

# Human Rights Considerations in the Exercise of Ownership of Natural Resources in Nigeria

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## Abstract

One of the most important characteristics of natural resources is that they possess different kinds of important values for humans. Ownership of Natural resources is a constitutional issue under Nigerian law. The Constitution of the Federal Republic of Nigeria 1999 grants exclusive ownership of natural resources to the federal government for the common good and benefit of the citizens. The paper examines human rights issues in the exercise of ownership of natural resources in Nigeria. The doctrinal method of legal research was adopted by this paper. The paper finds that the economic advantages of natural resources are at the heart of the demand for ownership. It also finds that the right to possess natural resources rests around the exercise of ownership and that its deprivation encompasses everything that has the immediate or remote ability to cause death. The paper concludes that the rights to life, property, and ownership of natural resources are all interconnected. The paper recommends that these rights should be enforceable by the Indigenous people in the resources-bearing community to reduce restiveness over ownership of natural resources. The study also recommended that the Nigerian courts act as a legal beacon in the pursuit of fundamental human rights in Nigeria.

**Keywords:** Human Rights, Natural Resources, Property Rights, Indigenous people, Resource Control.

## 1.0 Introduction

Natural resources are raw materials derived mostly from the earth or soil.<sup>1</sup> Man has altered these natural deposits for his gain and purpose. Natural resources have long been recognized as important in the process of

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<sup>1</sup> Ikpah C, and Ibanga N H, 'Nigeria Mineral Resources: A Case for Resource Control' <<http://www.nigerdeltacongress.com>> accessed 1 November 2022.

socioeconomic development by Scholars.<sup>2</sup> As a result, several theories of ownership of natural resource ownership have emerged. The ownership regime of these natural resources is governed by International conventions and customary international law, common law, and national constitutions.

Nigeria, with a geographical size of 923,768 square kilometers and a diverse variety of natural assets, is one of Africa's wealthiest countries. It also has enough energy resources to meet its present and future expansion requirements. The country possesses the world's sixth-largest crude oil reserve.<sup>3</sup> The Constitution of the Federal Republic of Nigeria (CFRN) 1999<sup>4</sup> expressly provides for the ownership of natural resources in Nigeria. Section 44(3) of the Constitution<sup>5</sup> 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 for Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly."

In recent years, the ownership of natural resources has been a cause of contention between the government and Indigenous peoples whose ancestral lands are located in the heart of natural resource exploitation. This agitation is based in part on a resolution passed by the United Nations General Assembly<sup>6</sup> which provides inter alia that:

The rights of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their National Development and the well-being of the people of the state concerned

Ownership of natural resources is commonly referred to as 'resource control' in Nigeria. The calls for 'resource control' are motivated by two fundamental concerns: environmental and economic. One of the key issues is the recurring issue of inadequate attention to indigenous peoples' environmental hardship in areas where natural resources are exploited. The environmental problems resulting from natural resources development include coastal or river bank erosion, flooding, sedimentation/silt, land degradation and loss of soil fertility, air and land pollution from oil spillage,

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<sup>2</sup> Parimal R., Arpit S., and Shashank G., Energy Security an Indian Perspective: The Way Forward. (8th Biennial International Conference and Exposition Petroleum Geophysics), Pandit Deendayal Petroleum University, India, 2010, 137-145.

<sup>3</sup> Adangor Z, 'Proposals for Equitable Governance and Management of Natural Resources in Nigeria.' (2018) 7 (1) *International Law Research*, 214-216.

<sup>4</sup> Hereinafter referred to as CFRN, 1999 (as amended).

<sup>5</sup> CFRN, 1999 (as amended).

<sup>6</sup> United Nations General Assembly Resolution 1803, 1962.

Gas flaring, tailings dumping, and loss of aesthetic beauty of the land.<sup>7</sup> This concern impact on quality of life and as such an infringement on the right to life. The other concern is socio-economic such as poverty, unemployment, displacements, inadequate compensation, kidnappings, sabotage, and destruction of property among others.<sup>8</sup> This concern is occasioned by the deprivation of property rights as means of sustenance. The consequences of such deprivation are predicated on indigenous people's demand for a fair share of the revenue generated from the exploitation of resources in their domain. These concerns cannot be ignored, it is as a result of this that these resources have been described as a "resource curse" to the indigenous people who live in abject poverty with little or no development to show for these rich natural deposits on their land.<sup>9</sup> These have led to several legal challenges.<sup>10</sup>

Human rights appear to be ideally suited to addressing the diversity of human interests in natural resources. For example, property rights aid in the realization of other human rights such as the right to food and the right to life. In addition to the right to food, clean water, adequate shelter, and education, having a safe and sustainable environment is critical since other rights rely on it. Akinola<sup>11</sup> argued that it is not an exaggeration to say that environmental rights are analogous to the right to life since they are an extension of the core human rights that humanity demands and deserves. As a result, human rights are constructed with a similar goal in mind: to safeguard a very broad spectrum of vital human interests that have been judged worthy of international legal protection. As a result, human rights concerns in the exercise of natural resource ownership are only a means to a goal.

## **2.0 Clarification of Key Terms**

### **2.1 Human Rights**

Rights have been defined in different ways by different Authors and Jurists. Garner<sup>12</sup> defined rights as:

1. That which is proper under law, morality, or ethics
2. Something due to a person by just claim, legal guarantee, or moral

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<sup>7</sup> Rev. David Ugolor, 'Strategies for Transforming Natural Resources Wealth into Wealth for the People', Proceedings of the 35<sup>th</sup> Annual Conference of the Nigerian Society of International Law (ed. Ademola O. Popoola, 2008), 164.

<sup>8</sup> Ibid.

<sup>9</sup> Burton E G, 'Reverse the Curse: Creating A Framework to Mitigate the Resource Curse and Promote Human Rights in Mineral Extraction Industries in Africa' (2014). Emory Int'l L. Rev. 28 at 425.

<sup>10</sup> Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (2005) AHRLR 151 (Nig HC 2005), FHC/B/CS/53/05 Federal High Court Benin Judicial Division, 14 November 2005; Fawehinmi v Abacha (1996) 9 NWLR (Pt. 475) 990.

<sup>11</sup> Akinola O B & Bamigboye L O, 'Expanding the frontiers of environmental rights under the 1999 constitution,' (2019) Vol. 2 *Confluence Law Journal*, 145.

<sup>12</sup> Garner B A, *Black's Law Dictionary*, (8<sup>th</sup> edn. West Group, 1999) 1347.

principle

3. A power, privilege, or immunity secured to a person by law
4. A legally enforceable claim that another will do or will not do a given act; a recognized or protected interest, the violation of which is wrong.
5. The interest, claim, or ownership that one has in tangible or intangible property.

Austin<sup>13</sup> defined a right as an ability inherent in a particular party or parties under a particular statute, acting against a party or parties (or in response to a duty belonging to a party or parties) in which it resides. He claimed that a person can be said to have a right only when another or others are bound or obliged by law to do something or forbear regarding him. It means that a right has always a corresponding duty. Holland<sup>14</sup> defines a legal right as the capacity residing in one man of controlling, with the assent and assistance of the state the actions of others. Holland follows the work given by Austin. Salmond<sup>15</sup> defines right from a different angle. He stated that a right is an interest recognized and protected by a rule of law. It is an interest that respect is a duty and disregard for is wrong.

The 1948 ratification of the Universal Declaration of Human Rights (UDHR) and the succeeding 1966 Covenants split human rights into two categories: political and civil rights on the one hand, and social, economic, and cultural rights on the other.<sup>16</sup> A new category of rights called the third generation of rights has emerged over time. This last group is fraught with uncertainty in terms of its precise nature and extent, particularly when it comes to enforcement.<sup>17</sup>

Fundamental Human rights are rights that humans have just of their humanity. They are built into the fabric of existence. This is true regardless of age, location, or social class. They are rights to which people everywhere 'naturally' feel entitled, and they protest any restriction of those rights by any person or authority, which may result in war in some instances. These rights are regarded as basic because they are seen as essential to human life, dignity, liberty, and livelihood.<sup>18</sup>

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<sup>13</sup> Aslam M A, Rights and Duties in the Light of Jurisprudence: An Overview <<https://www.legalserviceindia.com/legal/article-1919-rights-and-duties-in-the-light-of-jurisprudence-an-overview.html>> accessed 18 December 2022.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Akinola, (n. 11), 148.

<sup>17</sup> Ibid.

<sup>18</sup> Chinwo C A J, *Principles and practice of Constitutional Law in Nigeria* (Life, Law, and Grace Bookhouse, Chi amazing grace Ltd Port Harcourt, 2007), 102-103.

## 2.2 Ownership

Garner<sup>19</sup> defines ownership as the bundle of rights allowing one to use, manage, and enjoy the property, including the right to convey it to others. Going by this definition, ownership is the collection of rights allowing one to use and enjoy the property. Salmond<sup>20</sup> talks about ownership as the relationship between a person and an object which forms the subject-matter of his ownership. This means that ownership consists in a complex of rights all of which are rights in rem being good against the entire world and not merely specific persons. Austin<sup>21</sup> views ownership as a right indefinite in point of the user, unrestricted in point of disposition, and unlimited in point of duration over a determinate thing. Dias<sup>22</sup> asserted that a person is the owner of a thing when his interest will outlast the interests of other persons in the same thing. Ownership and possession were referred to as dominium or possessio in Roman law. Dominion refers to total right over something, whereas ownership refers to actual authority over it.<sup>23</sup> They prioritized ownership because they believe that having absolute rights to something is more essential than having physical control over it.

Niki Tobi (JCA) in **Abraham v. Olorunfunmi**<sup>24</sup> described ownership as the whole or bundle of rights that the owner has over and above every other person on a thing. He recognized the breadth of the rights implied by the collection in ownership of the whole or the rights of the owner over and above every other person on a thing. The court went on to explain that the benefits of ownership entail that the owner is not bound by the rights of others. Because the owner has an absolute right to alienate or dispose of the property, and he can exercise the right without the consent of another party because no other person has a stronger title to the property than he does.

The legal connection and entitlements to natural resources are governed by several theoretical ideas of ownership. These ideas describe the ownership rights of states and people over natural resources.

## 2.3 Natural Resources

Garner<sup>25</sup> defines Natural resources as any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water, and wildlife. They exist independent of human actions, they are gifts of nature. In other words. Scholars frequently use the

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<sup>19</sup> Garner, (n. 12), 1138.

<sup>20</sup> Fitzgerald F J, *Salmond on Jurisprudence* (12th Edn. Universal Law Pub Co. P. Ltd. Delhi, 2013), 504 at 256 - 259.

<sup>21</sup> Jurisprudence and Legal Theory, <<https://www.thelawlane.com/jurisprudence-and-legal-theory/>> accessed 18 December 2022.

<sup>22</sup> Dias R W M and Hughes G B, *Jurisprudence*, (2<sup>nd</sup> edn. Butterworths, London, 1964), 339.

<sup>23</sup> Sneh R and Garg R, 'Ownership' (2012). Lawyers in India; Law Articles <<http://www.legalserv.ceindia.com.>> accessed on 18 December 2022.

<sup>24</sup> *Abraham v. Olorunfunmi* (1991) 1 NWLR (Pt. 165) 53.

<sup>25</sup> Garner, (n. 12), 1056.

idea of "value" to define natural resources.<sup>26</sup> Miller and Spoolman<sup>27</sup> claim that everything taken from the environment to satisfy human needs and desires is a natural resource from a human point of view.

Natural resources can be categorized in a variety of ways depending on several different factors, such as their origin and whether they are renewable or not. But resources have three primary qualities: value, scarcity, and the possibility of consumption or depletion. In Nigeria, natural resources may be divided into two categories: solid minerals and oil and gas. There are 34 different types of solid minerals found in over 450 different places across the 36 states of the Federation and the Federal Capital Territory.<sup>28</sup> Out of all these natural resources mentioned above, oil and gas continue to be a significant source of income for the Nigerian government and are therefore considered a significant national resource in Nigeria.

The think tank Revenue Watch Institute stated the fate of resource-rich countries hinges on how they manage their oil, gas, and minerals.<sup>29</sup>

### **3.0 Evolution of Ownership of Natural Resources in Nigeria**

Natural resource exploitation is not an uncommon occurrence in pre-colonial Nigeria. Mining existed among Nigerians even before the arrival of Western civilisation and the formation of Nigeria as a nation in 1914.<sup>30</sup> Communities were mostly ethnic kingdoms, village groupings, and other geo-ethnic communities. Within the ethnic space, these tiny groups possessed and exercised resource-based rights to the natural resources within their borders for common subsistence and livelihood. These resources include, among other things, water resources, forest products, and wild animals. Other communities within the same ethnic group could not exert jurisdiction over their neighbors' natural resources. When other communities utilised another community's resources, they did so as a privilege rather than a right. An individual's claim to these resources is based on his/her lineal relationship to the land where such resources are found.<sup>31</sup>

Ajomo<sup>32</sup> explained that the vesting of ownership and management of natural

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<sup>26</sup> Miller G T and Spoolman S, *Living in the Environment: Principles, Connections, and Solutions* (17<sup>th</sup> ed. Belmont, CA: 2011), 5.

<sup>27</sup> Ibid.

<sup>28</sup> Ministry of Foreign Affairs, Nigeria - Natural Resources, <<https://foreignaffairs.gov.ng/nigeria/natural-resources/>> accessed 20 September 2022.

<sup>29</sup> Revenue Watch Institute. (2013). Resource governance index. Report. <[http://www.revenuewatch.org/sites/default/files/rgi\\_2013\\_Eng.pdf](http://www.revenuewatch.org/sites/default/files/rgi_2013_Eng.pdf) > accessed 24 August 2022.

<sup>30</sup> Oluwagbani A, 'The Niger-Delta Development Commission and the Future of Petroleum Industry in Nigeria'. (2001) *Modern Journal of Finance and Investment Law*, 5(3), 369-370.

<sup>31</sup> Njoku U J, 'Colonial Political Re-engineering and the Genesis of Modern Corruption in African Public Service: The Issue of the Warrant Chiefs of South Eastern Nigeria as a Case in Point,' (2005) *Nordic Journal of African Studies* 14 (1), 99-116.

<sup>32</sup> Ajomo M A, "The Legal Framework of the Petroleum Industry", Paper presented at the Centre for Petroleum Environment and Development Studies workshop at the University of Lagos on

resources in the Nigerian state is historical and extends back to the colonial era. Historians and scholars including Dike,<sup>33</sup> Ade-Ajayi,<sup>34</sup> Anene,<sup>35</sup> Oyebola and Oyelami<sup>36</sup> and Onwubiko<sup>37</sup> have argued that European conquest and occupation of West Africa and particularly British colonial rule in Nigeria was based on two main motives. These were initially economic interest and later governance. The previously established customary resource management patterns were eroded, and many of them were structurally distorted, derailed, and disintegrative. The dysfunctional effects of these did not become apparent until several decades after the colonialists had left.

The colonial legislations were transferred to after Nigeria's independence and thus, subsist. The Constitution of the Federal Republic of Nigeria (CFRN) 1999, (as amended) confers the power to own control, and regulate petroleum and other natural resources in the Federal Government. This power is firmly provided for in Section 44(3) of the Constitution. Others are the Petroleum Act,<sup>38</sup> The Nigerian Minerals and Mining Act<sup>39</sup> and The Land Use Act.<sup>40</sup> Aladeitan<sup>41</sup> argues that it is this concept of state ownership of minerals that Nigeria inherited at independence in 1960, which thereafter became entrenched in the 1963 Republican Constitution.

Nigeria has failed to completely learn from countries such as the United States of America and others where shared ownership of natural resources is practiced. This has in turn led to the seemingly unending agitations between the federal government, states, and the indigenous people over ownership of the natural resources found in their domain. Mrabure<sup>42</sup> argued that State ownership has failed significantly in recent years, and management of these resources by the people will result in a shift from the status quo. He proposed that the people will have a greater feeling of participation and autonomy, putting more responsibility in their hands to ensure that the region's indigenes confront the years of neglect constructively. He concluded that more wealth should be placed in their hands since it is common knowledge that when wealth is distributed, acrimony, and friction decrease

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essentials of oil and gas law Lagos (Oct.17-18, 2001).

<sup>33</sup> Dike K O, *Hundred Years of British Rule in Nigeria* (Federal Ministry of Information: Lagos 1960).

<sup>34</sup> Ade – Ajayi J F, *Milestones in Nigerian History* (Ibadan University Press: Ibadan, 1962).

<sup>35</sup> Anene J C, *Essays in African History* (Onibonoje Publishers: Ibadan, 1966).

<sup>36</sup> Oyebola A, and Oyelami A, *A Textbook of Government for West Africa* (Educational Research Institute: Ibadan, 1967).

<sup>37</sup> Onwubiko K B C, *History of West Africa: 1800-Present Day* (Book Two, Africana Educational Publishers Company: Aba, 1976).

<sup>38</sup> Laws of the Federation of Nigeria (hereafter referred to as LFN, 2004), Cap P10.

<sup>39</sup> LFN, 2004, Cap N117.

<sup>40</sup> LFN, 2004, Cap L5.

<sup>41</sup> Parimal, (n. 2), 160.

<sup>42</sup> Mrabure K O, "Revisiting Petroleum Resources Ownership Question. A Case for Private Ownership"; a Paper Presented at the 49th Annual Nigerian Association of Law Teachers (NALT) Conference <<http://www.naltng.org/wp-content/uploads/2016/06/25.pdf>> accessed 1 May 2022.

significantly.

Victoria<sup>43</sup> declares that Land, territories, and related resource rights are of fundamental importance to indigenous peoples since they constitute the basis of their economic livelihood and are the sources of their spiritual, cultural, and social identity. The land is the cornerstone of indigenous people's lives and cultures, as well as their ability to choose their growth and destiny. It deteriorates when they lack access to, and respect for, their lands, territories, and natural resources.

#### **4.0 Human Rights Considerations**

##### **4.1 Property Rights as a Frontier of Ownership**

Human rights postulated that human beings had some inherent rights that they were endowed with by nature.<sup>44</sup> These are found in international law<sup>45</sup> regional charter<sup>46</sup> and national constitutions.<sup>47</sup>

The right to property is provided for in Article 17 of the Universal Declaration of Human Rights (UDHR) 1948<sup>48</sup> and other relevant instruments.<sup>49</sup> In the context of natural resources, a property right is regarded as a tool of resource allocation.<sup>50</sup> Under international law, the ownership of natural resources varies, depending on whether such resources are located onshore or offshore. States have permanent sovereignty over onshore resources.<sup>51</sup>

The African human rights instrument<sup>52</sup> include the right to existence and self-determination,<sup>53</sup> the right to freely dispose of wealth and natural

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<sup>43</sup> Victoria T C, Chairperson, United Nations Permanent Forum on Indigenous Issues. Address to the Opening of the Sixth Session of the Permanent Forum on Indigenous Issues, (14 May 2007).

<sup>44</sup> Atsenywa A, 'Between Chapter 2 and Chapter 4 of the 1999 Constitution: Justifying Economic, Social and Cultural Rights in Support of Civil and Political Rights' in E Azinge and B Owasanoye (eds), *Justiciability and Constitutionalism: An Economic Analysis of Law* (NIALS Press 2010) 217-18.

<sup>45</sup> See Universal Declaration of Human Rights (UDHR) 1948 (Hereinafter referred to as UDHR)

<sup>46</sup> African Charter on Human and Peoples Rights 'Banjul Charter' 1981 (Hereinafter referred to as African Charter).

<sup>47</sup> Constitutions of all modern democratic nations provide for human rights.

<sup>48</sup> Everyone has the right to own property alone as well as in association with others, and 'no one shall be arbitrarily deprived of his property.

<sup>49</sup> See International Convention on the Elimination of All Forms of Racial Discrimination 1965, Art 5(v); International Convention on the Elimination of All Forms of Discrimination against Women 1979, Arts 15(2) and 16(1) (h); International Labour Organization Convention No 169 1989, Arts 14 and 16 concerns Indigenous and Tribal Peoples Art 21; the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms 1995, Art 26(1).

<sup>50</sup> Christopher Rodgers, 'Nature's Place? Property Rights, Property Rules and Environmental Stewardship' (2009) 68 *CLJ*, 550.

<sup>51</sup> Anita Ronne, 'Public and Private Rights to Natural Resources and Differences in their Protection?' in Aileen McHarg and others (eds), *Property and the Law in Energy and Natural Resources* (OUP 2010) at 64.

<sup>52</sup> African Charter, Arts 13(3), 14 and 21.

<sup>53</sup> *Ibid*, Article 20.



resources;<sup>54</sup> the right to economic, social, and cultural development with due regard to freedom and identity in the equal enjoyment of the common heritage of mankind;<sup>55</sup> and the right to a satisfactory environment favourable to their development.<sup>56</sup>

The Second World Conference to Combat Racism and Racial Discrimination<sup>57</sup> held in 1983 notably issued a Declaration which has been described as an official document. The preamble and the operative part of the document in paragraph 22 express the concern for the rights of indigenous people. It state:

The right of indigenous populations to maintain their traditional economic, social, and cultural structures, to pursue their own economic, social, and cultural development, and to use and further develop their language, their special relationship to their land and its natural resources should not be taken away from them...

United Nations has also come out with resolutions on the people and the control of their natural resources.<sup>58</sup>

Nigeria has been active in signing and ratifying human rights treaties. The Universal Declaration of Human Rights and treaties dealing with traditional civil and political rights have undoubtedly had an impact on different Nigerian constitutions, which have consistently contained a chapter devoted to ensuring fundamental human rights inside Nigerian boundaries.<sup>59</sup> Section 43 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. In Section 44 Subsection (1), it states that shall be acquired compulsorily in any other part of Nigeria except in the manner and for the purposes prescribed by the law.

The right to own land, freely dispose of wealth and natural resources revolves around the exercise of ownership in the interest of the people.<sup>60</sup> This includes the recognition of the people's legal rights to the natural resources located therein, the protection of the peoples' territorial integrity, the protection and preservation of their physical and cultural identities, including the protection of their ancestral shrines in their land, and the

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<sup>54</sup> Ibid, Article 21; The proviso to Article 21(4) State signatories to the current charter shall commit to eliminating all kinds of foreign exploitation, notably that practiced by international monopolies, to allow their peoples to fully benefit from the benefits gained from their national resources.

<sup>55</sup> Ibid, Article 22.

<sup>56</sup> Ibid, Article 24.

<sup>57</sup> Declaration of the World Conference to Combat Racism and Racial Discrimination, 1983.

<sup>58</sup> Adoga-Ikong J A, 'An Appraisal of the attitude of Nigerian courts in oil and gas pollution cases,' (2019) *International Journal of Law*, 5(5).

<sup>59</sup> CFRN, 1999 (as amended), Chapter IV.

<sup>60</sup> Jeremie G, The Right to freely dispose of Natural Resources: Utopia or Forgotten? *Netherlands Quarterly Human Rights*, 2013, vol. 32/2, 314-341, 2013 <<https://repository.uel.ac.uk/download/7092c00f4d614250f9849c> > accessed 25 August 2021.

provision of unrestricted access to their form and places of worship, as well as the right to free, prior, and informed consent before the start of exploitation activities.<sup>61</sup> It also includes the provision of adequate access to their means of livelihood including food, and an obligation on the government to take actions or measures to prevent deprivation of their normal subsistence.

#### **4.2 Right to Life as a Frontier of Ownership**

The right to life is of universal application.<sup>62</sup> This right is enshrined in the UDHR,<sup>63</sup> African Charter on Human and Peoples Rights 1981<sup>64</sup> and Section 33 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended). The sanctity of the right to life cannot be tied down to a single readily specified sphere: it incorporates a vast range of other rights that rely on the presence of life to be enjoyed: it is the foundation of all other rights.

The traditional approach to the right to life views the right in a very parochial sense to cover only occasions where the government was directly involved in the arbitrary deprivation of life.<sup>65</sup> A major problem with the traditional approach is that it has the effect of excluding other components (such as the right to health, property, food, healthy environment, etc) contained in the bundle conveniently wrapped up as the right to life. This has the effect of restricting the enforcement of the right to the occurrence of death and thus confining the right to the realm of a broken promise, for which compensation is a just and adequate remedy only when the government directly authorised the death.

The traditional approach, as applied in Nigeria,<sup>66</sup> views the right to life as imposing only a negative duty on the State not to arbitrarily deprive a citizen of her life. This is in contrast to an inclusive interpretation of the right to life, which combines the conventional perspective with the imposition of a positive duty on the government to take all reasonable means to safeguard life. To avoid this parochial view, a Nigerian Court in *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited*<sup>67</sup> decided not to

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<sup>61</sup> In *Maya Indigenous Community of the Toledo District v. Belize*, Inter-American Commission on Human Rights case 12.053 Report no. 40/04 (2004), Doc. OEA/Ser.L/V/II/122 Doc. 5, rev. 1, para 117 (2004) 142, the inter-American commission relying on a similar provision in her regional instrument indicted the authorities for violation of the right of the Maya people by allowing the exploitation of timber and oil in Maya ancestral land without the people's informed consent.

<sup>62</sup> Constitutions of most modern democratic nations provide for the right to life.

<sup>63</sup> UDHR, Art 3: Right to life.

<sup>64</sup> African Charter, Article 4

<sup>65</sup> See *Nasiru Bello v. AG Oyo State* [1986] 5 NWLR (pt. 45) 828. Where the Supreme Court of Nigeria at the suit of the deceased family held that the respondent violated the deceased right to life and ordered compensation to his family for the execution of a convicted felon while his appeal to a higher court was pending.

<sup>66</sup> Section 33 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999.

<sup>67</sup> *Jonah Gbemre v Shell Petroleum Development Corporation of Nigeria Limited* (2005) AHRLR

view the right to life in isolation. The court places a strong emphasis on the positive aspects of the right by reading it alongside the positive responsibilities of the State, which are frequently proclaimed non-justiciable in constitutional provisions.<sup>68</sup>

In its broadest sense, the right to life includes anything that has the immediate or distant potential to cause death. It includes contamination of the air, water, and anything else that negatively impacts well-being, such as a lack of proper healthcare. It encompasses the denial of the right to natural resources and their beneficial use; it encompasses the destruction of a person's means of livelihood, making it difficult for the individual to afford the requirements of life. The list is extensive; it extends far beyond compensation for unjust deprivation of life to encompass anything that jeopardises a dignified existence.<sup>69</sup> The right to life presupposes the existence and accessibility of certain fundamental necessities such as food, health care, housing, and education. To be sustained, the right to life requires sustenance, which must be generated by members of society, all of whom have this right to live. Thus, the right to life is related to the right to labour to gain means of sustenance to receive food and shelter...<sup>70</sup>

### 4.3 Limitations of Human Rights Treaties in Nigerian Law

Section 12 (1) of the CFRN 1999 limits the application and enforcement of human rights treaties to those that have previously been domesticated in Nigeria. This is due to Nigeria's dualist system, which states that treaties, particularly those dealing with human rights, cannot be applied domestically until they have been incorporated into national law. Section 12 (1) states that no treaty between the federation and any other nation has legal force save to the degree that it has been adopted into law by the National Assembly. Egede<sup>71</sup> argued that the requirement that a treaty must be enacted

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151 (Nig HC 2005), FHC/B/CS/53/05 Federal High Court Benin Judicial Division, 14 November 2005 and cited in J Nnamdi Aduba, 'The Right to Life under Nigerian Constitution: the Law, the Courts, and Reality' <<http://nails-nigeria.org/library/THERIGHTTOLIFEUNDERNIGERIANCONSTITUTIONTHELAWTHECOURTSANDTHEREALITYBYJNNAMDIADUBA.pdf>> accessed 28 August 2021.

<sup>68</sup> Such positive duties are contained in Chapter II of the CFRN, covering such components of the right to life as food, shelter, healthcare, a healthy environment, etc.

<sup>69</sup> See *Yakye Axa Indigenous Community v. Paraguay*, where the Inter-American Commission on Human Rights claimed that the government of Paraguay threatened the Yakye Axa Indigenous Community's access to food, water, and health care, as well as its survival, by failing to respect ancestral property rights, in violation of the American Convention on Human Rights articles 4 (right to life), 8 (right to a fair trial), and 21 (judicial protection). In its interpretation, the court also relied on the general comments of the Committee on Economic, Social, and Cultural Rights, the Supervisory Body of the International Convention on Economic, Social, and Cultural Rights <<https://leap.unep.org/countries/py/national-case-law/yakye-axa-indigenous-community-v-paraguay>> accessed 26 June 2023.

<sup>70</sup> Uchegbu S, 'The Concept of the Right to Life under Nigerian Constitution', in *Essays in Honour of T.O. Elias*, 151-152 cited in J.N. Aduba, (n 21), p. 3.

<sup>71</sup> Egede E, 'Bringing Human Rights Home: An Examination of the Domestication of Human

as a municipal law before it can be enforced in Nigeria appears to be merely a historical incident and a colonial relic.

In *Fawehinmi v. Abacha*,<sup>72</sup> One of the crucial issues that arose, in this case, was the status of a domesticated treaty under section 12 vis-à-vis other municipal law. The Supreme Court considered Section 12 (1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1979, which is similar to Section 12 (1) CFRN 1999, in respect of the African Charter on Human and Peoples Rights. The court unanimously held that section 12 of the constitution had a dualist impact. The conclusion is that no matter how advantageous an international treaty to which Nigeria has been a signatory may be, it remains unenforceable unless it is adopted into national law by the National Assembly. Egede<sup>73</sup> contended that the exclusion from the domestic application of Human rights which Nigeria has become a party by succession, accession, or ratification by the deliberate (or perhaps inadvertent) failure by the legislature to enact them into law appears to be unwarranted and disturbing.

#### 4.4 The Role of Nigerian Courts in Extending the Frontiers

Flowing from the provisions of the extant laws on the ownership and control of natural resources in Nigeria is the development and emergence of case law.

In *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited*,<sup>74</sup> The plaintiff sued Shell Nigeria, the Nigerian National Petroleum Corporation, and the Attorney General of the Federation, seeking a declaration that the rights to life and dignity of the human person guaranteed by sections 33(1) and 34(1) of the Constitution included the right to a clean, poison-free, pollution-free, and healthy environment. The Federal High Court ruled that the first and second respondents' actions in continuing to flare gas as part of their oil exploration and production activities in the applicant's Community violated the fundamental right to life (including a healthy environment) and human dignity guaranteed by the Constitution and the African Charter. Aside from isolated High Court cases such as *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited*,<sup>75</sup> Nigerian case law has failed to recognise the progress achieved by both local and international courts in the realistic application of the right to life as it pertains to natural resources.

However, in *Fawehinmi v. Abacha*,<sup>76</sup> the court also held that where justice cannot be obtained under domestic law in the domestic courts, litigants can proceed to the African Court on Human and Peoples' Rights.

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Rights Treaties in Nigeria', (2007) 51 (2) Journal of African Law, 251.

<sup>72</sup> (1996) 9 NWLR (Pt. 475) 990.

<sup>73</sup> Egede, (n. 72).

<sup>74</sup> Supra.

<sup>75</sup> Supra.

<sup>76</sup> Supra.

In *SERAC v Nigeria*,<sup>77</sup> The African Commission ruled that Nigeria breached African Charter Articles 4, 14, 16, 18, and 24 by tolerating and supporting ecologically deteriorating and polluting practices of oil firms in traditional Ogoniland through military force. Articles 4, 14, 16, 18, and 24 of the African Charter recognise the African people's rights to life, property, physical and mental health, family, and the right of women and children to be free from discrimination, as well as the right to a satisfactory environment for development.

#### 4.5 Lessons from Other Jurisdictions

Courts in other countries have set a good example for Nigerian courts by applying the right to life granted in their respective constitutions inclusively.

##### a) India

The introduction of Article 48A into the Constitution (Forty Second Amendment) Act 1976 explicitly embraced environmental protection and improvement as part of State policy. Article 51A (g) made it a citizen's obligation "to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for all living creatures."<sup>78</sup>

In India, this line of thinking has resulted in the formation of new notions in which the right to life has been construed to encompass, among other things, the right to survival as a species, the right to livelihood, the right to quality of life, and the right to dignity. *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>79</sup> was one of the earliest cases where the Supreme Court addressed issues relating to the environment and ecological balance. The extended concept of the right to life under the Indian Constitution was additionally elaborated in *Francis Coralie Mullin v. Union Territory of Delhi*<sup>80</sup> where the Supreme Court highlighted the positive obligations of the State, as part of its duty correlative to the right to life. The significance of this case resides in the court's willingness to be forceful in adopting a broad interpretation of human rights. Only via such an understanding can environmental issues be included in the broad framework of human rights.<sup>81</sup>

The right to livelihood (article 41), which is a guiding principle of state policy, is another extension of the right to life. This expansion can hold the government accountable for environmental acts that have threatened to displace the poor and damage their way of life. In the area of environmental rights, a strong link between the right to livelihood and the right to life has

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<sup>77</sup> Suit No ECW/CCJ/APP/10/11, Communication No 155/96.

<sup>78</sup> Aedoyin-Raji J O, Abdulkadir B A, Abdulkareem A M, 'The Indigenous People and Environmental Conflicts: Reflection on Environmental Democracy for Conflict Resolution', (2021) 6 (1) *Nasarawa State University Journal of Public and International Law*, 333.

<sup>79</sup> (1985) INSC 220.

<sup>80</sup> 1981 All Indian Reports (AIR) 746.

<sup>81</sup> Aedoyin-Raji (n. 78).

therefore been established. The Court has been led by the affirmative responsibilities contained in articles 48A and 51A (g) in the context of the rights of indigenous people displaced by development projects and has ordered sufficient compensation and rehabilitation of the evictees. An Indian court in **Bharati v State of Kerala**<sup>82</sup> has justified environmental rights. Hegede and Mukherjea JJ found in this case, among other things, that "it aims at rendering the India masses free in the positive sense without truly following the Directive Principles intended by the Constitution" (India 1950). It was also held in the Indian case of **M.C.Mehta v. Union of India**,<sup>83</sup> that the denial of the means of sustaining life is tantamount to a denial of the right to life.

This is in stark contrast to Nigeria, where environmental rights guaranteed by the constitution are still unenforceable in Nigerian courts.

#### **b) Bangladesh**

The Constitution of the People's Republic of Bangladesh, 1972 does not explicitly mention the right to a healthy environment, either in the guiding principles or as a basic right. Article 31 states that everyone has an innate right to be protected against activities that endanger their life, liberty, body, reputation, or property unless prohibited by law. In the case of **Dr. M. Farooque v. Government of Bangladesh**,<sup>84</sup> The Bangladesh Appellate Court interpreted the right to life broadly. The petitioner filed this action, requesting that the court halt the importation of certain milk powders that had been found to contain radiation levels over the permitted limit. The petitioner claimed that the government authorities' incapacity to ship back the imported milk powder was harmful to human health and violated the fundamental right to life. The court found in favour of the petitioner.

#### **c) United States**

The right to private ownership of oil and gas was recognized by the U.S. Supreme Court as early as 1898.<sup>85</sup> It was decided in **Del Monte Min. & Min. Co. v. Last Chance Min. & Mill. Co**<sup>86</sup> that a private owner has absolute ownership, and the government cannot interfere with it. Kuntz went on to say that owning property gives you the unique right to enjoy substances under the surface, and the state has no proprietary rights because of its sovereign status.<sup>87</sup>

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<sup>82</sup> (1973) 4 SCC 225.

<sup>83</sup> [1987] All Indian Reports (AIR) 1086

<sup>84</sup> 17 BLD (AD) 1997, vol. XVII, Page 1-33.

<sup>85</sup> Kuntz, Oil and Gas, A revision of Thornton, Vol 1, § 2.1 (1st ed. 1987)

<sup>86</sup> 171 U.S 18

<sup>87</sup> Kuntz, Supra, § 2.1.

## 5.0 Conclusion

This paper found that the right to life, property right, and the exercise of ownership over natural resources are all interconnected. Natural resources have varying degrees of importance to humanity. This is because natural resources such as air, water, and land have a life-sustaining value. Property rights have also been viewed as a component of human rights to movable and immovable property as provided by s 43 CFRN. It also found that the non-justiciability of Section 20 CFRN 1999 (as amended) under Section 6(6) (c) CFRN 1999 (as amended) is detrimental to environmental rights. These categories of human rights represent fundamental human interests that have been recognized as worthy of international legal protection. Furthermore, this paper found that Section 12 (1) of the CFRN 1999 limits the application and enforcement of human rights treaties in Nigeria, despite that these treaties have been stated in a universal human rights language.

This paper concludes that the various needs that natural resources fulfill are human rights. As the right to possess natural resources may be represented as a human rights claim, so can the right to access natural resources be viewed not just as a means of fulfilling the right to life, but also as a potential danger to human rights if denied. A human rights-based approach to environmental issues demands a high level of participation. This is unquestionably one of the reasons why human rights should play a prominent part in the exercise of natural resource ownership to alleviate disparities and abuses.

The soul of law is reason, and when the rationale for any given law fails, so does the law itself. The Latin maxim *cessant ratione legis cessat ipsa lex* is commonly used to convey this. As a result, if any law fails the "reason" test, that law loses its "soul" and is likely to lead to civil disobedience. This is the case with the existing laws, notably the Federal Republic of Nigeria's Constitution. 1999 (as amended). Therefore, this paper recommended an amendment to the Constitution of the Federal Republic of Nigeria (CFRN) 1999, specifically section 44(3) which grants exclusive ownership of natural resources to the federal government because it violates Section 43 CFRN 1999 (as amended), which guarantees citizens' property rights. It is also recommended that Section 20 CFRN 1999 (as amended) be amended, as its non-justiciability under Section 6(6) (c) CFRN 1999 (as amended) is detrimental to environmental rights. Furthermore, it is also recommended that Section 12 (1) of the CFRN 1999 be amended because it limits the application and enforcement of human rights treaties to those that have previously been domesticated in Nigeria. Finally, this paper recommended that the Nigerian courts act as a legal beacon in the promotion of these human rights in Nigeria.