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17. SEPARATION OF POWERS AND FUNCTIONS OF LOCAL GOVERNMENT IN
NIGERIA'S CONSTITUTIONAL DEMOCRACY EBONIYI STATE AS A CASE
STUDY
*H.P. FAGA

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NIGER DELTA PROBLEM AND THE SHARIA ANTIDOTE

BARK. IBRAHIM, RIDWAN OLAGUNJU (ESQ.)

INTRODUCTION

The hue and cry (today) in the whole of Niger Delta in Nigeria is, without doubt, traceable to the struggle for resource control. This struggle, which dates back to the slave trade era in the sixteenth century¹, is a reflection of the Niger Deltans' determination to control willy-nilly, all the mineral resources² found beneath their land.

More than any other time in the past, the negative impacts of the struggle for resource control, which has now gone militant and hyper violent are currently being felt everywhere in the country. Aside loss of many lives³ and properties to the agitation, series of arm twisting measures⁴ by the militants continue to unfold themselves as days roll by.

Despite concerted efforts of successive central governments in the country to stem the tide of this ever growing cankerworm, a remarkable achievement in the area is yet to be recorded. Apart from the military's idea of OMPADEC and Obasanjo's option of NDDC⁵ (both of which could not yield the expected fruit), the presidency, in the current administration, has equally tried a number of options⁶ but none has produced the desired result either.

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¹ Okonta I. And Douglas, *Where The Vultures Feast: Shell, Human Rights and Oil in the Niger Delta* (Sierra Club Books, New York, 2005).

² Though what easily comes to mind is petroleum, the struggle in the Niger Delta covers all mineral resources found in their land. These include: Silica Sand, Mica, Natural Gas, Marble, Bauxite, Granite, Columbite etc.

³ For instance, 900 was given as the death toll in the clash between the operatives of the Joint Task Force (JTF) code named operation restore hope and militants at Chanoini Creeks in Warri South Local Government Area of Delta State. See *Sunday Tribune*, (No. 1682, 17/05/2009, Page 5).

⁴ Such as hostage taking, kidnapping oil bunkering and a host of others.

⁵ Since the event of N500 million Juju scam involving the suspended chairman of the Niger Delta Development Commission (NDDC), Ambassador Sam Edem, Nigerians (including the Niger Delta Women forum) have expressed belief in the failure of the commission and its Managing Director, Timi Alaibe. See: *The Source Magazine*, (Vol. 23, No. 19, September, 2008, Pg. 18)

⁶ The proposed Prof. Ibrahim Gambari Led Abuja summit was one of the options. This summit which became dissolved even before take-off, failed because of the resentment the Niger Deltans have for Ibrahim Gambari on account of his previous comment, while still an ambassador, in support of the execution order of hanging late Ken Saro Wiwa and 9 other Ogonis; Other efforts by the Yaradua administration include inauguration of the Ledum Mittee-led Niger Delta Technical Committee, creation of a full fledged Ministry of Niger Delta and setting up of the Presidential Panel headed by Godwin Abbe on Amnesty and Disarmament of Militants in the Niger Delta to mention but few.

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Worse still, the Federal government, in an apparent show of being pushed to the wall, instructed the Nigerian military last month to embark on aerial bombardment⁷ of camp five⁸ in Okerenkoko and other Ijaw communities in Gbaramatu Kingdom in the Warri South West Local Government Area of Delta State. This violent measure by the federal government has again cost loss of so many lives and displacement of so many people including the aged and innocent children in the region. The ongoing crackdown on militant groups is also costing the entire country a great deal of setback in the area of viable global economy. There are even facts and figures⁹ that the Niger Delta aggressive militants are not likely to throw in the towel even as the military crackdown on them is going on as ordered by the federal government. What therefore is going to be the lasting panacea?

It is with a view to answering the above question that this paper is written. The writer presents to both the federal government, the Niger Delta people and other stakeholders in the matter the divine and classical Islamic way of solving the kind of problem going on in the Niger Delta. Introducing the shariah formula on the control and ownership of minerals cannot be better needed at a time longer than now when almost all known forms of human attempt to solve the problem have all failed. Indeed, Allah is the creator of man and because He best knows his creatures¹⁰, he alone is in the best position to chart a legal framework which shall best suit the needs of man at all times, on all issues and in all areas.

X DEFINITION OF RESOURCE

Just like so many other terms of legal importance, "resource", as a word, does not submit to a universally accepted definition. There seems to be a consensus of scholars on this point¹¹. Nevertheless, it shall be necessary for academic purpose to reflect on few of the various definitions so far offered in the context.

To start with, resource is defined in the Oxford Advanced Learner's Dictionary¹² as:

⁷ See: *Sunday Sun* (Vol. 5, No. 325, June 14, 2009, pg. 8)

⁸ This Camp used to be the hideout for the now wanted Chief Government Ekpemupolo a.k.a. Tompolo, Niger Delta Militant Leader.

⁹ See: *Sunday Sun*, June 14, 2009, Op. Cit., *Sunday Sun*, June 14, 2009, Pg. 52.

¹⁰ See *Quran Chapter 67, verse 14* on this.

¹¹ Lawrence Atseghua, "An appraisal of the problems and prospects of Comprehensive Legislation on the sustainable management of Nigeria's Natural Resources" (February, 1995) Vol. 2, No. 1, *University of Benin Law Journal*, 121.

¹² 6th ed., pg. 1001

a supply of something that a country, an organization or a person has and can use, especially to increase their wealth.

According to Hunker, a renowned scholar, a resource can no longer be conceived as a tangible object, but that there exists a working relationship between man's wants, his abilities and his appraisal of the environment. The meaning extractable from the above therefore is "a culturally defined abstract concept which hinges upon man's perception of the means of attaining certain socially valued goals by manipulating selected elements of the biological environment"¹³.

✓ CONCEPT OF RESOURCE CONTROL

Resource control is a basic economic theory grounded in the fact that land, labour, capital and entrepreneurship are factors of production¹⁴. Just as the price of labour is wages, capital has interest, entrepreneurship is driven by profit while rent and royalties are rewards for land ownership.

Rent is a return for the use of the original and indestructible properties of the soil. Whoever owns a land expects some form of compensation from those hiring this very important factor of production. The clamour for resource control is, alternatively, a clamour for adequate compensation, a cry for redistribution of the revenue allocation formula and nothing more¹⁵.

In another vein¹⁶, resource control is defined as the practice of true federalism and natural law in which the federating units express their rights to primarily control the natural resources within their borders and make agreed contributions towards the maintenance of common services of the government at the centre.

¹³ O' Riordan, T., *Perspective on Resource Management* (Pion Ltd., London 1971) Pg. 3

¹⁴ Adam Smith, an early economist, outlined these in his famous book, 'The Wealth of Nation' in 1776.

¹⁵ Senator David Definone, 'Resource Control: The Economic and Political Dimension' [http://www.waado.org/NigerDelta/Essays/Resource control Definone.htm](http://www.waado.org/NigerDelta/Essays/Resource%20control/Definone.htm) accessed on 07 July, 2008

¹⁶ The paraphrased definition here is contained in the communiqué issued at the end of the 3rd summit held on the 27th of March, 2001 in Benin City, Edo State, where the Governors of the 17 Southern states, who held the summit, proclaimed their preference for fiscal federalism.

According to Chief Obafemi Awolowo¹⁷, the benefits of resource control should accrue to the individuals and not the states following the principles finally explicated upon, in 1776, by Adam Smith as factors of production.

Finally, a comprehensive description of resource control can be said to have been given by Itse Sagay¹⁸, an astute professor of law and Senior Advocate of Nigeria. According to him, the concept of resource control in Niger has three major components. They are:

1. The power and right of a community or state to raise funds by way of taxation on persons, matters, services and materials within its territory.
2. The exclusive right to the ownership and control of resources, both natural and created within its territory, and
3. The right to custom's duties on goods destined for its territory and excise duties on goods manufactured in its territory.

Sagay's conceptualization of resource control in Nigeria, as herein above stated, has been endorsed¹⁹ by many of the resource control agitators in the Niger Delta. However, a cursory look into the provision of Article 1 of the celebrated Kaiama Declaration²⁰ would reveal that the resource control struggle is an all-encompassing agitation to control all lands and natural resources including mineral resources within the Ijaw territory. The above notwithstanding, it should be stated that the resource control struggle today is most identified with the Niger Deltans' zeal to own and control their mineral resources, and to be more specific, petroleum. This situation is perhaps caused by due to the country's heavy reliance on hydrocarbon as her major source of revenue and sustenance.

Having said the above on the concept of resource control, it may now be apt to delve into the origin of resource control. But just before that, it is considered imperative to pause for a while and dedicate a few

¹⁷In his book *'Path To Nigerian Freedom'*.

¹⁸In his *'Federalism, the Constitution and Resource Control'* a speech he presented at a sensitization programme organized by the Ibori Vanguard on the 19th May, 2001 at the Lagoon Restaurant, Lagos.

¹⁹One of such endorsers is Otiye Igbuzor, a pharmacist, political scientist and human rights activist, who indicates his endorsement of Sagay's conceptualization on page 5 of his paper *'Constitution Making and the struggle for resource control in Nigeria'* available at: "Igbuzor@cddnig.org".

²⁰Of the Ijaw people proclaimed on the 11th Day of December, 1998.

paragraphs to the geographical description of the area, in Nigeria, called Niger Delta. This is informed by the existence of nexus between the area and the entire struggle for resource control.

X NIGER DELTA: ITS AREA AND POPULATION

The Niger Delta is made up of nine states, 185 local government areas and a population of 27 million. It has 40 ethnic groups speaking 250 dialects spread across 5,000 to 6,000 communities and it covers an area of 27,000 square miles. This makes for one of the highest population densities in the world, with annual population growth estimated at 3%²¹. The geographical expression known as Niger Delta is endowed with an abundance of physical and human resources. Principally, the region is supplying the majority of Nigeria's oil and gas, controlling extensive forests, excellent fisheries, industrial base and a vibrant private sector²². And more specifically, about 1,500 of the Niger Delta communities play host to oil company operations of one kind or another. Thousands of miles of pipelines crisscross the mangrove creeks of the Delta, broken up by occasional gas flares that send roaring orange flames into the already hot, humid air. Modern air conditioned facilities sit cheek-by-jowl with primitive fishing villages made of mud and straw, surrounded with razor wire and armed guards trained to be on the lookout for local trouble markers²³.

X NIGER DELTA: ITS WORRIES AND CONCERN

The problem, according to the Niger Deltans, is that they have been neglected for over fifty years now when foreign oil companies started conducting some of the world's most sophisticated exploration and production operations, using millions of dollars' worth of imported ultra modern equipments against a backdrop of storage squalor. The foreigners have extracted hundreds of millions of barrels of oil which have sold on the international markets for hundreds of billions of dollars. But the major part of the worries of the people in the region is that they have seen none of the benefits²⁴.

²¹ John Ghazvinian, "The curse of Oil" [http://www.vqronline.org/articles/2007/winter/ghazvinian-curse-of-oil/page 2](http://www.vqronline.org/articles/2007/winter/ghazvinian-curse-of-oil/page%202).

²² See this in a two volume report in 1995 by the Industry and Energy Operation Division of West African Department of the World Bank titled: 'Defining an Environmental Development Strategy for the Niger Delta'.

²³ See the 'Curse of Oil' Supra.

²⁴ Ibid

According to them, while successive military regimes have used oil proceeds to buy mansions in Mayfair or build castles in the sand in the far away capital city of Abuja, many in the Delta live as their ancestors would have done hundreds, even thousands of years ago in hand-built huts of mud and straw.

Occasionally, oil has been spilled into those mangrove creeks, and fishing communities disrupted or plunged into violent conflict with one another over compensation payments²⁵. One may therefore not be far from truth if one concludes as done by Egbewole²⁶ that the wealth in the Niger Delta has brought up gory tales of environmental degradation, economic deprivation, insecurity, constant conflict, lack of portable water, incessant power outages and diseases.

Furthermore, the tragedy of the Niger Delta story could be told through the eyes of any one of many Delta minorities affected by oil production. Urhobo, Ijaw, Etche, Itsekiri, Ogoni, Edo, Efik all have some version of the sorry tale to tell. According to John Ghazvinian²⁷, the Ijaw community of Kula in Niger Delta was in the news in the year 2005. Angry that Shell and Chevron's promises of development projects had not been fulfilled, thousands of Kula villagers had occupied the companies' flowstations in the area shutting off 120,000 barrels of oil a day.

According to Cynthia Whyte²⁸, the people of the region, especially the militants, now view every action of the Federal Government with suspicion and mistrust. Whyte says rather than drop the armed initiative to embrace the dialogue option, the militants will instead escalate their armed struggle with the intention of crippling the nation's oil economy to make the government realize that the Niger Deltans are serious about their demands for resource control and correction of the injustice meted on the region.

²⁵ Ibid

²⁶ In his paper "Judicial intervention in Resource Control Imbroglio in Nigeria and Host Minority Interest" which he delivered at the 35th Conference of the Nigerian Society of International Law, Asaba, June 2005.

²⁷ A white man carrying out research about "Oil in Africa" who, while on visit to Nigeria in January 2005, went for research purpose to Kula in the Ijaw community of Niger Delta in Company of Felix Tuodolor who earlier in 1990, founded the Ijaw Youth Council (IYC). The researcher later made similar trip to Ijaw Kiri through Nelson, an Ijaw man from Oluasiri.

²⁸ Spoke person for the Joint Revolutionary Council (JRC), an umbrella body of three militant groups i.e. the Movement for the Emancipation of the Niger Delta (MEND), the Reformed Niger Delta Peoples' Volunteer Force (NDPVF) and The Martyrs Brigade (TMB).

However, it is interesting to note here that Cynthia's comment on the issue, as herein above paraphrased, is not reflective of all minds in the region. Indeed, certain people and organizations²⁹ within the same Niger Delta can conveniently be called apostles of peace and dialogue on the Niger Delta imbroglio.

Comrade Marvin N. Yobana, President of Ogoni Youth Council, is one of such liberal-minded people. He has, since, being in support of the Federal Government plans to initiate dialogue³⁰ towards achieving lasting peace in the troubled region.

Likewise, the current Government of Delta State, Emmanuel Uduaghan, is known with his unequivocal liberal stand towards resolving the Niger Delta quagmire. He is even of the opinion³¹ that anybody caught engaging in kidnapping, bunkering and oil facilities' destruction should be made to face the wrath of law. Little wonder therefore that Uduaghan's government recently took a decisive step to rebrand the state as a state of peace and rich potential³².

✓ ORIGINS OF RESOURCES CONTROL STRUGGLE

Resource control, as a concept, has traveled a very long and languid road to its present formulation. As put by Oronto Douglas³³, the concept, in the late 18th and early 19th centuries, was understood as a struggle by indigenous peoples of the Niger Delta to participate in trade and in the politics of self-government in the region. The principal resource then was palm oil. The communities and peoples of the area became involved in what would today have been described as struggle for resource control and self-determination.

King William Koko of Nembe, Nana Olomu of Itsekiri and Jaja of Opobo perhaps best exemplified this tendency towards self-assertion and a

²⁹ One of such organizations is the Niger Delta Peace and Conflict Resolution Committee (NDPCRC) created by President Umar Musa Yar'adua.

³⁰ Though the Comrade believes in dialogue, his main concern is implementation. This informs his suggestions of creating a legal framework to ensure implementation of dialogue outcomes.

³¹ Tell Magazine, (NO. 34, August 25, 2008), 32 at 33.

³² See: Newswatch Magazine, (Vol. 48, No. 11, 8/9/2008) 31.

³³ In his Paper titled "A community guide to Understanding Resource Control" [http://www.waado.org/nigerdelta/Essays Resource Control Guide-Douglas.html](http://www.waado.org/nigerdelta/Essays/Resource%20Control%20Guide-Douglas.html). Accessed on 7 November, 2008

desire not to be under any set of people or any government, especially "foreign".

Isaac Adaku Boro³⁴ also contributed later to the struggle by his attempt to declare the Niger Delta Republic in the mid sixties. The Federal forces crushed Boro's rebellion which lasted only twelve days³⁶.

In April 1990, some young officers, who were angered by the "injustice" in the Nigerian State staged a violent coup³⁷ against the General Ibrahim Babangida Military Administration. Although the military uprising was checkmated with so much blood spilled in the process, it did not resolve the issues the officers raised in their broadcast³⁸. A majority of the officers were from the Niger Delta and the Middle Belt region. This conference was not all inclusive; it was sectoral, violent and therefore short-lived. The process leading to it was secretive not open.

Similarly, the people of Ogoni led by the famous writer and dramatist Kenule³⁹ Saro Wiwa, mobilized under Mosop⁴⁰ peacefully for environmental justice, true federalism and a fair share of Ogoni resources to be used for Ogoni development. This was also in the early nineties. The Ogoni people were successful in sending Shell, the Anglo-Dutch transnational oil company out of their land and also in inviting the Nigerian state to a discussion based on ideas and issues. The Nigerian State, supported by Shell, ignored this called for intellectual exercise based on superior and just argument. They replied the Ogoni with violence. Before Ken Saro Wiwa could finish the sentence: "we are going to demand for our rights peacefully, non-violently and we shall win...", the Nigerian State took him to the gallows in Port Harcourt and had him hanged⁴¹ with nine others. Left to mourn him were his 90 years old father and an eighty-year-old mother. It was the hope of the Ogoni leader, Ken

³⁴ A former Student Union Leader and Ex-policeman.

³⁵ The historical organogram of those who started the struggle in the Niger Delta as given in this literary piece shows that Isaac Boro, though one of the Niger Delta heroes, was indeed preceded in the struggle by a number of other war like Niger Deltans. To this extent, one therefore finds the Nation Newspaper report of June 14, 2009 which describes Boro on page 35 as the first known freedom fighter in the 1960s as inaccurate and one which lacks veracity.

³⁶ Op cit. A community guide to understanding resource control. Note 33, Pg. 2 of 8.

³⁷ Later known and called Gideon Orkar Coup.

³⁸ of April, 1990

³⁹ This is a shortened form of "Kenule"

⁴⁰ An acronym for: Movement for the survival of Ogoni People- founded in August, 1990

⁴¹ On the 10th Day of November, 1995.

Wiwa, that as the momentum of the debate gathers steam, its ripple effect will galvanize the other nations in the Delta to do the same in popularly organizing debates for a better society and a better Nigeria. It is without doubt that Ken's hope has now materialized as the debate has continued to this day in the Niger Delta and beyond. The case for use of Ogoni resources can be found, up till now, in Ogoni bible on the issue, the Ogoni Bill of Rights.

In 1992, the movement for reparation to Ogbia⁴² (MORETO) issued the "charter of demand" of the Ogbia people. This document added another dimension to popular acclamation and democracy when all the traditional rulers of Ogbia in the present day Bayelsa State signed the MORETO charter in a great nationality gathering never before witnessed in Ogbia town.

Perhaps the most pointed articulation and presentation of "resource control" can today be found in the "KAIAMA DECLARATION" of the Ijaw people which was proclaimed on the 11th Day of December 1998. The Ijaw Youth Council, which made the Kaiama Declaration, coined, sharpened and popularized the term "resource control" and set the tone for the present debate on the matter. The declaration, among other things, asserts the right of the Ijaw people to ownership and control of their resources. The Kaiama declaration affirms that:

All land and natural resources (including mineral resources) within the Ijaw territory belong to Ijaw communities and are the basis of our survival. We seize to recognize all undemocratic decrees that rob our people/communities of the right to ownership and control of our lives and resources, which were enacted without our participation and consent. These include the Land Use Decree and the Petroleum Decree, etc⁴³.

The above quotation is provision of Article 1 of the declaration. Article 2 insists on the "peoples and communities right to ownership and control of our lives and resources" while article 4 advised all oil companies and staff operating in the Ijaw area to withdraw from Ijaw land pending the resolution of the issues of resource ownership and control in the Ijaw area of the Niger Delta.

⁴² A clan in the Ijaw Nation

⁴³ Kaiama Declaration, 1998.

And very pointedly in Article 10, the last article of the declaration, the issue of "resource control" was placed firmly and unambiguously bequeathed to the present day resource control interpreters. The declaration was then followed by several insistencies and proclamations: "We insist on our rights to self-determination and resource control. This is our minimum demand"⁴⁴.

The IYC's Kaiama Declaration was followed by a number of other "bills of rights", charters of demands", "Resolutions" and "Declarations from many of the Niger Delta's ethnic nationalities, including the Urhobo, Egi, Oron, Ibiobio and Ikwerre among others.

With the above so far, it is now beyond ambiguity that the struggle of the Niger Delta people against exploitation, environmental degradation and for resource control dates back, as documented by Okonta and Douglas⁴⁵, to the slave trade era in the sixteenth century. This continued into the colonial era up till date. With this forming our background knowledge about the origin of resource control, one now finds it inevitable to agree with Itse Sagay⁴⁶ that it is erroneous to attribute resource control, as a term, to South-South Governors, particularly Governor James Ibori of Delta State. The terminology has been in use ever before the Governors were elected. This, however, should not be understood as saying that the so called South-south Governors have no contribution to the struggle. They, indeed, had and, still, have. Conveniently, one can say that their involvement in the resource control struggle commenced towards the end of 1999. And, according to Oronto Douglas⁴⁷, four reasons may be adduced for their involvement.

1. The dominant position and view in the Delta, when they arrived on the 29th of May, 1999 was resource. To make a contrary position may probably have amounted to committing political suicide.
2. They came into office without an ideology or programme, and "resource control" readily became a platform to forge on.

⁴⁴ An IYC Leader later told journalist of this at the waterside community of Bundu, near Port Harcourt on 18/1/1999.

⁴⁵ In their book entitled: *Where the Vultures Feast: Shell, Human Rights and Oil in the Niger Delta* (Supra).

⁴⁶ Op. cit., "A community guide... See note 36.

⁴⁷ Ibid.

3. It was a convenient issue the Governors could use to compel the Federal Government to implement constitutional provisions relating to revenue devolution or allocation, which they (the federal government) were reluctant to let go.
4. "Resource control" advocacy was discovered by some governors to be a good weapon through which they could fight political Shariah.

X NIGER DELTA STRUGGLE BETWEEN VICTORY AND HINDRANCE

It is veracious that Niger Deltans have not for a day, relented in making use of their best arsenal in driving home their demand for resource control and self determination. They have remained a set of dogged fighters with burning determination and ever mustered courage to fight on. But with all this, actualization of their aim has, up till now, remained an elusive mirage. This, without doubt is informed by function of a number of reasons. A brief analysis of and comment on just two out of these shall constitute the fulcrum of our preoccupation at this juncture. They are as follows:

X NIGERIA FEDERALISM:

One of the hindrances to Nigeria Delta victory is the dynamics of our peculiar brand of federalism in Nigeria. Under a normal federal governmental setting, there should be in operation a full fledged theory of federalism which implies, as enunciated by Prof. K.C. Wheare⁴⁹, that each tier of government is coordinate and independent in its delimited sphere of authority and should also have appropriate taxing powers to exploit its independent sources of revenue. Also, Nwabueze in his book⁵⁰ defined the concept of federalism as "an arrangement whereby the powers of government within a nation or country are shared between a national government and a number of regional governments in such a way that each exists as an entity separately and independent of the others, and operates directly on the persons and property within its territorial area...."

⁴⁹ *Federal Government*, 4th ed., University of London Press, 1962.

⁵⁰ *Federalism in Nigeria under the Presidential Constitution*, 1983, P. 1

The worry of the people in the Niger Delta is caused majorly by departure of successive Nigerian governments from keeping in tune with the dictates of federalism as enunciated by Wheare and as stated herein above. The contention is that the central government in Nigeria is so powerful while the federating states have become relegated and subordinated, or like the soviet federalism of old, "mere administrative units of the central government."⁵¹

✓ CONSTITUTIONAL HINDRANCE

Nigeria is a country where written constitution is in vogue. Provisions of any reigning constitution are supreme and shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. This is self-evident in the content of S.I. of the current 1999 Nigerian Constitution.

The major concern of the agitators in the Niger Delta is to own and control the mineral resources, especially oil, found in their land. Whereas, a careful reading of the provision of paragraph 3 of S. 44 of the 1999 constitution reveals that exclusive ownership, management and control of these mineral resources have been vested in the government of the federation.

✓ OUR COMMENTS ON THE HINDERING ELEMENTS

On the Nigerian specie of federalism constituting a thorn in the path of the Niger Deltans' victory, this is absolutely true and for some time upward, it may continue like that. Though, the writer admits that the Nigerian federalism as it is being practiced, is so many miles away from the classical and ideal practice of a federal system, nevertheless, nursing a sudden hope of change from the situation as it is may be tantamount to a futile effort of shadow pursuit.

Federalism, under normal circumstances, presumes that the federating units give up something to gain another which is much more in return as

⁵¹ Senator David Dafinone, "Resource Control: The Economic and Political Dimensions" <http://www.waado.or/Niger Delta/Essay/ Resource control/definone.Htm>/accessed on 7th July, 2008.

Dawodu, "True Federalism in 21st Century Nigeria" available at <http://www.dawodu.Com/vanguard1.htm> accessed on 7th November, 2008.

Chief Awolowo said this in his "Path to Nigerian Freedom.

Op. cit., Dawodu's article on true Federalism, pg. 4 of 11.

Ibid.

members of one large family of a nation. This is so, more often than not, where a federated state comes into being as a voluntary action of the constituent units willing to cede certain powers such as defence, currency and external relations to a central body. The feeling that the membership is self induced constitutes the major incentive for federating units in this category to unite and stay united. Going by this explanation, federalism would only appear best suitable, as a political structure, for states that are lucky to be rainbow collections of national, sub-national and linguistic groups.⁵² Such lucky countries are not that many and it requires no evidential proof to believe that Nigeria is out of the list.⁵³

Nigeria is 95 years old as a federation. It is generally believed that this was the handwork of the late Lord Lugard, when, perhaps for reasons of administrative convenience, he decided to amalgamate the Northern and Southern Protectorates and the colony of Lagos into one country with a federal system of administration. His decision to do so caused some consternation in the colonial office in London. A colonial office memo⁵⁴ dated May 19, 1913 in response to Lord Lugard's decision, observed: "Sir F. Lugard's proposal contemplates a state which is impossible to classify. It is not a unitary state with local government areas but with one central executive and one legislature..."

The content of the above memo was no doubt informed by the non-uniform nature of the federating Nigerian units. Little wonder therefore that the first problem which confronted the Nigerian federation after amalgamation was the dichotomy in physical sizes of the federating units.⁵⁵ Though it is not an absolute rule that all federating units shall be equal, at all times, in size and population, a too glaring disequilibrium in these areas could possibly fuel internal disharmony in the federation.

Further, in contrast to how our own federation came into being, the thirteen American Colonies that originally formed the union did so entirely on their own volition.⁵⁶ Ours was a sharp opposite of this. This is why I feel that writers, such as Vincent O. Ola,⁵⁷ former governor of the Central Bank of Nigeria, should think twice before comparing Nigerian

⁵⁶ *Ibid*

⁵⁷ In his *"Fiscal Federalism: The Nigerian Experience, 2001"*

federalism to the practice of federalism in foreign territories such as Canada, Germany and the United States of America.

However, it should be stressed at this juncture that it is outside the writer's wish to be interpreted as calling for disintegration or deamalgamation of the federating Nigerian units. This call at this hour of the day is calumnious and quite belated. I therefore have nothing in association with it. But my earlier statement on incompatibility of many of the Nigerian federating units inter-se is for the warring militants in the oil rich area to appreciate the cause of departure in this country from the ideal practice of fiscal federalism. By this, militants may be prepared to admit Niki Tobi's conclusion⁵⁸ that the best ideals of federalism in Nigeria are what the writers and judicial interpreters of the Nigerian constitution say and not the best ideals as the case may be. This is more so that Walter Begehots⁵⁹ had posited that "a true federalism is a rare creature because of its numerous requisites..".

Concerning my comment on the constitutional hindrance to the realization of resource control struggle, I venture to say that, contrary to the opinions held by the Niger Deltans, there is hardly any contradiction in the constitution on the issue. It is true that S. 3 of the constitution does not vest land in the federal government other than the federal capital territory. It is also true that this provision (S.3) can be further supported by S. 44 wherein compulsory acquisition of interests in immovable properties (such as oil) is forbidden with exception of some circumstances.⁶⁰ Apart from these circumstances, paragraph 3 of S.44 of the 1999 constitution contains a fundamental proviso to the effect of both SS 3 and 44. This proviso takes away from the oil rich states and by extension, any other state in the country ownership, control and management of all minerals and natural gas.

With the above therefore being the story, the legal regime of the oil ownership in Nigeria vests same in the hands of the federal government. The only alternative therefore is resort to enhancement of the derivation up to the 13 percent minimum fixed by the constitution⁶¹ or even more. This, I advise, is not likely to be through militancy but dialogue.

⁵⁸ *In the case of FRN Vs. Anache*

⁵⁹ Quoted by Wheare in "Federal Government, 4th ed., Greenwood press Publications, Pp. 350.. Mentioned already in sub-paragraphs a & b to paragraph 1 of S. 44, 1999 constitution.

⁶¹ See the proviso to S. 162 of the 1999 constitution

✓ SOLVING THE NIGER DELTA PROBLEM SHARIAH

In Islamic law parlance, the registered word for minerals is the technical meaning of the term. Literally, however, place where minerals are found.⁶²

Though a suggestion of struggle for enhancement of revenue has been made earlier, the Niger Deltans' stiff insistence on ownership of their land is likely to becloud their sense of tune with the suggestion. This is self-evident in their reaction in the early hours of Friday 12/6/2009, on two major oil pipe militants blew at a spot less than 200 metres from camp of the dreaded base of wanted militant leader, Tompolo, notwithstanding the presence of troops of the Joint Military Task Force (JTF) in the Niger Delta. These attacks could still have taken place after the federal government's order of military crackdown on the region and after the promise of amnesty to any militant who drops arms in the region, though it should not be taken by surprise if the violent struggle in the area continues with the militants rubbishishing all offers of and suggestion of settlement. It is therefore thought pertinent to go religious to the issue of all stakeholders in the issue the shariah panacea to the problem.

✓ SHARIA RULES ON OWNERSHIP OF MINERALS

Four different juristic schools of thought have, long ago, developed in Islamic law of jurisprudence as classical experts, the Prophet Muhammad (SAW) and the four rightly guided caliphs, formulated rules out of the verses and traditions of the prophet respectively. These juristic schools are known as Hanafi School, Hambali School, Maliki school and Shafihi school, each taking its name after the name of its founder. Opinions in the

discovery or becomes the owner of the land that harbours the minerals. According to the Maliki school experts, all minerals are to be left to the ownership of the entire government to be held in trust for the entire populace and to be made use of in line with the public interest. It is clear in this school that ownership of land itself is irrelevant in the determination of the minerals' owner. To a large extent, this opinion is the closest to the Nigerian system of ownership of minerals and natural gas.

On the other hand, the Hanafis and Shafihi schools are of the opinion that ownership of land determines who owns the minerals found beneath the land. One of the two confirmed views in the Hambali school is also in agreement with this opinion. To this extent, a piece of land owned by individual or the government also has its minerals owned by them respectively. Hence, in line with this opinion of the majority, minerals discovered on land yet to be occupied belong to the discoverer.

Further, concerning the government's right over discovered minerals, there are two opinions. First is the Hanafis' opinion which makes the Islamic government entitled to one-fifth of entire quantity discovered while the discoverer takes charge of the remnant. This, according to the Hanafis, is based on a prophetic tradition which says:

"And on the ore (discovered), one-fifth becomes due to be given out (to the government) i.e, Wafir-rikaz al-khumsu".

It was convenient for the Hanafis to conclude on the one-fifth as the government's entitlement in this context because the same school of thought has interpreted the terms Rikaz (ore) to cover both Kunuz (treasures) and Ma'adin (minerals) and in the hadith, rikaz, as the parent term, is used.

However, note that the one-fifth rule in this school is only applicable to hard or solid minerals which can be hammered and pulled like gold, silver, iron, copper/brass and lead. In other words, the rule does not apply to the other type of hard minerals which can not be hammered such as diamond (Al-mās), corundum (Yāqut) and bony coal (Al-fahm al-hajari). The one-fifth rule is equally not relevant to the liquid minerals such as mercury and hydrocarbon (petroleum).

The above is the view of the Hanafi school of thought on the entitlement or otherwise of the government from the discovered

minerals. On the other hand, all the non-Hanafi jurists disagree with the government's right to any entitlement in this regard. Their disagreement is based on an hadith which says:

"Nothing is to be given out on stones, well and minerals, but on the ore (rikaz), there is 1-5th".

Therefore, since rikaz does not cover minerals in the non-Hanafi schools, but strictly restricted to the things buried in the Jahilyah period, the one-fifth entitlement of the government in the non-Hanafi school is only relevant to the discovered treasures of the pre-Islamic period. However, the non-Hanafi schools approve of paying general zakat on minerals.⁶⁵

Having stated the rules obtainable in Islamic law on the ownership of minerals, the next is to sell a particular opinion to the stakeholders for adoption and implementation.

Though the opinion supported by the Hanafi and Shafihi schools would appear superior same, being supported by the majority, I hereby make bold to present the Maliki opinion (minority) for consideration on the Niger Delta problem.

However, with the similarity this particular opinion enjoys with the system already prevalent in the country, one may easily fall prey to the temptation of concluding that this opinion is akin to the proverbial exercise of putting old drink in a new cup. Nevertheless, the fact that the Maliki opinion, as already stated, owes its source to religion and divinity is enough to make huge difference. Another difference is lack of attention on who really owns the land (where minerals flow) in the Maliki school. Whereas, in Nigerian constitutional framework, as it is, sight is not lost of this attention.

To those who may want to kick against the implementation of this particular opinion on account of being a minority opinion, a prophetic saying has described divergent opinions of jurists as blessing. The implication of this is that no one of the divergent opinions is invalid if followed. This is more so that in this part of the continent, Maliki school doctrines are more readily adopted than opinions in other juristic schools.

All these apart, ownership of oil can hardly be released to any individual

⁶⁵ One the Shariah rules on ownership of minerals, I considered, generally, the Vol. 4 of *Al-Fiqh Al-Islami Wa Adillatuh Minal Kitabl was-Sunnah* by Prof. Wahbah Zuhaili.

or region. Oil is the major generating source of income for the country as of now. The writer views the release of same as an awkward arrangement which is much likely to be regretted if embarked upon by the federal government. The same central government is responsible for the welfare of other states as well. Militants in the region, as I said before, should therefore forget about struggle for outright ownership rather and rather concentrate on enhancement of derivation revenue.

Even with this, close monitoring of the derivation, when same goes to the Niger Delta governors, is another thing very important. The case of N500 million Juju Scam that rocked the NNDC not too long ago is not a pleasant but gory tale to tell in this circumstance. And worse still, the scam was master minded by Ambassador Sam Edem, a son of the soil for that matter in the Niger Delta, the same area where the deafening noise on resource control is being heard of every now and then. To avoid a situation of this nature on the derivations given to the Niger Delta governors from time to time, I venture to tow the line of suggestion given by Senator David Dafinone when he said:⁶⁶

It is therefore necessary that whenever funds emanate from derivation, it should be placed in a trust fund to be administered by representatives of all the stakeholders; the communities, the federal, state, local governments and the multinationals. Such a board of trustees should administer all funds for the implementation of projects.

Conclusion

This paper, to a fair extent, has demonstrated a reflection of a hybrid of both historical and analytical approaches. The major problem in the Niger Delta has been said to be akin to the struggle for resource control. Both the meaning and concept of resource control have been stated. At the same time, elements viewed as some of the constituents of hindrance to the realization of the resource control struggle have been revealed and commented upon. At the end of these all, the writer goes religious and introduces the Islamic wayout of the Niger Delta problem to the stakeholders in the issue. The writer, certainly, does not do this for cosmetic purpose but for the stakeholders to borrow a leaf therefrom.

⁶⁶ In his article titled: *Resource Control: The Economic and Political Dimensions*.
<http://www.waado.org/NigerDelta/Essay/ResourceControl/Dafinone.Htm>
 Accessed on 7th July, 2008.