APPRAISAL OF THE COPY AND PASTE SYNDROME IN THE NIGERIAN OIL AND GAS INDUSTRY

Onyemere John-Kennedy C, PhD.*

Abstract

This article aims at examining the notoriety of copy and paste in the Nigerian oil and gas sector in consideration of the inability of previous reforms of the industry to resolve the perennial challenges of the sector. The objective of this research is also to discover why in spite of several reforms, the industry is still bedeviled by threshold hitches. The paper discovers that the reform is heavily characterized by recycling, imposition, importation and retention of unworkable laws of the colonial days and of other foreign nations with the result that the reforms do not target existing problems, so repeat previous errors and even create new ones. It is observed in this research that the reforms relegate the agitations against oppression, marginalization and injustices by the host communities leading to disillusionment, restiveness, hostilities and all sorts of

* Lecturer in Department of Commercial and Industrial Law, Faculty of Law, Abia State University Uturu, Umuahia Campus, Principal Partner Totalserve Attorneys, Port Harcourt. Phone Nos. 08034009164 and 08020660715. Email: johnkennedychinedu51@gmail.com and jkconyemere@yahoo.com

criminalities that disturb peaceful operations in the zone. The paper concludes that copy and paste reform cannot address the ailing situations in oil and gas sector. It recommends a proactive and innovative legislative engineering that can resolve the mischief of the earlier legislations and guarantee harmony in the industry.

Keywords: Copy and Paste Syndrome, Reform and Transform, Nigerian Oil and Gas Industry

1.1 Introduction

The oil and gas industry in Nigeria is a critical sector that directly influences the economy of Nigeria. It is the major employer of labour, the foremost source of national income and export in Nigeria. It is the key pillar holding the Nigerian economic project. This has possibly been the reason for the incessant engagement of the sector in regular reform and transformation to stimulate the entire economy to effect changes in the socio-politico-economic spheres. The endless attempts of Nigerian governments to stimulate the economy resulted in several reforms in the oil and gas sector to turn the table of foreign dominance in the sector using oil and gas sector as a driver. This is purposed to create jobs, stabilize the polity and douse tension in the industry. This situation evolved from the pre and post-independence oil and gas legislations in Nigeria that vested the ownership of oil and gas resources on the federal government.

2.1 Historical Development of Oil and Gas in Nigeria

The British interest in the Nigerian oil and gas resources pre-dates the period of the search for crude oil in Nigeria in 1908. However, it is clear that the Royal Charter signed by the National African Company Limited, the King and his Chiefs touching on ownership of mineral resources had come into existence in July 1886[1]before Mineral Oil Ordinance of 1889

However, in 1886 Taubman Goldie secured a royal charter from the British monarch, which armed him to secure some 360 treaties from the local kings and chiefs[2]. The charter gave powers to the National African Company to collect customs and to make treaties. The Company exercised only extraterritorial rights but did not forbid the local chiefs from entering into similar arrangements with Germans and the French. Subsequently, the treaties were made to restrain the local kings and chiefs from entering into similar treaty with any other set of people[3]. The Company enjoyed broad sovereign

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1 After Goldie secured a royal charter in 1886, both Mackinnon's Imperial British East Africa Company (IBEAC, 1888) and Rhodes' British South Africa Company (BSAC, 1889) soon followed suit; see R.R. Mahir, 'Sovereignty Ltd: Sir George Goldie and the Rise of the Royal Niger Company; (Undergraduate Senior Thesis, Department of History, University of Columbia 2019) 13).

2 B.0.Nwabueze, '*Constitutional Law of the Nigerian Republic'*(London Butterworths,1964)

3 A. Aniete Inyang & Manasesh Eddien Bassey, "Imperial Treaties and the Origins of British Colonial Rule in Southern Nigeria, 1860-1890", 2014Mediterranean Journal of Social Sciences at p. 5; Ken Swindel, "The Commercial Development of the North and Government Relations, 1900-1906" (1994) Paideuma Vol. 40 pp. 149-162

powers over the chiefs by the 1885 treaty which bound the chiefs and native leaders. It provided thus:

> We the undersigned King and Chiefs [...with the view to bettering the conditions of our country and people, do this day cede to the National African Company (Limited), their heirs and assigns, forever, the whole of our territory [… We also give the said National African Company [Limited] full power to settle all native disputes arising from any cause whatever, and we pledge ourselves not to enter into any war with other tribes without the sanction of the said National African Company (limited). In conclusion of the foregoing, the said National African Company (Limited), bind themselves not to interfere with any of the native laws or customs of the country, consistently with the maintenance of order and good government [and] agree to pay native owners of land a reasonable amount for any portion they may acquire[4].

Actual history of oil exploration in Nigeria started in 1908 with the Nigerian Bitumen Corporation that conducted vain exploration efforts around Araraomi areas of Ijebu Ode in Ogun State and Okitipupa in Ondo State of Nigeria. This

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4 The 1885 Treaty and Charter between the Local Leaders and Chiefs of Lagos and the National African Company Limited ceding their territories including their resources to the National African Company in exchange for the protection and defence of the native chiefs and their communities from any external aggression.

pioneering effort of the Nigerian Bitumen Corporation was terminated by the outbreak of 1st world war in 1914. As a result, its licence was revoked and issued to D'Arcy Exploration Company and Whitehall Petroleum whose efforts too were unsuccessful, too, and they returned their licences in 1923[5].A new exploration licence covering exploration area of 920, 000 square kilometers approximately 357000 square miles[6] was granted to Shell D'arcy Petroleum Development Company of Nigeria[7]. Shell D'arcy started exploration over the entire Nigeria in 1937 but unfortunately, the original acreage allotted to the consortium was reduced in 1957. All oil drilling operation efforts in 1951 at Iho Ikeduru Local Government near Owerri in Imo State and Akata near Eket in 1953 failed[8]. Shell D'arcy's continued search for commercial discovery of oil hit a breakthrough[9]in 1956.This breakthrough ended the 50 years of unsuccessful discovery for oil in commercial quantity by various oil companies in the country. It got Nigeria into the comity of oil rich nations. Further to this, in February 1958 Afam[10] and Bomu oil wells[11] were spudded and 265ft of gas

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5 J.G. Frynas, Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities. Minister: Lit. verlag

6 Petroleum Industry in Nigeria- Wikipedia, Free Encyclopedia; https// en.wikipedia.org/wiki/Petroleum_ in _ Nigeria, p.1

7 A consortium of Shell and British Petroleum known then also as Anglo-Iranian Oil Company

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9 on Sunday 15th of January 1956 in Oloibiri in Ogbia Local Government of Bayelsa State in Nigeria

10 In Oyibo Local Government Area of Rivers State of Nigeria

11 In Bomu in Gokana Local Government Area of River State of Nigeria

and 165ft of oil bearing sands were found at Agbada and production began in 1959[12].

Commercial production of oil in Nigeria started in 1957 with the first fruit of 5,100 barrel per day and rose to 75 000 barrel per day from 26 oil wells and 3 producing water wells[13] before the civil war.

Conceptual Clarifications

Copy and Paste Syndrome

The copy and paste syndrome is a blind copy and paste of the legal rule from one jurisdiction, legal system or legal environment to another to solve the problem of the new environment without assessing the political homogeneity, situation, circumstances and culture of the new environment, legal system or network[14.] It is a sickly and ugly tendency in legislative behaviour that avoids reformative legislation to solve problems in a geographical location but copies a similar legislation and pastes same into its jurisdiction without resort to the mischiefs the reform is sought to resolve[15]. It has been

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[12] In Ebiri Kelvin, Oil Production to begin in Ogoni by October· *The Guardian Newspaper* (Lagos 19, May 2019) 6 <https//guardian.ng>

[13] Ariweriokuma, Soala, *The Political Economy of Oil and Gas in Africa: The case of Nigeria*. (Routledge, 2001) 28 ISBN 9781134039593 – via Google Books

[14] Berryl Claire Asiago, "Norwegian Local Content Model a Viable Solution'? Regulatory Rationale for Local Content Requirements in the Oil and Gas Sector", (2017) U.S – China Law Review Vol. 14 at pp. 471-488

[15] Copy and paste in British English means to copy information or document in a computer and put it somewhere else in the document. It also means to make a copy of a file, folder or selected text in another location. It is

variously described as reception, borrowing leading to various levels of transplantation of the legal traditions that permeates the substantive and adjectival nucleus of the receiving jurisdiction[16].It is the blind importation of partial or complete legal rules designed elsewhere and valued as positive by the receptor[17].Copy is imitation, transcript or reproduction of an original work such as legislation, decree, letter, painting, table, or dress[18]**.**The copy and paste approach of legislation in Nigeria has become an incurable disorder.

Law Reform and Transformation

Reform implies, change(s) to improve, make better, refine and refashion. Transformation is the total renovation, complete change, remodeling and modification to improve[19]. It aims at making a marked change in the form and nature of the system. Law reform is the process of carrying out necessary changes in

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sometimes used interchangeably with the phrase "cut and paste" which is often used to describe when the people's action is to copy and paste. In a cut and paste operation, the content is moved and not copied. See cut and paste, clipboard, Win Copy between windows, Copy and copy.. See Collins English Dictionary. Copyright © HarperCollins Publishers last visited 20/3/2023 @09:22pm

[16] Silvia Ferreri& Larry A. DiMatteo, "Terminology Matters: Dangers of Superficial Transplantation", (2019) B.U. Int'l Law Journal Vol. 37, No. 35

[17] n 14

[18] Nature, 'Copy and Paste', Macmillan Publishers Limited(2011)Vol. 473, 419–420, last visited 27/4/2023 @04:22pm

[19] J. P. Kotter, 'Leading Change: Why Transformation Efforts Fail' Harvard Business Review (1995) 1, last visited 27/4/2023 at 04:50pm; J.F. Manzoni, A. Enders & Others, 'Transformation Journeys: The Reasons and the Art of How' IMD Research & Knowledge (2018) last visited 27/4/2023 at

a legal system to enhance efficiency and justice[20]. It is important for any country or sector to keep abreast with the legal, socio-political and economic development of its society to clarify and strengthen the course of justice[21]. It targets to improve the law by making changes or corrections so that the laws will conform to the constant demands and desired democratic norms and social justice[22]. Every reform aims at transforming the system or institution for which it is billed to reform. Reforming a system does not aim at breeding new problems that were non-existent.

Nigerian Oil and Gas Industry

Nigerian oil and gas Industry means the Nigerian petroleum industry which is defined[23] as the industries involved in upstream, midstream and downstream petroleum operations in Nigeria. It is a critical sector/industry in Nigeria because the sector is an essential asset for the functioning of the Nigerian economy. It is cardinal to the effective and efficient functioning of the Nigerian economy. The concept is intertwined with critical infrastructure in that as oil and gas sector is a critical sector in Nigeria, the facilities and infrastructure are critical infrastructures in Nigeria.

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[20] Mills, Jon and McLendon, Timothy (2008) "Law Schools as Agents of Change and Justice Reform in the Americas," Florida Journal of International Law: Vol. 20, Iss. 4, Article 2.last visited 27/4/2023 at 05:21pm

[21] ibid

[22] ibid

[23] section 318 of the Petroleum Industry Act 2021

According to Mgbame,[24] petroleum industry includes the global process of exploration, extraction, refining, transporting and marketing petroleum products.

3.1 The Copy and Paste Matrix of Nigerian Oil and Gas Legislations

The overview of the oil and gas copy and paste syndrome can be x-rayed in the assessment of the overbearing colonial and post-colonial oil and gas legislations and the 1885 Treaty which ceded all the land to the National African Company Limited to mine, search, win and build.

3.2 Colonial and Post-Colonial Oil and Gas Legislations

i. Petroleum Ordinance of 1889[25] and Mineral Regulation (Oil) Ordinance of 1907

A critical look at the Charter of 1885, pre-Independence Petroleum Ordinance of 1889 and Mineral Regulation (Oil) Ordinance No. 12 of 1907 reveals that the tragedies of the Nigerian oil and gas today and years to come are built on the foundation laid by the legal framework of these colonial

[24] C.O. Mgbame, P.A. Donwa and E.O. Osunbor, "Nigerian Oil and Gas Sector: Background, Reform Efforts and Implication for Economic Growth", *International Journal of Multidisciplinary Research and Development, University of Benin, Department of Accounting*, (2015) 2(9) at p. 508

[25] G. Etikerentse, Nigerian Petroleum Law, (2nd Ed. Nigeria Dredew, Publishers 2004) referred in V.C.I. Ogugua and Anor, 'Examination of Some Legislations Referencing Acquisition of Rights for Oil Exploration , Prospecting and Mining in Nigeria', *Journal of Energy Technology and Policy*, 2015, 5(9) accessed 22/4/2023 3:01pm

legislations[26]. Section 5 of the Southern Nigeria Mineral Regulation (Oil) Ordinance 1907 granted the Governor, the right to enter into agreement with the traditional rulers on the sale of both the surface and subsurface mineral without the payment of rent on oil. It was under the Southern Nigeria Mineral Regulation [27](Oil) Ordinance 1907 that Bitumen Oil Corporation was granted exclusive right over oil mineral exploration in the South Western Nigeria, the right to start geological and geophysical investigations, to drill and extract samples as well as export to Europe. The Governor did this in exercise of the powers vested on him by the Southern Nigeria Mineral Regulation[28](Oil) Ordinance 1907.

ii. The Land and the Native Rights Proclamation Act 1910

The Land and the Native Rights (Protectorate) Act of 1916[29] and the Land Tenure Law 1962, provide in section 14(2) that:

> an occupier whose right of occupancy is revoked for public purposes or for mining purposes shall be entitled to compensation for the value at the date of the revocation of his unexhausted improvements and for the inconvenience caused by his disturbance. The compensation to be awarded

[26] Petroleum Ordinance of 1889 and Mineral Regulation (Oil) Ordinance No. 12 of 1907

[27] Oil Mineral Ordinance of 1907

[28] ibid

[29] Cap 85 1916, replaced by the Land Tenure Law 1962 equivalent to section 29(1) and (4) Land Use Act 1978

> shall, if not agreed upon by the Governor and the Occupier, be determined by arbitration.

This was similarly re-enacted in section 43 of the Land Tenure Law 1962. Section 78 of the Minerals Act 1916 provides that the appropriate Minister may direct that compensation matter in dispute be determined by Arbitration[30] if the assessment by the Local Government Chairman is unacceptable to the parties. This concept till this day continues to undermine the framework of Nigerian oil and gas law and the nature of the current compensation system which is a contributory cause of the conflict between the oil producing communities and the oil companies.

iii. Mineral Oil Ordinance of 1914

The Mineral Oil Ordinance of 1914 was passed into law by Fredrick Lugard to secure an easy administration over mining and oil rights and to replace the 1907 Oil Mineral Ordinance by making mineral oil a British concern and turned Nigeria into one concession. Section 2 of the same Mineral Oil Ordinance of 1914 vested the entire property and control of mineral and mineral oil on the crown and provides inter alia, thus;

> the entire property in and control of all Minerals and Mineral Oil in, under or upon any lands in Nigeria and of all rivers, waters and watercourse throughout Nigeria is and shall be vested in the

[30] Section 115 of the Arbitration and Conciliation Act Cap C18 LFN 2004 provides that the Arbitration and Conciliation Act shall apply to every arbitration under the Act subject to modifications stated therein

> crown save in so far as such rights may in any case have been limited by any express grant made before the commencement of this Ordinance[31]

In furtherance of the powers section 6 (1)(a) of the Ordinance[32] vested on the Crown the entire mineral and oil resources in Nigeria stating, thus:

> no lease or licence shall be granted except to a British subject or to a British company registered in Great Britain or in a British colony having its principal place of business within Her Majesty's dominion, the Chairman and the Managing Director(if any) and the majority of the other directors of which are British subjects[33]

The Mineral Oil Ordinance 1914 vested the right to search for, win, and work mineral oil exclusively in British subjects or companies controlled by them; the mining and oil lease granted the company the right:

> at all reasonable times, to enter into and upon any part of leased area for all or any of the following purposes (a) to examine boreholes, wells, chattels, plants, appliances, buildings, installations works and effects used for the

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[31] National Archives Ibadan, 29/1914

[32] Ordinance No.19, 1909 (Cap. 130 Laws of Southern Nigeria) and Mineral Oil Ordinance No. 17 of 1914

[33] ibid

> operation, .. (b) to inspect the samples of strata, petroleum or water which are required to keep in accordance with the provisions of the lease[34]

The implication of these provisions is that the landowners have no right to challenge the occupier of the leased land while the agreement is in force; the Mining Company has the sole right to start exploration and extract any resources found on such land. It is ill-fated that the Constitution[35], the Exclusive Economic Zone Act[36], the Continental Shelf Act[37], the Petroleum Act[38]and the Petroleum Industry Act[39], copied from the Mineral Oil Ordinance of 1914 and vested the ownership of the mineral resources on the Federal Government of Nigeria.

Due to this colonial disposition, subsequent Nigerian oil and gas laws have overlooked the history of communal land ownership in Nigeria in consideration of the host communities before the incursion of the colonial masters. It is contended that the so-called laws of Nigeria, starting from the colonial Constitutions of Nigeria to the present Constitution[40] were

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34 L.H. Schatzl, *Petroleum in Nigeria*, (Nigerian Institute of Social and Economic Research, 1969) 78

35 Federal Republic of Nigeria 1999 Cap C23 Laws of the Federation 2004

36 Exclusive Economic Zone Act Cap E17 Laws of the Federation 2004

37 Continental Shelf Act Cap C Laws of the Federation 2004

38 Cap P10 Laws of the Federation of Nigeria 2004 now repealed in part by the Petroleum Industry Act 2021 and saved also by section 311 (2) PIA 2021 to the extent of any subsisting oil prospecting licence or mining lease issued under the Petroleum Act 1969.

39 Section 1 Petroleum Industry Act 2021

40 n 34

mere copy and paste of the old laws of the colonial masters with inconsequential variations. This obviously made it impossible to attend to the peculiarities of the host communities and their origin. The idiosyncrasies of the colonial masters imposed on colonies aided them to continue to copy and paste the colonial version of everything they did till date without realizing that our purposes and theirs are at variance.

It is worthy to note that, what stands today as the basis of ownership of natural resources in Nigeria contributes majorly to the menace of restiveness, criminality, insurgency, terrorism and killings in the oil and gas zones and has reduced the economic viability of the region[41]. This is owing to the primordial errors of the colonial administrators which have become so aged and engraved in our *corpus juris*, that it seems impossible to abolish them, due to the interests it serves to the operators of the machinery of government, just as their European counterpart.

The purpose of the Mineral Oil Ordinance[42] was to regulate the right to search, win and work mineral oils. Section 2 of the

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[41] C. Mark Thurber, R. David Hults & Patrick R. Heller, Exporting the "Norwegian Model" The Effect of Administrative Design in Oil Sector Performance, (2011) 39 Energy Policy 5366 https://www.sciencedirect.com/science/article/pii/SO301421511004125 (Last visited 2/9/2022) 4:54am

[42] Ordinance No. 19, 1909 (Cap 130 Laws of Southern Nigeria) and Mineral Oil Ordinance No. 17 of 1914; see also section 2(1) Petroleum (Production) Ordinance 1934.

Mineral Oil Ordinance 1914[43] defined Petroleum as mineral oil which includes bitumen and all other bituminous substances with the exception of coal while section 15(1) of the Petroleum Act[44] defined it as mineral oil or other hydrocarbon or natural gas as it exists in its natural state in strata and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

Further still, section 318 of the Petroleum Industry Act 2021 defines petroleum as hydrocarbons and associated substances as exists in its natural state or strata and includes crude oil, natural gas, condensate and mixtures of any of them, but does not include bitumen and coal. These definitions are clear evidence of copy and paste as they round the same ring without any substantial difference.

iv. Mineral Oil Ordinance 1916

The Mineral Oil Ordinance 1916 reaffirmed the control and ownership of the entire mineral resources by the British Crown over mining and oil rights found in Nigeria[45]. This is obviously a replication of what have been in existence without any improvement even when the provisions are unworkable and require significant amendments. For the sake of emphasis Section 3(1) of the Mineral Oil Ordinance 1916 is clearly, the reproduction of section 2 of the Mineral Oil Ordinance 1914. It states;

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43 ibid

44 n 37

45 National Archives Ibadan, CSO 1290/1916

> the entire property in and control of the minerals and mineral oils in, under or upon any land in Nigeria and of all rivers, streams and water courses throughout Nigeria is and shall be vested in the Crown save in so far as such rights may in any case have been limited by the express grants made before the commencement of this ordinance[46]

Sequel to the above provisions, section 22 of the Mineral Oil Ordinance 1916 states that:

> the holder of a mining right shall continuously and regularly carry on mining operations on the lands the subject of the mining right to the satisfaction of the government Inspectorate of Mines and shall furnish such reports and returns and shall keep such books as may be prescribed[47]

In furtherance of the tradition of replication, section 34(1) of the Mineral Oil Ordinance 1916 is similar to section 15(2) of the Native Rights Proclamation Act 1910. It provides that

> … the mining lease shall pay compensation to the owner of any building or of any economic trees or crops removed, destroyed or damaged by the lessee, his agents, workmen provided that compensation shall not be payable in respect of any building erected or trees or crop planted on

[46] National Archives Enugu CSO 422/1916

[47] National Archives Ibadan, Min. Ordinance 1916

> land in respect of which surface rent is paid by the lessee under section 32 after the date of which such rent commences to be payable[48]

v. Petroleum (Production) Ordinance 1934

Section 1(1) and 2(1) Petroleum (Production) Ordinance 1934 provides that:

> the property in petroleum existing in its condition *in strata in Great Britain* (sic) is hereby vested in His Majesty, and His Majesty shall have exclusive right of searching and boring for and getting such petroleum. The Board of Trade on behalf of His Majesty, shall have power to grant such persons as they think fit licence to search and bore and get petroleum.

Section 1(2) of the same law[49] provides that the expression 'petroleum' includes:

> any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation

These have remained the basic strata of our oil and gas law, till date in spite of the emerging challenges arising from the

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[48] National Archives Enugu, CSO 422/1916) equivalent to section 44 (2), n 37

[49] Petroleum (Production) Ordinance Cap 120 Laws of the Federation 1958

ownership structure, without mitigating or assuaging the loss of the host communities whose natural rights have been expropriated by law. The problem of the Nigerian oil and gas sector is tied and/or glued to these facts which have turned so old that no man thinks of how to correct or change the narrative. This problem and the solution are obvious, but needs sincere and transparent political will[50] power to do the right thing at all cost[51].

vi. Mineral Oil Ordinance 1946

In 1946, the British colonial government secured the passage of the Mineral Oil Ordinance 1946 whose principal purpose and effect was to vest in the Crown, the property in all Petroleum (Mineral Oil) in place.
The Ordinance[52] provided:

> the entire property in and control of all Minerals and Mineral Oil in, under or upon any lands in Nigeria and of all rivers, waters and watercourse throughout Nigeria is and shall be vested in the crown save in so far as such rights may in any case have been limited by any express grant made before the commencement of this Ordinance

This vesting of rights was subject to the condition under section 6 (1) (b) of the 1914 Ordinance[53] to the effect that the grantee

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[50] n 33
[51] see the dictum of Lord Denning MR in *Parker v Parker* (1954) All ER 22
[52] Mineral Oil Ordinance 1946
[53] Mineral Oil Ordinance 1914

of the lease or licence pay compensation to any person in lawful occupation of the land for disturbance of surface rights or as determined by the Governor- General of Nigeria. No provision was however made for compensation in the event that exploration showed the presence of substantial deposit in one's land on the basis that no compensation is due to the owners for his loss.

4.1 Copy and Paste in the Post-Colonial Oil and Gas Legislation

i. Petroleum Act 1969

The preamble to the Petroleum Act[54] reveals the purpose of the Act[55] that made it impossible for the makers to consider any other things wrong with the legislations but was only concerned to wrestle the ownership of the mineral resources from the British Crown and so fell into the trench of future problems which the colonial masters dug unwittingly. The preamble states:

> the Petroleum Act is an Act to provide for the exploration of Petroleum from the territorial waters, and continental shelf of Nigeria and to vest the ownership of lands; all onshore and offshore revenue from the petroleum resources derivable there-from in the Federal Government[56]

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[54] n 37

[55] ibid

[56] ibid

This is the very source of the tragedy we fell into, the bitterness, experienced by the Nigerian leaders over the colonization and vesting of all petroleum resources on the British government, British crown, the British companies and subjects were a source to worry about. So immediately the opportunity to address the situation became crucial to remove this vesting right from the government of British and vest same on the home government, they did without considering further errors; such as exclusion and marginalization in the legislation. Similarly, **section 1(1) and (2) of the Petroleum Act 1969** provides:

> the entire ownership and control of all petroleum in, under, or upon any lands o which this section applies shall be vested in the State; Section 1(2) applies on all lands (including lands covered by water) which is in Nigeria or is under the Territorial Waters of Nigeria or forms part of the Continental Shelf or forms part of the Exclusive Economic Zone[57]

Section 2 (2) of the Petroleum Act provides that, a licence or lease under this section may be granted only to a company incorporated in Nigeria under the Companies and Allied Matters Act[58] or any corresponding law. The Mineral Oil Ordinance No. 17 of 1914, the Mineral Oil Ordinance of 1925

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[57] ibid

[58] Cap 59 LFN 1990, later Cap. c 20 LFN 2004 and currently Companies and Allied Matters Act 2020

and the Mineral Oil (Amendment) Ordinance 1959 ceded Mineral rights to the British crown.

It reserved exploration, production rights to only British Companies for payment of token as royalty. The tragedy of oil and gas law and vesting of ownership rights of the natural resources in the federal government and the attendant neglect of the communities are the primordial and perennial causes of hostilities, restiveness in the oil rich communities. In the same vein, section 3(1) of the Mineral Ordinance of 1946, provide; that the entire property in and control of all minerals and mineral oils in, under or upon any land in Nigeria, and of all rivers, streams, and water courses throughout Nigeria is and shall be vested in the Crown.

The Republican Constitution of 1963 institutionalized the provisions, vested ownership of all property in mineral resources previously held by Her Majesty in the President of the Federation just as the Crown government did without consideration of the owners of these lands. The same circumstances affected the extant local content regime[59] which should have been an act of reprieve by government and would have provided a lasting solution to the conflict between the host communities and the oil companies.
Unfortunately, it suffered the set back of playing the ostrich by neglecting the peculiar circumstances of the host communities by swapping the local content with Nigerian content. The Petroleum Act[60] took after the draconic, unjust and

[59] Nigerian Oil and Gas Industry Content Development Act 2010
[60] n 37

inconsiderate colonial Petroleum Ordinances[61] which the British crown made to achieve total control over the Petroleum resources of Nigeria without addressing the affairs of the people who are directly affected by the incidence of the operations. The draftsmen of the Petroleum Act[62] only removed the absolute control of the Petroleum resources from the British crown, British government and British subjects.

It similarly transferred same to the Nigerian government, Nigerian companies and Nigerian citizens without more. But it awfully maintained the position of the British crown by wrongfully vesting the right of ownership on the federal government instead of the owners of the land which the British government did on purpose, which the post-colonial legislations should have corrected along the line of other corrections or made priority considerations in favour of the landowners and host communities to assuage their deprivations. The same fate is applicable to The Exclusive Economic Zone Act, Land Use Act 1978, 1979 and 1999 Constitutions of Nigeria.

ii. Exclusive Economic Zone Cap 116 LFN 1990

Section 2(1) of the Exclusive Economic Zone,
provides:

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61 Ordinance No. 19, 1909 (Cap 130 Laws of Southern Nigeria) and Mineral Oil Ordinance No. 17 of 1914Petroleum Ordinance of 1889 and Mineral Regulation (Oil) Ordinance No. 12 of 1907, Mineral Oil Ordinance No. 17 of 1914, the Mineral Oil Ordinance of 1925 and the Mineral Oil (Amendment) Ordinance 1959

62 n 37

> sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the sea bed, subsoil and subjacent waters of the Exclusive Zone shall be vested in the Federal Republic of Nigeria and such rights shall be exercised by the federal government

iii. The Land Use Act 1978[63]

Section 1 of Land Use Act 1978 provides;

> subject to the provision of this Decree, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provision of this Act[64].

iv. The 1979 and 1999 Constitution of the Federal Republic of Nigeria

The 1979 and 1999 Constitution of the Federal Republic of Nigeria provides that:

> the entire property in and control of all minerals, mineral oil and natural gas, 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

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[63] Cap L5 LUA Laws of the Federation 2004

[64] ibid

Federation and shall be managed in such manner as may be prescribed by the National Assembly[65]

v. Nigerian Industry Oil and Gas Content Development Act 2010

Despite, the reform the new content legislation[66]equally paid lip service to local content plan; transfer of technology, capacity building and succession plans and foreign dominance. It could not also resolve the challenges of the enforcement or make any difference like the former content legislations[67]to salvage the trying situation in the oil and gas rich region.

vi. Petroleum Industry Act 2021

In a similar manner section 1(1) of the Petroleum Industry Act copied the ownership provisions and provides that, the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and Exclusive Economic Zone is vested in the Government of the Federation of Nigeria[68]. In a copy and paste manner, it copied and replicated colonial legislation made for selfish and parochial motives into the post-colonial and present day oil and gas legislation to the

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65 Section 44(3), n 34

66 n 58

67 Regulation 26 of the Petroleum (Drilling and Production) Regulations 1969; Petroleum (Drilling and Production) Regulations 1969 saved by section 2(b) of section 310 of PIA 2021

68 Petroleum Industry Act 2021

extent that the Nigerian Constitution wears the same ugly expropriatory face[69].

Nigerian Content is a misleading nomenclature. In *Famfa Oil Ltd v A.G.F. & NNPC*[70] the court held invalid paragraph 2 of Deep Water Block Allocation to Companies (Backing Rights) Regulation 2003 which gives the Federal Government the arbitrary right to acquire five-sixth (5/6) of an Oil Prospecting Lease or Oil Mining Lease's interest for being inconsistent with paragraph 35 of the First Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder of the OPL or OML. Section 1(1) of the Petroleum Act 1969, copied the pre-independence oil and gas legislation and states that the entire ownership and control of all petroleum in, under or upon any land to which this section applies shall be vested in the state.

The Supreme Court in *Att. Gen. Federation v Att. Gen. of Abia State & 35 Ors No. 2*[71] confirmed the vesting of ownership of Petroleum resources in the Federal Government, and further held that the Federal Government alone and not the littoral states can lawfully exercise legislative, executive and judicial powers over the maritime belt or territorial waters as well as sovereign rights over exclusive economic zones subject to

[69] Laws that deprive the citizens of their proprietary rights in the property; *AG of Bendel State v Aideyan* (2003) FWLR (Pt. 187) at 886; *Bello v Diocesan Synod of Lagos* (1973) 3 SC at 103

[70] (2003) 18 NWLR (Pt. 852) 452

[71] (2002) 6 NWLR (Pt. 764) 542

universally recognized rights. This has been the bedrock of restiveness and criminality in the oil and gas rich region. This circumstance has continued to turn the natural owners to mere slaves. Considering the fact that it is rather too late to think of shifting the post since the correction was not made at the appropriate time, it becomes apposite that the host communities should be granted priority position and consideration in the Nigeria oil and gas sector to assuage their feelings. The feelings of the host communities have been regularly neglected due the copy and paste legislative syndrome that does not allow analysis of the pitfalls of the earlier legislation to enable improvement. For the above reasons, value creation, utilization, use and participation of Nigerians in the oil and gas industry canvased by the extant regime will not yield any difference without the appropriate placement of the indigenous communities hosting the extractive industries in Nigeria. No reasonable value could be said to be created and added in the economy when the absurdity which the Act[72] was made to resolve is still manifestly spreading. It is the wellbeing of the people that aggregate into the wellbeing of the nation through wellness of the economy. Where the people are hungry with poor living standard it will be illusory to imagine of value creation.

The situation may become worse when the restive youths eventually realize that, the thought-about local content is nevertheless Nigeria Content, implying that the law did not address their woes after much celebrated inauguration of the

[72] n 58

regime. The worst of all the scenarios is the inability of the long awaited Petroleum Industry Act[73] to resolve the problems extant Nigerian Content[74] significantly failed to resolve but rather created new heads of problems and potential sources of restiveness.

The title of the Act[75]should be amended to read 'Local Content' or to accord the host communities a place of priority in all the activities of the industry. The tragic phenomenon of expropriation in our property laws was masterminded by the progenitors of the colonial oil and gas laws who made them to serve their proprietary interests only, without regard to the traditional ownership system of African lands they met and swore in the treaties not to interfere with. This disorder has been a source of restiveness in the region. They have become enshrined in these laws that nobody imagines their amendment let alone removal despite the mischief and harm they have caused. Justice will be better served if the ownership structure can be doused or amended in a manner that provide justiciable priority status to the natural owners of these resources to assuage their losses and enhance their welfare, infrastructural development and needs.

5. 1 Recommendations and Conclusion

This paper examined the Nigerian copy and paste legislative practice in the Nigerian Oil and Gas industry reform. The paper finds that the colonial and post-colonial oil and gas legislations

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[73] n 67

[74] n 58

[75] ibid

vested ownership of oil and gas resources on the federal government following the wrong precedent of the progenitors of these legislations.

The facts equally showed that the legislations made scanty provisions for compensation for the crops damaged during mining and petroleum exploration. These have made these principles, the woes of the oil and gas industry which has permeated into the Nigerian property jurisprudence but without assessment of the damages and havoc it has caused to the system. It also shows that every effort at remedying the trajectory is heinously hijacked.

There is gross neglect of the indigenous communities in terms of infrastructure, involvement and participation in the activities of the industry. This leads to incessant agitations, persistent restiveness and general criminalities in the region as response to the exclusion and non-inclusion. The Nigerian local content is a legal transplant of the Norwegian experience of local content that inspired admiration and imitation but without synchronizing the legal, political, economic and social circumstances of Nigeria which is not homogeneous with the Norwegian environment[76]. While a particular legislation can work in one country, it may not equally work well in another nation because of the situational differences in the two locations. It is recommended in this article that the Nigerian legislative engineering machinery should embark on effective and sincere legislative engineering that should be innovative,

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[76] Thurber, Hults and Heller, n 40

overhauling, reformative and attentive to the pedigree of the *hitherto* legislation that triggered the reform. Resolution 1803(XVII) December 14, 1962 was the genesis of the onslaught in the oil and gas sector in Nigeria that imposed expropriation in the Nigerian law. It influenced the imposition of the principle of permanent sovereignty over natural resources in Nigeria which was copied into all the Nigerian property laws, which constitutes the cause of restiveness in the oil rich region.

Another of such critical imposition with radical influence is the transplanting of Norwegian Local Content model, shaped, tamed, tested in Norway and transplanted to Nigeria[77]; a country with different political, cultural, social, economic and legal circumstances and environment.

The policy was adopted into the Nigerian local content policy without considering, that what motivated the success of the model in Norway is a mile of difference from the prevailing factors in the Nigeria sphere. Nigerian legislature should be dispassionate in carrying out its statutory legislative responsibilities to enable efficient and effective legislations that will solve socio-politico-economic problems posed by the unworkable laws to avert reoccurrence. They should be able to weigh the options and ensure that when the transparent is made on the legislation; the result will match the needs of the society, it is meant to serve. They should avoid unworkable provisions of the Act[78] and replace them with provisions that can resolve

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[77] Berryl Claire Asiago 473, n 14

[78] n 67

the perennial problems rather than initiating new provisions or clauses that generate fresh problems that were inexistent before the reform. It is further recommended that the legislators should throw away the copy and paste technique in reforms involving critical sector and evolve a reformative legislation that resolve the inadequacies and challenges of the erstwhile legislation.