided a common pool into which shall be paid certain agreed percentage royalty from the proceed of natural resource from the mineral or natural resources producing units of the federation. This pool shall be managed by the

¹ No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right or interest in any such property shall be acquired compulsorily in any part of Nigeria except in a manner and for a purpose prescribed by law.

² Angaye, O. ‘Who Owns Papa’s Land and Oil in Nigeria?’ URL www.dadoo.com (visited 12/03/2010) A former Governor of Delta State of Nigeria. at the inaugural meeting of the Governors and National Assembly members from the South-South Region at Asaba on Friday 31st March 2000 in his keynote address.

³ Ebeku, K. Oil and the Niger Delta People, the Injustice of the Land Use Act” www.dadoo.com/article/ebeku.html (visited 13/03/2010)

⁴ According to Sagay “resource control” involves *inter alia*; the unreserved demand of the south-south people to the exclusive ownership and control of natural resources, within their land. Sagay, I.E. “The Lakayana’ Syndrome and the Supreme Court”, the Guardian, (2002) Monday and Tuesday, July 23rd and 24th.

⁵ Nwabueze, B.O., How President Obasanjo Subverted Nigeria’s Federal System *op. cit.* p.411

Federal Government and shall be distributed to the states or units according to their various needs and or including other conditions as may be determined by the National Assembly.

2.2.6 Conclusion

Flowing from the preamble to the 1999 Constitution as well as provisions of sections 2, 4, 5, and 6 of the Constitution on the division of powers between the Federal government and the component States of the Federation, it is not debatable whether Nigeria is a federation or not, what is in doubt however, is her practice and adherence to federal ideals and principles. The Nigerian supreme Court In *A.G Lagos State v. A.G. Federation*¹ emphasized that in a federal system the division of powers under Section 4 of the Constitution² is to be jealously guarded as the National Assembly has no legislative power to interfere or stray into the law making powers of the House of Assembly of a State and on the other hand the State Houses of Assembly cannot likewise stray into matters within the law making authority and jurisdiction of the National Assembly. The principle of autonomy and non interference is therefore, embedded in the Nigerian Constitution. A federal state must meet up with the basic and underlying principles of federalism of which it *ipso facto* professes.

we are of the view that in the spirit of federalism and upon the principle of '*quic quid plantatur solo solo cedit*' Section 44(3) of the 1999 Constitution should be amended as it runs afoul of federal principles as well as conflicts with the common law position on land. The amended should aim at bequeathing the ownership, control and management of land and natural resources located in the territory of each state on that state and its communities. This will conform to federalism and at same time conform to the common law principle of '*quic quid plantatur solo solo cedit*'. It is certainly illogical to state that one owns Land and another owns the thing buried underneath same. These recommendations if adopted will surely strengthened our federal practices and engender political stability and coherence in the polity.

REFERENCES

- Adisa v. Oyiwola* (2000)10 NWLR (Pt 674) SC 116.
Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act, 2004.
Amah, E.I. "A Critical Analysis of the Federal and States Taxing Power in Nigeria" *JCCL* (2011) Vol. 1. pp, 65-66
Amuwo, K. *et. al.(eds)* Federalism and Political Restructuring in Nigeria, Ibadan: Spectrum Books Ltd, 1998, p.13.
Appadorai, A. The Substance of Politics, New York: Oxford University Press, 1968,
Attorney General Abia State v. Attorney General Federation. (No. 1)(2002)11 NWLR (Pt. 725) 689 SC
Attorney General Ondo State v. Attorney General Federation (2002) 9 NWLR (Pt 772)222.
Common Wealth v. New South Wales (1923), 33 CLR 1 at 23
Constitution of Federal Republic of Nigeria 1999
Ebeku, K. *Oil and the Niger Delta People, the Injustice of the Land Use Act*³
www.dadoo.com/article/ebeku.html(visited 13/03/2010
Elezar, D.J. *Federal System of the World*⁴, A Hand Book of Federal, Confederal and Autonomy Arrangements; Harlow, Essex: Longman, 1994.p.3 *JCPA online* <http://www.jcpa.org/dje/books/fedsysworld-intro.htm>.(accessed 12/3/17)
ELF (Nig) Ltd v. Sillo (1994) 6 NWLR (Pt 350) 258 SC *Federal Attorney General v. Attorney General of Abia State* (No. 1) (2002) 11 NWLR (Pt.725) 689 SC.
Fekumo, J.F., '*Ownership and Control of Mineral and Mining Activities*' paper delivered at the National Workshop for the review of the Minerals Act, 1946 and Allied Legislation held on May 3-6 1993.
Huddersfield Banking Company v. Lister (1895) 2ch 274
Ihebon G. O. C. "Fiscal Federalism in Nigeria: A Comparative Analysis" *IMSUCCL* (2011) vol.1. No.1 p.46
Interpretation Act 1945, Cap.123 LFN 2010
Land Use Act 1978, Cap. L5 Laws of the Federation of Nigeria, 2010
Minerals and Mining Act, 1999 Cap. M12 Laws of the Federation of Nigeria 2010 *Mitchell v. Mosley* [1914] 1Ch.438 26.
Nkwocha v. Governor Anambra State and ors (1984) 6 SC 326
N.N.P.C. v. Sele (2004) 5 NWLR (Pt. 866)379 CA
Nwabueze, B.O., *How President Obasanjo Subverted Nigeria's Federal System*, Ibadan: Gold Press Ltd, 2007
Nwabueze, B.O. *Constitutionalism in the Emergent State* UK: C. Hurst & Co. 1973.p.12
Ofoeze, G. A. *Federalism, a Comparative Perspective*, Enugu, Chenglo Pub.,2000, 27
Olugbenga, O.O., *et.al., (eds)* Cross-Cutting Issues in Nigerian Law, Lagos, Showers IMC Press, 2007 p 253.
Omaka, C.A. "*The Concept of Environmental Impact Assessment in Nigeria*" Ebonyi State University Law

¹ (2003) 12 NWLR {Pt 833}p.1

² 1999 CFRN.

-
- Journal (2007) Vol.2 No.1, p.65
Okany, M.C. Nigerian *Law of Property*, 2nd Ed. Enugu, Fourth Dimension Publishers, 2000
Petroleum Act 1969, Cap.10 Laws of the Federation of Nigeria 2010.
Reynard v. City of Caldwell, 55 Idaho 342, 42 p. 2d
Sagay, I. E. “*Nigeria: the Unfinished Project*” being lecture delivered in honor of late Justice Idigbe at University of Benin City, on Wednesday April 30, 2008
State v. Coffee, 556 P. 2d 1185, 1193, 97 Idaho 905
Sagay, I.E. “*The Lakayana’ Syndrome and the Supreme Court*”, the Guardian, (2002) Monday and Tuesday, July 23rd and 24th.
Where, K.C. *Federal Government*, New York: Oxford University Press, 1963