



**ISLAMIC UNIVERSITY  
IN  
UGANDA**

**COMPARATIVE LAW JOURNAL**  
(IUIUCLJ)

*IUIUCLJ. VOL 6, ISSUE 1, 2019*

# MODELS OF PETROLEUM OWNERSHIP IN UNITED STATES, NIGERIA AND UGANDA

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## Abstract

*The article conducts a jurisprudential examination of the various petroleum ownership models with particular reference to Uganda, United States of America and Nigeria with reference to relevant legal and policy instruments..*

## Introduction

Natural resources, worldwide are gifts of nature and an endowment of comfort that makes the existence of mankind complete. As nature's priceless gift to man by God and, because nature's endowment of these resources are without reference to people or nations, the subject of ownership and control of these resources has been the remote, if not the immediate, cause of great wars and human tragedies. The scramble for partition of Africa at the Berlin Conference of 1884, the Boer wars of South Africa, the institution and sustenance of the obnoxious apartheid system of South Africa, even Hitler's Second World War, apart from its much-vaunted desire to create a master Aryan race, had its sole motivation in mind of these mighty Nations which is of course the economic domination.

Unfortunately, these resources have been identified as playing key roles in triggering conflicts, and, all through history, the struggle for possession and in contemporary times, the desire of the industrialized North in continuing to do business with developing countries, apart from finding sales outlets (markets), is to exploit and take the natural resources of these countries to their maximum benefits. The possession of mineral resources is therefore crucial to a nation's wealth and well-being. Thus, the ownership and control of such resources are issues that cannot be taken for granted.

## Definition of Ownership

Ownership, is the right or state of being an owner. His business interest include ownership of a county newspaper.<sup>2</sup> Legally, ownership connotes the rights or interest of an owner.<sup>3</sup> Ownership within the meaning of petroleum refers to the –exclusive

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<sup>2</sup>. <https://dictionary.cambridge.org> >available at [www.Wikipedia.wiki.org](http://www.Wikipedia.wiki.org). accessed on the 13/11/2018 around 12:35 am.

<sup>3</sup>. <https://www.merriam-webster.com> > own available at [www.wikipedia.org/wiki/](http://www.wikipedia.org/wiki/) accessed on 13/11/2018 around 12:48 pm.

rights to explore, search, and drill for produce store, transport, and sell petroleum within the designed acreage for a specified number of years.<sup>4</sup> Ownership of petroleum, within its conceptual meaning refers to the totality of rights to use or control a mineral resources.<sup>5</sup> Historically, in the colonial era, oil companies operated and were allowed to exploit mineral resource without due regard to the rights of indigenous Africa. The exploited countries raised their concern to the United Nations sometimes around 1960s. In response to this, various instruments were passed, by the United Nations General Assembly (UNGA).<sup>6</sup>

The above instrument was passed on the 14<sup>th</sup> December, 1962 which recognized the countries Permanent Sovereignty over Natural Resources. This, was as a result the Commission on Permanent Sovereignty over Natural Resources which the United Nation mandated it to make a full survey of the status of permanent sovereignty over natural wealth and resources as the basic of self-determination.<sup>7</sup>

The Commission came up with recommendations that, due regards should be given to the rights of and duties of states under international law and to the importance of encouraging international co-operation in the economic development of developing countries.<sup>8</sup> Another Instrument was the UNGA Resolution of 3201 of IST May, 1974 which adopted and recognized New International Economic Order based, on equity, sovereign equality, interdependence, common interest and cooperation among all states, irrespective of their economic and social systems which shall correct inequalities and redress existing injustice.<sup>9</sup>

The above instruments have shaped the then existing nation of use and control of natural resources which in it the IOC ere not paying any royalties to the Host Countries even where they paid such payments were minimal. This provision is in line with Article 2 of the United Nations Charter which recognized that, every people and states have the inalienable rights to disposed freely their natural resources in accordance with the United Nations Charter and for respect of the economy of their state.<sup>10</sup>

## **Challenges of Ownership of Natural Resource**

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<sup>4</sup> Abu Dhabi Concession agreement art 34 reprinted in International petroleum Agreement at 1-18-1-19 in Taxes International Law Journal (vol. 24:13)

<sup>5</sup> Ernest E. Smith; International Petroleum Transaction; Rocky Mountain Law Foundation;9191 Sheridan; (2010) 3<sup>rd</sup> edition Page 72.

<sup>6</sup> Resolution 1803 of 1962.

<sup>7</sup> UNGA Resolution Of 12 December, 1958.

<sup>8</sup> Ibid.

<sup>9</sup> UNGA Resolution of 1974.

<sup>10</sup> United Nations Charter of 1945.

An owner is a person that have control over a particular thing, and the control is recognized by a formal instrument.<sup>11</sup> To obtain a permit an investor must use skill in search for an owner to give a permit to do an act. An investor must take all necessary step to prevent force majeure before commencing exploration he needs a permit from the original owner. So that an investor may not find he or itself on a disputed land on the aim for exploration Of petroleum which may likely to lose his investment.<sup>12</sup>

Virtually, nearly all countries of the world, the sovereign own the mineral resources except, with few countries where private ownership was recognized.<sup>13</sup>

### **Ownership of petroleum in the United States of America**

In United States, is a country consisting of 50 states, a Federal district, five major self-governing territories, and various possession.<sup>14</sup> In the United States, ownership of petroleum rights to a particular parcel of land may be owned by the government or private individual, corporations or by local or state governments.<sup>15</sup>

Oil and gas rights offshore are owned by either the state or federal government and leased it to oil companies for development.<sup>16</sup> Oil laws in the US varies from one jurisdiction to the other.

### **Prior to and at extraction field**

Oil and gas are fluids, they may flows to another person's land or in the surface across boundaries. In this way, an operator may lawfully extract fuel in another's person land where the extraction is lawfully carried out.<sup>17</sup> They recognized legal Doctrines of Rule of Capture, and the correlative rights Doctrine. Which doctrines apply depending on the particular state.

The rule of capture gives landowner an incentive to pump out oil and gas, as quickly as possible by accelerating operations or drilling multiples wells to capture the oil of another. State Laws often limit the rule of capture to protect correlative rights of neighboring owners.<sup>18</sup> Government agencies and State oil and gas Conservation Commission was formed to address the issue such as the Texas Railroad Commission and were able to develop Laws protecting the landowners from such activities and to

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<sup>11</sup> See 1803 Resolution on permanent sovereignty over natural resources.

<sup>12</sup> Ernest E. Smith; International petroleum transaction; Rocky Mountain Mineral Law Foundation 9191 sheridon (2010) 3<sup>rd</sup> edition page 72.

<sup>13</sup> Ibid.

<sup>14</sup> . - US census Bureau QuickF acts selected; United States - Quick Facts , US Department of Commerce July 1, 2016. Retrieved September 11, 2017 available at Wikipedia.org.wiki. accessed on 13/11/2018 around 5:34 pm.

<sup>15</sup> . <https://en.wikipedia.org/wiki/oil-gas-law-in-the-united-states#jurisdiction> available at Wikipedia.org.accessed on the 13/11/2018 around 5:45 pm.

<sup>16</sup> . Ibid.

<sup>17</sup> Kelly vs.Ohio oil co, 57 ohio 87, 3tur 17, 49 N E 399(1879).

<sup>18</sup> John and Lowe; Oil and Law a nut shell (5<sup>th</sup> edition 2009) available at Wikipedia.org.accessed on 13/11/2018 around 5:13 pm.

prevent economic and physical waste.<sup>19</sup> The states that were practicing this qualified theory were Taxes, California and in some part of Canada.

### **Ownership of petroleum resource in Nigeria**

Ownership in Nigeria was different from that of US, in Nigeria ownership mineral resource was vested exclusively to the federal Republic of Nigeria.<sup>20</sup> The Mineral Act expressly provide:

The entire ownership and control of all petroleum in, under, or upon any land which this section applies shall be vested in the State [State here means the Nigerian State]. This section applies to all land (including land covered by water) which— (a) is in Nigeria; or (b) is under the territorial waters of Nigeria; or (c) forms part of the Exclusive Economic Zone of Nigeria.<sup>21</sup>

The current legislations are:

1. The Federal Republic of Nigerian Constitution 1999;
2. The Land Use Act 1978;
3. The Mineral Act and Mining Act , 2007; and
4. The Petroleum Act 1969 Cap 10 Laws of Federation 2004

### **A. Constitution of the Federal Republic of Nigeria of 1999, as Amended**

The Constitution of the Federal Republic of Nigeria (CFRN) of 1999, as amended, confers exclusive power on the Nigerian State to own, control and regulate the activities of minerals, mineral oils and by-products. This power is firmly provided for in Section 44(3) of the Constitution and specifically states:

Notwithstanding the foregoing provision 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 territorial waters and the Economic 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.<sup>56</sup>

In addition to the above provision, mines and minerals—including oil fields, oil mining, geological surveys and natural gas—were included in Part I of the Second Schedule of the Exclusive Legislative List in respect of which only the National Assembly have legislative power. The inclusion of this subject matter in the

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<sup>19</sup>. Ibid.

<sup>20</sup> Mineral Act of 1962.

<sup>21</sup>. Ibid.

Exclusive Legislative List follows the same pattern in both the Republican Constitution of 1963 and the 1979 Constitution.<sup>22</sup>

### **B. The Petroleum Act, 1969**

The Petroleum Act is described in its preamble as:

An Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resource derivable therefrom in the Federal Government and for all other matters incidental thereto.<sup>23</sup>

A combined reading of both the preamble and the provision of section 1(1), which stated that, –the entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the state,|| is clear and unequivocal as to whom ownership is vested.<sup>24</sup> Specific description of the extent of coverage was also provided for in section 1(2) as follows:

- a) [all lands, including land covered by water] is in Nigeria; or
- b) is under the territorial waters of Nigeria; or
- c) forms part of the continental shelf; or
- d) forms part of the Exclusive Economic Zone of Nigeria.<sup>25</sup>

### **C. The Nigerian Minerals and Mining Act, 2007**

The Nigerian Minerals and Mining Act of 2007 repeals the Minerals and Mining Act of 1999:

The entire property in and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and watercourses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zones is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.<sup>26</sup>

Consequent upon this provision, the Act in Section 1(2) provided that all lands in which minerals have been found in commercial quantities shall, from the commencement of the Act, be acquired by the Government of the Federation in accordance with the provisions of the Land Use Act.<sup>27</sup>

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<sup>22</sup> Section 44 of the Federal Republic of Nigeria, 1999 as Amended; Emmanuel Uduaghan, *Solving the Niger Delta Problem; The law and the people- An over view of Legislations Impending on socio- economic development of South-South Region*; The Land Use Act 1978.

<sup>23</sup> Nigeria Mineral, Mining Sector and Business Guide, 82 (1990).

<sup>24</sup> Ibid.

<sup>25</sup> Nigeria Mineral, Mining Sector and Business Guide, 82 (1990).

<sup>26</sup> Nigerian Minerals and Mining Act, The Complete Laws of Nigeria, Mar. 29, 2007, available at <https://wikipedia.org/wiki/> accessed on 15/11/2018 around 3:32 am.

<sup>27</sup> Ibid.

However, by virtue of Section 3, some lands are excluded from mineral exploration and exploitation and, as such, no mineral title can be granted in respect of such land. The lands referred to in Section 3 includes:

land set apart for, or used for, or appropriated, or dedicated to any military purpose except with prior approval of the president; land within fifty meters of an oil pipeline license area; land occupied by town, village, market, burial ground or cemetery, ancestral, sacred, or archaeological site; land appropriated for a railway, public building, reservoir, dam, or public road; and land that is subject to the provisions of the National Commission for Museum and Monument Act, Cap. N19, Laws of the Federation of Nigeria, 2004 and the National Parks Service Act, Cap. N65, Laws of the Federation of Nigeria, 2004.

Perhaps due to the importance attached to mining, Section 22 of the Act provides that the use of land for mining operations shall have a priority over other uses of land and shall be considered for the purposes of access, use and occupation of land for mining operations as constituting an overriding public interest within the meaning of the Land Use Act.<sup>28</sup>

Even though the ownership of mineral resources is entirely vested in the federal government, certain rights and customs of host communities— such as preservation of salt, soda, potash and galena from any land other than land within the area of the mining lease or land designated by the Minister as security land—are still preserved.<sup>29</sup>

#### **D. Land Use Act**

The significance of the land ownership and tenure system in Nigeria and its impact on ownership of natural resources makes any discussion on the ownership of natural resources incomplete without an appreciation of the country's land ownership and tenure system. Prior to the coming into force of the Land Use Act, Nigeria's land ownership and tenure system had undergone historical development in three distinct stages—the pre-colonial, colonial and post-colonial—such that what one obtains in the country before the introduction of the Land Use

Act was a dual system of land ownership. The pre-Land Use Act structure was such that in the Southern States—comprising of the former Western Region, Eastern Region, Midwestern Region and Lagos—the communal system of land ownership held sway and it was from this system, according to Professor Ajomo,<sup>30</sup> that private ownership of land evolved through grants, sales and partition. Whereas in the

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<sup>28</sup> Nigerian Minerals and Mining Act (note 21) page 97-(1).

<sup>29</sup> .Ibid.

<sup>30</sup> . M.A. Ajomo, *Ownership of Mineral Oils and the Land Use Act*, Current L. Dev. 335, 335 (1982) available at [Wikipedia.wiki.org](https://www.wikipedia.org). accessed on 15/11/2018 around 4:10 am.

Northern Region, the system of land ownership was governed and regulated by the Land Tenure Law that was enacted in 1962 by the regional government to replace Lord Lugard's Land and Native Rights Ordinance of 1916.<sup>31</sup>

It is noted that the Land Tenure Law replaces Lord Lugard's Land and substantially reaffirms the principles and philosophy underlying the Land and Native Rights Ordinances to the extent that, under the Land Tenure Law, the only interest available to an individual throughout the Northern Region is a right of occupancy.<sup>32</sup> The effect of this enactment is that it operated to divest the natives of ownership of their land and facilitated easy dispossession by the authorities.

It can be submitted that the structure that existed prior to the introduction of the Land Use Act reflects a basic tenet of an ideal federalism. Also, it would appear that the unitary configuration sought to promote uniformity in the country through the Land Use Act and brought an end to the duality in Nigeria's land tenure system. The Land Use Act of 1978 was, therefore, promulgated and became applicable all over the federation as evident in its preamble and Section 1, which vests all lands comprised in the territory of each state in the federation in the Governor of the state, who in turn shall hold it in trust and administer it for the use and common benefit of all Nigerians.<sup>33</sup>

The Land Use Act was specifically entrenched in the 1979 Constitution and was equally retained in the 1999 Constitution, as amended, thus making its repeal cumbersome and tedious. The Land Use Act introduced an entirely new dimension into land ownership in the country by abolishing the ownership rights of communities and individuals to land and turning their interests into rights of occupancy only.<sup>34</sup>

It is, therefore, clear that land ownership and tenure in Nigeria is a qualified one in which absolute title is vested in the Governor. However, it must be mentioned that, notwithstanding the vesting of title in the Governor's land in the respective state, one cannot exercise rights over lands that belong to the federal government and its agencies.<sup>35</sup> This includes lands that contain mineral deposit or land used for related purposes. Hence, none of the states that are component units of the federation have any direct control over the exploration and exploitation of minerals.

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<sup>31</sup>. M.A. Ajomo, *Ownership of Mineral Oils and the Land Use Act*, Current L. Dev. 335, 335 (1982) available at Wikipedia.wiki.org. accessed on 15/11/2018 around 4:10 am.

<sup>32</sup>. Ibid.

<sup>33</sup>. <sup>33</sup> Nigerian Minerals and Mining Act, (note. 25) page 1-(1).

<sup>34</sup>. Ibid.

<sup>35</sup> S. 49 Land Use Act 1978, Cap L5 LFN, 2004.



It is equally noted that, apart from legislation, case law has also acceded to the fact that ownership and control of mineral resources is vested in the federal government. This was confirmed by the Supreme Court of Nigeria in the case of Attorney General of the Federation v. Attorney General Abia State (No. 2) where it was held that –the federal government alone and not the littoral states can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters and sovereign rights over the Exclusive Economic Zone subject to universally recognized rights.<sup>36</sup> The court went on to decide that the mere fact that oil rigs bear the names of indigenous communities on the coastline adjacent to such offshore area does not prove ownership of such offshore areas.<sup>37</sup> There is no doubt from the pronouncement of the Supreme Court that ownership and control of mineral resources—whether onshore, offshore, in Nigeria’s territorial waters, the exclusive economy zone<sup>38</sup> or the continental shelf<sup>39</sup>—is vested in the Federal Government of Nigeria.

### **Ownership of Petroleum in Uganda**

The discovery of petroleum in Uganda, came a lot of confusion and hope by the host communities, with expectations to rifts the benefits therefrom. Legislations were enacted to regulate the vast petroleum industry. These various legislations in particular, the constitution devolve the ownership of land from the hands of citizens in whose land the petroleum was found and place them in the care of the government as trustee.<sup>40</sup> Under these arrangement expectedly, the revenue of these resources would utilized for national development are mismanaged.<sup>41</sup>

However, it can be argued that, the concept of national ownership as operated both in Uganda and Nigeria which embodies the above opinion is not the single answer to the proper utilization and control of these resources. When compare the above concept and what was obtainable in the United States of America, which recognized both the national and private ownership of petroleum.<sup>42</sup> United States and Canada also

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<sup>36</sup>. Attorney General of Federation V. Attorney General of Abia State (2002) 4. NSCC, 51.

<sup>37</sup>. The Exclusive Economic Zone Act, No. 28, (1978) available at Wikipedia.org. accessed on 15/11/2018 around 4:15 am.

<sup>38</sup>. Petroleum Act, Laws of Federation, 2004.

<sup>39</sup>. Ibid.

<sup>40</sup> Abdulkareem Azeez, *Understanding petroleum in Uganda; Environmental & Energy Law Forum; Kampala International University; 1st edition 2016; page 55.*

<sup>41</sup>. Ibid.

<sup>42</sup>. Abdulkareem Azeez, *Understanding petroleum in Uganda; Environmental & Energy Law Forum; Kampala International University; 1st edition 2016; page 55.*

42. Ibid.

43. Ibid.

recognized national ownership and private ownership in both Federal, States and the Local Government levels.<sup>43</sup>

As without doubt, national ownership is being practiced in Uganda, it advocate the vesting of ownership of mineral resource on the government as the sole owner.<sup>44</sup> This theory attract foreign companies to come and invest where sometime the state participate in the arrangement.<sup>45</sup> The countries that are practicing this type of arrangements were Uganda, Nigeria, South Africa, Bolivia, Venezuela and China. In *ACODE V. AG*,<sup>46</sup> though the matter was on the forest reserve, the court in alluding to the national ownership of the natural resources in Uganda made reference to the Article 237(2) (b) of the Federal Republic of Uganda, 1995 which states:

—The Government or a Local Government as determine by law, shall Hold in trust for the people and protect, natural lakes, rivers, Wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and tourist purposes for the Common gold of all citizens||.

The above provision has operational efficacy by S. 44 of the Land Use Act 1998 provide that: (1). The Government or local government shall hold in trust for the People and protect national lakes, rivers, ground natural ponds, Streams, wetlands, forest reserved for ecological and tourist Purposes for the common good of all citizens.

Similarly, Section 4, upstream Act<sup>47</sup> provides that in accordance with Article 244, Ugandan Constitution, the entire property in, on or under any land or water in Uganda is vested in the government on behalf of the Republic of Uganda.

Similarly, section 3 of the Kenyan Act,<sup>48</sup> provides that, all petroleum existing in its natural condition in strata lying within Kenya and the Continental Shelf under part 5 and 6 of the law of the sea, on the Exclusive Economic Zone (EEZ) and continental shelves is vested in the government, subject to any rights in respect of thereof which by or under any other written law, have been or are granted or recognized as being vested in any other person.

The above provisions cited, are pointing to a single direction that petroleum resources are vested in the hand of the government for the common good of its citizens.

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44. Ibid.

45. MISCELLANIOUS CAUSE NO. 0100 OF 2004.

46. Petroleum ( Exploration Development and production) Act 2013

48. Petroleum ( Exploration and Production) Act 1985.

In Nigeria, the Supreme court in *AG federation V. AG of Abia state & ors*<sup>49</sup> That court held that, the ownership, control and management rights of the Federal Government of Nigeria over mineral resources located in the offshore areas of Nigeria, was recognized to the exclusion of the states.<sup>50</sup> The gist of the matter was whether ownership of mineral resources in the eight littoral states of Akwa- Ibom, Bayelsa, Cross- Rivers, Edo, Ondo, Delta State, Lagos and Rivers States are in hand of Federal OR States Government? The Supreme Court affirmed the exclusive resource control and ownership rights are that of the Federal Government and not a state government by virtue of section 44 of the 1999 Constitution.

The situation in Uganda is similar to that of Niger Delta in Nigeria, save managed professionally, it will yield a bad result. Because, villagers around lake Albertine region ( which serves as the host communities) had high hopes on how oil will transform their lives.<sup>51</sup> While the host communities might be having exaggerated expectations, the government equally, is not helping matters by refusing to educate the host communities on the they will handle or working on an oil industry and the nature of the agreement to be entered between the government and international oil companies.

### **Ownership of Petroleum Challenges**

Sometime dispute may arise as a result of boundary as who is the owner of a particular area covering or adjacent of two or more countries. In such a situation countries may resort to General Principles of International law in resolving their differences. Where they cannot settled their differences alternatively may use some devices.

1. **Unitization**, is a response to the common law rule of capture, under this title to petroleum resources are in the hand of the owner or physical owner. But where it migrate, the other person can claim it, and sometime people are using systematic technology cause migration. As in *Onaiho V. Bernard*, they make it a unit and developed it. Unitization minimize dispute and waste. It is called international unitization or cross border, this can be seen in border dispute between U K v. New Zealand of 1965. Article 1 of the Agreement provide that the two countries should work together. This also happened between UK V. Norway in 1965.<sup>52</sup>

### **2. Joint Development**

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<sup>49</sup>. No. 2, (2005) 12 NWLR ( PT.940) 452.

<sup>50</sup>. Abulkareem Azeez, at page 70.

<sup>51</sup>. Abdulkareem Azeez cited May Jeong , " *Uganda oil brings quick cash, Dashed Hope* | at page 71.

<sup>52</sup>. Daniel Kahneman, *Thinking, Fast and slow* ( New York: Faarar , straus and GIROUX, 2011).

A joint Development occurs where each Country lay a claim on a particular boundary and the two countries may form a joint agreement to develop the area. It is an intergovernmental agreement to develop and dispose the mineral resource. It has a future where the two countries would have an arrangement within the disputed area pending the boundary limitation between the two countries.

### Model

1. One country may country may develop the place and share the proceed with the other. For example Saudi V. Bahrain
2. Where each country, may nominate it contractor and the two contractor may exploit the area. For example Japan V. South Korea, Nigeria V. Santo mea.
3. Where the two countries joint a body called Joint Development Commission. As in the case of Uganda V. Kenya.  
It is advisable countries to take cognizance of the of the United Nations delimitation rule of the law of the sea.<sup>53</sup>

### Conclusion

In concluding this concept of ownership, one may different understanding of the concept but the reality is that ownership varies in terms of conceptual. National ownership is the most prevalent and widely accepted, sometime the confirmation of the sole rights to state may yield to unrest as in Nigeria. Whereas vesting ownership of mineral resource in the hand of private ownership may resulted to a dispute where a neighbor may extract petroleum by means of systematic technology as in rule of capture. But in my opinion vesting ownership of mineral resources would be better as in private ownership as have experience in the United States of America. Where as a result of that, the citizens there are more far better than those in a countries who are practicing National ownership.

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<sup>53</sup>. Vasco Becker weinberg, *Joint Development of hydrocarbon Deposit in the Law of the Sea*; ( Heidelberg: springer, 2014)

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