THE HADITH OF THE THREE COMMONS: A LEGAL RE-EVALUATION OF SHARED NATURAL RESOURCES IN MODERN ENERGY GOVERNANCE

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ABSTRACT

The management of natural resources is a central theme in Islamic proprietary jurisprudence. It is characterized by the Prophetic mandate: "Muslims are partners in three things: water, pastures, and fire" (Sunan Abi Dawud). This Hadith establishes a normative framework for the "Commons," suggesting that essential resources required for human survival and communal flourishing are inherently collective. In the contemporary Nigerian context, where energy transition and water security are paramount, this primary source offers a profound legal basis for public trust. The modern commodification and total privatization of essential resources—particularly energy ("fire") and water—frequently lead to the marginalization of vulnerable populations and the degradation of the environment. Nigerian laws are increasingly prioritizing exclusive private ownership or state-led commercialization which creates a Tragedy of the Commons where communal access is sacrificed for corporate profit. This creates a tension between the Prophetic prohibition of resource monopoly and the neoliberal legal structures of the 21st century. This paper interrogates the legal status of shared natural resources by analyzing the Hadith of the Three Commons through the lens of *Al-Amwal al-Ammah* (Common Property). It seeks to determine how this Prophetic principle can be operationalized to challenge the absolute privatization of energy and water sectors as well as advocating for a Prophetic Public Trust model within Nigeria's regulatory framework. The analysis reveals that the three resources mentioned in the hadith (i.e., water, pastures, and fire) are categorized as *Res Publicae* under Islamic law. This renders them non-subject to exclusive private ownership if such ownership results in public hardship (*Darar*). The paper finds that fire in the modern context encompasses electricity and hydrocarbons implying that the infrastructure for these services must serve a communal partnership. Furthermore, the paper discovers that the concept of *shirkah* (partnership) in these resources mandates a distributive justice model that transcends simple market economics. It is recommended that the Nigerian government adopt a Communal Resource Easement based on the Hadith of the Three Commons. This legal instrument would ensure that even where private licenses are granted for resource extraction, a guaranteed Partnership Share is reserved for local communities to ensure ecological and social equity.

Keywords: Prophetic Economics, Social Equity in Infrastructure, Collective Ownership, Neoliberalism vs. Islamic Communalism.

1. Introduction

The ontological foundation of property in Islamic legal thought is predicated upon the principle of *Al-Mulk lillāh* (Divine Ownership), wherein humanity exercises only a delegated stewardship (*Istikhlāf*) over the earth's bounties.[1] Within this framework, the management of natural resources is not merely a matter of administrative convenience but a sacred trust (*Amānah*) designed to ensure the realization of *Maqāṣid al-Sharī'ah* (the Objectives of the Law), specifically the preservation of wealth and the promotion of social equity.[2] Central to this discourse is the Prophetic mandate recorded in the Sunan of Abu Dawūd: "Muslims are partners in three things: water, pastures, and fire."[3] This Hadith serves as the primary normative cornerstone for the doctrine of *Al-Amwāl al-'Āmmah* (Common Property), establishing a categorical prohibition against the exclusive monopolization of resources essential for human survival and communal flourishing.

In the contemporary legal landscape, particularly within the Nigerian energy sector, this classical framework faces a profound challenge from neoliberal paradigms of governance. The modern trajectory toward the total privatization and commodification of fire (energy) and water often treats these elements as purely market-driven commodities (*Mutaqawwim*)[4] rather than communal rights (*Mubah*). This shift frequently leads to the marginalization of vulnerable populations, creating a Tragedy of the Commons where communal access is sacrificed at the altar of corporate profit and state-led commercialization.[5] Furthermore, current statutory frameworks, such as the Petroleum Industry Act (PIA) and the Water Resources Act, frequently prioritize exclusive private licensing over the Public Trust, and that usually creates a tension with the Prophetic prohibition of resource monopoly (*Ihtikar*).

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[1] Anis, M., & Zaki, I. (2019). How Islamic Economics View on Ecology? *AFEBI Islamic Finance and Economic Review*, *4*(2), 115. https://doi.org/10.47312/aifer.v4i02.366 Accessed on 4/01/2026

[2] *The Economic System of Islam*. (n.d.). ISFIN.net. p. 247. https://www.isfin.net/sites/isfin.com/files/the_economic_system_of_islam.pdf Accessed on 4/01/2026

[3] *Sunan Abī Dāwūd*, Kitāb al-Buyū', No. 3477. See also Ahmad, I. (1999). Islamic Water Law as an Antidote for Maintaining Water Quality. *University of Denver Water Law Review*, *2*(2), 68

[4] *Mutaqawwim* refers to any resource that has been legally transformed from a free, communal right into a private commodity that can be owned, priced, and traded in the market. In Islamic law, for a resource to be considered *Mutaqawwim*, it must satisfy two conditions: it must have a recognized use-value, and its possession must be legally permissible. When a resource shifts from *Mubah* (publicly accessible) to *Mutaqawwim*, it enters the realm of private commerce. It ceases to be a shared human right and becomes a commodity that can be legally owned, traded, and priced according to market forces.

[5] Caffentzis, G. (2018). The Petroleum Commons: Local, Islamic, and Global. *DergiPark*. https://dergipark.org.tr/tr/download/article-file/19456 Accessed on 4/01/2026

This paper interrogates the legal status of shared natural resources by subjecting the Hadith of the Three Commons to a rigorous re-evaluation through the lens of classical juristic analysis. It seeks to determine how these 7th-century principles can be operationalized within 21st-century regulatory frameworks to challenge absolute privatization. This synthesizes classical *Fiqh* with modern energy governance and therefore advocates for a "Prophetic Public Trust" model—one that ensures that even amidst private extraction, a Partnership Share (*Shirkah*) is legally reserved for local communities to guarantee ecological and social justice.[6]

2. Conceptual Clarifications of Terms

2.1 The Hadith of Three Commons

The hadith of the three commons is a hadith reported by Imam Abu Dawud.[7] Prophetic declaration, "Muslims are partners in three things: water, pastures, and fire." This hadith serves as a foundational legal maxim in the Islamic law of property. To understand its normative weight, one must examine the linguistic and legal nuances attributed to it by the classical *Fuqahā'* (jurists). The hadith contain three important concepts, i.e., water, pastures, and fire.

2.1.1 The Concept of Water (*Al-Māʾ*)

Al-Māʾ (Water) In *Lisān al-ʿArab*, Ibn Manẓūr defines *al-māʾ* as the "substance by which every living thing is sustained."[8] Linguistically, it is a generic noun (*ism jins*) that covers all forms of hydration. The use of the definite article (*al*) in the Hadith suggests *al-Istighrāq* (comprehensiveness), encompassing all natural sources of water that are not captured or enclosed by human labor.

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[6] *The State's Legal Responsibilities in the Protection of Public Assets: An Islamic Sharia and Common Law Perspective*. (2025). International Journal of Multidisciplinary Research and Growth Evaluation, *6*(3), 141. https://www.allmultidisciplinaryjournal.com/uploads/archives/20251112134927_MGE-2025-6-032.1.pdf Accessed on 4/01/2026

[7] See also Abū ʿUbayd al-Qāsim ibn Sallām al-Harawī (1988), *al-Amwāl*, taḥqīq Muḥammad Khalīl Harrās, Dār al-Fikr, Bayrūt, **729**; Abū Bakr ʿAbd Allāh ibn Muḥammad ibn Abī Shaybah (1989), *al-Muṣannaf*, taḥqīq Kamāl Yūsuf al-Ḥūt, Maktabat al-Rushd, al-Riyāḍ, **7/304**; Aḥmad ibn Ḥanbal (1999), *al-Musnad*, taḥqīq Shuʿayb al-Arnāʾūṭ wa-ākharūn, Muʾassasat al-Risālah, Bayrūt, **23082**; Aḥmad ibn al-Ḥusayn al-Bayhaqī (2003), *al-Sunan al-Kubrā*, taḥqīq Muḥammad ʿAbd al-Qādir ʿAṭā, Dār al-Kutub al-ʿIlmiyyah, Bayrūt, **6/150**; Yaḥyā ibn Ādam al-Qurashī (1933), *al-Kharāj*, taḥqīq Aḥmad Muḥammad Shākir, al-Maṭbaʿah al-Salafiyyah, al-Qāhira, **315.**

[8] Ibn Manẓūr, M. (1981) *Lisān al-ʿArab*. Cairo: Dār al-Maʿārif, Vol. 6, p. 4301

In technical terms, this encompasses *Miyāh al-Awdiya* (river waters) and *al-Biʾār al-ʿĀmmah* (public wells). Jurists like Al-Kāsānī argue that the public's right to water is twofold: *Haqq al-Shafah* (the right to quench thirst) and *Haqq al-Shirb* (the right to irrigation).[9] In modern legal terms, this provides a framework for Water Security, positioning water not as a market commodity to be sold at cost-reflective prices, but as a public utility where the state's role is limited to recovering the cost of conveyance (infrastructure) rather than the essence of the water itself.

2.1.2 The Concept of Pastures (*Al-Kalaʾ*)

Al-Kala Unlike the term *marʿā* (which can refer to specifically cultivated land), *al-kalaʾ* in dictionaries such as *Al-Qāmūs al-Muḥīṭ* refers specifically to "herbage, whether green or dry, that grows spontaneously without the intervention of human sowing."[10] It denotes a resource provided directly by the Creator for the sustenance of the animal kingdom, which was the primary economic engine of the era.

Technically, *al-kalaʾ* has evolved to signify Ecological Commons. Modern juristic re-evaluation extends this to include timber, minerals found in the wild, and biodiversity.[11] It mandates that unclaimed land or the wilderness cannot be enclosed for exclusive private profit if it serves as a source of survival for the local community.

2.1.3 The Concept of fire

Lexicographically, *nār* refers to the "luminous, heat-producing phenomenon resulting from combustion." However, in the *Asās al-Balāghah*, Al-Zamakhsharī notes its metaphorical use for "light," "power," and "energy."[12] It is the elemental force required for the transformation of raw materials into sustenance.

The challenge of modern energy governance lies in the hermeneutical transition from the literal "fire" of the 7th century to the complex energy systems of the 21st century. In classical *Fiqh*, "fire" referred primarily to the heat and light produced by wood, brush, or

[9] Al-Kāsānī, A. *Badāʾiʿ al-Ṣanāʾiʿ*. Vol. 6, p. 189
[10] Al-Fayrūzabādī, M. *Al-Qāmūs al-Muḥīṭ*. Beirut: Muʾassasat al-Risālah, p. 55
[11] See International Islamic Fiqh Academy (IIFA), 'Resolution No 150 (7/16) concerning the Protection of the Environment from an Islamic Perspective' (2004) para 2; Mustafa Abu-Sway, *Towards an Islamic Jurisprudence of the Environment* (Islamic Environment Research Centre 1998) 18; Mawil Izzi Dien, *The Environmental Dimensions of Islam* (Lutterworth Press 2000) 51
[12] Al-Zamakhsharī, M. *Asās al-Balāghah*. Beirut: Dār al-Kutub al-ʿIlmiyyah, Vol. 2, p. 450

naphtha, the fundamental energy sources of the time. However, through the mechanism of Juristical Analogy (*Qiyās*), modern scholars extend this definition to encompass the contemporary energy matrix.

To enhance the "Modern Energy Governance" aspect, explicitly state the ‘Illah (ratio legis) as absolute necessity for human survival/livelihood. In the modern context, this utility is provided through the electrical grid and hydrocarbons (oil and gas). Just as a 7th-century traveler had a right to take a brand from a communal fire, a modern citizen has a vested right in the energy infrastructure that powers human life.[13]

Contemporary scholars, such as Taqī al-Dīn al-Nabhānī, argue that fire includes all sources of fuel and energy. He posits that because electricity is generated from water (hydro), fire (coal/gas), or other communal resources, the entirety of the energy sector, from the extraction of crude oil to the transmission of megawattage, falls under the category of *Al-Amwāl al-‘Āmmah*.[14]

Therefore, in the Nigerian context, the "fire" of the Hadith directly corresponds to the nation’s petroleum and power sectors. To treat these as purely private commodities is to ignore their status as the modern manifestation of the Communal Fire. If the infrastructure of fire becomes so privatized that it is inaccessible to the common man due to exorbitant pricing or monopolistic control, it constitutes a breach of the Prophetic partnership (shirkah).

2.1.4 Exegesis of the Hadith

The term *al-Nās* (people) or *al-Muslimūn* (Muslims) used in various narrations of this Hadith implies a collective right of access that transcends individual or state-centric appropriation. Imām al-Khaṭṭābī (d. 388 AH) in *Ma‘ālim al-Sunan* elucidates that the partnership (*shirkah*) mentioned here refers to resources that are *mubāḥ al-aṣl* (permissibly available in their original state).[15] He argues that if these resources are found in their natural, uncultivated state, such as water in a flowing river or fire in a wilderness, no individual has the right to fence them off or demand a price for their consumption, as doing so would constitute a violation of the communal bond.

[13] Nyazee, I. A. K. (2000). *Islamic Jurisprudence (Usul al-Fiqh)*. Islamabad: International Institute of Islamic Thought, p. 212
[14] Al-Nabhānī, T. (1990). *The Economic System in Islam*. London: Al-Khilafah Publications, p. 215
[15] Al-Khaṭṭābī, Ḥ. M. (1932). *Ma‘ālim al-Sunan*. Aleppo: Al-Maṭba‘ah al-‘Ilmiyyah, Vol. 3, p. 254

Furthermore, the Shāfi‘ī and Ḥanbalī schools provide a rigorous distinction between the resource itself and the land upon which it sits. Imām al-Nawawī (d. 676 AH), in his commentary on the *Sahih* of Muslim, notes that even if these resources are found on private land, the owner of the land cannot prevent others from utilizing them if it does not cause undue harm (*darar*) to the property.[16] This suggests that the Three Commons occupy a unique legal category: they are proprietary easements held by the public, limiting the absolute nature of private title.

From the Ḥanafī perspective, Shams al-A’immah al-Sarakhsī (d. 483 AH) in *Al-Mabsuṭ* emphasizes the rationale (*‘illah*) of the prohibition against monopoly. He posits that the partnership is rooted in the common necessity (*al-ḥājah al-’āmmah*).[17] Sarakhsī argues that since these three elements are the primary means of survival, water for life, pasture for livestock (the basis of the pre-modern economy), and fire for warmth and cooking, allowing an individual to control them would give that individual the power to starve or coerce the community. Thus, the *shirkah* (partnership) is a legal mechanism to prevent economic hegemony and ensure that the primary means of production remain within the public domain.

Ibn Qudāmah (d. 620 AH) in *Al-Mughnī* further refines this by stating that these resources cannot be sold in their natural state.[18] He clarifies that while one may own the *vessel* or the effort of harvesting (such as a bucket of water or a bundle of wood), the source, the spring, the forest, or the elemental fire, remains a communal trust. This distinction is critical for modern governance, as it separates the utility service (the effort) from the raw natural resource (the common).

2.2 The Concept of *Al-Amwāl al-Āmmah* (Common Property)

In the taxonomy of Islamic property law, resources are broadly bifurcated into *al-Amwāl al-Khāṣṣah* (Private Property) and *al-Amwāl al-‘Āmmah* (Common Property). The Hadith of the Three Commons provides the primary evidence for the latter, establishing a category of assets that are inherently non-exclusive. Unlike *Mulk al-Dawlah* (State Property), which the sovereign may dispose of according to administrative discretion (*Siyāsah Shari‘iyyah*), *Al-Amwāl al-‘Āmmah* is held in a "Public Trust" for the benefit of the *Ummah* at large.[19]

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[16] Al-Nawawī, Y. S. (n.d.). *Al-Minhāj bi-Sharḥ Ṣaḥīḥ Muslim*. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, Vol. 11, p. 52

[17] Al-Sarakhsī, M. A. (1993). *Al-Mabsuṭ*. Beirut: Dār al-Ma‘rifah, Vol. 23, p. 164

[18] Ibn Qudāmah, A. A. (1968). *Al-Mughnī.* Cairo: Maktabat al-Qāhirah, Vol. 5, p. 445

[19] Al-Zuhaylī, W. (2003). *Financial Transactions in Islamic Jurisprudence*. Damascus: Dār al-Fikr, Vol. 1, p. 418

The Mālikī jurist, Imām al-Qarāfī (d. 684 AH), in *Al-Dhakhīrah*, distinguishes these assets by their utility. He argues that resources such as water and minerals are *ḥaqq al-shāri‘* (the right of the Legislator/God) delegated to the public, meaning the state acts not as an owner, but as a custodian (*nāẓir*).[20] Consequently, the state lacks the legal authority to alienate these resources through absolute privatization if such an act leads to the deprivation of the masses. This aligns with the legal maxim: "The affairs of the imām (state) concerning the subjects are contingent upon the public interest (maṣlaḥah)."[21]

Ibn Taymiyyah (d. 728 AH) further expanded this in *Al-Siyāsah al-Shar‘iyyah*, asserting that common property constitutes the "wealth of the Muslims" (*māl al-muslimīn*). He posited that any attempt by the ruling elite to grant exclusive concessions (*iqṭā‘*) over these shared resources to private entities is legally void if it creates a monopoly over a necessity.[22] Under this classical framework, the Commons are characterized by:

1. Inalienability: The core resource cannot be sold into private hands.
2. Universal Access: No member of the community can be barred from its use for basic needs.
3. Revenue Equity: Any surplus generated from the management of these resources must be redistributed to the public, particularly the poor (*fuqarā’*).

3 Legal Frameworks for the Ownership of the Three Commons in Nigeria

3.1 1999 Constitution of the Federal Republic of Nigeria

The foundational legal architecture for resource governance in Nigeria is anchored in Section 44(3) of the 1999 Constitution (as amended). This provision mandates that the "entire property in and control of all minerals, mineral oils, and natural gas... shall vest in the Government of the Federation."[23] The analysis of this provisions on constitutional vesting represents a radical departure from the *Mālik* (Absolute Owner) vs. *Amīn* (Trustee) distinction found in Islamic law. While the Constitution implies that this ownership is held for the benefit of the people, the legal reality functions as a Statutory Enclosure of the Commons. Judicial precedents, most notably the seminal *AG Federation v. AG Abia State*,[24] have reinforced the Federal

[20] Al-Qarāfī, S. D. (1994). *Al-Dhakhīrah*. Beirut: Dār al-Gharb al-Islāmī, Vol. 8, p. 125
[21] *Al-Ashbāh wa al-Naẓā’ir*, a legal maxim popularized by Ibn Nujaym and Al-Suyūṭī
[22] Ibn Taymiyyah, T. D. (1951). *Al-Siyāsah al-Shar‘iyyah fī Iṣlāḥ al-Rā‘ī wa al-Ra‘iyyah*. Cairo: Dār al-Kitāb al-‘Arabī, p. 54
[23] Section 44(3), *Constitution of the Federal Republic of Nigeria 1999 (as amended)*
[24] *AG Federation v. AG Abia State & 35 Others* (2002) 6 NWLR (Pt. 764) 542

Government's exclusive right to extract and manage these resources, often at the expense of the proprietary interests of the local communities who reside upon the land.

This creates a Domanial Paradox where the state claims ownership to ensure equitable distribution, yet the centralization of power effectively alienates the local populace from the Three Commons. From a juristic perspective, this is a transition from *Al-Amwāl al-ʿĀmmah* (Common Property) to *Mulk al-Dawlah* (State Property), where the citizen's right is reduced from a vested partnership share to a mere expectation of state benevolence.

However, it is worth here to draw attention to the concept of "Trustee" role under the Constitution if it is legally compatible with the *Amīn* (Trustee) role in Shari'ah, or if they are diametrically opposed in practice. While the Nigerian Constitution assumes a 'Trustee' role over natural resources, notably under the Land Use Act and Section 17, it diverges significantly from the Shari'ah concept of *Amānah*. Under Shari'ah, the *Amīn* is a fiduciary agent whose authority is contingent upon protecting the vested rights of the public in the 'Common Property' (*Al-Amwāl al-ʿĀmmah*). Conversely, the Nigerian state's practice often aligns with *Mulk al-Dawlah* (State Ownership), where the 'Trust' is used as a legal veil for the state to exercise absolute control. Thus, while compatible in nomenclature, they are diametrically opposed in practice: one prioritizes the citizen's inherent partnership, while the other reduces the citizen to a mere beneficiary of state discretion.[25]

3.2 Petroleum Industry Act (PIA) 2021

Section 1 of the Act PIA vested the ownership of the petroleum resources in government. It 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.

The enactment of the PIA 2021 was heralded as a revolutionary reform intended to modernize the oil and gas sector through commercial transparency. One of the most important objectives of the Act is to establish a framework for the creation of a commercially oriented and profit-driven national petroleum company.[26] Thus in the process, the Act transformed the

[25] See Auwalu Yadudu, 'Islamic Law and Custodianship of Public Property' (1992) 35 Journal of African Law 12–15; *see also* Section 1 of the Land Use Act 1978 and its interpretation in *Abioye v Yakubu* [1991] 5 NWLR (Pt 190) 130

[26] Section 2 (b) of the PIA

national oil company into NNPC Limited,[27] a commercial entity governed by the Companies and Allied Matters Act (CAMA) and this signaled that the Nigerian state has made profit maximization as the primary objective of energy governance.[28]

However, through the lens of Prophetic Jurisprudence, the Act formalizes the commodification of Fire. Under the classical *Fiqh* principle that fire is a communal utility, the state's role is that of a *Nāẓir* (Manager) tasked with facilitating access, not a *Tājir* (Merchant) tasked with optimizing dividends.

Furthermore, the Host Communities Development Trust (HCDT), while ostensibly a mechanism for social equity, is fundamentally flawed in its conception of rights. It allocates a mere 3% of an operator's actual annual operating expenditure to local communities. This top-down philanthropic model treats communities as beneficiaries of charity rather than legal partners (*Shurakā'*) in the underlying resource. It fails the test of Distributive Justice because the community possesses no veto power or inherent proprietary stake in the Common Fire extracted from their ancestral domain.[29]

3.3 Electricity Act 2023

The Electricity Act 2023 constitutes the most comprehensive statutory framework governing Nigeria's power sector. Enacted pursuant to the constitutional alteration that permits States to legislate on electricity within their territories, the Act restructures regulatory authority and opens the entire electricity value chain, i.e., generation, transmission, distribution, system operation, trading, and supply, to sub-national governments and private participation.

The Act empowers the Nigerian Electricity Regulatory Commission (and, where applicable, State regulators) to issue licences for generation, transmission, distribution, trading, and system operation. Under Section 17(1), a distribution licencee is mandated to "supply electricity to all consumers located within its area of distribution and may have exclusivity to perform such activity…" until total or partial deregulation is effected under Section 7. This provision thereby creates territorial exclusivity for distribution companies, effectively granting them dominant control over a defined geographic market. Such exclusivity bears resemblance to a structural monopoly, which in the Prophetic legal paradigm is problematic where it restricts

[27] See section 8 of the Act
[28] Petroleum Industry Act 2021, Section 53
[29] Ajogwu, F. (2022). *Ownership and Control of Oil and Gas Resources in Nigeria*. Lagos: Commercial Law Publishers, p. 88

access to an essential necessity. In effect, access to electricity becomes mediated by a single licensed entity, raising concerns analogous to *ihtikār*[30] where an essential good is placed under exclusive commercial control. Moreover, the Act allows partial or total deregulation to open supply to alternative licensed suppliers,[31] but this remains contingent on regulatory decisions rather than guaranteed communal access.

One of the central pillars of the Act is the requirement that tariffs be **cost-reflective,** enabling licensees to recover prudent operational costs and earn reasonable returns on capital. The Act establishes detailed tariff-setting principles under **Part VI and Part XI. Section 33(1)** empowers the Commission to set and *periodically review tariffs* for electricity sales, network use, and connection charges. **Section 34(1)** requires that tariffs: (a) allow full recovery of costs and financing expenses; (b) include incentives for efficiency and quality, and *"restrict departures from the cost-reflective principle to cases necessary for the implementation of social policy, which includes… an affordable tariff for low-income residential customers."* This clearly embeds *cost-reflectivity* as the foundational tariff principle.

Simultaneously, **Section 116** (as noted in regulatory commentary) instructs that tariff methodologies should allow a licensee to *"recover the full costs of its business activities, including a reasonable return on capital invested."* This confirms the market-based pricing orientation of the regime. While this permits *lifeline tariffs* and social policy considerations, these are not absolute rights but discretionary regulatory instruments. This means that in practice cost-reflective pricing can persist in a way that effectively excludes low-income

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[30] The granting of exclusive commercial control over a utility like electricity mirrors the classical prohibition of *Iḥtikār* (monopoly/hoarding). While traditionally associated with the hoarding of grain, Hanafī jurists such as Al-Sarakhsī argue that the legal prohibition centers on the distress (*Dharar*) caused to the community rather than the specific nature of the commodity itself. See Al-Sarakhsī, *Al-Mabsūṭ* (Dār al-Ma'rifah 1993) vol 15, 127–129. Ibn al-Humām further clarifies that any resource essential to the public interest falls under this prohibition if its management results in artificial scarcity or exploitative pricing. Kamāl al-Dīn ibn al-Humām, *Sharḥ Fatḥ al-Qadīr* (Dār al-Fikr) vol 9, 62–64. This perspective is reinforced by the broader cross-school consensus in the Mālikī and Shāfiʿī traditions. The Mālikī school, as articulated in *Al-Mudawwanah*, focuses on the "intent to wait" (*al-tarabbus*) for profit at the expense of public necessity, extending the prohibition to any essential market commodity. See Sahnūn al-Tanūkhī, *al-Mudawwanah al-Kubrā* (Dār al-Kutub al-ʿIlmiyyah 1994) vol 3, 292–293 Similarly, the Shāfiʿī jurist Al-Ramlī emphasizes that the State must intervene when a necessity is withheld during a time of public need, requiring a sale at a "fair price" (*thaman al-mithl*). See Shams al-Dīn al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* (Dār al-Fikr 1984) vol 3, 456–458. Collectively, these classical authorities suggest that when a survival resource—indisputably a modern necessity—is placed under a single licensed entity, the Shari'ah mandates proactive intervention to prevent the very "prejudice to the public" that the prohibition of *Iḥtikār* was designed to avert.

[31] See Section 17(2)–(6)

consumers. This creates hardship, what Islamic jurists describe as *ḍarar*, if left unmitigated. Also, once access to a survival-enabling resource produces widespread hardship (*ḍarar ʿām*), the public authority bears a duty of corrective intervention. Regulatory passivity in the face of structural exclusion would conflict with the juristic maxim that harm must be removed.

The Act does contain consumer-protection mechanisms. It mandates performance standards, complaint resolution systems, and service obligations. It also empowers the regulator to impose penalties for non-performance and to create frameworks for electrification of underserved areas. Also, under Section 35, suppliers must provide consumers with comprehensive service information, billing transparency, and customer rights, including procedures for billing disputes and disconnections. However, these protections are procedural, not proprietary guarantees of access. They are regulatory safeguards rather than entrenched distributive rights. The statute does not constitutionally guarantee a minimum energy entitlement nor does it mandate a legally reserved communal share in energy infrastructure revenues. Protection is therefore managerial, not proprietary.

By permitting States to establish independent electricity markets within their territories, the Act introduces competitive federalism into energy governance. Yet this decentralization remains embedded within a commercialization paradigm. Whether federal or state-based, the dominant objective remains capital attraction, revenue assurance, and bankability of projects. In normative terms, the statute adopts a market-stabilization model rather than a trusteeship model. Electricity, representing the modern extension of fire is regulated as an economic commodity subject to licensing, tariff design, and investment protection.

Under the Prophetic conception of the Three Commons, however, fire is not merely a tradable utility but a communal necessity whose infrastructure must preserve partnership (*shirkah*) and prevent exclusionary dominance. The Electricity Act 2023, though progressive in decentralization and sectoral reform, does not structurally internalize this communal premise. Its architecture prioritizes investor security and financial sustainability over an express legal recognition of energy as a shared public trust resource. The resulting tension is therefore not between regulation and religion, but between commercialization and communal entitlement.

The Act emphasizes that prices must be cost-reflective, which, in a developing economy plagued by high inflation, effectively prices out the vulnerable populations.[32] In Islamic legal theory, if the infrastructure of fire becomes so expensive that it causes *Darar* (public hardship), the state is under a religious and legal obligation to intervene. The Act's focus on attracting private capital through guaranteed returns conflicts with the Prophetic prohibition of *Iḥtikār* (monopoly/hoarding), as private licensees gain exclusive control over regional grids, turning a communal necessity into an exclusionary market commodity.[33]

3.4 Water Resources Act

Section 1 of the Water Resources Act 2004 vests "the right to the use and control of all surface and groundwater" affecting more than one State in the Federal Government. This provision constitutionalizes a model of sovereign custodianship framed as necessary for coordinated development, environmental regulation, and equitable allocation.

The Act preserves limited customary and domestic entitlements. Individuals may draw water for domestic purposes, livestock watering, fishing, navigation, and small-scale irrigation without charge, particularly where they possess lawful occupancy rights. These savings clauses reflect an implicit recognition that water is indispensable to subsistence and community life.

Yet, the broader statutory structure moves toward what may be described as a permit-based sovereignty model. Large-scale abstraction, irrigation, and commercial exploitation require centralized licensing. In practical terms, this recharacterizes water from a naturally accessible commons (*mubah*) into a regulated asset contingent upon bureaucratic authorization.

Perhaps no resource illustrates the tension of the Three Commons more poignantly than water. The existing Water Resources Act and the recurring attempts to pass the National Water Resources Bill exemplify the state's attempt to extend sovereign ownership over a resource that is naturally *Mubāh* (a communal right), thereby stripping the public of their inherent partnership in the 'source of life. The Act vests the right to use and control all surface and groundwater in the Federal Government, ostensibly to ensure planned development.[34]

[32] Section 34, Electricity Act 2023,
[33] Section 127 Electricity Act 2023
[34] *Water Resources Act (Cap W2 LFN 2004),* Section 1(1)

However, the discursive reality is that this creates a "Permit State." Under the Prophetic model, water in its natural state is *Mubāḥ* (permissibly available to all); yet, statutory frameworks move toward a system where even communal access to rivers or aquifers requires state-sanctioned licenses. This creates a Legal Alienation where indigenous communities, who have managed these waters for centuries as a Common, suddenly find themselves as trespassers on state-owned property unless they possess statutory title.[35] The proposed Water Resource Bill's emphasis on centralized licensing for large-scale irrigation and commercial use risks marginalizing small-holder farmers, whose right to "Water and Pasture" is explicitly protected by the Hadith.

4. Legal Re-evaluation

The dissonance between Nigeria's statutory frameworks and the Prophetic mandate necessitates a rigorous legal re-evaluation. This section interrogates the "Statutory Enclosure" of Nigerian resources by applying the classical doctrines of *Darar* (Harm), *Shirkah* (Partnership), and the *Maqāṣid* (Objectives) of equity to the current neoliberal landscape.

4.1 The Doctrine of *Shirkah* (Partnership) vs. Neoliberal Commodification

The Hadith's use of the term *Shurakā'* (partners) implies a proprietary relationship that is horizontal and inclusive, rather than vertical and exclusionary. In classical *Fiqh*, a partnership in *Al-Amwāl al-'Āmmah* signifies that the ownership is vested in the collective *Ummah*, while the state merely serves as an *Amīn* (Trustee). Thus, for instance, Al-Qarāfī, in his *Al-Furūq*, he posits that the state's authority over the commons is one of *Wilāyah* (Guardianship), not *Mulk* (Ownership). Therefore, the state cannot give away or privatize what it does not "own" in a proprietary sense.[36] Ibn Qudāmah, in *Al-Mughnī*, he asserts that if an individual attempts to revive land that contains a common resource (like a spring or a salt mine), the common resource remains public, and the individual's private claim is voided to the extent of the public need.[37] Al-Kāsānī**,** in *Badāʾiʿ al-Ṣanāʾiʿ*, he emphasizes that the right of the community to these resources is "absolute and prior" to any individual claim, framing it as a collective right of the *Ummah* that no ruler can abrogate.[38]

[35] Ola-Daniels, O. (2024). *Protecting Water Rights in Nigeria*. Karibu Foundation
[36] Al-Qarāfī, S. D. (1994). *Al-Dhakhīrah*. Beirut: Dār al-Gharb al-Islāmī, Vol. 8, p. 125
[37] Ibn Qudāmah, A. A. (1968). *Al-Mughnī*. Cairo: Maktabat al-Qāhirah, Vol. 5, p. 445
[38] Al-Kāsānī, A. B. (1986). *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*. Beirut: Dār al-Kutub al-ʿIlmiyyah, Vol. 6, p. 189

In contrast, the Petroleum Industry Act (PIA) 2021 and the Electricity Act 2023 treat energy as a *Sila'ah* (commodity) subject to the vagaries of market forces. While the PIA's Host Community Development Trust (HCDT) attempts to address communal grievances, it fails the test of *Shirkah* because it treats the community as a charity recipient rather than a vested partner. From an academic standpoint, a true Prophetic model would require that communities hold a non-dilutable equity share in the resources extracted from their soil, effectively transforming them from passive observers into active stakeholders in the Common Fire.[39]

4.2 The Legal Maxim of *Darar* (Harm) and the High Cost of Utilities

The Ḥanafī jurist Ibn 'Abidin (d. 1252 AH) emphasized that the state's intervention in the market is mandatory when the public necessity is threatened by price gouging or monopoly (*Iḥtikār*).[40] The legal maxim *Lā ḍarara wa lā ḍirār* (There shall be no harm nor reciprocating of harm) serves as a check on the absolute privatization of the Three Commons. Juristically, the "harm" (*darar*) is defined as any action that deprives a human being of a necessity of life. When a resource categorized under the "Three Commons" is privatized to the extent that it becomes unaffordable, it constitutes a structural *darar*. Classical jurists like Ibn Najaym[41] argued that the right of an individual to profit is always subordinate to the community's right to avoid destruction. Therefore, a "Prophetic Public Trust" model would mandate that the state implement Social Tariffs not as a subsidy, but as a legal remedy to prevent the harm of energy poverty.

When the Electricity Act 2023 mandates cost-reflective tariffs without adequate social safety nets, it creates a *Darar*, a legal harm, where the poor are disconnected from the modern fire. Meticulous analysis suggests that if the privatization of a common resource leads to the exclusion of the vulnerable, the state has a *Shari'ah* obligation to intervene. In this context, subsidies for basic water and energy are not economic distortions (as viewed by the IMF), but legal remedies to rectify the violation of the public's right to the commons.[42]

4.3 Reclaiming the Public Trust Beyond State Ownership

A critical distinction must be made between *Mulk al-Dawlah* (State Ownership) and the Prophetic Public Trust. Under Section 44(3) of the Nigerian Constitution, the state often acts

[39] Al-Zuhaylī, W. (2003). *Financial Transactions in Islamic Jurisprudence*. Vol. 1. Damascus: Dār al-Fikr, pp. 418-422
[40] Ibn 'Ābidīn, M. A. (1992). *Radd al-Muḥtār 'alā al-Durr al-Mukhtār*. Beirut: Dār al-Fikr, Vol. 6, p. 398
[41] Ibn Najaym, Z. (1999). *Al-Ashbāh wa al-Naẓā'ir*. Beirut: Dār al-Kutub al-'Ilmiyyah, p. 85
[42] Kamali, M. H. (2002). *The Dignity of Man: An Islamic Perspective*. Cambridge: Islamic Texts Society, p. 54

as an Absolute Owner that can sell off resources to the highest bidder. However, according to the Mālikī jurist Al-Shāṭibī (d. 790 AH), resources that are essential to the life of the community cannot be subject to *Tamalluk* (exclusive appropriation) that leads to communal distress.[43]

The Nigerian Domanial system, where the Federal Government owns the minerals but the communities suffer the environmental externalities, represents a breakdown of the fiduciary duty inherent in the *Istikhlāf* (Stewardship) model. A legal re-evaluation suggests that the state's power should be restricted to "Administrative Oversight" (*Wilāyah al-Idārah*) rather than Beneficial Ownership (*Wilāyah al-Mulk*). This would legally bar the government from granting licenses that do not reserve a Common Share for the public good.[44]

5. Application to Nigeria

The theoretical framework of the Three Commons finds its most critical application in the socio-legal crises currently facing Nigeria's energy and water sectors. By examining these through the lens of Prophetic Jurisprudence, we can identify how current statutory enclosures violate the principle of *Shirkah* (Partnership).

5.1 The Enclosure of Fire

In the Nigerian context, fire is represented by the nation's hydrocarbon wealth and its nascent electrical grid. The application of the Hadith challenges the current neoliberal trajectory of these industries. Under the Petroleum Industry Act (PIA) 2021, the state grants exclusive Petroleum Mining Leases (PML) to corporate entities. While the Act satisfies international commercial standards, it creates a Proprietary Divorce between the community and the resource. The Hadith's mandate that "Muslims/People are partners" implies that a license should not be a transfer of absolute control, but a Service Contract.

Thus, this paper suggests moving from 'Host Community Development Trusts' (which function as charity) to Communal Equity Stakes. In this model, the 3% Opex mandated by the PIA is re-evaluated as a Partnership Dividend (*Ribḥ al-Shirkah*), granting communities a legal seat at the board level rather than just a fund for local projects.[45] This shift aligns with the Value-Based Intermediation (VBI) models practiced in jurisdictions like Malaysia, which

[43] Al-Shāṭibī, I. (1997). *Al-Muwāfaqāt*. Al-Khobar: Dār Ibn 'Affān, Vol. 2, p. 321
[44] Sambo, A. O., & Abdulkadir, B. A. (2012). *Public Interest and the Management of Natural Resources in Nigeria: An Islamic Law Perspective*. Journal of Islamic and Comparative Law, Vol. 5, p. 76
[45] Ajogwu, F. (2022). *Ownership and Control of Oil and Gas Resources in Nigeria*. Lagos: Commercial Law Publishers, p. 94

prioritize 'inclusive growth' over philanthropic handouts.[46] Furthermore, as noted by Adi Setia in his framework for the Islamic Gift Economy, treating communities as 'Vested Partners' (*Shurakā'*) rather than 'Charity Recipients' fulfills the Shari'ah mandate of 'Adl (Justice) by acknowledging their inherent stake in the resources extracted from their ancestral lands.[47]

Moreover, the Electricity Act 2023 unbundles the sector to encourage private investment. However, when the fire" of electricity is privatized without social safeguards, it results in the Darar (Harm) of mass disconnections. Applying the principle of Ibahah (Original Permissibility), basic electricity for light and cooking should be treated as a Lifeline Utility. A "Prophetic Public Trust" would mandate that a certain "Block of Energy" be reserved as a common right, exempted from profit-reflective tariffs to ensure the survival of the vulnerable populations cited in your abstract. The current Domanial system allows the Federal Government to extract fire from the Niger Delta or coal from Kogi while the locals live in darkness. This creates a violation of the *Maqasid* of Justice. The Hadith's inclusion of fire as a common suggests that those closest to the source of the fire must be the first to benefit from its warmth.[48]

5.2 Water Governance

Water is the most literal of the Three Commons, yet its governance in Nigeria is increasingly leaning toward exclusionary commercialization. Statutory frameworks like the Water Resources Act require licenses for large-scale water use. While intended for regulation, in practice, this often marginalizes rural communities who rely on "spontaneous" access to rivers. However, according to the *Majallah*, water in its natural source is *Ghayr Mamluk* (non-owned).[49] Any law that criminalizes a community's traditional access to a riverbank without a state permit is a violation of the Prophetic *Shirkah*.

Further, the explosive growth of the private water bottling industry in Nigeria represents a Micro-Enclosure of the Commons. Corporations often sink industrial boreholes that deplete local aquifers, effectively "selling the common water" back to the people in plastic. Applying Ibn Qudamah's analysis, the *essence* of the water cannot be sold—only the *labor* of bottling.

[46] Bank Negara Malaysia, 'Value-based Intermediation: Financing the Future' (Report, 2018) 12–15
[47] Adi Setia, 'The Islamic Gift Economy: A Brief Introduction' (2014) 12(1) *Islam & Science* 7, 10
[48] Sambo, A. O. (2012). *Public Interest and the Management of Natural Resources in Nigeria*. Journal of Islamic and Comparative Law, Vol. 5
[49] *Majallah al-Ahkam al-'Adliyyah*, Article 1234

Legislation should be amended to impose a Commons Levy on commercial water extractors, with the proceeds used to fund public taps, ensuring that the Partnership is maintained.

Environmental pollution from oil spills and industrial runoff is a direct Reciprocation of Harm (*Dirar*). If fire and water are common properties, then their degradation is not merely a regulatory infraction but a Trespas against the Public Trust. Under Islamic law, the polluter is liable (*Daman*) for restoring the resource to its original Partnership quality. This provides a stronger proprietary basis for litigation than current Nigerian environmental law, which often treats pollution as a matter of administrative fines.

6. Conclusion and Recommendations

The contemporary crisis of resource governance in Nigeria—manifesting as energy poverty, water insecurity, and the systematic marginalization of host communities—is fundamentally a crisis of legal philosophy. The transition from a Public Trust ethos to a neoliberal "Commodity Logic" has facilitated a modern enclosure of the Three Commons, where the essential elements of survival are partitioned for private and state-led commercialization. This research has demonstrated that the Hadith of the Three Commons is not an archaic relic of 7th-century pastoralism, but a sophisticated jurisprudential anchor for Distributive Justice. By deconstructing the Prophetic mandate that "People are partners in water, pastures, and fire," we find a categorical rejection of any monopoly (*Iḥtikār*) that results in public hardship (*Darar*). Through the mechanism of *Qiyās* (Analogy), the "fire" of the Hadith finds its modern expression in the hydrocarbon and electricity sectors. Consequently, the current Domanial system in Nigeria, which grants the state absolute ownership under Section 44(3) of the Constitution, must be re-evaluated. The state's role is not that of an absolute owner, but a Fiduciary Trustee (*Amīn*), legally bound to manage these resources for the collective flourishing of the *Shurakā'* (the partners/citizens). To bridge the gap between Prophetic principles and Nigerian statutory law, the following recommendations are proposed:

1. The National Assembly should amend the Petroleum Industry Act (PIA) 2021 and the Electricity Act 2023 to move beyond the current charity-based Host Community Trusts. It should introduce a Prophetic Public Trust clause that recognizes the Communal Resource Easement. This would legally mandate that any private entity granted an extraction or generation license must reserve a non-dilutable "Partnership Share" of the resource or its revenue for the local community. This ensures that the community is not

merely a recipient of a 3% pittance but is recognized as a vested partner in the Common Fire of the nation.

2. Based on the legal maxim *Lā ḍarara wa lā ḍirār* (Harm must be eliminated), the Nigerian Electricity Regulatory Commission (NERC) and water regulatory bodies should replace the Market-Reflective tariff model with an Equity-Reflective framework for basic consumption tiers. Every Nigerian household should be entitled to a Communal Lifeline Quota of water and electricity at cost-price or subsidized rates, funded by a Commons Levy imposed on high-volume commercial and industrial users. This operationalizes the Prophetic right of access to "water and fire" as a fundamental necessity rather than a market luxury.
3. To protect the "Pastures" element of the Commons, Nigeria's Land Use Act should be amended to recognize conservation and ecological restoration as a valid form of "development." Drawing from the principle of *Iḥyā' al-Mawāt* (revivifying dead land), the law should issue "Green Usufructuary Titles" to communities and organizations that restore degraded ecosystems or protect communal forests. This would prevent the state from revoking land rights on the basis that "restoration" is not "productive use," thereby securing the environmental commons for future generations against industrial encroachment.