Reclaiming Nigeria’s Natural Resource Frontiers after *AG Federation vs. AG Abia & 35 Ors*

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*Natural resource endowment is not a matter of choice for any country, though resource-rich States have a choice on how they appropriate and manage their resource wealth. Natural resource revenues are finite in nature and as such they require sustainable management and use. While it is necessary for the purpose of fiscal equities e.g., cohesion and promotion of harmony in sharing petroleum revenues between the Federal Government and the oil producing areas, lack of consensual fiscal model presents a challenge in a multi-level governance of a federal system such as Nigeria. Different sharing formulas have been employed over the years with same occasioning different reactions from the federating units. Resource control and allocation in Nigeria has been made particularly famous by the decision of the Supreme Court in Attorney General of the Federation v. Attorney General of Abia State and 35 others and the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 respectively. The far reaching implications of that decision and the Act include a grave delimitation of Nigeria’s territorial and natural resource frontiers as guaranteed under national and international law. The paper establishes that these frontiers have been*
rolled backwards in the attempt to confer on the oil-producing states, less than what the Constitution guarantees them. The paper further argues that the proviso to Section 162 (2) on exploitation of Nigeria’s creates an impetus for the development of the nation’s other viable mineral resources apart from oil and gas on the one hand; and the need for the Supreme Court to revisit the decision in the best interest of the country.

Introduction

The optimum utilisation of natural resources requires credible management and administrative effectiveness. It has been noted that the first challenge facing any resource-rich country is ensuring the public is able to extract as much of the value of resources that lie beneath its land as possible. Even in countries with stable and mature democracies, there is an ongoing struggle by oil and gas and mining companies to seize as much of the wealth for themselves as they possibly can.¹ The situation is no different in Nigeria, wherein the

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resource management function with respect to any particular industry becomes more complicated if the responsibility for national economic management and the agency for tapping the industry’s resources are separated, and more so if their interests are divergent.2 The politics of resource control has its genesis in the way revenues from petroleum-related economic activities have become the mainstay of the Nigerian economy,3 and as such, resource control has been described as Nigeria’s key fiscal federalism issue.4

In fundamental ways, the politics and economics of Nigeria have been shaped by the control of revenues from oil. The Biafran War of the late 1960s was in part an attempt by the eastern region – predominantly Ibo – to gain control over oil reserves.5 Apart from the successive military dictatorships which plundered oil wealth, the most notable being General Sani Abacha, stories of transfers of large amounts of undisclosed wealth abroad are legion in Nigeria.

The Constitution treats natural resources as a national heritage, and economically, the Nigerian State is endowed with the requisite power over its resources. As an agent of development, the State appropriates and centralises surplus from export commodities in the name of accelerating

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5 T Shelley, Oil: Politics, Poverty and the Planet (ZED Books 2005) 59.
development. Thus, the theory and practice of ownership and control of mineral resources in Nigeria is that of absolute ownership and control in favour of the Federal Government of Nigeria. In this capacity, the Constitution reposes absolute ownership of all natural resources in Nigeria in the Federal Government. The Petroleum Act of 1969, the Land Use Act of 1978, as well as the proposed Petroleum Industry Bill, vest ownership of petroleum resources in the Federal Government. As a result, States have no legal rights to oil and gas reserves in their respective territories. Furthermore, the oil and gas industry is on the Exclusive List, and all laws in relation to this industry are drafted and enforced by the National Assembly at the federal level.

I. Federal Structure and the Politics of Resource Allocation

It is a general rule, albeit not an absolute one, that economic emphasis is the first concern of a federalist or quasi-federal system of government, as against political considerations. Moreover, federalism and resource control have been

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7 Exclusive power to legislate on matters relating to ‘mines and minerals, including oil fields, oil mining, geological surveys and natural gas; including nuclear energy, is vested on the federal government. See generally, items 39 and 41, of Second Schedule, Legislative Powers, Part 1, Exclusive Legislative List, Constitution of the Federal Republic of Nigeria (CFRN) 1999.
described as twins whom mutually complement each other.\textsuperscript{9} The fiscal relationship between the centre and the periphery, before and since the era of formal federalism in Nigeria, has been described as resembling the relationships between householder and housekeeper, or tantamount to a paymaster of the piper dictating the tune.\textsuperscript{10}

Ethnic factors, considerations, and pressures also affect the mode of resource allocation and distribution in many ways. The most emphasis is placed on the ‘sharing of the national cake’,\textsuperscript{11} whilst less emphasis is placed on the production, or at least on the sustainability of the ‘cake.’ As such, it has been asserted that the interest of the Nigerian State, which represents an over-centralised federation consisting of the ruling elite from larger ethnic groups, is in continuously producing oil.\textsuperscript{12} It has even been proposed that oil revenues be transferred from the public to the private sector in order to reinitiate growth in Nigeria.\textsuperscript{13} However, the private sector is

\textsuperscript{9} M Odje, \textit{The Challenges of True Federalism and Resource Control in Nigeria} (Omadro Impressions Limited 2000).
\textsuperscript{11} O Nnoli, \textit{Dead-End to Nigerian Development, An Investigation into the Social Economic and Political Crisis in Nigeria} (CODESRIA 1993) 232.
\textsuperscript{13} A Subramanian and X Sala-i-Martin, \textit{Addressing The Natural Resource Curse: An Illustration from Nigeria} (2003) National
far from infallible and Gylfason makes the following analogy: ‘if judges prove corrupt, the solution is not to privatize the judicial system, rather the solution must be to replace the failed judges and reform the system by legal or constitutional means aimed at securing the integrity of courts’.14

Since the late 1940s, several criteria have been used to allocate revenue among the states. The principles adopted to date include derivation, fiscal autonomy, national interest, equality of states, population, balanced development, social development, and absorptive capacity. Other principles such as need, development, independent revenues, continuity of government services, financial comparability, fiscal efficiency, tax efforts, minimum national standards, and equality of access to development opportunity, have been used to attempt to devise a legitimate means of sharing centrally generated revenues.15 However, the principle of derivation has unequivocally attracted the most significant attacks and protestations.16 The principle contemplates that the receipt of revenue from the Federal Government by State should be proportionate to their contribution to the national revenue, though the principle has gradually been eroded.

The 1999 Constitution also provides a revenue-sharing formula that enables states that have natural resources within their territories to be entitled to a stipulated percentage of the revenue which accrues directly to the Federation Account from the exploitation of any such resources.

The Federal Government has created Special Accounts containing funds which are federally generated and to be paid into the Federation Account for vertical sharing among the three levels of government. Jega maintains that in a federal system, the contributions of a federating unit as a source of national revenue must be recognised such that in the sharing of revenues, a reasonable compensation proportionate to that contribution is granted. This is without prejudice to the imperatives of equality, need, and equalisation. The problem in Nigeria has been the total neglect of the derivation principle and the aggressive, if not reckless and insensitive promotion of other variables perceived to favour the North.

Moreover, MacMahon notes that federalism itself is a system of government well-suited for a country where there exists vast diversity and heterogeneity. It is best suited for a country where two or more groups differ in language or otherwise, or where a homogenous people are spread over a large area but share sufficient interests to enable action through a central government whilst leaving parts to be self-governing for important purposes.

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17 Jega (n 3).
18 Ibid.
While the economics of Nigeria’s federalism is rather fascinating, in reality the bigger question is: why does federalism hold a special appeal for Nigeria and control for the federal government? The simple answer is that in the Nigerian model of federalism, which has evolved over time, control of the federal government determines the allocation of development resources. Given the evolution of the Nigerian federal structure over the years, constitutional recognition and prescription for the ownership of and control over resources can only be thought of as apt for a credible social order, such that in times of doubt, the constitution can stand above the fray and determine the ownership and quantity therein of said resources.

Nigeria is a federal state by virtue of Section 2(1) of the 1999 Constitution:

‘Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria.’

Subsection 2 of the same Section also provides that Nigeria shall be a Federation consisting of States and a Federal Capital Territory. Each tier is assigned respective spheres of jurisdiction by the Constitution, and in a federal system of government, the tiers of government ought to share political power as expressly stated in the constitution. As such, revenue is shared among these constituents of Nigeria; a common distributable pool account known as the ‘Federation Account’ maintains all revenue paid into and collected by the Federal Government.

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21 Ibid 2(2).
22 Section 162(1) of the 1999 Constitution (n 21).
It is imperative to note the constitutional roots of the politics of revenue allocation in Section 162 of the 1999 Constitution of the Federal Republic of Nigeria. In the wordings of subsection 2 of the article under reference, it is provided that:

the National Assembly shall take into account the allocation principles especially those of population, equality of states, internal revenue generation, land mass, derivation as well as population density; provided that the principle of derivation shall be constantly reflected in any approved formula as not less than thirteen percent of the revenue accruing to the federation account directly from any natural resource.\(^2\)

However, the lingering question remains: what exactly does the Constitution mean by the expression: ‘not less than thirteen percent of the revenue accruing to the federation account’?

The present formula for the allocation of revenue in Nigeria is heavily tilted in favour of the Federal Government. The formula for allocation since the commencement of democratic rule in 1999 is as follows: Federal Government – 48.5\%, State Governments – 26\%, Local Governments – 20\%, and Special Funds 7.5\%.\(^2\) However, with the decision in *AG Federation v. AG Abia State & 35 Ors*,\(^2\) the president modified the revenue sharing formula to transfer much of the percentage in special funds to the Federal Government, and as a result, the Federal Government now collects 54\% of the allocation from the

\(^{23}\) Ibid 162(2).
\(^{24}\) RJ Rotberg, *Crafting the New Nigeria: Confronting the Challenges* (Lynne Rienner Publishers 2004) 89.
Federation Account. The implication of the above position is that the concentration of excessive financial power at the centre potentially leads to abuse and erosion of the political and economic strength of its federating units. This has been identified as one of the deformities of the federal system as it operates in Nigeria, which necessitates the extortion, degradation, and consequent underdevelopment of the Niger Delta region. Ojefia identifies a pressing need for a re-examination and re-structuring of the federal system of government in Nigeria to reflect fair and equitable distribution of resources and an acceptable measure of autonomy at all levels of the constituent part of the federation.

II. Implications of Permanent Sovereignty over Natural Resources

The principle of Permanent Sovereignty Over Natural Resources as it stands today in international law is largely credited to the United Nations (UN); the UN has categorically been referred to as the mid-wife who birthed the principle. The principle is embodied in a number of Nigerian legislations which, in their promulgation, were aimed at appropriating this right on behalf of the Nigerian State. The Petroleum Act vests entire ownership and control of all petroleum under or upon any lands in the State, including land covered by water in Nigeria, under the

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27 Ibid.
28 Ojefia (n 12).
29 N Schrijver, Sovereignty over Natural Resources – Balancing Rights and Duties (CUP 2008) 399.
Reclaiming Nigeria’s Natural Resource Frontiers

 territorial waters of Nigeria, or forming part of the continental shelf.\(^{30}\) The Territorial Waters Act of 1967 confers on Nigeria sovereign jurisdiction of the open sea within twelve nautical miles and declares it as territorial waters of Nigeria.\(^{31}\) In the case of \textit{Fagunwo v. Adibi}, the Supreme Court defined ownership as:

Ownership generally connotes the totality of or the bundle of the rights of the owner over and above every other person on a thing. It connotes a complete and total right over property. The property begins with the owner and also ends with him. Unless he transfers his ownership of the property to a third party he remains the allodial owner.\(^{32}\)

The constitutional power conferred to the Federal Government to own and control the mineral resource in Nigeria, which is rather absolute, has not been received well in some parts of the country. Furthermore, Section 44 (3) of the Constitution vests within the Federal Government of Nigeria overriding powers of control of the nation’s natural resource revenue. It enacts:

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


\(^{31}\) Section 1(3) Territorial Waters Act, Cap T5 Laws of Federation of Nigeria 2004.

Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.33

Over a decade ago, some state governors (precisely, governors of the south-south littoral states of Nigeria) proposed a revenue-allocation agreement in which they would be in a position to pay a certain percentage of revenue to the Federal Government. To require the Federal Government to relinquish control as the south-south governors indicated, would be to require a constitutional amendment of the above section to grant a measure of control to the state government. Apart from the agitation of the south-south governors, there have been other calls for and quests to control the vast mineral wealth of the south-south region of the country. The Kaiama Declaration by Ijaw Youths of the Niger Delta on 11 December 1998 purported to grant ownership of all land and natural resources within the Ijaw territories to the Ijaw Communities.34 In addition to such bold attempts, ethnic militias clamouring for self-determination have also arisen; notably the Bakassi Boys, Odua People’s Congress, and the Movement for the Emancipation of the Niger Delta.

Another pressing issue was the problem of the determination of the seaward boundary of a littoral state for the purpose of determining what constitutes the constitutionally guaranteed minimum of 13% derivation. In 2001, the then Honourable Attorney General of the Federation, late chief Bola Ige, filed a

33 Section 44(3) of the 1999 Constitution.
lawsuit requesting the Supreme Court to determine the seaward boundary of a littoral state within the federal republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that state, pursuant to Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999. The Section enacts that:

The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.

The plaintiff argued persistently that the boundary ends at and does not extend beyond the low water mark of the sea, and that accordingly, the area of the sea up to 12 nautical miles from the low-water mark, denominated as territorial sea with its bed and sub-soil, is not part of Nigeria’s territory. This Section further enacts a proviso:

[P]rovided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

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36 Section 162(2) of the 1999 Constitution (n 21).
37 Ibid.
The principle of derivation, as contained in the above portion of the Nigerian Constitution, places the strict constitutional minimum at 13%, leaving the maximum allocation at the discretion of the National Assembly. Furthermore, the revenue accruing from the Federation Account comprises revenue from natural resources, including petroleum resources, whether exploited on-shore or off-shore; the governors had contended that the revenue from off-shore petroleum resources have not been included by the federal government, which ought not to be so seeing as it forms part of their respective states. The Supreme Court, in a lead judgement by Ogundare JSC (as he then was) of blessed memory, rejected the position taken by the eight littoral states – Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Lagos, Ondo, and Rivers, whilst affirming the contention of the Federal Government.

Acceptance of the territorial sea as part of Nigeria’s territory presented a dilemma for the Federal Government and the Supreme Court, as it would have meant accepting that it is also part of the territory of the littoral states and thus conceding their claim to 13% of the oil revenue derived from it on the principle of derivation as provided under Section 162(2) of the Constitution. The littoral state had contended that, ‘Nigeria consists of the aggregate of the territories of all 36 states of the federation and the FCT and that Nigeria cannot as such constitutionally have any other territory outside this aggregate.’

Their contention is sound and irrefutable. The only way to defeat the claim of the littoral states to a 13% share of the off-shore oil revenue and extricate the Federal Government and

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38 AG Federation v AG Abia State & 35 Ors, 713.
the Supreme Court from the dilemma was to deny the territorial sea, with its bed and subsoil, as part of the territory of Nigeria and, *ipso facto*, of the littoral states.\(^{39}\) However, having held that the territorial sea is not part of the territory of Nigeria, and consequently, of the littoral states, and that littoral states are not entitled to any share of oil revenue derived therefrom, it should also follow that Nigeria as a federation is not entitled to such revenue either.\(^{40}\) This created another dilemma for the Federal Government and the Supreme Court, from which they sought an escape route. The Court had to rely on a plethora of past and current legislations including the Nigeria (Constitution) Order-in-Council of 1951, the colonial Northern Region, Western region and Eastern Region (Definition of Boundaries) Proclamation of 1954, and the Constitutions of the Federal Republic of Nigeria 1960 and 1963 respectively. The Court found a weak and unconvincing route of escape in the sovereignty conferred on Nigeria by Article 1 of the U.N Convention on the law of the sea 1982, which provides that:

‘The sovereignty of a state extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast, described as the territorial sea..., up to 12 nautical miles from the low-water mark with its bed and subsoil.’\(^{41}\)

This provision of Article 1 has been given effect in Nigeria’s municipal law by three statutes: the Territorial Waters Act, Exclusive Economic Zone Act, and Sea Fisheries Act.

\(^{39}\) Nwabueze (n 35) 9.
\(^{40}\) Ibid.
Based on the provision of Article 1 of the Convention and the local statutes giving effect to the convention in Nigerian municipal law, the Supreme Court upheld the government’s claim to sovereignty over the territorial sea and the oil revenue derived from its bed. By this decision, the Supreme Court contradicted itself; it affirmed Nigeria’s sovereignty over the territorial sea and at the same time declared that the territorial sea does not form part of the territory of Nigeria. Nwabueze posits that even on the erroneous premise that the seaward boundary of Nigeria is the low-water mark of the sea, the littoral states remain entitled to the prescribed 13% of revenue from off-shore oil revenue upon a purposive interpretation of the ‘principle of derivation’ under the proviso to Section 162 (2) of the Constitution.42

As it is, the proviso is clumsy and leaves open for argument whether the ‘principle of derivation’ applies solely to revenue from natural resources located within the territory of a state or whether it applies only to revenue from natural resources located in the seabed and subsoil contiguous to the land territory of a state. Thus, in failing to make any reference to the physical location of the natural resources to which the ‘principle of derivation’ is applied, the proviso creates a problem of interpretation.43

Apparently taking it for granted that, beyond dispute, ‘derivation’ could only refer to revenue from natural resources located within the land territory of a state, the judgement of the Supreme Court proceeded on the basis that it was to determine the boundary of the littoral states, and that this would in turn provide the answer to the matter in dispute. The Supreme Court therefore erred in treating the

42 Nwabueze (n 35).
43 Ibid.
case as one for the determination of boundary, as was expected by the Federal Government, rather than one for the interpretation of Section 162(2), which, when properly and purposively construed does not require the determination of boundary. Similarly, it has been expressed that while on its surface the determination sought by the Federal Government appears to be restricted to merely resolving the seaward boundary of the littoral states, the actual dispute concerned the ownership of the offshore as between the littoral states and the Federal Government.44

Nwabueze further notes that the Court worsened a problem it could have easily solved. The Court’s decision exposed the yawning gap created by the absence of a revenue allocation formula pursuant to the Constitution.45 Shortly after this decision, the Federal Government initiated the On-Shore Off-Shore Dichotomy Abolition Bill at the National Assembly. In the heat of realising the erroneous position and the doubtful reason behind the Court’s decision, based on what it termed a ‘political solution’ to the crisis emanating from the judgment, the President appointed a Presidential Committee to find such a solution. The Committee recommended a legislative intervention in the form of an enactment by the National Assembly, that the natural resources found offshore be deemed to have been found within the territory of the adjacent littoral states for the purpose of the application of the derivation principle.

45 Nwabueze (n 35).
Pursuant to this recommendation, the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004, which represents a reversal of the mistake of the Court’s position, was enacted. It enacts the following in its only section:

1 (1) As from the commencement of this Act, the two hundred metre water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purposes of computing the revenue accruing to the Federation Account from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment.

(2) Accordingly, for the purposes of the application of the Principle of Derivation, it shall be immaterial whether the revenue accruing to the Federation Account from a State is derived from natural resources located onshore or offshore.\(^{46}\)

The decision of the Apex Court has delimited Nigeria’s seaward boundary at low-water mark, but not without consequences. The rule in customary international law entrenched by Article 3 of the United Nations Convention on the Law of the Sea 1982, is that ‘the sovereignty of a state extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast, described as the territorial sea..., up to 12 nautical miles from the low-water mark with its bed and subsoil.’\(^{47}\) To ameliorate the damaging effect of


the SC’s decision to the territorial sovereignty of Nigeria, Nwabueze recommends that a new subsection be added to Section 3 of the Constitution, to read as follows:

‘It is hereby declared that the territorial sea, with its bed and subsoil, is part of Nigeria’s territory.’

This recommendation is laudable given the reality that the abolition of on-shore/off-shore dichotomy does not salvage the damage done to Nigeria’s territorial sovereignty, rather, it seeks only to take the revenue from the off-shore resources out of the reach of the governor of the littoral states, whilst accruing such revenue to the Federal Government of Nigeria despite the Court’s judgment operates to disentitle Nigerian State to such resources. While the Court’s decision and the 2004 Act provide short-term relief, long-term damage subsists at the international level.

With the dichotomy between on-shore and off-shore mineral resources abolished, as it concerns allocation of revenue from the Federation Account, it would seem that the disgruntled voices have been silenced. However, the almost perpetual uprisings in the Niger Delta region tell otherwise. It is on this note that Jega recommends Nigeria must go beyond the Supreme Court decision in *AG Federation v. AG Abia and Ors.* to seek a political solution to the problem of resource-control, by establishing an acceptable balance between derivation, equity, and national interest. He propounds at least 40% of the revenue accrued from petroleum-related activities should go to the oil-producing states. This would not only ensure the development of these areas, which is commensurate with

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48 Nwabueze (n 35) 21.
49 Jega (n 3).
the negative effects of oil exploration and exploitation, but would also raise competition in non-oil producing states such that no natural resource is left fallow. Nigeria has numerous viable mineral resources, and Section 162 of the Constitution specifically uses the phrase ‘from any natural resource.’ This opens the door to full exploitation of Nigeria’s other natural resources besides oil and gas. Nigeria’s viable mineral resources include: coal, lignite, tin, columbite, wolfram, uranium, mica, gold, rutile, barite, lead-zinc, graphite, talc, asbestos, diatomite, fireclay, kaolin, iron ore, limestone, bitumen, marble, phosphate, thorium, gypsum, glass sand, Kaolin, manganese, barites, and salt.

**Conclusion and Recommendations**

A crucial aim which resource control must achieve is guaranteeing the equitable and judicious use of aggregate revenues accruable to each level of government towards economically developing the Nigerian population. If nothing can be done with little, certainly much can be done with more. It appears the ownership and control of natural resources is constitutionally vested in the state, because it stands as a custodian and in a position to seek the common good of its citizenry. Therefore, ensuring that the wealth accrued from natural resources improves the quality of life of the people must become a priority for the government.

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50 Section 162 of the 1999 Constitution (n 21).

What becomes of Nigeria when the country’s oil becomes insignificant in the international market? As Sheikh Ahmed Zaki Yamani, the former Saudi Oil Minister, famously said in June 2000:

‘The Stone Age came to an end not for a lack of stones and the Oil Age will end, but not for a lack of oil.’

It is apt to state that the amount of revenue is not as paramount as how it is used. Resource allocation becomes as important as resource utility if economic and social transformations must be achieved by way of wealth accruing from resources. Stiglitz goes with this view when he notes that the second task facing developing countries is the use of wealth accruing from resources well after the first challenge, which is ensuring the public gets much of the value of the resources that lie beneath its land as possible.

The National Assembly cannot afford to play the sitting duck when issues of territorial sovereignty are at stake. Ten years following the decision, the legislature have failed to revisit the delimitation of Nigeria’s territorial and natural resource boundaries by the decision, either by way of amending the constitution or the Abolition of Dichotomy Act. In terms of the delimitation, it is recommended that there should not only be a stipulated minimum but there should also be a constitutional maximum, such that the maximum is not left to the discretion of the Federal Government. This can be achieved via a constitutional amendment or a credible revenue-sharing legislation, wherein the modalities for sharing federally generated revenue among states are explicit.

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52 Fagegan (n 2).
53 Stiglitz (n 1).
The Supreme Court should also revisit this decision; seeing as it has created irreconcilable conflicts with a plethora of legislations. A clarification of the derivation principle to include on-shore and off-shore natural resources is imperative. Further, had the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 read ‘1 (1) As from the commencement of this Act, the two hundred metre water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State’, it would have salvaged the damage done by the decision of the Supreme Court.\(^\text{54}\) However, the second part of the section, which reads: ‘for the purposes of computing the revenue accruing to the Federation Account from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment,’ failed to utilise the opportunity to bring clarity to the situation.\(^\text{55}\) Therefore, it would be a better option to equally amend the Act.

Nigeria’s other viable resources should be equally exploited to create income for their host-states. This flows from the potential of the proviso to Section 162 (2), and the effect of such exploitation, would generate more income for the states and the country as a whole.

\(^{54}\) Section 1(1) Allocation of Revenue Act 2004 (n 46).

\(^{55}\) Ibid Section 1(2).
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