**TITLE PAGE**

# LEGAL REGIME GOVERNING THE OWNERSHIP AND EXPLOITATION OF NATURAL RESOURCES IN NIGERIA

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**GOU/U21/LAW/381**

**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, ENUGU STATE OF NIGERIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF BACHELOR OF LAW (L.L.B) DEGREE OF GODFREY OKOYE UNIVERSITY**

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## DECLARATION

I hereby declare that the project work titled “Legal Regime Governing the Ownership and Exploitation of Natural Resources in Nigeria” submitted to the Faculty of Law Godfrey Okoye University is a record of an original work done by me under the guidance of Mrs. Nnenna P. Nwajiaku and this project work is submitted in partial fulfillment of the requirement for the award of Bachelors of Law (L.L.B) Degree. The result of this thesis has not been submitted to any other University or Institution for other degree or diploma.

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Uchechi Nneoma Otta Date

## APPROVAL

We the undersigned, certify that this project was completed by Uchechi Nneoma Otta with Registration number GOU/U21/LAW/381, in partial fulfillment of the requirement for the award of Bachelor of Law Degree (L.L.B)

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# DEDICATION

This project, by the guidance and grace of the God Almighty, is dedicated to the Federal Republic of Nigeria, especially all Indigenous Tribes, Persons and Communities who suffer the effects of the current system.

## ACKNOWLEDGMENT.

I would love to express my sincere gratitude and reverence to God Almighty who inspired me, strengthened me, protected me and guided my thoughts when I needed it the most. I also wholeheartedly express utmost gratitude to my Supervisor, Mrs. Nnenna P. Nwajiaku. Thank you for your patience, hard work, dedication and earnest efforts in making this research project greater.

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I also deeply appreciate my older friends, Ononye Ngozi and Mgbakogu Jane who are doing a good job in setting the pace for me, being good examples, offering solid advice and putting me back on track.

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## LIST OF ABBREVIATIONS

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|---|---|
| ACHPR | African Charter on Human and Peoples' Rights |
| BIA | Bureau of Indian Affairs |
| CFRN | Constitution of the Federal Republic of Nigeria (1999) |
| EIA | Environmental Impact Assessment |
| FEPA | Federal Environmental Protection Agency (Act 1988) |
| FPIC | Free, Prior and Informed Consent |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organization |
| MOSOP | Movement for the Survival of the Ogoni People |
| NESREA | National Environmental Standards and Regulations Enforcement Agency |
| NOSDRA | National Oil Spill Detection and Response Agency |
| OAU | Organization of African Unity |
| PIA | Petroleum Industry Act |
| UDHR | Universal Declaration of Human Rights |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |

## ABSTRACT

Natural resources are an essential element of economic development and nation-building, and thus, their ownership and exploitation have become a critical issue of law, politics and socio-economics. In Nigeria, the laws, including the Constitution of the Federal Republic of Nigeria, vests ownership and regulation of its exploitation on the Federal Government of Nigeria, leading to several debates about resource control and environmental justice. This long essay analyzes the existing law on the ownership and exploitation of natural resources in Nigeria and accesses a socio-legal implications, suggesting better ways for management of Nigeria's natural resources. The study adopted the doctrinal research methodology, relying on both primary and secondary sources of law. It revealed that the current system of federal ownership is an extension of the colonial policy of resource control which has been responsible for environmental degradation, economic marginalization, resource disputes and exclusion of host communities from participation in the process of resource ownership and management within their territories. The study also found that International Law supports the right to self-determination of indigenous peoples, energy justice and indigenous peoples' rights, which encourages community participation in resource management. Consequently, the research advocates for a transition from government ownership of natural resources in Nigeria, to a regulated community-based ownership and management of natural resources. It calls for constitutional and legal reforms that would recognize the proprietary rights of host communities, effective implementation of free, prior and informed consent and other regulatory measures to achieve sustainable resource management and environmental protection.

# CHAPTER ONE

# INTRODUCTION

## 1.1 Background to the Study

Since the first commercial discovery of crude oil in Nigeria in 1956, the petroleum industry in Nigeria has been subject of great interest and exploits both nationally and internationally. Over the years, the industry has contributed greatly to the economy of the country, and is responsible for almost 90% of export value[1], making Nigeria Africa's biggest oil producer and the largest crude oil exporter in the Continent.[2] Likewise, the use and trade in other natural resources like coal, natural gas, zinc, tin, gold and so on contribute to the nation's wealth hence making exploitation of resources fundamental for the development and maintenance of the Nation. The ownership and exploitation of natural resources in Nigeria has of consequence been an important subject of discourse for several years given its central role in the nation's economy and general standard of living of its people. The discussion of the right to the ownership and control of these resources is also of grave importance as whoever owns and controls resources has the power, not only to significantly influence the economy, but also to determine the wealth distribution in the country.

The position of the law on the ownership and control of natural resources in Nigeria has been undeniable and clear cut; evident in the provisions of the Constitution, Statutes, Legislative pronouncements and even case laws. Notably, the 1999 Constitution[3] vests the ownership and control of all the natural resources in Nigeria on the Federal Government; while similar emphasis

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[1] Statista, 'Oil Industry in Nigeria: Statistics and fact'<https://www.statista.com/topics/6914/oil-industry-in-nigeria/>accessed 4 November 2025.
[2]'Nigeria: Leading Crude Oil Producer in Africa.'*Nigerian Upstream Petroleum Regulatory Commission*<https://www.nuprc.gov.ng/nigeria-leading-crude-oil-producer-in-africa/>accessed 4 November 2025.
[3]Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 44(3).

is made in the Petroleum Industry Act 2021[4] and the Minerals and Mining Act 2007.[5] These laws have been interpreted in a plethora of cases, one of the most notable being the case of *Attorney-General of the Federation* v. *Attorney-General of Abia State& 35 others*[6]which recognised and gave judicial backing to the constitutional provision vesting the right of ownership and control of natural resources on the Federal Government. In spite of these clear provisions, several activists, authors and representatives of host communities where the resources are located have been agitating for a shift from government ownership and control in exploitation of the resources to indigenous ownership and control for several economic, social and environmental reasons.

This long essay evaluates the current legal vesting of ownership and exploitation of natural resources in Nigeria on the government, presents the issues created by this approach and proposes a more satisfactory mode of ownership and control of natural resources in Nigeria that seeks to balance the interests of all stakeholders, drawing support from theories, international treaties and human rights. The research will draw lessons from the United States of America because it has thrived on the basis of its distinct concept of private property rights on minerals, thereby providing an example for Nigeria, whose approach has been through the state. The comparison between these two federating states will prove beneficial in showing how changing resource control can promote development.

**1.2 Statement of the Problem**

The legal ownership and right to exploration of natural resources in Nigeria has been resolved by the CFRN 1999 and various other statutes in favour of the federal government but the approach has been detrimental to the communities wherein these resources are found and to the nation at

[4] Petroleum Industry Act 2021, Section 1.
[5] Minerals and Mining Act 2007, Section 1.
[6] (SC 28/2001) [2002] NGSC 10.

large. Lack of resource accountability, mismanagement, economic inefficiency due to overreliance on oil, environmental degradation, poor distribution of wealth and many more are the effects of government's ownership of natural resources in Nigeria today thus, resulting in scrutiny and controversies at national and international levels regarding where true ownership and right to the exploration of the natural resources should reside. An excellent case study is the concern voiced by the Niger Delta people who claim that natural resources found in lands which situate in the Ijaw territory belong to the Ijaw people; as it is required for their continuous survival. They claim that the due to the denial of this right which they ought to have, they suffer various consequences like environmental damage (flooding, gas flaring, land subsidence) leading to residential issues, utter neglect after exploitation, lack of concern for ecological rehabilitation and many more[7];one may begin to deliberate on whether the resource wealth is a curse or blessing. The loss of livelihoods (as a result of pollution affecting agricultural land, fishers and forest trees), economic neglect despite their land producing a lot of wealth, political marginalisation of the people leading to conflict, and mismanagement of these resources and revenue generated from them to benefit outsiders instead of issues faced by the host community has led to the vehement protests by the people of Niger Delta for resource control and self-determination.

The justification provided by the government for its exclusive right to own and control natural resources is that, it holds the resources in trust for the benefit of the people; whereas in reality, the people suffer from this exploitation but have not benefitted from this natural wealth. The host communities whose resources are exploited, harnessed and used do not receive full social benefits and funds derived from the resources rather, they suffer fully for the social and

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[7] Ijaw Youths, 'The Kaima Declaration' <http://waado.org/nigerdelta/RightsDeclaration/KaimaDeclaration.html>accessed13 November 2025.

economic problems resulting from its exploitation; therefore, the reason put up by government for this current approach to ownership of natural resources no longer holds true. It is trite that when a reason for a particular law ceases, so does the law itself. This is rooted in the latin maxim *Cessanterationelegis, cessatipsa lex.*

The right to self-determination and resource control has received international recognition and is contained in treaties which Nigeria has ratified. It begs the question: Why then are there no local/national recognition of these which are acknowledged by Nigeria for the citizens and highlighted by the international bodies? Are the inherent rights of the citizens of Nigeria with regards to their natural wealth ignored? Should the disregarded rights of the citizens, current issues as a result of government ownership of natural resources and its terrible results continue as it is, it poses an existential threat to our economy, citizens and nation,

**1.3 Research Questions**

This research poses the following questions:

1. What is the approach to ownership and exploitation of natural resources in Nigeria?

2. What are the legal framework regulating the ownership and exploitation of natural resources in Nigeria?

3. What are the socio-legal problems resulting from the government ownership of natural resources in Nigeria?

4. How can Nigeria transition to a private/ indigenous community based ownership of resources?

5. What are the challenges that could hinder the adoption of a community-based ownership and their possible solutions?

**1.4 Aim and Objectives of the Study**

The aim of this research is to critically analyse the current government ownership of natural resources in Nigeria, highlight its negative effects on the host communities and suggest a better approach. The specific objectives of the research are to:

1. Analyse the approach to ownership and exploitation of natural resources in Nigeria.

2. Examine the legal framework regulating the ownership and exploitation of natural resources in Nigeria.

3. Identify the socio-legal problems associated with the current government ownership and control of natural resources exploitation in Nigeria.

4.Propose a pathway for Nigeria's transition to a private/ indigenous community based ownership of resources.

5. Investigate the difficulties that could arise from adopting a community-based ownership and propose possible solutions.

**1.5 Scope and Limitations of the Study**

This study focuses on the legal right to own and exploit natural resources in Nigeria and presents an argument for the citizens of Nigeria to have the right to exploit and own natural resources found in their various communities. Noting that natural resources is a broad term which covers both renewable resources (sunlight, wind, water) and non-renewable resources (coal, oil, natural gas, as well as various minerals), for the purpose of this study, the discussion will be limited to ownership and exploitation of non-renewable natural resources. This is because no person can claim ownership of the sun, air or the water for they are *res communis*, which means that they belong to and are made for the use of everyone. The research being focused on ownership and the right to exploit, the legal framework covered is also confined to specific provisions on these issues including matters arising such as environmental, land acquisition and human rights concerns and does not extend to general legal provisions regulating the petroleum and other mineral resources sectors. The focus is on Nigeria's legal framework, nevertheless the study extends briefly to the legal framework for mineral ownership in the United States of America so as to draw lessons from another jurisdiction.

Throughout the course of this investigation, most scholarly research focuses mainly on petroleum, ignoring all other natural resources like coal, tin etc., which are also often found in communities. There is also a glaring lack of reliable and accessible geological data on the location of certain resources in the country. Notwithstanding these challenges, this study will endeavor to account for other natural resources and the location of host communities.

**1.6 Significance of the Study**

A research on the legal regime governing the ownership and exploitation of natural resources in Nigeria is of grave importance as it determines the right to own, explore and profit from these resources of which in turn results in several consequences. This long essay is particularly significant because as earlier established, these natural resources are the moving force of our economy and it is evident that whoever possesses the right to exploit and own these resources, control the economy of the country. This is the case because whoever possess the right to own controls how the resources are realized, explored, who benefits from it and who can extract it. It is damaging that an integral part of the economy of a nation which is democratic, is controlled solely by the government, with no consideration as to the citizens. This study hopes to relay which type of ownership will be devoid of ample negative effects and would help in the thriving of the nation's economy and its citizen's livelihood.

### 1.7 Research Methodology

This study adopted the doctrinal research methodology and relies on both primary and secondary sources of data. The primary sources include, but are not limited to: International Conventions, Statutes, Judicial Decisions (Case Laws), and Constitutional Provisions. The secondary sources include, but are not limited to: Articles, Journals, Customs, and relevant Textbooks.

### 1.8 Literature Review

There is plethora of Statutes, Laws or Judicial decisions vesting the ownership and control of natural resources on the government of Nigeria, in fact, in many Nations all over the world, the right to ownership and exploitation of natural resources is vested in the government rather than the people on whose land the resources are found. This position of the law has been so accepted over the years that academics rarely challenge it, rather they focus on reiterating the legal provisions and history of these laws. While few researches explore some of the various theories or principles in support of adopting a different community-based approach, they hardly relate these theories to the Nigerian legal system so as to beseech the government to revisit these laws. For instance, researchers like Aluko &Oyebode[8] have focused on explaining the fact that natural resources in Nigeria are owned and controlled by the federal government. Akpan, dared to visit the possibility that there is certainty for the ownership and control of crude oil and solid minerals in Nigeria as it has been formally legalized; whilst the interrogation around ownership and control over petroleum and solid mineral resources in Nigeria rightfully belonging to the

[8]Aluko &Oyebode ALN, 'Between Mineral Rights and Land Tenure: Navigating Land Acquisition in Nigeria's Oil and Gas Sector' <https://www.aluko-oyebode.com/insights/land-acquisition-in-oil-and-gas-operations-nigeria/>accessed24 November 2025.

indigenous people, remain a rumor.[9] Some other researches while indirectly acknowledging the federal government ownership are nonetheless more concerned with other issues; for instance, Osawe and Uwa recognized that regulations governing the extraction, use and ownership of natural resources are paramount but more importantly, noted broader global relations with powerful emerging companies like China essentially shifting the authorities of power with regards to Africa's (particularly Nigeria) natural resources.[10] While their assertion may be arguably correct, they did not expressly delve into the issue of ownership of natural resources in Nigeria. Also, while Nwefuru and Itumo highlighted an important aspect of the use of natural resources in Nigeria-the over dependence on crude oil(a natural resource) causing the Nation to run a highly vulnerable mono-economy, the authors did suggest that Nigeria should improve the regime which governs their natural resources by allowing capable stakeholders access to exploration, exploitation and use of natural resources found in their territories.[11] This position is not far-fetched from that of this study; the slight difference resides in the fact that the author were silent on the ownership of these resources, they care mostly about the right to exploitation, exploration and use. Nevertheless, this study will provide a more realistic way of achieving this goal and will delve into ownership of these resources by host communities which will be regulated by the government.

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[9] Macaulay Akpan, 'Ownership and Control of Natural Resources in Nigeria: Rumor Vs. Reality' [2020] (2) (1) *American Journal of Law*<https://www.researchgate.net/publication/358937581_OWNERSHIP_AND_CONTROL_OF_NATURAL_RESOURCES_IN_NIGERIA_RUMOR_VS_REALITY?enrichId=rgreq-884b3faaaf2f5af8d944af20251056ae-XXX&enrichSource=Y292ZXJQYWdlOzM1ODkzNzU4MTtBUzoxMTQzMTI4MTEwOTU2OTMzN0AxNjcyMTEzNjA4NDkw&el=1_x_3&_esc=publicationCoverPdf>accessed24 November 2025.
[10] Anthony IkhideOsawe, OsimenGoddyUwa, 'Natural Resource Governance and Conflict in Nigeria' [2023] (8) (1) *International Journal of Natural Resource Ecology and Management*<doi:10.11648/j.ijnrem.20230801.11>accessed15 November 2025.
[11] Nwobashi Humphrey Nwefuru, Itumo Anthony, 'Natural Governance and Resource Control Controversy: Interrogating the Implications of Mono-Economy',[2018] (9) (4) II. *IOSR Journal of Economics and Finance (IOSR-JEF)*<https://europub.co.uk/articles/-A-414886>accessed24 November 2025.

Beyond an exposition of the federal government ownership and control over exploitation of natural resources in Nigeria, some other authors have stretched their discussions towards advocating for a shared ownership and control between the federal government and the state government where the resource is located. They predicated their argument on the idea of true federalism and the principle of derivation that the state governments should also have the right to the revenue generated from resources therein to enable these states repair any damage that may have been incurred and provide for their residents. Ayodele recognises provisions in international law which significantly impacted on the ownership of resources in Nigeria as they vest national governments with the right to ownership of natural resources found within their territories/boundaries, free from foreign exploitation. He, however, advocates for mixed ownership of these natural resources between the state and federal government as is attainable in a true federalism. Emem Udoh also based his research on the practice of federalism, yet, he further argued that in the application of the principle of derivation, not just the states should be involved but the communities where these natural resources are located. He posits that host communities should be entitled to shares of the federally collected revenues from natural resources and should be entitled to a considerable measure of control and ownership over their revenue resources; as it is an important attribute of a federal system of government which Nigeria practices.[12]

While it is worthy of commendation that some authors advocate that the right to own and exploit natural resources should be shared between the federal and state government, and that the principle of derivation be applied to the communities as well, the body of research generally does

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[12] Emem Udoh, 'Control and Ownership of Natural Resources in Nigeria and Resolution of the Niger Delta Crisis' <https://www.linkedin.com/pulse/control-ownership-natural-resources-nigeria-resolution-emem-udoh>accessed4 November 2025.

not address the individuals within the local communities where the natural resources are derived, and their rights to benefit directly from the natural wealth, self-determination and resource control. Only few authors like Ibiam and Umobong contended that although the international law confers on nations the right over natural resources, it is subject to the rights of the indigenous people whose lands these resources are produced. They stated that the right to self-determination, right to development, and right of indigenous people to freely dispose of their natural resources are available and should be employed by these indigenous communities wherein these resources are found and suggest that the rights to ownership and exploitation granted to the federal government is no longer feasible in today's world.[13]

This study recognises the scarcity of research proposing the view that communities should own and be in control of their natural resources and seeks to add to the body of literature in support of this view. It delves into the ownership and resource management by the host-communities/ indigenous people with regards their rights to sustainable development and self-determination. The research anticipates that the government will present certain challenges as limiting the possibility of adopting community-based ownership and control of the resources,for this reason it also incorporates into the study, possible solutions to those challenges such as supervision and regulation from the government whether state or federal.

[13]Amah Emmanuel Ibiam, Moses Charles Umobong, 'View of Examining the Claims of Natural Resources Rights by the Niger Delta peoples of Nigeria'[2021] (17) (2) *Acta Universitatis DanubiusJuridica*.<https://dj.univ-danubius.ro/index.php/AUDJ/article/view/1329/1446>accessed4 November 2025.

# CHAPTER TWO

# CONCEPTUAL AND THEORETICAL FRAMEWORK

## 2.1 Conceptual Framework

### 2.1.1 *Ownership*

The rights bestowed on a person through the word "Ownership" may vary depending on the context in which it is used, who grants this ownership, and to whom this ownership is given. Ownership, in its ordinary meaning, is the "act, state, or right of possessing something.[14] Ownership has been defined as "the collection of rights allowing one to use and enjoy property, including the right to convey it to others"[15]. It is also defined as "the bundle of rights allowing one to use, manage, and enjoy the property, including the right to convey it to others."[16] Ownership "connotes the right to use, enjoy, and deal with the thing in any manner the owner wishes, including the right to sell, hire, dispose of the thing, and exclude others from using or interfering with the property."[17] According to Tobi J.C.A, "The owner of the property is not subject to the right of another person… The owner of a property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial, or even for purpose which is detrimental to his personal or proprietary interest. In so far as the property is his and inheres in him, nobody can say anything. He is the alpha and omega of the property. The property begins and ends with him."

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[14]Oxford English Dictionary, Revised 2005 (Oxford University Press).
[15] O.K Edu, 'Ownership of Oil and Gas in Nigeria: Matters Arising' [2007] (7) (1) *The Constitution*. <https://journals.co.za/doi/epdf/10.10520/AJA15955753_175>accessed25 December 2025.
[16] B.A Garner, The Black's Law Dictionary (10th ed. St. Paul Publishing, 2014) 146. 25.
[17]Oladiran A. Ayodele, 'International Law and the Ownership Structure of Petroleum Resources in Nigeria' [2022] (2) *Redeemer's University Nigeria, Journal of Jurisprudence & International Law (RUNJJIL)* 2022

Nevertheless, the concept of ownership with regards to natural resources poses complexity. Ownership of natural resources may involve legal rights to control, use, and benefit from resources such as minerals, water, and land. However, this ownership varies between private, state-controlled, and shared systems, often governed by complex laws that limit its scope in terms of time or material. In the ownership of natural resources, the ability to determine how a resource is used is distinct from possession of the legal title.

### 2.1.2 *Exploitation*

Exploitation is the act of making use of and benefitting from resources. It is taking advantage of and maximising the use of something. In this particular study, exploitation will be limited to natural resource exploitation. Resource exploitation refers to patterns of extraction and use influenced by economic, environmental, cultural, and political processes. These activities often result in depletion and threaten both industrial competitiveness and nature's non-industrial values.[18] Conceptually, it extends beyond extraction to include issues of ownership, control, sustainability, and equity. Typically, exploitation gives rise to dangerous scenarios as a consequence of its application, which in turn leads to the incorporation of remedies to this act of exploitation. In essence, exploitation is the balance between the productive use of resources and the potential abuse that will subsequently affect social and ecological well-being. It is pertinent to note that the right of resource exploitation has changed hands as it shifted from communal use (pre-colonial) to colonial state control and to post-colonial federal ownership.[19]

### 2.1.3 *Natural Resources*

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[18] 'Resource Exploitation' <https://www.sciencedirect.com/topics/social-sciences/resource-exploitation>accessed5 January 2026.

[19] Ugwu, Dave Ude, 'A Critical History of Resource Control in Nigeria', [2019] (9) (1) *International Journal of Development Strategies in Humanities, Management and Social Sciences*<https://internationalpolicybrief.org/wp-content/uploads/2023/10/ARTICLE3-94.pdf>accessed21 April 2026.

Natural resources are materials or substances provided freely by nature. In a bid to define natural resources, it has been said to be “any biological, mineral, or aesthetic asset afforded by nature without human intervention that can be used for some form of benefit, whether material (economic) or immaterial.”[20] Natural resources can either be renewable resources or non-renewable resources. Natural renewable resources are such which replenish themselves naturally over reasonable amount of time, usually a short period, and are virtually inexhaustible. Some examples include: Solar energy, plants, water, animals, etc. Natural non-renewable resources are such which exist and are found in fixed amounts; they take a lot of time to form and cannot be replaced. Some examples include: Minerals and metals (copper, gold, iron ore, aluminium), fossil fuels (petroleum, natural gas, coal). For the purpose of this study, the term “Natural Resources” will be limited to non-renewable resources (coal, oil, natural gas, as well as various minerals). This is because no person can claim ownership of the sun, air or the water for they belong to and are made for the use of everyone.

### 2.1.4 *Host Communities*.

Host Communities is a broad term that encompasses so many meanings. First, “Host communities are local populations that receive and accommodate migrants from other regions or countries.”[21] In similar context, it is defined to be “the local population or group of individuals residing in a particular area that receives newcomers, such as migrants, refugees, or other groups seeking to integrate into their environment.”[22]Alternatively, “Host communities are geographical areas and populations that reside in close proximity to natural resource extraction sites, such as

[20]<https://www.britannica.com/science/natural-resource> Assessed January 5, 2026
[21]Fiveable; Host Communities – AP Human Geography. (2024) <https://fiveable.me/key-terms/ap-hug/host-communities>accessed5 January 2026.
[22]Oxford Review, ‘Host Community Definition and Explanation’<https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/host-community-definition-and-explanation/#>accessed5 January 2026.

oil and gas fields."[23] These communities are directly impacted by the acts of extraction and exploitation companies, which can remarkably alter their social, economic, and environmental landscapes. Host communities are often characterized by a strong dependency on local natural resources for their livelihoods, including agriculture, fishing, and even some minerals. Such communities often feature migrant workers attracted by employment opportunities in the oil and gas sector. These communities often have limited access to advanced healthcare, education, and infrastructure and often face challenges such as poverty, underdevelopment, and political marginalisation, which can aggravate the effects of exploitation activities.

**2.2 Historical Background**

Before colonisation, natural resources in Nigeria were owned and managed communally or by traditional rulers. Rights to use resources such as farmlands, forests, rivers, and minerals were granted to citizens and regulated by customary law, and local authority structures such as chiefs, kings, and councils of elders.[24] More prominent was the exploitation of minerals like iron ore, copper, tin and bronze, used diversely for weapons (spears, machetes), farming equipment (hoes, cutlass) and other day-to-day useful materials like scissors.[25]

The colonial period in Nigeria began with the slave trade in the 15th century and by the 18th century, the British became the leaders of the slave trade business. Then came the abolition of the slave trade and this led to the British truly intervening in the region. They placed their focus

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[23] Onoriode Reginald Aziza, Ngozi Samuel Uzougbo and Munachi Chikodili Ugwu, 'Legal frameworks and the development of host communities in oil and gas regions: Balancing economic benefits and social equity' [2023] (19) (03) *World Journal of Advanced Research and Reviews(WJARR)*<https://wjarr.com/sites/default/files/WJARR-2023 1425.pdf#:~:text=Host%20communities%20are%20geographical%20areas%20and%20populations%20that,oil%20and%20gas%20fields%20%28Nuhu%20et%20al.%2C%202020%29.>Accessed5 January 2026.
[24]Marvellous Nathaniel, 'The Economic Activities of Pre-Colonial Nigerian Societies' <https://mnathall.com/the-economic-activities-of-pre-colonial-nigerian-societies/>accessed15 January 2026.
[25]Frances Jumoke Oloidi, 'Traditional Economy In Nigeria Before Colonial Administration' [2021] (18) (6)*Webology*<https://webology.org/data-cms/articles/20220331122902pmwebology%2018%20(6)%20-%20304%20pdf.pdf>Accessed15 January 2026.

on obtaining goods to increase their ability to trade. Their focus quickly rested on their discovery of oil and other minerals in the Niger Delta areas. After the successful colonisation of Nigeria (using the divide and conquer method), ownership of natural resources was primarily vested in the British colonial government. The British Minerals Ordinance, 1916 ensured that the British had absolute control over Nigeria's natural resources when it provided that "the entire property in, and control of all minerals and minerals oils in, under, or upon any lands in Nigeria, is and shall be vested in the crown."[26]

After Nigeria gained independence, the new state adopted and institutionalised this fragment of colonial experience. The first independent 1960 Constitution of Nigeria unabashedly retained the language of the Minerals Ordinance 1916, and posited that entire property in and control of all minerals, mineral oils and natural gas in Nigeria was vested in the Federation. This right of the federation has been continuously passed down to the present day, with a plethora of domestic laws and cases solidifying this mode of ownership of natural resources. It is surprising that even after independence, Nigeria has not followed countries like the United States of America and others where the practice is what one may safely refer to as shared ownership and control of petroleum and other natural resources. This has in turn led to the seemingly unending agitations, arguments and counter-arguments between the central government, littoral states, oil producing communities on who should own and control petroleum and other natural resources in Nigeria.[27]

## 2.3 Theoretical Framework.

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[26]Kaitlyn Alme, Colonial History of Nigeria: Slave Trade, Resource Extraction, and the Invention of a National Territory [2016] <https://scalar.usc.edu/works/niger-delta-black-gold-blues/12-colonial-subjugation-of-people-land-and-nature-slave-trade-resource-extraction-palm-oil-and-the-invention-of-a-national-territory-kaitlyn>accessed15 January 2026.

[27]Joseph N Agada and Emmanuel I. Umbu, 'A Critical Appraisal of The Legal Regime Regulating Ownership and Control of Petroleum and Other Natural Resources in Nigeria' [2021](6), *Crescent University Law Journal* <https://cuab.edu.ng/wp-content/uploads/2023/09/11.-Agada-Critical-Appraisal-of-The-Legal-Regime-Regulating-Ownership-Control-of-Petroleum-etc.pdf>accessed15 January 2026.

### 2.3.1 *Absolute Ownership Theory*

The absolute ownership theory states that oil and gas are capable of being owned in fee simple.The import of the theory is expressed in the Latin maxim *quic quid plantatur solo, solo cedit* (whatever is affixed to the soil belongs to the soil); and another Latin maxim -*cujusest solum, ejusestus que ad coelom ad inferos,* which means "whoever owns the soil owns also the sky above and the depths below". The theory is recognised in the State of Texas in the United States of America. The owner of a piece of land is regarded also as the owner of the oil and gas lying underneath the land. Land in this regard includes everything down to the crux and up to the sky.

Nevertheless, this fee simple or absolute ownership is capable of being defeated; it is argued that since oil and gas are fugacious substances and as a result wander from one place to another beneath the surface of the earth, the fee simple or absolute ownership is defeasible. One of the leading cases for the ownership in place theory, as it is applied in Texas is *Brown v. Humble Oil & Refining Co*.[28] where the Court stated:

> Owing to the peculiar characteristics of oil and gas, the foregoing rule of ownership of oil and gas in place should be considered in connection with the law of capture. This rule gives the right to produce all of the oil and gas that will flow out of the well of one's land and this is a property right. And it is limited only by the physical possibility of the adjoining landowner's diminishing the oil and gas under one's land by the exercise of the same right of capture.

### 2.3.2 *Natural Law Theory*

Natural law is a system of justice derived from nature, considered common to all humans, and existing independently of societal rules or positive law. It posits that objective moral principles

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[28] (1935) Tex. S. C. 83 S. W. (2d) 935 at 940.

are the basis for valid positive laws. It is a system of right or justice held to be common to all humans and derived from nature rather than from the rules of society.

Natural law has been integrated into modern legislation, as it grounds legal systems in universal principles of justice, morality, and human dignity; and its ideals which include: fairness, equity, and respect for fundamental rights. It postulates that certain rights, particularly property rights, are inherent and not dependent on legislation and recognises that property rights are extensions of human dignity, labour, and justice. The current position of ownership of property and inherently natural resources in Nigeria is that the state possesses complete ownership over them and the natural law theory challenges this monopoly, suggesting that communities and individuals closest to the resources have a moral claim to ownership and benefit. This strengthens arguments for resource control, host community rights.

### 2.3.3 *Free, Prior and Informed Consent*

Free, Prior and Informed Consent (FPIC) is a fundamental principle that is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which requires States to "consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them".[29] In particular reference to the exploitation and ownership of natural resources, this declaration asserts that, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources,

[29] Article 19, UN Declaration on the Rights of Indigenous Peoples (2007).

particularly in connection with the development, utilisation or exploitation of mineral, water or other resources".[30]

In view of this recognised declaration, the Federal Government of Nigeria is required to consult and seek, without coercion or intimidation (free), the consent of these indigenous host communities before (prior) the undertaking of any exploitation or development with regards to minerals or other resources found on their land. This right of the indigenous people connotes ownership and power to make decisions about resources found on their land.

### 2.3.4 *Principle of Energy Justice*

Energy justice is an innovative field, which encompasses principles of social justice, environmental sustainability, and equitable access to energy resources. A main objective of energy justice is to address the discrepancies and inequities within energy systems which often excessively affect marginalised host communities. This entails acknowledging that certain groups like indigenous communities, and low-income populations, often bear greater burdens such as higher exposure to pollution, energy poverty (lack of access to affordable energy), and displacement due to exploitation and production of energy resources; as a result, the emergence of procedural and distributional justice.

Procedural justice is that which demands fair, transparent, and inclusive decision-making processes in energy policy and project development.[31] This ensures that all stakeholders (the indigenous people, host communities) have a voice in the shaping of energy futures and are treated with equity, respect and dignity. It moves beyond simply informing communities about

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[30] Article 32, Paragraph 2, UN Declaration on the Rights of Indigenous Peoples (2007).
[31] <https://energy.sustainability-directory.com/question/what-are-the-key-principles-of-energy-justice-implementation/>Accessed 14 January 2026.

decisions to actively involving them in the decision-making process. It lays emphasis on the need to establish participatory planning and ownership procedures for local communities and indigenous people impacted by energy-related projects.

Distributional justice is concerned with fair and equitable allocation of benefits and burdens within throughout a society. It entails giving all members of society a "fair share" of the benefits and resources available within.[32] It examines whether communities are exposed to environmental risks which may result from various circumstances, including exploitation, and distributes rewards. Resources are prioritised for those who are more disadvantaged or have more need for them. Procedural justice focuses on the process, ensuring a fair and smooth running, while distributive focuses on the outcome and fair share; and for this exploitation system to be considered fair, both are required.

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[32] Michelle Maiese, Heidi Burgess, Types of Justice (2020) <https://www.beyondintractability.org/essay/types_of_justice#:~:text=This%20article%20points%20out%20that,throughout%20the%20entire%20justice%20process.>Accessed21 April 2026.

## CHAPTER THREE

## LEGAL FRAMEWORK FOR THE OWNERSHIP AND EXPLOITATION OF NATURAL RESOURCES IN NIGERIA

### 3.1 International Laws

#### 3.1.1 *African Charter on Human and Peoples' Rights*

The African Charter on Human and Peoples' Rights[33] originated from the desire of African states to establish a human rights instrument which covers the whole continent. The draft was produced by a committee of experts established by the Organization of African Unity (OAU) (now African Union)[34] and was unanimously approved at the OAU's 18th Assembly in June 1981.[35] The Charter came into force on October 1986 and was ratified by Nigeria and enforced in 1983.[36]

The African Charter on Human and Peoples' Rights emphasises fundamental rights which are essential for persons to exercise their rights and participate in the management of natural resources. The purpose of the Charter's provisions is to ensure that all individuals can enjoy their rights without discrimination and can participate in decision-making processes and use regarding their natural resources. To investigate these provisions accurately, reference will be made to articles and paragraphs contained in this Charter.

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[33] Also known as the Banjul Charter. This is because it is named after Banjul, The Gambia, where the draft was completed. The name reflects the charter's significance in the African context. The charter's preamble specifically mentions the need to eradicate all forms of colonialism from Africa, which is a unique aspect of its content and purpose. This preamble is a significant reason for the charter's name, as it reflects the charter's commitment to addressing the historical and ongoing issues of colonialism in Africa.

[34]The Human Rights Agency (ADH)<https://www.agencedh.org/en/the-african-charter-on-human-and-peoples-rights/>accessed 2 February 2026.

[35] Boydell & Brewer, The Origins of the African Charter on Human and Peoples' Rights, 2023. <https://boydellandbrewer.com/blog/african-studies/the-origins-of-the-african-charter-on-human-and-peoples-rights-2/>Accessed 2 February 2026.

[36] This act is backed by the AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (RATIFICATION AND ENFORCEMENT) ACT, 1983.

Article 14 of ACHPR provides that property rights are guaranteed, but they may ONLY be limited by law when required for public need or the general interest of the community.

Article 20 states, “All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination…”. Consequently, every person has the right to exist and self-determine, which includes choosing how to control and benefit from their natural resources for their own political, economic, and social development.

In this context, Article 21 of the Charter equally states that “all peoples shall freely dispose of their wealth and natural resources” with a provision that says that no person shall be deprived of this right. Paragraph 2 of the same article provides that if people are wrongfully deprived of their property, they have the right to get it back legally and receive fair compensation.

Ultimately, Article 24 of the Charter explicitly states that “all peoples shall have the right to a general satisfactory environment favourable to their development.” Accordingly, misuse of the environment by any individual or state that affects the livelihood and development of citizens is illicit and unlawful.

By virtue of the above provisions, it is evident that this Charter indeed promotes individual utilisation of natural resources. Though it may be contended that the charter does not condemn government ownership in trust for the individuals, it is notable that where the government ownership of these natural resources are damaging the interest and rights of the individuals, its use holds no positive ground. It is widely acknowledged that government ownership of natural resources in Nigeria has led to inattentive and negligent use that unavoidably leads to damage to the environs which consequently affect the inhabitants of the affected environment. This environmental damage deprives the people of their rights as provided for by the Charter, which calls into question the legitimacy of government control over natural resources.

### 3.1.2 ***International Covenant on Civil and Political Rights.***

The International Covenant on Civil and Political Rights was adopted on December, 1966by the United Nations General Assembly, and entered into force on March, 1976. It is part of the International Bill of Human Rights, alongside the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). This treaty was ratified by Nigeria on July, 1993.[37]

The ICCPR was clear on its advocacy for individual and community exploitation of natural resources, and this position was buttressed in Article 1 of the treaty. It states in paragraph 1 of the article that, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This paragraph contains the foundation and introduction of the people’s right to self-determination. In the same vein, Paragraph 2 of the article specifically incorporates the realm of natural resources, providing that, “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” This stipulation recognizes collective rights, which entails that communities (not just states) also have a claim to control and benefit from their natural resources; and the clause “in no case may a

[37]‘International Covenant on Civil and Political Rights Status Information’ *United Nations Human Rights Treaty Bodies (UN Treaty Body Database).*<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR>accessed 3 February 2026.

people be deprived of its means of subsistence" protects communities from resource exploitation that undermines their survival.

This provision has been interpreted in connection with the UN Declaration on the Rights of Indigenous Peoples (2007), which reinforces indigenous communities' rights to manage and benefit from their lands and resources.[38] It is noteworthy that The Human Rights Committee has emphasized that Article 1 is a cornerstone of the ICCPR, requiring states to respect peoples' sovereignty over natural wealth.[39]Article 1 of the ICCPR is the foundation that supports community and individual determination over natural resources. It enshrines the principle of self-determination and guarantees peoples the right to freely dispose of their natural wealth and resources, ensuring they cannot be deprived of their means of subsistence.

### 3.1.3 ***International Covenant on Economic, Social and Cultural Rights.***

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on December 1966 and came into force on January 1976.[40]The ICESCR is part of the International Bill of Human Rights and works alongside the International Covenant on Civil and Political Rights (ICCPR).This ICESCR was also ratified by Nigeria on July, 1993.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rightsboth begin with a common Article 1, which establishes the principle of self-determination. This provision is central to the recognition of peoples' rights over their political destiny and their natural resources. It recognizes that control over natural resources

[38]Nicolaas Schrijver, Self-determination of peoples and sovereignty over natural wealth and resources (1997).
[39]Ms. Anna Batalla, The Right of self-determination – ICCPR and the jurisprudence of the Human Rights Committee(2006).
[40]Mónica Pinto, International Covenant on Economic, Social and Cultural Rights, (1966) <https://legal.un.org/avl/ha/icescr/icescr.html>Accessed 3 February 2026.

is not just a matter of political independence but also a fundamental economic and social right. It ensures that communities can use their land, minerals, forests, and other resources to sustain themselves and to promote development. The phrase “no people may be deprived of their means of subsistence” significantly protects against exploitation or policies that strip communities of the resources they need to survive.

The ICESCR provision highlights the collective dimension of rights. Unlike individual rights such as the right to education or health, Article 1 speaks to the rights of “peoples” as a whole. This collective framing is crucial for indigenous groups, minority communities, and nations under colonial or foreign domination, as it affirms their entitlement to manage and benefit from their resources.At the same time, the article acknowledges that resource use must respect principles of international law and cooperation, preventing isolationism or misuse that could harm others.In essence, Article 1 of the ICESCR establishes that economic and social development is inseparable from resource ownership and control. Peoples must be free to determine how their wealth is used, and they must be protected from deprivation. This provision is a cornerstone for relevance of indigenous land rights, fair resource distribution, and resistance to exploitative practices by states or corporations.

### 3.1.4***United Nations Declaration on the Rights of Indigenous People. (UNDRIP)***

The United Nations Declaration on the Rights of Indigenous People(UNDRIP) and resource control by host communities is centered on the principle of Self-Determination. UNDRIP predominantly establishes a framework for Indigenoushost communitiesto assert control over natural resources found in their ancestral lands.[41] Article 26 of UNDRIP recognises the Indigenous peoples' inherent right to the lands, territories, and resources they have traditionally owned, occupied, or used. This includes the right to own, use, develop, and control resources found on these lands, with states required to provide legal recognition and protection.

Article 32 commissions that states should consult and cooperate with host communities to obtain their Free, Prior and Informed Consent (FPIC) before approving any projects affecting their lands or resources. This provision is requiring agreement, giving communities significant influence over local resource projects and should be effectively enforced. In cases where resources are taken, used, or damaged without consent, UNDRIP provides restitution for the communities by granting the right to redress, and if not possible, fair compensation.

The provisions of UNDRIP links resource control to internal self-determination[42] enabling communities, such as in the Niger Delta in Nigeria, to pursue economic development, and argue for the right to manage resources on their ancestral lands.

## 3.2 **National Laws**

### 3.2.1 ***The 1999 Constitution of the Federal Republic of Nigeria (as amended)***

The 1999 Constitution of Nigeria is the fundamental legal document governing the country; it is the grundnorm on which every act of law derives its validity. It serves as a reference point for all matters of the country; legal, political or otherwise.

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[41] Ibiam Amah Emmanuel, and Hemen Philip Faga, 'Indigenous Peoples' Rights over Natural Resources: An Analysis of Host Communities Rights in Nigeria' [2021] (3) (2) pp119-36. *Lampung Journal of International Law*. <https://doi.org/10.25041/lajil.v3i2.2402.>Accessed 6 February 2026.
[42] Article 3 of United Nations Declaration on the Rights of Indigenous People.

The position of the 1999 CFRN on the right to ownership and exploitation of natural resources has always been consistent, clear and definite. Section 44 (3) and item 39 Schedule II of the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests the control and management of the natural resources and hydrocarbon operations on the federal government for the common good and use of the people.

The exclusivity of this provision dates back all the way to prior constitutions (The 1963 and 1979 Constitutions) and it represent a reflection of British colonial statutes in Nigeria which vested ownership and control of natural resources on the Crown, while granting oil exploration and mining rights and prospecting licences to corporate entities. The 1999 constitution is silent on the indigenous people and host communities in whose lands these natural resources are found, and this undue and continuous disregard for the people is one of the grounds for this study.

3.2.2 ***Petroleum Industry Act 2021***

The Petroleum Industry Act (PIA) is the principal legislation regulating the Nigerian oil and gas industry. The PIA's position on the ownership of oil and gas mirrors that of the 1999 CFRN,it states in Section 1 that "The property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the government of the Federation of Nigeria." This expressly vests the right over oil and gas found in the country on the Federal Government.

It is pertinent to note that the PIA is not silent about the indigenous peoples and communities; it did make an attempt to recognise the indigenous people through its provision for Host Community Development which is provided for under Chapter 3 of the Act, despite this, the attempt is constrained by conditions favoring and prioritising corporate control. This is evident in the provisions that allow for limitations to the community autonomy via rigid, pre-set allocations for the 3% development fund, oil companies to choose the leaders in the Board of Trustees,[43] and to determine and define host communities' borders.[44]This ability of operators to dictate community boundaries and other factors truly undermines local participation.

### 3.2.3*Land Use Act*

The Land Use Act was enacted in 1978 and is the rudimentary piece of legislation that regulates the ownership and use of land in Nigeria; it was designed to address the issues of land ownership. The Act vests all land in the government (to be held in trust and for use and benefit of the citizens),[45] which presupposes that the government is the ultimate owner of all land in Nigeria. This provision has significant implications for property owners (the people, as it means that they do not have absolute ownership of their land) and on natural resources found on the land for it is common postulation that "He who owns the land owns everything up to the sky and down to the centre of the earth." commonly expressed in the Latin maxim "*Cuiusest solum, eiusestusqueadcoelum et ad inferos"*. Thus, the people do not possess complete right of ownership over any land in Nigeria and on the account of this, also have no right to any natural resource found on any land.

### 3.2.4 *Minerals and Mining Act 2007*

The Minerals and Mining Act provides for a legal framework which effectively governs the exploration and exploitation of solid minerals in Nigeria. Like all other national legislative enactments, the MMA vests the unfettered controlofall mineral resources found within all the

[43] Section 235 (6) para b of the Petroleum Industry Act 2021.
[44] Section 235 (1) & (3) of the Petroleum Industry Act 2021.
[45]Section 1 of the Land Use Act 1978.

territories of the country in the Government of the Federation for and on behalf of the people of Nigeria.[46]

The Act additionally affirms that all lands where minerals have been found in commercial quantities shall be acquired by the government of the federation.[47] What these provisions do is to entirely exclude the people from ANY ownership rights over any mineral found in the country as may be bestowed upon them. It excludes all rights of access or use from the people, effectively stripping indigenous communities of this basic right.

### 3.2.5 *Environmental Impact Assessment Act of 1992*

With exploration and exploitation of natural resources comes unavoidable damage and effects to the environments where these resources are found. However inevitable these damages and effects may be, they can still be curbed. The Environmental Impact Assessment (EIA) Act of 1992 is a significant piece of legislation in Nigeria which is aimed at promoting sustainable development by requiring environmental assessments for certain public and private projects. It ensures that major projects undergo environmental checks to support sustainable development.

Although this Act provides a legal mechanism for members of indigenous communities to influence how resources found in their lands are used,[48] it remains a tool for the federal government and often limits the idea of true control to mere consultation.[49] Despite the Act's provisions for participation of the people, it doesn't bestow an inkling of effective power to the decision making. The Veto Power rests strongly and exclusively on the Federal Government.

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[46] Section 1(1) of the Minerals and Mining Act 2007.
[47] Section 1(2) of the Minerals and Mining Act 2007.
[48] Section 36 of the Act mandate the opportunity for public comments to be provided during the EIA process.
[49]Taofeek Babatunde, 'The Efficacy of the Environmental Impact Assessment Act in Nigeria' (2024) <https://metalexlegal.com/publication/article/the-efficacy-of-the-environmental-impact-assessment-act-in-nigeria.105>accessed6 February 2026.

While this legislation provides a theoretical platform for participation of indigenous persons, they often only prioritize government led development and oversight. Due to the fact that the government reserves final decision making rights, the act appears to function as a tool to manage the dissent of indigenous persons rather than granting any ounce of control.

### 3.2.6 ***National Environmental Standards and Regulations Enforcement Agency Act 2007***

The NESREA Act was enacted by the National Assembly of Nigeria and signed into law in 2007. It replaced the Federal Environmental Protection Agency (FEPA) Act and established NESREA as the primary body for environmental regulation in Nigeria.[50] The act was a response to the growing need for effective regulation of the environment in Nigeria especially following the 1988 toxic waste incident in Koko. It aims to address various environmental challenges which include deforestation, pollution and even damages that are incurred by the environment due to exploitation of natural resources.

While the Act aims for sustainable resource development and management, it often centralizes control mainly at the federal level which can create friction with the claims of the people in host communities.[51] NESREA encourages public participation and partnership in environmental rights and management of resources[52] and  for this encouragement to support actual indigenous control

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[50] NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA) ACT - A REVIEW<https://nigerianlawguru.com/wp-content/uploads/2024/10/NATIONAL-ENVIRONMENTAL-STANDARDS-AND-REGULATIONS-ENFORCEMENT-AGENCY-NESREA-ACT-A-REVIEW.pdf>Accessed6 February 2026.
[51] Igwe Onyebuchi Igwe, 'Agitation for Resource Control in the Niger Delta and the Federal Government Response: A Litmus Test for Human Rights Posture in Nigeria.' [2020] (4) (2) *African Journal of Law and Human Rights*. <https://www.researchgate.net/publication/349075317_Agitation_for_Resource_Control_in_the_Niger_Delta_and_the_Federal_Government_Response_A_Litmus_Test_for_Human_Rights_Posture_in_Nigeria>accessed6 February 2026.
[52] Nnamdi Kingsley Akani, Anugbum Onuoha, OkemdiNnubia, 'An Evaluation of the Role of NESREA in Preventing Oil and Gas Pollution in Nigeria'(2021) <https://www.researchgate.net/publication/360939433_An_Evaluation_of_the_Role_of_NESREA_in_Preventing_Oil_and_Gas_Pollution_in_Nigeria>accessed6 February 2026.

there must be an action taking to forward free, prior and informed participation for local host communities most affected by the resource extraction.

### 3.2.7 *National Oil Spill Detection and Response Agency Act 2006*

While Indigenous communities advocate for direct control over petroleum and mineral resources on their lands, the National Oil Spill Detection and Response Agency Act (NOSDRA) functions as a government regulating tool to manage the environmental consequence of exploration and exploitation. The Act, while silent on advocating for resource control by host communities, established NOSDRA for detecting and responding to oil spills to prevent the excessive damage that often fuel the clamour and calls for resource control by the indigenous people.[53]

Oil spills, more frequently than none, heavily impacts negatively on the livelihood of persons inhabiting areas where these resources are found, and it is among the plethora of aims of the NOSDRA to compensate these people and mitigate their losses. While this may seem like a helping initiative, the dependence of NOSDRA on these exploring oil companies for logistics, data and possibly funding may be to the detriment of the process, for with its dependency on the organisations it should be regulating, its process and work may be prejudiced.

[53] Christian Chidi Okeke, Ezeamama Ifeyinwa Georginia, 'Niger Delta Conflict and Dilemma of Environmental Policy Enforcement in Nigeria; A Critique of NOSDRA' (2022) <https://www.researchgate.net/publication/363267206_Niger_Delta_Conflict_and_Dilemma_of_Environmental_Policy_Enforcement_in_Nigeria_A_Critique_of_NOSDRA>Accessed6 February 2026.

# CHAPTER FOUR: A CASE FOR INDIGENOUS PEOPLE'S OWNERSHIP AND EXPLOITATION OF NATURAL RESOURCES

## 4.1 **Critique of Government Ownership based on Human Rights.**

### 4.1.1 ***Right of Self – Determination***

The concept of self-determination is the view that empowers individuals to make their own decisions and grants freedom from external control. In recent times, self-determination is increasingly associated with Indigenous people and their claims for democratic participation and increased autonomy.[54] The International Covenants (ICCPR & ICESCR) both share a common Article 1, which states that "all peoples have the right to self-determination" and may "freely dispose of their natural wealth and resources". This use of 'peoples' has been interpreted by international bodies to encompass sub-national groups and not just the states. While the legal frameworks of Nigeria centralises the ownership of all resource wealth in the Federal government, it is argued that this system disenfranchises the indigenous people and minorities whose land the wealth is found and extracted.[55]

The provisions of the legal framework of Nigeria separates the ownership of the surface of the land from what lies beneath it, effectively disregarding the principle of property law, that whoever owns the lands owns everything beneath it.  The Land Use Act vested all land in the state to the governor who holds it in trust for the people, who are subsequently granted a "Right of Occupancy" giving them right to use and inhabit the land surface. Alternately, the 1999 CFRN

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[54] Omar Abdelhalim, 'Self-determination for Indigenous Peoples, International IDEA' (2025)<https://www.idea.int/news/self-determination-indigenous-peoples#:~:text=This%20article%20explores%20the%20concept,rights%E2%80%94potentially%20through%20constitutional%20provisions.>accessed3 April 2026.

[55] Joseph N Agada, Emmanuel I. Umbu, 'A Critical Appraisal of The Legal Regime Regulating Ownership and Control of Petroleum and Other Natural Resources in Nigeria', [2021] (6)*Crescent University Law Journal*<https://cuab.edu.ng/wp-content/uploads/2023/09/11.-Agada-Critical-Appraisal-of-The-Legal-Regime-Regulating-Ownership-Control-of-Petroleum-etc.pdf>accessed3 April 2026.

vests the entire ownership and control of all minerals, oils and natural gas in the Federal Government. In the implementation of the Federal Government's right to these minerals it can easily revoke an individual or community's right to the land, which may in turn generate the effective and legal nullification of the right of a community and its individuals to manage their own ancestral territory, consequently giving rise to the overriding of public interest.

Self-determination includes the right to pursue economic development and where the government controls all resource wealth, the local population suffers the environmental costs of exploitation and extraction while the revenue generated is diverted to the national capital. This leaves the community with no means to sustain them and shelter the damages incurred from such exploitation, effectively causing the means of livelihood and survival in such areas to deteriorate. This phenomenon is often described as the "resource curse" where the government's interest lies only on the gains of the industry rather than its citizens. True self-determination requires that the people whose territory houses these resources ought to have a say on how and when these resources are exploited.

A prominent expression of the effect of government ownership of natural resources occurred in the 1990s with the Movement for the Survival of the Ogoni People (MOSOP).[56] The Ogoni Bill of Rights demanded the right to control and use a fair portion of the resources found in Ogoni for their own development for the Federal ownership violated their right to economic self-determination and environmental protection. The African Commission on Human and People's Rights (ACHPR) in the case Social and Economic Rights Action Center (SERAC) & Anor v.

[56] Elowyn Corby, 'Ogoni people struggle with Shell Oil, Nigeria 1990 – 1995' (2011), Global Nonviolent Action Database. <https://nvdatabase.swarthmore.edu/content/ogoni-people-struggle-shell-oil-nigeria-1990-1995>Accessed3 April 2026.

Nigeria[57] ruled that the Nigerian government's role in collaboration with Shell violated the Ogoni people's right. Subsequently, the Supreme Courts upheld a massive compensation claim of 17 billion naira. While this result is more favourable, various other indigenous communities lack the means to even begin a movement, and if they have, their pleas have met deafened ears.

This government ownership of natural resources often acts as an agent for centralised control, which can be just as domineering as colonisation if and when it ignores the will of the local population.

#### 4.1.2 ***Right of Indigenous People***

Indigenous people enjoy many rights which are completely documented in different International Conventions which have been ratified by Nigeria. These conventions have brought about improvements which indicate a better recognition on the rights of indigenous people over their lands, their development, territories and resources found within. The UNDRIP, though not binding on the member states of the UN, sets a global standard on the reception of right of indigenous people and influences national laws of member states seeking to develop a better nation.[58] It maintains that the Indigenous peoples have the right to the lands and resources which they have traditionally and initially owned, occupied and used.[59] While Nigerian law recognises the presumption of legal title of a person over a land which he has so developed and held before the commencement of the Act,[60] same civility was not extended to resources found on the land. Therefore, when a state, like Nigeria, claims exclusive ownership of natural resources, minerals and oil included, it directly contradicts and acts against the international standard that traditional occupation constitutes legal title to the land and consequently, resources found within.

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[57] (2001) AHRLR 60 (ACHPR 2001).
[58]<https://esg.sustainability-directory.com/>Accessed4 April 2026.
[59] Articles 25 and 26 of UNDRIP.
[60] Section 34 and 36 of the Land Use Act, 1978.

Article 32 of the UNDRIP provides that states are legally required to consult with and seek the permission of indigenous people to obtain their Free, Prior and Informed Consent (FPIC) before approving or embarking on any project that may affect their land with special relation to development of general natural resources.[61] This provision implies a grant of veto power on the people with regards to these projects and this courtesy has not been extended to the indigenous peoples of Nigeria. In addition, where the land or resources were exploited or developed without the FPIC of the people, it is the position of international law that such a people reserve the right to redress, which may entail fair compensation and restitution.[62] The legal frameworks vesting the exclusive ownership of resources in the government do not sufficiently, adequately and distinctly provide for such a redress.

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides for the protection of the right of minorities to enjoy their culture, and while the correlation of the two concepts, culture and ownership of natural resources, may seem inconceivable, International Courts in a plethora of cases have ruled that for indigenous peoples, their culture is inseparable from their land and its resources.[63] Hence, exploitation of natural resources led and cultivated by the government on such lands belonging to indigenous persons births a violation of the peoples' right to life and culture.

Nigeria sought to incorporate rights of host indigenous communities and their peoples in her legal system, through the Petroleum Industry Act(PIA), but this vision was again hindered by numerous limitations on the rights of the peoples and a grant of excess powers to the regulator and operators over the communities. The PIA severely compromises the rights of the local

[61] See also ILO Convention No. 169 for more backing of the International body on this topic.
[62] Article 28 of UNDRIP.
[63] Yakye Axa Indigenous Community v. Paraguay (2005).

communities since it gives the oil companies or settlers sole discretion over the process of indicating the exact positions of boundaries and borders of the community's land to determine if the oil company's facilities, pipelines, or wells are located within their territory[64]; ie, whether the oil companies' operation lie within their boundary. Through this clause, the companies are able to exclude highly affected communities from being labeled as host communities in order to cut down on their responsibilities. Such a provision denies indigenous people any say in the process of demarcation, thereby rendering them mere spectators in their own development process. What is more, such an arrangement fosters unhealthy competition among the communities in pursuit of funding.[65] The provision of twelve months from the start of the act for the establishment of the trust by existing lessees ensures that heavily contaminated and poor communities wait for one whole year before receiving any legal or financial assistance through the law.[66] This makes the process lengthy, ensuring that corporate exploitation of natural resources continues for another year without provision of essential social facilities. Also, the Act does not provide any form of immediate and automated penalty for companies that fail to adhere to these timelines, as a result making it ineffective in enforcing laws against such companies. It takes away the host communities' right to govern themselves and puts the control of their own development funds into the hands of the corporations. The oil company (or the settlor) is the only entity authorized to establish the Board of Trustees and appoint its members[67];as such, the indigenous people have no voting rights whatsoever and cannot choose who will represent them. This hierarchical approach leads to an immense conflict of interests, since the appointed trustees will be obligated to the oil company that hired them and not to the indigenous community they are supposed to

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[64]M. Homan 'Knowing Your Community' (2016) *Global Community Development Exchange*<https://globalcommunitydevelopmentexchange.files.wordpress.com/2016/07/ch-5-knowing-your-community.pdf>Accessed 16 June 2026.

[65] Section 235 PIA 2021.

[66] Section 236 PIA 2021.

[67] Section 237 PIA 2021.

serve. In addition, by making it possible for the oil company to control the administration of the trust and regulate its operations, the Act transforms a community-based development project into a corporation-controlled program. Consequently, this clause guarantees that the local population will be unable to participate in the decision-making process and have their opinion heard regarding the compensation for the damage done to the environment.

The critics believe that the PIA 2021 is structurally flawed in the sense that it turns community provisions into mechanisms of control through the settlor-led needs assessment process under section 239 and the cap on the percentage of operating expenditure under section 240, which is considered insufficient and unverifiable. Sections 242 and 243 take away the community's ability to make decisions about trust management, and section 257 amounts to collective punishment for vandalism.[68]The Petroleum Industry Act (PIA) through its strong preference for corporate operators ensures that the indigenous communities are denied access to their own resources, yet they suffer immensely from environmental degradation. The laws ensure that the legitimate owners and main providers of the country's economy are reduced to mere recipients, receiving just enough money in the name of corporate generosity. This law is a direct negation of the concept of resource ownership, effectively turning people who should be kings into beggars.A landmark case which Nigerians may benefit largely from is the *Saramaka People v. Suriname* (2007).[69] where the government of Suriname claimed that because there was no official legal deed proving the ownership right of the Saramaka people over their ancestral land (which have been in their possession for centuries), the land and everything on it, gold, timber, water and minerals, belonged to the state. The Inter – American Court of Human Rights ruled against the government of Suriname establishing 3 rules/standards that every government must follow to gain fair and

[68] The PIA and Its Imperfections: Was the Niger Delta Shortchanged? <https://www.thisdaylive.com/2021/08/24/the-pia-and-its-imperfections-was-niger-delta-shortchanged/>accessed19 May 2026.
[69] Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Ser. C, No. 172 (Nov. 28, 2007).

legal access to resources on indigenous land. There must be effective participation of the people in the form of their FPIC; where a state extracts resources, there must be a fair share of profits and gains given back to the people and; there must be proof to show that such projects or exploitation will not destroy the environment of the way of life of the people.

In light of all these developments, it is widely recognized that the power over natural resources have shifted and it will be in the interest of the government of Nigeria to tap into such developments.

4.1.3 ***Right to Healthy Environment***

The Constitution of Nigeria and all other subsidiary legislation vests the absolute ownership of natural resources on the Federal Government, and with this comes the prioritising of revenue generation over the human rights of local communities. This is often referred to as a resource curse, in the sense that the effect of the discovery of economic natural resources in their land has been more detrimental than advantageous.[70] The government acts as both the beneficiaries of the resource extraction as well as the regulators of such extraction, tasked with environmental protection. This births a conflict of interest with a flagrant disregard for a check on their powers over these resources, allowing the government the leeway to act only in their own interest. This leads to an increasing decline in the standard of living of occupants of such communities as a result of inevitable pollution, damage and effects of extraction and exploitation. Farmlands and

[70] Eli G. Burton, 'Reverse the Curse: Creating a Framework to Mitigate the Reverse the Curse: Creating a Framework to Mitigate the Resource Curse and Promote Human Rights in Mineral Extraction Industries in Africa' [2014] (28) (1) *Emory International Law Review*<https://scholarlycommons.law.emory.edu/eilr/vol28/iss1/10>accessed13 April 2026.

food crops are damaged due to uncontained oil spills; water is also polluted, affecting fishers, and daily need for water in their lives.[71]

Due to this dual role of the government in matters of natural resources ownership and regulation, regulatory tools set in place like NOSDRA, NESREA, and EIA are often weakened,[72]because the government earns majority of its revenue from oil, there is often more inclination and pressure to keep the oil flowing rather than penalize spills. Moreover, the NESREA is legally barred from regulating matters regarding the oil and gas sector[73] which is ironic because the primary scope of the agency is to protect the environment and enforce environmental standards, which are threatened mostly by the oil and gas sector.[74] In addition, the EIA Act requires a study of possible environmental damages before any major project, but this role has become a mere formality for government backed projects, and the public participation provided for by the law is overlooked as many communities discover such projects after they have been commenced.[75]

It is unjustifiable for the government to continue to exclusively exploit and extract natural resources in communities which they do not inhabit nor seek permission from. This is rooted in 2

[71] Natural Resource (In)justice, 'Conflict and Transition Challenges in Africa: Lessons from the Niger Delta' (2022) <https://www.accord.org.za/conflict-trends/natural-resource-injustice-conflict-and-transition-challenges-in-africa-lessons-from-the-niger-delta/#:~:text=Trends%202022/1-,Natural%20Resource%20(In)justice%2C%20Conflict%20and%20Transition%20Challenges%20in,PHOTO:%20REUTERS/BAZ%20RATNER>accessed13 April 2026.

[72] Innocent Okoronye, Chika Odoemenam, A. L. Nwogu-Ikojo, 'Appraisal of the Nigerian Environmental Laws through the Lens of the Principles of Sustainable Development.'<https://journals.ezenwaohaetorc.org/index.php/NAU-JLCLE/article/view/3491#:~:text=APPRAISAL%20OF%20THE%20NIGERIAN%20ENVIRONMENTAL,LAW%20AND%20CLINICAL%20LEGAL%20EDUCATION>accessed 13 April 2026.

[73] See sections 7, 8 and 29 of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007 which explicitly exclude the oil and gas sector from the agency's oversight.

[74] A. N. Kingsley, A. Onuoha, O. C. Nnubia, 'An Evaluation of the Role of NESREA in Preventing Oil and Gas Pollution in Nigeria' (2021)<https://www.researchgate.net/publication/360939433_An_Evaluation_of_the_Role_of_NESREA_in_Preventing_Oil_and_Gas_Pollution_in_Nigeria>accessed13 April 2026.

[75] Everest Nwankwo, 'Review of Environmental Legislations in Nigeria: Case Study of EIA Act, NOSDRA Act NESREA Act, EGASPIN Regulation and HYPREP Gazette' (Silverink Nigeria Ltd 2020) *Centre for Environment, Human Rights and Development (CEHRD)*<https://cehrd.org.ng/wp-content/uploads/2021/01/Review_of_Environmental_Legislations_in_Nigeria_Final__Published_Copy_Online_Version.pdf>accessed13 April 2026.

latin maxims: *Quodomnestangit ab omnibus approbaridebet* meaning “What touches all must be approved by all” and *Qui sentitcommodum, sentiredebet et onus* meaning “He who receives the advantage must also bear the burden”. After exploitation, the persons who would get the short end of the stick are the indigenous people, inhabitants of the communities where extraction took place and as such their approval is paramount for the commencement of a project. In the same vein, the persons who gets the most gain from exploitation is the government and they are required to shoulder whatever burdens may arise, in form of protection measures for the environment, fair compensation for the people and adequate development. In our today’s world, the inhabitants of such areas have no say on their resources. They shelter most of the burden arising from the exploitation of such resources as a result of the dual exclusive powers possessed by the government, with a complete disregard on the sustenance, development and livelihood of the people.

### 4.2 **A Proposal for Private Ownership of Natural Resources by Indigenous People in Nigeria**

As established, the absolute ownership of the government over natural resources in Nigeria has birthed a "resource curse" characterised by environmental degradation and the systemic marginalisation of host communities. A transition from exclusive state ownership to a hybrid model of individual and communal property rights is required to facilitate sustainable development in the country. Ideally, individuals who own land, should own the resources found on such a land in accordance with the general land doctrine. A system of ownership by private persons is possible as is evident in its application in other jurisdictions of the world especially in the United States of America.

### 4.2.1 *The United States of America Approachto Private/ Indigenous Ownership of Natural Resources*

Ownership and management of natural resources in the United States depends completely on how the land is classified. The system makes a clear distinction between the rights of landowner citizens versus that of indigenous tribes. While landowner citizens have total control over all the natural resources below their lands, natural resources found in lands owned by indigenous tribes are regulated in a totally different manner. Generally, the absolute ownership theory is applied such that the owner of the land owns the mineral resources beneath it subject to government regulations. In essence, though private individuals have rights over minerals under their property, they have no free rein to exploit those mineral resources however they please.[76] Each State in the US practicing private ownership has an agency (eg: Texas Railroad Commission or North Dakota Department of Mineral Resources) which regulates the extraction of resources guided by some basic principles. For instance, well spacing laws, dictate how far apart wells are allowed to be drilled, so that a person cannot drill his well on the property line next door and drain their neighbour's pocket of oil. This is to avoid the flaw in the absolute theory whereby oil that flows to a neighbor's land into a well drilled on a person's land, becomes his property and on that basis, the well spacing law seeks to curb aggressive drilling on one's land to steal their neighbour's oil. Also, the law protects correlative rights by ensuring that where there is a common subsurface deposit, each owner will get their proportionate amount of the mineral. Another principle regulating private ownership of minerals is that of "compulsory pooling" such that if one wants to drill a legally approved large horizontal well that requires a large continuous tract of land and the whole neighborhood is willing to sign mineral leases except for one person, the regulator can

[76] E. Allison and B. Mandler, 'U.S. Regulation of Oil and Gas Operations' (2018) American Geosciences Institute <https://www.americangeosciences.org/static/files/profession/petroleum-environment/AGI_PE_Regulations_web_final.pdf>accessed26 May 2026.

force pooling of the mineral rights in the process so the resource is not left wasted. The private ownership of mineral rights is so sacrosanct that the surface rights can be separated from the mineral rights. As a result, one may decide to divide their property by selling the surface to a house builder while retaining the minerals beneath.[77]According to U.S. property laws, the mineral estate holds a position that is "dominant" compared to the surface estate.[78]What this implies is that a person owning the surface cannot prohibit a mineral holder from exploiting minerals under the surface as this would render the minerals grant "fruitless". It is legally accepted that "the rights of the surface owner [must] give way to those of the minerals owner".[79]

Mineral rights in the U.S. are regulated via a decentralized multilevel approach between the federal government and each state. Therefore, the states regulate the extraction process itself, while the federal government oversees the environmental regulation for private-sector extraction activities through legislation such as the Clean Water Act, Safe Drinking Water Act, Clean Air Act e.t.c[80]. Also, even where drilling is approved by the state regulator, at the local level, the city or county regulators can deny access to use of the drilling rig to enforce certain planning regulations e.g to stipulate certain setbacks from schools or homes and set limits on noise, traffic, and working hours.

In the case of the Native Americans who are the indigenous people in the United States of America, the regulation of the use and ownership of natural resources has some unique features that differ from the conventional American private property regulations. Where the latter allows individuals to own land and mineral rights completely, the former is characterized by a very

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[77] 'Mineral Rights by State: 2026 Value Ranges and What to Expect' (2026) *Minerals Royalties Group*<https://mineralroyaltiesgroup.com/mineral-rights-by-state-what-to-expect/>accessed26 May 2026.
[78]Cowan v. Hardeman (1862); Harris v. Currie (1943).
[79]LLC v. The City of Lubbock, Respondent (2016)
[80]<https://www.britannica.com/topic/natural-resources-law>accessed26 May 2026.

complicated legal system predicated on some colonial principles, treaties between the Native tribes and the USA, and other special statuses. Native American Tribes are considered "domestic dependent nations" according to the US Constitution and their relationship with the US is based on a Trust System whereby the lands reserved (reservation land) for them do not belong to individuals but is rather, vested in the United States Federal Government as trustee for the Native American tribe itself and/or certain tribal members individually. As the land belongs to the US federal government formally, any tribe needs an approval of the Federal Bureau of Indian Affairs (BIA) to lease, explore, and mine for natural resources on their land. Since the federal government holds legal title to the land that is held in trust by the tribes, any extraction of natural resources requires approval from the federal government.[81]

Within reservation borders, any subsurface resources such as oil, gas, water, and minerals belong to the tribe as a governmental entity, not to landowners within it. The Indian Mineral Development Act (IMDA) allows tribes to lease their land commercially with energy companies without federal oversight for extraction. Nevertheless, in order to protect the tribes from any potential exploitation, any such lease must be reviewed and approved by the Bureau for proper market royalties on behalf of the tribe.[82] Tribes being independent sovereigns, state conservation bodies, such as the Texas Railroad Commission, or state tax boards lack jurisdiction regarding the regulation of natural resources activities taking place on trust land. Tribes are free to impose any environmental policies and severance taxes on energy firms doing business in their territories. They also enjoy complete regulatory power to control development projects, including large-scale solar and wind farms within their territory irrespective of state interests.

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[81] Stoel Rivers LLP, 'Tribal Laws and Land Issues' <https://www.stoel.com/insights/reports/the-law-of-solar/tribal-laws-and-land-issues2>accessed26 May 2026.

[82]Murray, Mariel J., 'Energy Leasing and Agreement Authorities on Tribal Lands: In Brief' (2026) Library of Congress <https://www.congress.gov/crs-product/R47640>accessed26 May 2026.

Friction yet arises with respect to the discovery of natural resources on lands which belong to the federal public domain but are located outside the official reservation lands and which have great cultural and religious importance for the indigenous tribes. In this case, the U.S. government retains complete ownership rights over such lands e.g. National Forest Lands, and can lease or sell these lands to any mining or logging companies. In *Apache Stronghold v. United States*[83], the U.S. Supreme Court did not stop a mining operation on Oak Flat—part of a forested area owned by the U.S. government that has great cultural significance for the San Carlos Apache tribe; thus, federal property rights and resource development tend to outweigh indigenous religious claims for these lands.[84]

#### 4.2.2 ***Transitioning to Private/Indigenous Ownership of Natural Resources in Nigeria***

Nigeria can adopt some practices from the US style of natural resource control. The Land Use Act,[85] while according exclusive ownership of all lands in the government, confers a statutory right of occupancy on the citizens over land in their possession. So, while the government formally owns the land, the statutory right of occupancy enables such persons to own, sell, sub-lease, or lease the use and occupation of the lands to other people; yet, the right does not extend to resources found on the land or below it. It is of paramount importance that the right of individuals to own landed properties be extended to natural resources found within. As the State exercises regulatory oversight over private landed property, it can maintain a robust framework to govern the acquisition, ownership, and sustainable exploitation of natural resources by private citizens.

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[83] 2025.

[84] 'Indigenous Peoples' Struggle: Climate Change Challenges for 5000+ Communities' (2025) *Climate Change Academy*<https://climatechange.academy/climate-change-society/indigenous-peoples-struggle-climate-change/>accessed26 May 2026.

[85] 1978.

Shifting ownership to individuals does not abrogate the State's role; rather, it refines it. Like under the US private ownership of resources model, the Nigerian government will transition from a custodial owner to a primary regulator, ensuring that private resource extraction aligns with national safety, environmental, and fiscal standards. While ownership is vested in the individual, the government can retain the authority to establish statutory requirements for resource extraction and make landowners legally obligated to satisfy these regulatory benchmarks to exercise their exploitation rights. Furthermore, should a landowner elect to delegate extraction to a third party, they should be mandated to engage only duly certified entities that maintain full compliance with national standard. Hence, to fully activate their mineral rights, owners must demonstrate adherence to environmental and safety protocols. This regulation is essential to ensure responsible resource exploitation while upholding environmental standards and protecting the broader public interest. Like under the US system where mineral resources found on Federal Government land is entirely under the jurisdiction of the federal government, in Nigeria, those resources especially oil and gas found within Nigeria's exclusive economic zones and other international water bodies will continue to be the property of the federal government.

The American system separating mineral rights from the surface rights whereby the owner of a land sells his surface rights to the land but retains the right to continue to exploit the natural resources beneath it can also be applied with proper documentation that will then be made part of a publicly available record. This should however be applied with a compensation regime where the surface owners will be entitled to receive mandatory financial compensation in case their land or crops have been damaged in the process of the mining taking place below.

It is also necessary to enforce the application of an elaborate, multi-level framework for regulation through the integration of local zoning and national-level environmental regulations. In this balanced system, the federal government only deals with top-level decisions, such as national environmental protection measures, pollution levels, and inter-state pipelines. On the other hand, it is the responsibility of the state and local governments to take into account the immediate effects of these decisions on local issues, including town planning, water conservation, public health, and drilling permission licenses.

Recognising that natural resources remain assets of national significance, the transition to individual ownership necessitates a structured payout system whereby the entire nation benefits from the resource though it is owned privately. This can be achieved by implementing a regime of taxes, dues, or percentage-based royalties, guaranting that private prosperity translates into a broader collective benefit for the entire nation. The federal government will be responsible for collecting the corporate income tax, resource rents tax, and federal royalties from production, which will then be deposited into a national sovereign wealth fund that will pay for public infrastructure, health, and education. More significantly, a certain portion of these funds will be shared among non-mineral producing states through an equalisation formula based on derivation, ensuring that there won't be any inequality at a national level. This system helps in transforming underground resources into steady public revenues, and this helps in improving socio-economic standards of citizens.[86]

Nigeria should emulate the American practice of separation between surface land ownership and subsurface mineral ownership but should guard against the peculiar weaknesses present in that

[86] F. Shivambu, 'A Sovereign Wealth Fund will redistribute wealth and stimulate the economy' (2018) *Daily Maverick*<https://www.dailymaverick.co.za/opinionista/2018-04-18-a-sovereign-wealth-fund-will-redistribute-wealth-and-stimulate-the-economy/>accessed 16 June 2026.

arrangement. First, Nigeria should not allow the concept of dominant estates, where the mineral estate is treated as superior, giving room for oil companies to extract resources from surface lands without prior permission and compensation from landowners. Instead, the two parties in dispute should be considered equal with strict requirement for payment of surface rents and prior permission from the landowner. Secondly, Nigeria should not consider adopting the rule of capture where drilling becomes a race among competitors due to oil migration in subterranean areas, leading to wastage of resources. For proper management of these underground flows to avoid wastage, Nigeria must adopt unitization whereby neighboring owners would have to pool together all resources found within their common underground reservoir and share profits based on percentage contributions. Finally, Nigeria should not entertain federal trust doctrine that subjects indigenous lands to cumbersome bureaucratic federal control. Communities must be allowed to have autonomous and absolute control over their lands.

### 4.3**Challenges to the Transition and Possible Solutions**.

#### 4.3.1 ***Regulatory Burden and Complex Legal Framework***

Transitioning to private ownership would explode the number of regulated entities from a few hundred large companies to potentially millions of individual landowners. There would be an immense administrative burden that would fall upon regulatory bodies. Under the current centralised regime, the state manages a relatively small number of multinational and indigenous corporate players. In a private ownership, the regulatory area expands exponentially to include thousands, or even millions, of individual landowners. Agencies would be tasked with the effort of monitoring environmental compliance, safety standards, and fiscal transparency across a fragmented landscape. This shift necessitates a comprehensive legislative overhaul—a simple amendment to existing laws like the Land Use Act would be insufficient. Instead, a new, robust framework is required to establish mechanisms for compulsory pooling of shared resources, and create specialized tribunals to resolve the inevitable surge in property litigation.

The transition must also account for the "human factor"—the inherent unpredictability of individual owners. Unlike corporate entities, which generally operate according to structured profit-seeking logic and institutional governance, private individuals are often driven by varied and sometimes irrational motivations. A struggling landowner might prioritise immediate survival over long-term sustainability, leading to aggressive, short-term exploitation that permanently scars the environment. Conversely, inter-communal rivalries or ancestral sentiments could create "holdout" scenarios, where a single individual blocks a project of significant national interest. Because man is an unpredictable being, no legal code can preemptively encompass every nuance of human greed, desperation, or sentiment.

In an attempt to resolve this issue, the regulatory framework must be adaptive and resilient. It is impossible to ascertain every potential issue before the transition begins, and this entails that the state must build a system capable of learning and adapting from the conflicts that arise. In order to have precise control and minimize the possibilities of neglect due to centralised management, it is imperative for the framework to require decentralisation of supervisory powers by the establishment of Local Resource Management Bodies. This will enable the government to take advantage of local expertise to make sure that the exploitation process remains firmly within the boundaries of the community and national interest. Ultimately, the success of private ownership depends on the state's ability to refine its role from a custodial owner to a primary regulator, ensuring that while the people enjoy the freedom of exploitation, the broader public interest and the integrity of the ecosystem remain protected against the volatility of individual choice.

#### 4.3.2 ***Overexploitation under the government radar***

If every landowner can mine their own land, Nigeria risks a tragedy where millions of small, unmonitored pits degrade the environment faster than regulators can track. Cumulative damage from thousands of small operations is harder to police than one major oil spill. Private land ownership leads to a great disparity between the size of the property and the scale at which the resource should be developed. Since natural deposits cover large expanses, the fragmentation of privately-owned property does not allow for the consolidation of a large land mass required for industrial development. Moreover, there is a great possibility of “negative externalities,” in which one person’s use of the natural resources in his land results in pollution and degradation of other peoples’ lands.

In addition to this, the right to use the resource implies that an individual has the right to forego the use of the natural deposit. This implies that even in cases when it is necessary for the entire community to enter into an agreement in order to exploit the resource, a “holdout” who refuses to participate might prevent exploitation of the resource. As a result, the country will be unable to utilise its natural wealth for economic growth.

In order to curb these issues, it is necessary to make laws prohibiting mining operations on plots below a certain minimum size. If the size of the plot is less than the minimum, then the owner of the land must team up with other owners to create a Unit. For unnecessary holdout by unwilling land owners, a law creation whereby a certain percentage of the property owners (60-70%) can petition the relevant authority to create a unit is needed. In case the petition is granted, the reluctant few must become members of the enterprise against their will. This strategy works since while the "holdout" does not have any say as far as veto powers are concerned, the "holdout" still has the right to enjoy the fruits of the project.

For overcoming the concern of polluting adjoining areas, the concept of "Strict Liability" can be put into practice. Here the mining firm will be responsible for causing damage irrespective of its fault or negligence. This stringent criterion makes it mandatory for the firm to adopt environmentally friendly technology and at the same time gives a legal cover to the skeptical neighbors. Incentivize citizens to report pollution by their neighbors.

4.3.3 ***Vulnerability of External Pressures***

Large businesses or politicians can forcefully coerce poor rural land owners to give up their land at low prices before they realize the actual worth of the natural resources buried under their property. Corporations have information regarding the geologic survey data and market forecasts that are not available to the landowners. It is possible to use this disparity of information as an opportunity to portray the land as regular agricultural land instead of valuable mineral land. The elites can also utilize their control of local land registry services or the local traditions of that community to cloud the title deed, thereby forcing the individual to believe that the only option is to sell the land cheaply since he or she would otherwise lose the property anyway. Using their powerful position, they can fool owners into signing agreements, which include such conditions as “royalty-free” and “perpetual easements.” In other words, they give up all rights on the resource by making one-time payment, and therefore make the original owner poor, while reaping benefits for the following years. This could create a class of "resource landlords" while indigenous communities become landless tenants on their ancestral ground.

In order to reduce these burdens, it is critical that landowners be well informed about what their land is capable of producing in terms of natural resources underground; information is a basic right. Thus, while surveying by the Ministry of Lands takes place to map and register the property, it is also important that a subcommittee be created to determine whether there are any mineral deposits, iron ore, or even crude oil underground. This would guarantee the element of transparency, meaning that the landowner will have a clear idea of what geological resources his/her property is endowed with prior to negotiating

4.3.4 ***Short – Term Focus***

Private individuals often prioritise immediate survival over long-term sustainability. A farmer who is finding it hard to make ends meet may accept a deal involving the use of "strip mining" to get immediate cash. However, this will make the land useless for cultivation for many years to come. The solution will help the farmer survive the current year but will deny his descendants the benefit of the fertile soil.

To resolve it, it is advisable that the criteria for permission to mine and exploit resources should include the use of measures and means of exploitation that will not be detrimental to the environment, such that if one disobeys, their right over those resources could be suspended or revoked. To ensure compliance, it can be established that before breaking ground, a private owner must purchase a "Bond" (insurance). If they fail to restore the land after mining, the bond pays for the cleanup. This forces the owner to internalize the future cost.

4.3.5 ***Weak Administrative Capacity***

The current regulatory regime in Nigeria suffers from enforcement challenges due to funding issues and corruption. The decentralised individual mode of ownership of natural resources demands better monitoring. If the regulator is inefficient, "private ownership" turns into "legalized anarchy." It is not that there are no laws regulating resources in Nigeria, rather the main problem lies in the lack of proper enforcement of these laws. The corruption of the people charged with law enforcement leads to environmental standards being turned from rules into guidelines. If there is inadequate funding for the agencies, then there will be a shortage of both the technical and human resources necessary to properly monitor mining activities and control flow stations from remote locations. In such situations, private ownership simply means anarchy. The most influential actors can use their economic might to ignore the rules, leaving the local farmers at their mercy.[87]

To effectively curb this, the formalizing of local communities as “primary regulators” is needed. By providing local communities with a statutory share of the royalties, there will be an incentive for the community members to identify any illegal actions that may happen and also monitor the environmental requirements. Local communities would act as unpaid enforcers of the laws for the government. In order to avoid corruption from the local elites, the trust boards must include mandatory third-party auditing. Moreover, it will be imperative that the regulators receive independent funding so as to make impartial actions by them possible. Permit the regulators to keep a substantial percentage (such as 40%) of the money they earn from fees and fines so as to cover their expenses. All title deeds for land and minerals should be placed on an open blockchain platform to avoid any tampering of records or double allocation of land favours to cronies.

[87] Mukhtar Ya'u Madobi, ‘Nigeria: Why Nigeria Must Intensify Regulation of Its Booming Mining Sector’ (2026) <https://allafrica.com/stories/202604130128.html#:~:text=Regulation%20as%20a%20Security%20Imperative,of%20the%20national%20security%20strategy.>Accessed 28 April 2026.

# CHAPTER FIVE

## 5.1 Summary of Findings

This research posed several questions as to the current position of the law on natural resource ownership control in Nigeria, the legal framework supporting it, problems arising therefrom and finally how Nigeria can transition to a better private model of ownership by indigenous people, the challenges it may face and their solutions. On equal importance, it reviewed the legal regime relating to the ownership and exploitation of natural resources in Nigeria and conducted a critical analysis of the current monopoly of ownership rights by the federal government. It analysed legal, constitutional, and international documents relating to natural resources and assessed the conformity of the current system to ideas of justice, self-determination, sustainable environment and indigenous rights, among others.

The results obtained from this research have shown that the existing system of law in Nigeria on natural resources is centralised, giving precedence to the interests of the state rather than those of the communities where the resources are found. It finds that though the system was initially created with the purpose of ensuring national unity, economic co-coordination and wealth distribution, in reality there are many problems in its implementation. Host communities continue experiencing environmental degradation, poverty and disenfranchisement, despite making immense contributions to the national treasury.

The present system of natural resource ownership in Nigeria is not a product of native legal tradition, the system developed as a result of laws passed during the colonial period by the British colonial government. In the pre-colonial era, the ownership and management of natural resources was communal. The land, forests, rivers, and minerals were owned by the people, and were managed by the community under customary law. Access to these resources was controlled by traditional rulers and family heads that made sure that the management was done for the good of the community. The British colonial government changed this state of affairs completely by enacting instruments like the 1916 Minerals Ordinance which made mineral resources belong to the Crown, thus establishing the system whereby ownership of the land and ownership of its resources were separated. Post-independence, Nigeria continued to use the colonial model of resource exploitation as opposed to adopting a different model altogether and all Nigerian constitutions, from the 1960, 1963, 1979, up to 1999 Constitutions, have ensured that mineral resources belonged to the Federal Government.

The legal regime governing the regulation of natural resources in Nigeria is heavily in favour of the Federal Government as regards ownership and control of natural resources. Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 and Item 39 of the Exclusive Legislative List of the same constitution grant the Federal Government ownership and control of all minerals, mineral oils, and natural gas. The Federal Government enjoys exclusive jurisdiction over all matters concerning mining, oil exploration, and other associated activities. These legal provisions have been reinforced by the Petroleum Industry Act 2021, Minerals and Mining Act 2007, Land Use Act 1978, Environmental Impact Assessment Act 1992, NESREA Act 2007and the NOSDRA Act 2006.The laws provide for a highly centralised system in which the Federal Government has almost total control over natural resources; the Petroleum Industry Act, the Minerals and Mining Act both state that the ownership of oil is exclusively under the Government of the Federation. These laws, by implication, disallow host communities from having any right of ownership or decision-making processes regarding the resource exploitation process. Host communities do not have much say on matters of exploration, extraction, licensing, management of the environment, and revenue distribution. In addition, the judiciary in Nigeria has always upheld the position of federal ownership of mineral resources through cases like *Attorney-General of the Federation v Attorney-General of Abia State & 35 Others*. In this case, the decision handed down by the Supreme Court made it clear that the absolute right and control of mineral deposits rest entirely with the Federation. Consequently, any valuable deposits found in the water were not the property of the state but that of the federation; only onshore sources can provide the 13% derivation right for the coastal states. The constitutional provision that supported this case was Section 44(3).

The centralised form of ownership has played an important role in causing economic disparity and marginalization of host communities. While natural resources have been responsible for generating vast amounts of wealth for Nigeria, there has not been any fair distribution of this wealth across communities. Communities rich in oil deposits have some of the poorest living standards in the country despite their contributions towards making Nigeria richer. There is a discrepancy between resource generation and development because of the adoption of the federal model. Host communities face challenges including poor infrastructures, ineffective healthcare services, high rates of unemployment, few educational opportunities, limited access to clean water sources, ecological problems, and neglected economy. The contemporary model of resource ownership has led to economic inequality in that host communities carry all the burden caused by exploitation while receiving inadequate profit from resource production. Host communities are subjected to pollution, destruction of natural habitat, gas flaring, oil leaks, deforestation, and water poisoning; agricultural lands, fishing areas, natural reserves, and forests suffer greatly due to decades of oil extraction in the Niger Delta region.

The legal and institutional framework put in place to protect the communities from disadvantages of exploitation on their lands and those to apportion benefits to them have failed. The Principle of Derivation aimed at reducing the existing inequality through providing some percentage of resource revenue to producing areas did not make any significant improvement as most of the revenues stayed concentrated on the state level while being insufficiently distributed among the people whose lives are directly influenced by this problem. Moreover, misappropriation and corruption reduce the effectiveness of resource distribution as centralized resource ownership makes it easier for politicians to steal public funds. The existence of government as both an agency and beneficiary of the activities makes a conflict of interest because the government derives a substantial amount of income from petroleum operations, which make it hesitant to apply sanctions and stop operations that are detrimental to the environment. Environmental regulatory bodies including the National Environmental Standards and Regulations Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA) are undermined by lack of proper funding, political meddling, and their reliance on oil companies for logistical and other support. While the 2021 Petroleum Industry Act was meant to bring reform and enhance development in host communities, the analysis indicated that the Act has failed to facilitate any notable change in the level of development of host communities.

## 5.2 Recommendations

- Constitutional and Legal Reforms on Ownership of Natural Resources

There is need for the Federal Government to undertake reforms in the constitutional and legislative provisions pertaining to absolute ownership and management of natural resources by the government alone. There should be an ownership system that provides scope for participation and co-ownership of resources in host communities. This will foster equity, minimize clamor for ownership of resources, and promote sustainable development.

- Empowering Environmental Agencies

There is need for empowerment of environmental agencies like the National Environmental Standards and Regulations Enforcement Agency (NESREA) and National Oil Spill Detection and Response Agency (NOSDRA). These environmental agencies need to be made independent, adequately funded, and equipped with strict laws to monitor exploitation activities.

- Implementation of Free, Prior and Informed Consent (FPIC)

In addition to its adoption into Nigerian law, FPIC should also be implemented in practice. The host communities should be consulted before initiating an exploration/exploitation project in their lands and their prior consent be obtained. This will protect the rights of the indigenous peoples, enhance transparency in the process and avoid disputes between the government, corporations and the communities.

- Amendment of the Petroleum Industry Act 2021

It would also be important to amend the Petroleum Industry Act 2021 by giving host communities more powers to be involved in the management of the Host Community Development Trusts. Indigenous communities should also be granted the power to elect their representatives onto the Board of Trustees who will participate in decision-making about management and distribution of funds for community development projects.

- Revenue Sharing and Development

Another measure that could be taken is the enactment of policies that ensure that host communities receive fair shares of revenues resulting from the exploitation of natural resources found in their communities. These revenues should be utilized in infrastructure development, environmental rehabilitation, provision of health services, education, creation of jobs and poverty eradication programmes.

**5.3 Conclusion**

Finally, the discovery of crude oil in Oloibiri was expected to liberate the economy but ended up being the catalyst for institutionalizing an intricate structure that would result in underdevelopment, pollution, and instability in the region. Though resources act as the foundation of any country's budget and foreign reserve, the state control monopoly as per Section 44(3) of the constitution has not achieved success legally, economically, and morally by severing state revenue from local development. The centralised form of control has led to gross human right violation whereby the right to development, self-determination, and sustainable environment is denied and disregarded, leaving host communities voiceless throughout the resource exploitation process. For Nigeria to effectively address this resource curse, it should change its ideological approach and borrow from the U.S system while being cautious about the flaws present therein. Nigeria should avoid the exploitative dominant estate theory and the disorganised rule of capture by dividing resources equally and implementing oilfield unitization as per the law.Nigeria will also have to do away with its Federal Trust Doctrine, which entails giving the citizens of each community legal title ownership to their ancestral land, without having to go through federal channels. In essence, the Federal Government will need to move from being an absolute owner, who keeps everything to himself or herself, to a regulator or custodian of the wealth that is created by the citizens.

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