**AN OUTLINE OF CONTROL OF NATURAL RESOURCES**

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**INTRODUCTION**

Nigeria is a resource rich country. The natural resources found therein can broadly be categorized into liquid and solid minerals. The liquid minerals include fresh water, natural gas, crude oil and allied hydrocarbon resources. Solid minerals on the other hand include metals, stones, sand, clay etc. Added to the above classifications, there are also water-based, wildlife-based and land-based resources such as game (wildlife) timber, wood, fish, rangeland and farmland.[[1]](#footnote-1)

**Dimensions of Natural Resources[[2]](#footnote-2)**

|  |  |
| --- | --- |
| Categories | Resources |
| Mining | Coal columbite, salt, lime stone, gold, diamond, and allied solid minerals |
| Quarrying | Sundry stones, sand, clay and cognate solid minerals |
| Petroleum | Crude oil, natural gas |
| Forestry | Timber, wildlife (game), eco-tourism resorts, fuel-wood, charcoal |
| Water | Fish, fresh water, aqua-life |
| Land | Rangeland, farmland, flora |

**Applicable Laws**

* Constitution of the Federal Republic of Nigeria 1999 (as amended)
* Petroleum Act, 1969 Cap 350, Laws of the Federation 1990
* Nigerian Minerals and Mining Act 2007
* The Land Use Act 1978
* The Water Resources Act 1993

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

While the Constitution guarantees freedom of the right to own and acquire property in Nigeria (see section 43), it limits this right with respect to ownership of natural resources.

Section 44(3) provides:

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

Furthermore, item 39 of Part 1 of the Second Schedule to the Constitution lists ‘Mines and minerals, including oil fields, oil mining, geological surveys and natural gas’ as belonging to the Exclusive Legislative List which only the National Assembly can legislate upon.

**NNPC & ANOR. V. FAMFA OIL LTD. (2012) LPELR-7812(SC)**

Per ONNOGHEN, J.S.C. (P. 57, paras. A-C)

"It is clear from the provisions of Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 that the "control of all minerals, mineral oil, etc. shall vest in the Government of the Federation", which said minerals/mineral oils "shall be managed in such a manner as may be prescribed by the National Assembly."

The Case of **ATTORNEY-GENERAL OF THE FEDERATION V. ATTORNEY-GENERAL OF ABIA STATE AND 35 OTHERS (No. 2)** (2002) 96 LRCN, 559; (2001) 89 LRCN, 2413) is worthy of note.

The crux of this case is on the right to control natural resources; particularly, whether ownership, right and control of mineral resources located off-shore of the eight littoral states of Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Lagos, Ondo and Rivers vest in the littoral states or the Federal Government of Nigeria. The Supreme Court stated that by virtue of section 44 (3) of the Constitution of the Federal Republic of Nigeria, the Federal Government has exclusive resource control and ownership rights over such mineral resources. The case also raised the issue of the principle of derivation, particularly as it relates to the revenue accruing to the Federation Account directly from any natural resources of which section 162 subsection(2) of the Constitution of the Federal Republic of Nigeria 1999 empowers the National Assembly to determine the formula for the distribution of funds into the Federation Account.

**Petroleum Act 1969**

The Petroleum Act is “an Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable therefrom in the Federal Government and for all other matters incidental there to”.

The Act vested the entire ownership and control of all petroleum in, under or upon any lands to the state (the state in this case means the Federal Government of Nigeria).

Section 1 vests petroleum in the state.

Subsection (1) states that “the entire ownership and control of all petroleum, under or upon any lands to which this section applies shall be vested in the state”.

Section 4 is on control of petroleum products.

Subsection (1) thereof states that “no person shall import, store, sell or distribute any petroleum products in Nigeria without a license granted by the Minister”. [[3]](#footnote-3)

**The Nigeria Minerals and Mining Act 2007**

The Nigeria Minerals and Mining Act (No. 20, passed into Law on 16 March 2007) which repealed the Minerals and Mining Act of 1999 provides in section 1 as follows:

“The entire property in and control of all mineral resources in, under or upon any land in Nigeria, its continuous continental shelf and all rivers, streams and water courses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zones is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.”

**JULIUS BERGER (NIG.) PLC. V. ANIZZEAL ENG. PROJECTS LTD (2013) LPELR-20694(CA)**

Per OTISI, J.C.A. (Pp. 30-31, Paras. B-C)

"An examination of the Nigerian Minerals and Mining Act will reveal that the purpose of the Act is to have some regulatory control over mining activities in the Country.

Section 1(1) of the Act provides that:

The entire property in and control of all Mineral Resources in, under or upon any land in Nigeria... is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.

Section 75 provides regulatory control provisions for another set of elements, if I may again reproduce for emphasis:

“This part applies in relations to all naturally occurring quarriable minerals such as asbestos, china clay, fuller's earth, gypsum, marble, limestone, mica, pipe clay, slate, sand, stone, laterite, gravel, etc. which may also be lawfully extracted under Mining Leases.”

These elements are such as may be lawfully extracted under Mining Leases. The sole purpose being again to regulate and control the mining of quarriable minerals.”

**The Land Use Act 1978**

The Land Use Act vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who holds such land in trust for the people and would be responsible for allocation of land in all urban areas to individuals – See sections 1 and 2.[[4]](#footnote-4)

**Water Resources Act 1993**

The Water Resources Act Cap W 2 LFN 2004 is an Act to promote the optimum planning, development and use of the Nigeria’s water resources and other matters connected therewith.

In the case of **AKUMA (SAN) v. ABIA STATE GOVT & ORS (2019) LPELR-47030(CA)** the issue was whether by virtue of the Water Resources Act, Laws of the Federation of Nigeria, 2004, the Federal Government of Nigeria through its Ministry of Water Resources is the appropriate authority to authorize the use and control of all surface and underground water in Nigeria?

 The Court of Appeal in addressing the issue pronounced thus:

"The first issue presented for consideration herein is whether the learned trial Court was right in its decision that the act of drilling a borehole by the Appellant in his private residence was not governed by the Water Resources Act but within the legislative competence of the Abia State House of Assembly. To determine this, there is absolute necessity to understand fully the provisions of Section 1(1) of the Water Resources Act. It provides that:

"1. The right to the use and control of all surface and groundwater and of any watercourse affecting more than one State as described in the Schedule to this Act, together with the bed and banks thereof, are by virtue of this Act and without further assurance vested in the Government of the Federation."

It must be recognized that by Section 1(1) of the Act, the right and control of three species of water affecting more than one State or within the Federal Capital Territory over which the nation has power to legislate, are vested in the Federal Government. They are

(a) surface water,

(b) ground water and

(c) any watercourse affecting more than one State as described in the Schedule to the Act.

Surface water is described as the water that collects on the surface of the ground, i.e. a top layer of a body of water. On the other hand, ground water is said to be water held underground in the soil or in pores and crevices in rock. Whereas a watercourse is the channel that a flowing body of water follows.

It is clear in the above provisions that it is only in respect of watercourse, being a channel that flowing body of water follows that more than one State can be affected and not with ground water that is usually extracted.

Item 64 Part 1 of the Second Schedule is under the Executive Legislative List in respect of which only the National Assembly has the authority to legislate upon. It means that only the National Assembly can enact laws pertaining to "Water from such sources as may be declared by the National Assembly to be sources affecting more than one State." The ownership of all lands comprised in the Federal Capital Territory is vested in the Government of the Federation. The power to legislate Laws applicable to the Federal Capital Territory is vested in the National Assembly, so it is only in respect of groundwater or drilling of borehole within the Federal Capital Territory that the Water Resources Act, being an Act of National Assembly, can apply." Per ORJI-ABADUA, J.C.A. (Pp. 34-37, Paras. A-D)

1. Humphrey Nwefuru Nwobashi and Anthony Itumo, ‘Nigerian State, Natural Governance and Resource Control Controversy: Interrogating the Implications of Mono-Economy’ 2018 9(4) IOSR Journal of Economics and Finance (IOSR-JEF) 52

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2. ibid [↑](#footnote-ref-2)
3. Job Imharobere Eronmhonsele and Chukwuemeka Egberase Okuchukwu, ‘Constitutional Provisions and Control of National Resources in Nigeria: Implications for National Cohesion’ 2016 2(4) International Journal of Law 5 [↑](#footnote-ref-3)
4. Theodore Okonkwo, ‘Ownership and Control of Natural Resources under the Nigerian Constitution 1999 and Its Implications for Environmental Law and Practice’ (2017) 6(1) International Law Research 162

<<https://www.researchgate.net/publication/320721613_Ownership_and_Control_of_Natural_Resources_under_the_Nigerian_Constitution_1999_and_Its_Implications_for_Environmental_Law_and_Practice>> [↑](#footnote-ref-4)