

LAW 411

OIL AND GAS LAW I



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**SCHOOL OF LAW**

**COURSE CODE: LAW 411**

**COURSE TITLE: OIL AND GAS LAW I**

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## **COURSE GUIDE**

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**INTRODUCTION**

This course is created to give you the knowledge about oil and gas as a concept and as a natural resource. From your previous knowledge of various aspects of substantive law, this course will give you knowledge of the subject oil and gas law which is a branch of law on petroleum and natural gas and their operations. The existence of man in the society is founded on the resources available and discovered which are then employed for his use. These are natural resources which occur without any direct input of man. These resources have to be properly utilized for the purpose for which they are meant. Petroleum and natural gas are major natural resources that have been so utilized and it is intended in this course to expose you to the history and legal developments in the operations of the industry.

Since oil was first discovered over 5,000 years ago a lot has changed in its character compared with what obtains now. To a large extent oil and indeed natural gas are the most widely used source of energy today having taken over from the use of other sources of energy such as wood and coal. Today every house, industry and factory uses oil to power its engine, operate small machines in order to produce one material or the other. In this wise, oil has been a moving fluid (or gas) that powers many aspects of life both domestically and in the manufacturing concern.

In this respect, oil and gas law has been developed to treat the legal aspects of the subject. There is need to regulate this important substance of nature by the means of certain rules and regulations. In coming to this point, certain theories have evolved which have been employed in the transactions relating to the subject. Oil and gas can be seen as both economic and legal subject which also cut across various other fields like natural science, social and political sciences. This can be gleaned from its nature as a material that has many uses, and is a source of wealth for many nations including Nigeria.

Thus, the legal aspect of oil and gas is our main focus in this course while the other aspects would be discussed as they relate to this subject. The history of petroleum has been full of startling discoveries, ranging from the classes of crude oil, the manner of

their occurrence and the use to which they have been put. The utility and availability of crude oil and natural gas have called for regulations which are the results of agreements and concessions on oil explorations.

This course consists of 24 units of study which are designed to give easy understanding of the course to the students. It is an interesting subject which a concerned student would find revealing and possibly be gingered up to find solutions to some problems encountered in the present state of oil and gas development.

You will find some useful self examination questions, and tutor marked assignments in the course guide. These questions and assignments are important to assess your proper understanding of the course and you are advised to take them seriously and treat them on your own using the course guide and other references.

#### **What You Will Learn in This Course:**

This course is about the legal aspects of oil and gas industry in general but with some specific reference to Nigeria as the cases demand. It is a 400 Level course for Law Students. The course is meant to expose the student to the history, development, law and policy of oil and gas. This course, Law 411 is the first part of the course on oil and gas law designed for the first semester. It is a 4 –Credit Unit Course. A minimum study time of 4 hours per week is required for the duration of each of the two semesters.

The student will need to get acquainted with the various pieces of legislations that are related to the oil and gas industry.

It is also essential to note that: All these statutes and other regulations will be consulted and referred to in the course of this study. There will be references to other pieces of legislations in some other parts of the world where there are similar practices and comparison will be made thereof.

You should take note of the various terms and usages in this course as certain terms of art will inevitably occur in the proper analysis and discussion of the topics. However, as

much as possible we have tried to simplify the analysis to make you understand effectively. You need to relate any of the topics in this course to the occurrences in the society and through any examples that are given.

### **Importance of Statutes and Regulations**

It is essential to note that this course for this semester finds its basis from statutes, regulations and policies. Some of the statutes include but are not limited to the Petroleum Act, the Oil Pipelines Act, Minerals Act, Associated Gas Re-injection Act, the Land-Use Act, Mineral Oil Act, NNPC Act, Petroleum Industry Bill, Local Content Act. etc.

Its sources also include textbooks, journals and monographs on laws relating to oil and gas. You will be referred to some of these texts and you are expected to make adequate use of them along with this course guide. Relevant sections of statutes may be quoted or cited to give specific references during discussion of a topic. You are expected to get yourself familiar with these as much as they are relevant.

### **Course Aims**

This course aims at providing the participants with basic knowledge and clear understanding of the law with respect to oil and gas. It is aimed at giving you the requisite knowledge of the facts, background, and development of oil and gas with the legal developments that are relevant to it. You will learn the theories of ownership of oil and gas, the nature of interests in oil and gas, concessions and agreements. Each of the topics in the course will be discussed in sequence and the terms defined to enable a clear understanding of them. By the foregoing, the aims of this course include:

- The Historical Origin of Petroleum
- Natural Occurrence of Crude Oil and Natural Gas.
- Definition of Petroleum, Oil and Natural Gas.
- Understanding the Nature of Oil and Gas as Natural Resources.
- The Law and Policy of Exploration and Production of Oil in Nigeria.
- Concept of ownership and control of oil and gas.

- The Role of the United Nations and International Law in the Preservation of Natural Resources.
- Nature of Expropriatory Rights in Petroleum.
- Petroleum Pipelines and Operations.

**Course Objectives:**

At the completion of the course, you should be able:

- i. To understand the origin, nature and development of oil and gas.
- ii. To understand the theories of ownership and control of petroleum and their incidences.
- iii. The nature of interests in oil and gas operations with a view to distinguishing between the various interests that can be created and their major characteristics.
- iv. To understand the concept of indigenous rights of ownership of land and minerals.
- v. To understand the concept of expropriation of rights in mineral oil resources and its effects.
- vi. To understand the role of the international organisation like the United Nations in the exploration of natural resources.
- vii. To understand the nature of oil and gas pipelines and the procedure for grant of operating licenses.
- viii. The student should also be able to have a sound knowledge of the current developments in legislation in the oil and gas industry and its prospects.

**Working through this Course**

To complete this course, you are advised to read the study units, recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

**Course Materials**



The major components of the course are:

- a) Course guide.
- b) Study Units.
- c) Textbooks
- d) Assignment file
- e) Presentation schedule.

### **Study Units**

There are Twenty four (24) study units in this course as follows:

#### **Module 1**

- Unit 1 : The nature and origin of oil and gas.
- Unit 2: Exploration for petroleum and natural gas.
- Unit 3: Importance of oil and gas.
- Unit 4: Discovery and development of petroleum in Nigeria.
- Unit 5: The legal regime for petroleum in Nigeria.

#### **Module 2:**

- Unit 1: Theories of Ownership and Control of Oil And Gas.
- Unit 2: Ownership and Control of Petroleum in Nigeria.
- Unit 3: Ownership and Control of Petroleum in other Countries.

#### **Module 3:**

- Unit 1: Types of Interests in Petroleum Exploration.
- Unit 2: Production Contracts.
- Unit 3: Participation Agreements in Nigeria.
  
- Unit 4: Oil Exploration Licence and Mining Lease.

**Module 4:**

- Unit 1: The concept of traditional ownership of land as natural resources.
- Unit 2: Divestment of rights in mineral oil resources.
- Unit 3: Effect of Divestment of interest in mineral oil.
- Unit 4: Resource control agitation.
- Unit 5: Compensation and Allocation of petroleum gains.

**Module 5:**

- Unit 1: Natural Resources in the history of the United Nations.
- Unit 2: The role of international law in natural resources exploration.
- Unit 3: The role of international law in natural resources exploration continued.

**Module 6:**

- Unit 1: Nature of oil and gas pipelines
- Unit 2: Legal status, regulations for oil pipelines.
- Unit 3: Conditions for grant of rights to lay pipelines.
- Unit 4: Rights and Duties of the Licence holder.

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will then have a clearer picture into which to paint these topics.

Each study unit includes specific objectives, directions for study, reading materials and Self Assessment Exercises (SAE). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

**Textbooks and References**

Certain books have been recommended in the course. You should read them where so directed before attempting the exercise.

**Assessment**

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score.

**Tutor-Marked Assignment**

There is a Tutor-Marked Assignment at the end for every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best three performances will be used for assessment. The assignments carry 10% each.

When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

**Final Examination and Grading**

The examination for this course will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire LAW411 – OIL AND GAS LAW I course. You may find it useful to review your self assessment exercises and tutor marked assignments before the examination.

### **Course Marking Scheme**

The following table lays out how the actual course marking is broken

### **Course Marking Scheme**

The following table lays out how the actual marking is done.

<b>Assessments</b>	<b>30% of Course Marks</b>
<b>Final Examination</b>	<b>70% of Overall Course Marks</b>
<b>Total</b>	<b>100% of Course Marks</b>

### **How to Get the Most from this Course**

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, you study units provide exercises for you to do at appropriate times.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

### **Facilitators/Tutors and Tutorials**

There are tutorials provide in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Keep a close watch on your progress and on any difficulties you might encounter. Your tutor may help and provide assistance to you during the course. Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if:

- You do not understand any part of the study units or the assigned readings;
- You have difficulty with the self assessment exercises;

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from

course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

**Conclusion**

We hope you will find this course interesting. We wish you the best of luck.

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**MODULE 1**

- Unit 1: The nature and origin of oil and gas.
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**UNIT 1 THE NATURE AND ORIGIN OF OIL AND GAS.****Contents**

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- 2.0 Objectives
- 3.0 Main content.
  - 3.1 Definition of oil and gas.
  - 3.2 Nature of oil and its occurrence.
  - 3.3 The physical properties of oil and gas.
  - 3.4 Background and origin of petroleum and natural gas.
  - 3.5 Growth in the search and use of oil and gas.
- 4.0 Conclusion.
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings

**1.0 INTRODUCTION**

The existence of man in society is founded on the resources available in his environment. These resources have to be discovered and then employed for human use. Most of these resources are natural which occur without any direct input of man. These resources have to be properly utilized for the purpose for which they are suited. Petroleum and natural gas are major natural resources that have been so utilized and it is intended in this course to expose you to the history and legal developments in the operations of the industry.

Since oil was first discovered over 5,000 years ago a lot has changed in its character when compared with what obtains now. To a large extent oil and indeed natural gas are the most widely used source of energy today having over taken over from other sources of energy such as wood and coal. Today every house, industry and factory use oil to power its engine, operate small machines in order to produce material or the other. In this wise, oil has been a moving fluid (or gas) that powers many aspects of life.

As 'common' as it is however, most everyday users of oil do not avert their minds to the source and component of this substance. But to the industry operators, legal experts, government, policy makers and scientists, the origin, source, formation and component of oil are as important as its production. This is essential because it will give the primary basis upon which policies are made. This is even more important to a legal practitioner who intends to practice in this area as it will help in having the knowledge of what the subject matter is all about from the very basis.

## **2.0 OBJECTIVES**

At the end of this unit, you should be able:

- i. To define 'petroleum', 'crude oil' and 'natural gas'
- ii. To understand the nature of these substances.
- iii. To understand how petroleum is formed.
- iv. To give details of the origin and early discovery of oil.
- v. To relate the search for oil with its growth for human use.

## **3.0 MAIN CONTENT**

### **3.1 Definition of oil and gas.**

It is important at the inception to have the definition of few major terms of this subject matter to be able to capture their essence. Petroleum or crude oil is a naturally occurring, toxic, flammable liquid consisting of a complex mixture of hydrocarbons of various molecular weights, and other organic compounds, that are found in geologic formations beneath the earth's surface. Put simply it is a form of naturally occurring liquid substance found in rock formations. It consists of a varying mixture of hydrocarbons of different weights, plus other organic compounds.

Yinka Omorogbe in her work The Oil and Gas Industry: Exploration and Production Contracts described petroleum as a mixture of hydrocarbon that occurs under the earth surface primarily within the pore spaces of sedimentary rocks, in liquid, gaseous or solid forms.

The term petroleum is however more generally used for the liquid form, also commonly called crude oil. This is the most widely utilized type of petroleum. The term oil is used loosely to refer to petroleum in many cases and it usually means the same thing as crude oil unless the meaning is expanded in particular situations.

Petroleum is a compound mainly composed of hydrogen and carbon and is commonly called hydrocarbon. When it is found as a solid, it is coal, shale, tar sands or bitumen. The most commonly known hydrocarbon is crude oil which as stated earlier many refer to as petroleum. However, from a technical point of view, the term petroleum covers other types of hydrocarbons.

There has also been a statutory definition of petroleum under the Petroleum Act of Nigeria which provides that petroleum means “mineral oil (or any other related hydrocarbon) or natural gas as it exists in its natural state in strata, and it does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.” Furthermore, “crude oil” is defined in the Act as “oil in its natural state before it has been refined or treated (excluding water and other foreign substances)”.

Natural gas means “gas obtained from borehole and well consisting primarily of hydrocarbon.” This is the definition given to it by the Petroleum Act. It is the combination of certain hydrocarbon substances in gaseous form that accompany crude oil in its occurrence. It is in this form of its unrefined state that makes it natural gas.

From these definitions and descriptions of petroleum, it can be said that the term petroleum includes (crude) oil and natural gas, while each of oil and gas have similar qualities but are not the same in many of their components.

### **Self Assessment Exercise**

1. What is oil and gas?

2. Explain your idea of what is petroleum.

### **3.2 Nature of oil and its occurrence**

Petroleum is fossil fuel that has been formed from long-buried plants and microorganisms. Fossil fuels, which include petroleum, coal, and natural gas, provide most of the energy that powers modern industrial society. The petrol that fuels our cars and the natural gas that powers electrical plants are all fossil fuels.

Chemically, fossil fuels consist largely of hydrocarbons, which are compounds composed of hydrogen and carbon. Some fossil fuels also contain smaller amounts of other compounds. Hydrocarbons form from ancient living organisms that were buried under layers of sediment millions of years ago. As accumulating sediment layers exerted increasing heat and pressure, the remains of the organisms gradually transformed into hydrocarbons. The most commonly used fossil fuels are petroleum, coal, and natural gas. These substances are extracted from the earth's crust and, if necessary, refined into suitable fuel products, such as petrol, heating oil and kerosene.

As illustrated by Gene Whitney: "Fossil fuels formed from ancient organisms that died and were buried under layers of accumulating sediment. As additional sediment layers built up over these organic deposits, the material was subjected to increasing temperatures and pressures. Over millions of years, these physical conditions chemically transformed the organic material into hydrocarbons."

Most organic debris is destroyed at the earth's surface by oxidation or by consumption by microorganisms. Organic material that survives to become buried under sediments or deposited in other oxygen-poor environments begins a series of chemical and biological transformations that may ultimately result in petroleum, natural gas, or coal. Many such deposits occur in sedimentary basins, and along continental shelves.

It can be seen therefore that oil and natural gas are natural resources which have been formed as a result of the continuous processes of organic materials under the soil over a long period of time.

It is a type of mineral resources but with a distinct character because of its components. It is not formed by the direct acts of humans but by nature through the processes explained in this unit.

### **Self Assessment Exercise**

1. Describe the nature of oil.

### **3.3 Physical properties of oil and gas.**

It is generally accepted that oil, like other fossil fuels, formed from the fossilized remains of dead plants and animals by exposure to heat and pressure in the Earth's crust over hundreds of millions of years. Over time, the decayed residue was covered by layers of mud and silt, sinking further down into the Earth's crust and preserved there between hot and pressured layers, gradually transforming into oil reservoirs.

Todd M. Doscher, a Professor of Petroleum Engineering, University of Southern California, opined that natural gas is formed from water-dwelling microorganisms. As these microorganisms died and accumulated on the ocean floors, they were slowly buried and the remains were compressed under layers of sediment. Over millions of years, the pressure and heat exerted by the overlying sediments chemically transformed this organic material into natural gas.

Because petroleum and natural gas are formed by similar natural processes, these two hydrocarbons are often found together in underground reservoirs.

The chemical composition of all petroleum is principally hydrocarbons, although a few sulfur-containing and oxygen-containing compounds are usually present; the sulfur content varies from about 0.1 to 5 percent. Petroleum contains gaseous, liquid, and solid elements. The consistency of petroleum varies from liquid as thin as gasoline to liquid so thick that it will barely pour. Small quantities of gaseous compounds are usually dissolved in the liquid; when larger quantities of these compounds are present, the petroleum deposit is associated with a deposit of natural gas.

Doscher stated further that three broad classes of crude petroleum exist: the paraffin types, the asphaltic types, and the mixed-base types. The paraffin types are composed of molecules in

which the number of hydrogen atoms is always two more than twice the number of carbon atoms. The characteristic molecules in the asphaltic types are naphthenes, composed of twice as many hydrogen atoms as carbon atoms. In the mixed-base group are both paraffin hydrocarbons and naphthenes.

Petroleum is formed under earth's surface by the decomposition of marine organisms. The remains of tiny organisms that live in the sea—and, to a lesser extent, those of land organisms that are carried down to the sea in rivers and of plants that grow on the ocean bottoms—are enmeshed with the fine sands and silts that settle to the bottom in quiet sea basins. Such deposits, which are rich in organic materials, become the source rocks for the generation of crude oil. It is believed that the process began many millions of years ago with the development of abundant life, and it continues to this day. The sediments grow thicker and sink into the seafloor under their own weight. As additional deposits pile up, the pressure on the ones below increases several thousand times, and the temperature rises by several hundred degrees. The mud and sand harden into shale and sandstone; carbonate precipitates and skeletal shells harden into limestone; and the remains of the dead organisms are transformed into crude oil and natural gas.

### **Self Assessment Exercise**

1. Explain how petroleum and natural gas are formed and their basic components.

### **3.4 Background and origin of petroleum and natural gas.**

Petroleum in an unrefined state has been utilized by man for over 5000 years. Oil in general has been used since early human history to keep fires ablaze, and also for warfare. Ancient Persian language tablets indicate the medicinal and lighting uses of petroleum in the upper echelons of their society. Ancient China was also known to burn skimmed oil for light. An early petroleum industry was established in the 8th century, when the streets of Baghdad were paved with tar, derived from petroleum through destructive distillation noted, Ajram (1992). In the 9th century, oil fields were exploited in the area around modern Baku, Azerbaijan, to produce naphtha. These fields were described by al-Masudi in the 10th century, and by Marco Polo in the 13th century, who described the output of those oil wells as hundreds of shiploads. According to Zayn Bilkadi,

petroleum was distilled by al-Razi in the 9th century, producing chemicals such as kerosene in the alembic, which he used to invent kerosene lamps for use in the oil lamp industry.

Its importance in the world economy evolved slowly, with whale oil used for lighting into the 19th century, and wood and coal used for heating and cooking well into the 20th Century. Halliday Fred in his work stated that a petroleum industry emerged in North America in Canada and the United States. The Industrial Revolution generated an increasing need for energy which was fueled mainly by coal, with other sources including whale oil. However, it was discovered that kerosene could be extracted from crude oil and used as a light and heating fuel. Petroleum was in great demand, and by the twentieth century had become the most valuable commodity traded on the world market.

In another account by OPEC:

The first oil well is said to have been dug in Shush, southern Iran in about 500BC and the Chinese are believed to have drilled for oil and gas with bamboo tubes and bronze drill bits as early as the third century BC. Originally, oil was collected from natural surface seepages and shallow pits, and for hundred of years was used mainly for medicinal purposes, water proofing occasionally as a basic lubricant and for lighting. It was used as asphalt in the building pavements of ancient Babylon.

The first modern commercial drilling and production of oil is usually said to have begun in 1859 in the U.S when Col Edwin L. Drake sunk a well in Pennsylvania near some natural oil seepages. He was working for Pennsylvania Rock Oil Company which was interested in using oil for lighting. However, some authorities claim the first modern oil well was sunk in 1806 near Charlottesville in West Virginia.

During the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, the oil industry concentrated on extracting kerosene from crude oil for lamps and stores. Its use as lubricant also began to be developed at this time. However, more important was the development of crude oil as a boiler fuel which soon became competitive with other established energy forms, particularly with coal in locomotives and ships. By World War I advances in refining had extended its use as a fuel for car and aero engines. The large - scale conversion of



navies and merchants fleets to oil from coal helped to provide oil with an important boost.

With this rapid advance, by the 1930s oil began to compete with coal as the chief energy source for the world's industries. World consumption of oil rose from about one million barrels a day by 1940. However, it was in the post – World War II period of reconstruction and growth ending in the 1960s that oil over took coal's predominant position in world energy consumption with total oil production reaching over 20 million barrels a day.

Russia as one of the earliest producers of oil produced 3,500 tons of oil in 1825 and doubled its output by the middle of the century. After oil drilling began in what is now Azerbaijan in 1848, two large pipelines were built in the Russian Empire.

At the turn of the 20th century, Imperial Russia's output of oil, almost entirely from the Apsheron Peninsula, accounted for half of the world's production and dominated international markets.

The first modern oil refineries were built by Ignacy Łukasiewicz near Jasło, Poland from 1854–56. These were initially small as demand for refined fuel was limited. The refined products were used in artificial asphalt, machine oil and lubricants, in addition to Łukasiewicz's kerosene lamp. As kerosene lamps gained popularity, the refining industry grew in the area.

In the first quarter of the 20th century, the United States overtook Russia as the world's largest oil producer. By the 1920s, oil fields had been established in many countries including Canada, Poland, Sweden, the Ukraine, the United States, and Venezuela.

In 1947, the Superior Oil Company constructed the first offshore oil platform off the Gulf Coast of Louisiana.

After World War II ended, the countries of the Middle East took the lead in oil production from the United States.

It will be realized that Drake's success in 1859 marked the beginning of the rapid growth of the modern petroleum industry. Soon petroleum received the attention of the scientific community, and coherent hypotheses were developed for its formation, migration upward through the earth, and entrapment. With the invention of the automobile and the energy needs brought on by World War I (1914-1918), the petroleum industry became one of the foundations of industrial society.

As the world's consumption of oil rises, the quest to have more reserves of oil increased and consequently it has led to more drilling effort by many countries in different parts of the world through the available scientific and technological means.

For natural gas it is to be noted that human beings have used natural gas for centuries. Historical records show that natural gas was burned as fuel in China as early as AD 250. In the 17th century, natural gas was used for heating and lighting in northern Italy. In the United States, it was first discovered in Fredonia, New York, in 1821.

As its name implies, natural gas emerges from the ground in gas form, which is difficult to transport and store. As a result, natural gas has historically been used in areas close to the gas reservoirs. As the petroleum industry grew in the 19th and 20th centuries, natural gas that was recovered with petroleum from underground reservoirs was typically treated as a waste by-product and was often burned off at the well. Today, natural gas is transported through extensive networks of pipelines or is liquefied and transported by ship.

Again, the character of natural gas has changed as it is sought after for industrial use and for power. Between 1949 and 2002, approximately 2.5 million exploration and development wells were drilled in the United States. While domestic petroleum exploration continues on land, oil companies are also exploring promising offshore locations along the continental margins.

### **Self Assessment Exercise**

1. Discuss the origin of petroleum and its development.
2. Highlight the developments in oil and gas in perspectives.

### **3.5 Growth in the search and use of oil and gas.**

There were other sources of energy prior to the discovery of oil. Certain other energy sources, found only in localized areas, were also used in ancient times. These include: asphalt, coal, and peat from surface deposits and oil from seepages of underground deposits.

This situation changed when wood began to be used during the middle ages to make charcoal. The charcoal was heated with metal ore to break up chemical compounds and free the metal. As forests were cut and wood supplies dwindled at the onset of the Industrial Revolution in the mid-18th century, charcoal was replaced by coke (produced from coal) in the reduction of ores. Coal, which also began to be used to drive steam engines, became the dominant energy source as the period progressed.

From the late 19<sup>th</sup> century petroleum has been used as a major commodity in the world and it was propelled largely by the industrial revolution which required that petroleum, coal and other products thereby had to be used to power the engines. Thus, petroleum gradually became a major commodity being sought after.

In the United States of America the oil industry expanded rapidly as refineries sprang up to make oil products from crude oil. The oil companies soon began exporting their principal product, kerosene—used for lighting—to all areas of the world. The development of the internal-combustion engine and the automobile at the end of the 19th century created a vast new market for another major product, gasoline. A third major product, heavy oil, began to replace coal in some energy markets after World War II.

The major oil companies, which are based principally in the United States, initially found large oil supplies in the United States. As a result, oil companies from other countries—especially Britain, the Netherlands, and France—began to search for oil in many parts of the world, especially the Middle East. The British brought the first field there (in Iran) into production just before World War I (1914-1918). During World War I, the U.S. oil industry produced two-thirds of the world's oil supply from domestic sources and imported another one-sixth from Mexico. At the end of the war and before the discovery of the productive East Texas fields in 1930, however, the United States, with its reserves strained by the war, became a net oil importer for a few years.

During the next three decades, with occasional federal support, the U.S. oil companies were enormously successful in expanding in the rest of the world. By 1955 the five major U.S. oil companies produced two-thirds of the oil for the world oil market (not including North America and the Soviet bloc). Two British-based companies produced almost one-third of the world's oil

supply, and the French produced a mere one-fiftieth. The next 15 years were a period of serenity for energy supplies. The seven major U.S. and British oil companies provided the world with increasing quantities of cheap oil. The world price was about a dollar a barrel, and during this time the United States was largely self-sufficient, with its imports limited by a quota.

These companies also known as the “seven sisters” dominated the oil industry for a long time and their operations covered many countries due to their capital and experience. One major thing that also contributed to the expansion of these international oil companies was that it had the support of the governments of these two big countries at the time. i.e. the United States and Britain. This was the situation of oil and gas that affected the operations in the industry.

It should be noted that oil and gas have been given serious attention by many people because of its growth as a source of energy in the world. As noted by Omorogbe energy is basically what makes things function. It is the underlying factor behind every type of activity or action. For this reason, the future of any society is dependent on its ability to have access to the energy it needs. The amount of energy a society uses or has at its disposal is also a function of its level of development. Therefore one finds that the energy consumption of any of the developed country is several times more than that of the average developing country. It can safely be said that any country whose energy needs are not being met will have severe development problems.

This factor has been one of the major reasons oil and gas has been given priority by both the developed and the less- developed countries.

### **Self Assessment Exercise**

- Take note of the periods in time and the societal responses to the use of oil as a source of energy.

### **4.0 CONCLUSION**

Since oil was first discovered over 5,000 years ago a lot have changed in its character compared with what obtains now. To a large extent oil and indeed natural gas are the most widely used source of energy today having over taken the use of other sources energy such as wood and coal.

Today every house, industry, factory use oil to power its engine, operate small machines in order to produce one material or another. In this wise, oil has been a moving fluid (or gas) that powers many aspects of life.

The physical state of petroleum has significantly affected the evolution of the industry. The transportation of petroleum either in gas or liquid form is a primary concern of any producer especially since large scale movement of the product requires specially designed installations. Solids on the other hand, are easier to transport and can often be carried and/or stored with other materials. In early days oil was carried in barrels, then in bulk containers, and later through pipelines and increasingly larger tankers. The physical state of oil and the fact that several millions barrels daily are utilized by the average industrial state makes long term storage a problem. Other solid commodities can be stored with greater ease to the extent that a stockpile of several years can be built up by any consuming state. Even with increased technology this remains difficult for petroleum or natural gas. Therefore the producers remain important and a force to be reckoned with in the whole system.

## **5.0 SUMMARY**

In this unit we have been able to define oil and gas along its contents and its qualities. It is clear now that petroleum or crude oil is a naturally occurring, toxic, flammable liquid consisting of a complex mixture of hydrocarbons of various molecular weights, and other organic compounds, that are found in geologic formations beneath the earth's surface. Also we have seen the statutory definition for the term and its meaning in the context. The history of petroleum and natural gas have also been treated in detail for a proper understanding of what brought about this very important substance.

The physical contents of oil shows that it is wasting asset, it is not renewable by man since he did not create it. It is natural resources which is formed by a series of scientific processes and can only be discovered by continuous exploration into the vast areas of the earth and under the waters.

The most important use of petroleum today lies in its current use for most of this century as the world's major supplier of energy. Analysts are of the view that this is likely to continue for a long time to come.

### **6.0 TUTOR MARKED ASSIGNMENT.**

1. Give a detailed account of the origin and development of oil and gas.
2. Carefully explain the nature of petroleum and how it is formed.

### **7.0 REFERENCES/ SUGGESTIONS FOR FURTHER READING.**

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## **UNIT 2: EXPLORATION FOR PETROLEUM AND NATURAL GAS.**

### **Contents**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main content.
  - 3.1 What is oil exploration?
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  - 3.4 Oil and gas refining.
- 4.0 Conclusion.
- 5.0 Summary
- 6.0 Tutor Marked Assignment
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## 1.0 INTRODUCTION

It is a common occurrence to have petroleum being used by people for a variety of activities in their daily lives. It is also frequently carried in several forms by many but the process of getting it is far from the knowledge of many people. For petroleum to be useful for human and other use it has to be extracted from its source. Crude oil in its natural state has to be explored before it can be got for use and this unit is intended to discuss this topic. The process of exploration and prospecting for petroleum will be examined in details in a manner that will leave you the student with knowledge of how oil and gas are extracted from the ground, and refined into the state that they can be used.

## 2.0 OBJECTIVES

At the end of this unit, you should be able to:

- i. Understand the meaning of exploration of oil.
- ii. Explain the effort made by different countries to explore oil.
- iii. Understand the nature of natural gas production.
- iv. Have an understanding of the basic process of refining and production.

## 3.0 MAIN CONTENT

### 3.1 What is oil exploration?

To explore in relation to petroleum means “to make a preliminary search by surface geological and geophysical methods, including aerial surveys but excluding drilling below 91.44 metres.”

**See Section 15 of the Petroleum Act, Cap P10 Laws of the Federation of Nigeria (LFN) 2004.** It is important to note that in this technical sense exploration will entail the use of certain techniques to search for the areas of the earth surface that have petroleum underneath. This definition of exploration of petroleum is particularly for the purpose of the operations that would be carried out under the Act in Nigeria. This is so because the term ‘exploration’ generally may be construed as meaning the search for or discovery of certain substance like mineral, oil and other materials from the sub-surface of the ground or the ocean beds.

Exploration is the general process of searching for oil and it is in this context that it will be used in this discussion. It is the first step in the actual search for oil among series of other steps. The other steps involved are 'prospecting' and 'mining' which normally involves actual drilling of the earth surface deep into the ground to locate crude oil deposits. By its nature petroleum is found underground deep inside the earth's crust and under the sea beds. But it has to be extracted. After several thousands of years of formation of the dead bodies of organisms and their reaction with other chemicals to make oil, the crude oil sediments and remain in the pore spaces beneath the ground. Little drops of the oil seep to places within this pore spaces and settle there with the continuous pressure and heat which both cause further transformation and change in composition. Oil exploration involves the process of search for and discovery of oil from its natural source which is usually under the ground. In order to find crude oil underground, geologists must search for a sedimentary basin in which shales rich in organic material have been buried for a sufficiently long time for petroleum to have formed. The petroleum must also have had an opportunity to migrate into porous traps that are capable of holding large amounts of fluid. The occurrence of crude oil in earth's crust is determined by these conditions, which must be met simultaneously, and by the time span of between ten million to a hundred million years required for the oil's formation.

Petroleum geologists and geophysicists have many tools at their disposal to assist in identifying potential areas for drilling. The only way to prove that oil is present in the subsurface is to drill a well. In fact, most of the oil provinces in the world have initially been identified by the presence of surface seeps.

These petroleum scientists have developed techniques that indicate the possibility of oil or gas being found deep in the ground. Nevertheless, the only method by which oil or gas can be found is by drilling a hole into the reservoir. In some cases oil companies spend many millions of dollars drilling in promising areas, only to find dry holes. For a long time, most wells were drilled on land, but after World War II drilling commenced in shallow water from platforms supported by legs that rested on the sea bottom. Later, floating platforms were developed that could drill at water depths of 1,000 m (3,300 ft) or more. Large oil and gas fields have been found offshore: in



the United States, mainly off the Gulf Coast; in Europe, in Russia and Brazil. Most major finds in the future may be offshore.

An oil field, once found, may comprise more than one reservoir—that is, more than one single, continuous, bounded accumulation of oil. Several reservoirs may be stacked one above the other, isolated by intervening solid rock strata. Such reservoirs may vary in size from a few tens of hectares to tens of square kilometers, and from a few meters in thickness to several hundred or more. Most of the oil that has been discovered and exploited in the world has been found in a relatively few large reservoirs. In the United States, for example, 60 of approximately 10,000 oil fields have accounted for half of the productive capacity and reserves.

### **SELF ASSESSMENT EXERCISE**

- Explain what oil exploration means and what it entails.

### **3.2 Beginning of oil exploration.**

Exploration for oil has commenced in many parts of the world for centuries. In various countries and regions attempts have been made to discover oil through the geological means and within the technology available. It is believed that the first oil well is said to have been dug in southern Iran in about 500BC and the Chinese are believed to have drilled for oil and gas with bamboo tubes and bronze drill bits as early as the third century BC. As we have already noted the first modern commercial drilling and production of oil is usually said to have begun in 1859 in the United States when a well was sunk in Pennsylvania near some natural oil seepages.

It is also noted that Russia was one of the earliest producers of oil producing 3,500 tons of oil in 1825, an output that was doubled by the middle of the century. After oil drilling began in what is now Azerbaijan in 1848, two large pipelines were built in Russia.

The twentieth century saw tremendous growth in the exploration and prospecting for oil. Exploration for oil, started by the Navy during the World War II near Point Barrow in the Arctic Naval Reserve, was turned over to private contractors in 1946, and wells were driven in the

region approximately 100 miles South of Point Barrow, the northernmost tip of the North American continent.

In Nigeria the search for oil was a product of the colonialists who were in control of the trade going on at the time around Oil Rivers Protectorates and the banks of the Rivers Niger and Benue. Mining and other activities for solid minerals like tin, columbite, limestone etc were already taking place in these areas and in the northern parts of the protectorates. It was in 1908 that the first recorded major exploration took place. This was carried out by the German Bitumen Company in 1908 around a place in the present day Ondo State of Nigeria. Prior to this time however, there has been some sort of legislation on mineral oil in Nigeria with the enactment of **Petroleum Ordinance of 1889**. This legislation was in existence before actual mineral oil exploration of any kind was undertaken. The 1889 ordinance was followed by **Mineral Regulation (Oil) Ordinance of 1907**. Both of these legislations laid down the basic framework for the development of petroleum and other minerals in Nigeria.

Several regulations have been put in place by the governments of the various countries where oil has been explored for the regulation of the operations of this important segment of the industry. At the initial stages of the exploration of oil in the world, private companies and conglomerates were the ones taking up the operations while the government only allotted oil fields and coastal portions for the companies to prospect for oil. With the passage of time and the discovery of oil in various quantities, the governments of these countries have taken up interests and public corporations have been established to take part in the exploration process along side the already existing multinational companies. The environment has also been properly regulated with written and more comprehensive statutes that meet with the times.

### **SELF ASSESSMENT EXERCISE**

Outline the early oil exploration efforts around the world.

### **3.3 Natural Gas Production.**

Natural gas has been used for several centuries by man. Historical records show that natural gas was burned as fuel in China as early as AD 250. According to James Speight, in the 17th century, natural gas was used for heating and lighting in northern Italy. In the United States, it was first discovered in Fredonia, New York, in 1821.

A certain amount of natural gas almost always occurs in connection with oil deposits and is brought to the surface together with the oil when a well is drilled. As its name implies, natural gas emerges from the ground in gas form, which is difficult to transport and store. As a result, natural gas has historically been used in areas close to gas reservoirs. As the petroleum industry grew in the 19th and 20th centuries, natural gas that was recovered with petroleum from underground reservoirs was typically treated as a waste by-product and was often burned off at the well. Today, natural gas is transported through extensive networks of pipelines or is liquefied and transported by ship and is put to many uses. To locate natural gas, exploration geologists search for geologic regions containing the ingredients necessary for the formation of natural gas.

Natural gas is transported, usually by pipelines, to customers who burn it for fuel or, in some cases, make petrochemicals from chemicals extracted, or “stripped,” from it. Natural gas can be liquefied at very low temperatures and transported in special ships. This method is much more costly than transporting oil by tanker. Oil and natural gas compete in a number of markets, especially in generating heat for homes, offices, factories, and industrial processes.

World production of natural gas is measured in two ways: gross production, which is the total amount obtained from oil and gas wells; and marketed production, which is the amount sold to consumers, as well as that used by producers as fuel. The difference between gross production and marketed production is the amount of gas that is either 'flared' (burned at or near the well because it cannot be piped to a customer economically) or re-injected into the earth's crust to maintain the pressure in the oil fields. Analysis for 1976 indicated that world production of marketed gas exceeded the 1975 level of 47,064 billion cubic feet, as efforts to utilize a greater proportion of gross production continued around the world.

In 1977, natural gas production exceeded that of the previous year of 49,203 billion cubic feet (marketed production). Producing nations that formerly flared much of the gas produced as a by-

product of oil extraction continued efforts to increase economic utilization of this valuable resource. The United States remained the leading world producer, with an output nearly double that of the second-ranked Soviet Union, despite a decline in U.S. output and an increase in Soviet production.

Nigeria has established the Liquefied Natural Gas Project which eventually took off in 1993.

### **Self Assessment Exercise**

1. Give a brief account of how natural gas occurs.
2. Take note that natural gas is sometimes a by product of crude oil but is often discovered separately on its own which makes it a separate product.

### **3.4 Oil and Gas Refining.**

The oil and gas industry is regulated in many phases based on its divergent nature. Before crude oil can be useful it has to be refined into a suitable form.

As crude oil or natural gas is produced from an oil or gas field, the pressure in the reservoir that forces the material to the surface gradually declines. In an effort to extract this remaining oil, oil companies have begun to use new techniques that allow operators to drill horizontally, as well as vertically, into very deep structures have dramatically reduced the cost of finding natural gas and oil supplies.

After it has been extracted from the ground, crude oil is transported to refineries by pipelines, barges, or giant oceangoing tankers. Refineries contain a series of processing units that separate the different constituents of the crude oil by heating them to different temperatures, chemically modifying them, and then blending them to make final products. These final products are principally gasoline, kerosene, diesel oil, jet fuel, home heating oil, heavy fuel oil, lubricants, and feedstocks, or starting materials, for petrochemicals.

Raw petroleum is heated to distill hydrocarbons by their weight. Crude with lighter molecular weights are separated and refined into gasoline (commonly called petrol) and other fuels, while heavier crude are processed into engine lubricants, asphalt, waxes, and other products. Because

demand for fuel exceeds demand for these other products made from the heavier hydrocarbons, petroleum engineers involved in the process of refining often break apart the heavy molecules into lighter ones that can be refined into gasoline. They do so by means of processes called thermal cracking and catalytic cracking.

Several hundreds of products can be made out of crude oil during the process of refining which includes addition of certain chemicals and through heating process. The products that can be got from refined petroleum depend on the nature of the crude and the qualities it possesses. It also depends on the technology available at the refinery. When crude oil has been refined it usually brings out three major groups of products which are produced when crude oil is broken into fractions. They are: gas and gasoline, middle distillates, and fuel oil and residue cuts.

The gas and gasoline group after refining gives the following products: aviation fuels, motor fuels and raw material, or feedstock for the petrochemical industry. The middle distillates refer to products from the middle of a hypothetical barrel of crude such as kerosene, and light gas oil, heating oil, diesel oil and waxes as well as some lubrication oil. The third group is the heavy or black products such as fuel oil for power stations, industrial boilers and ship furnaces. It also includes asphalt and bitumen used for roads, waterproofing and roofing material.

In the initial period of the oil industry, the first refining processes were developed to extract kerosene for lamp. The light products and residue were considered waste and usually burned off. The first refining processes were developed to purify, stabilize and improve the quality of kerosene. Other uses were progressively developed for those parts of the barrel previously thrown away. By World War I, gasoline or petrol began to be used in increasing quantities as a motor fuel for cars, trucks. Other grades of refined crude oil have since been developed to cater for the different facets of machines that exist in the world today.

### **SELF ASSESSMENT EXERCISE**

1. State the process of refining crude oil and the end products.

#### **4.0 CONCLUSION**

Petroleum scientists and engineers have to devise means of getting crude oil from the sub-surface before it can be obtained and transformed into the required state. This is done through the process of exploration. When oil has been produced from an oil field, it is treated with chemicals and heat to remove water and solids, and the natural gas is separated. The oil is then stored in tanks, and later transported to a refinery by truck, railroad tank car, barge, or pipeline. Large oil fields usually have direct outlets to pipelines.

Many parts of the world have crude oil deposits which have been explored by these countries for more than a century and are still being explored up till date.

#### **5.0 SUMMARY**

In this Unit we have considered the concept of oil exploration, what it entails as the major preliminary step towards extraction of crude oil deposits from their natural basins in the ground. We have also considered the earliest attempts at exploration for oil and the successes of these efforts in Nigeria and other places. The process of refining petroleum was treated briefly while the basics of natural gas were explained. All these are meant to give the student the preliminaries of how oil is found.

#### **6.0 TUTOR MARKED ASSIGNMENT.**

With the aid of examples give a detail account of the efforts at production of petroleum and natural gas in the world.

#### **7.0 REFERENCES**

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### **UNIT 3 IMPORTANCE OF OIL AND GAS**

#### **Contents**

1.0 Introduction.

2.0 Objectives.

3.0 Main content.

    3.1 General uses of oil and natural gas.

    3.2 Petroleum as a source of energy.

    3.3 Oil producing countries and oil production.

4.0 Conclusion.

5.0 Summary.

6.0 Tutor Marked Assignment

7.0 Reference/further readings

#### **1.0 INTRODUCTION.**

This unit deals with the importance of crude oil and natural gas to our world. From the ancient times when oil was discovered it has been used for different purposes. Its use transcends a number of instances in daily living. The physical properties of oil make it a product that has

special purposes. This highlight of the uses of crude oil and natural gas will show their importance all round the world and as a source of energy. The countries that are into production of oil and gas are examined to illustrate the contribution of oil and gas to their economy.

## **2.0 OBJECTIVES**

At the end of this unit, you should be able:

- i.** To highlight the uses of oil.
- ii.** To explain how oil became a product sought after by people of many countries.
- iii.** To understand the importance of crude oil and natural gas.
- iv.** To understand how oil has contributed to the growth of the economy of oil producing countries.



### **3.0 MAIN CONTENT.**

#### **3.1 General Use of Oil and Natural Gas.**

It should be noted that the use of oil has changed over time in the world right from its early discovery through its development to the present age. During the late 19th and early 20th centuries, the oil industry concentrated on extracting kerosene from crude oil for lamps and stores. The oil industry which grew in the United States expanded rapidly as refineries sprang up to make oil products from crude oil. The oil companies soon began exporting their principal product, kerosene—used for lighting—to all areas of the world. The development of the internal-combustion engine and the automobile at the end of the 19th century created a vast new market for another major product, gasoline. A third major product, heavy oil, began to replace coal in some energy markets after World War II.

The major oil companies, some of which are based principally in the United States, initially found large oil supplies in the United States. As a result, oil companies from other countries—especially Britain, the Netherlands, and France—began to search for oil in many parts of the world, especially the Middle East. Its use as lubricant also began to be developed at this time. However, more important was the development of crude oil as a boiler fuel which soon became competitive with other established energy forms, particularly with coal in locomotives and ships. By World War I advances in refining had extended its use as a fuel for car and aero engines. The large - scale conversion of navies and merchants fleets to oil from coal helped to provide oil with an important boost.

With this rapid advance, by the 1930s oil began to compete with coal as the chief energy source for the world's industries. World consumption of oil rose from about one million barrels a day by 1940. However, it was in the post – World War II period of reconstruction and growth ending in the 1960s that oil over took coal's predominant position in world energy consumption with total oil production reaching over 20 million barrels a day.

Petroleum also has certain qualities which makes it unique among other natural resources. Omorogbe opined that these peculiarities “are linked to its physical state of either liquid or gas.” This has had effect on the international industry so that the history of the industry would have

been different if it “could have been made into a powder, packeted, and sold in general stores.” Solid products are easier to transport, and can often be carried and stored with other materials. However large-scale transport of a liquid such as petroleum requires specially designed installations.

One major consequence of the physical state of petroleum is that whereas other trades can rely on other means of transport which are capable of catering for a host of products and are thus not compelled to provide machinery of their own, transportation must be provided for by the industry. Transport is thus an integral part of the industry and a ‘constituent fact which has considerably influenced the structure of the industry’. Earlier forms of transportation were the barrel (which remains the international unit of measurement for liquid crudes) and then bulk containers. Pipelines have consistently been used from the earliest days of the industry, and are currently the most effective means of transport on land. However sea going tankers form one of the most visible characteristics of the industry today, and because of their flexibility are the major carriers. Over long distances they are the most economical form of transport, and since the larger the tanker the larger the unit cost of transportation, there is a natural tendency towards increasingly large tankers which constantly ply the seas and which require special loading jetties, artificial islands or large buoys moored far off shore.

Another important use of petroleum is that it serves as lubricants for machines generally. Lubricants are applied to machinery to reduce friction between moving parts. There are various lubricants that are products of crude oil. Natural lubricants may be fluid, or semi fluid, such as organic and mineral oils. They may be semisolid, such as grease; or solid, such as graphite. Since the late 19th century, more than 90 percent of all lubricants have been obtained from petroleum or shale oil, which are abundant and can be distilled and condensed without decomposing.

The discovery of oil has increased the revenue of several nations, from the discoveries of the Arabian Peninsula, the North Sea and the Gulf of Mexico. The same yield in revenue is found in the oil regions of Russia, West Africa, South America and other parts where oil is found. In Britain for example, by the 1980s it was adding significantly to the British economy as oil exports increased during a period of high oil prices. British taxpayers also benefited from the

taxes and royalties paid by the oil and gas companies, which were licensed by the crown to search for and produce oil and gas. Oil production in that country peaked during the 1990s.

Natural gas production has contributed in great measure to development of the producing countries. This is particularly among the advanced countries. Gas has been used since the 19th century in London and other places, but it was manufactured from coal. Since the 1960s, when offshore gas fields were discovered, natural gas has been used. In the early 2000s natural gas accounted for more than two-fifths of the fuel consumption in Britain.

Use of natural gas has continued to expand on the residential and commercial fronts in the United States with more than 26.8 million customers using gas for heating in the 1980s. In Nigeria since the 1980s, there has been increasing utilisation of gas in Nigeria, for power generation, industrial heating, fertiliser and petrochemical manufacturing and as feedstock for direct steel reduction. But the largest gas users will be the Liquefied Natural Gas (LNG) Project and the Aluminium Smelting Industry. Nigeria's LNG project had been on the drawing board since the 1960s. the Ministry of Petroleum Resources, in addition to imposing penalties which were intended to end gas flaring by 1994, has offered incentives to potential investors who are interested in gas exploration.

### **SELF ASSESSMENT EXERCISE**

1. Examine the general use of oil and natural gas in the world.
2. What is the importance of oil?

### **3.2 Petroleum as a Source of Energy**

The importance of petroleum today is due largely to the fact that it is a source of energy. Fossil fuels are primarily burned to produce energy. This energy is used to power automobiles, trucks, airplanes, trains, and ships around the world; to fuel industrial manufacturing processes; and to provide heat, light, air conditioning, and energy for homes and businesses.

To provide fuel for transportation, petroleum is refined into petrol, diesel fuel, aviation fuel, and other derivatives used in most of the world's automobiles, trucks, trains, aircraft, and ships.

Demand for natural gas, historically considered a waste by-product of petroleum and coal mining, is growing in business and industry because it is a cleaner-burning fuel than petroleum or coal. Natural gas, which can be connected directly to commercial plants or individual residences and used on demand, is used for heating and for air conditioning. This is common in the countries where technology is advanced. Residential uses of natural gas also include fuel for stoves and other heating appliances.

“Without energy the wheels of industry do not turn. No cars, trucks, trains, ships or airplanes could be built. Without energy, houses would remain cold and unlighted, food would be uncooked. Without energy resources we would literally be back in the Stone Age.”

The growth in the utilization of the mechanical engines and automobile during the twentieth century increased the need for the fuel to power these engines. This was found in petroleum and its products. Certain variants of this product like diesel, and aviation had to be used in the fueling of heavy equipments and consequently the demand for petroleum increased tremendously. In addition to direct utilisation for commercial purposes, fossil fuels are also burned to generate most of the world’s electric power. Oil is frequently used for this purpose in the developed countries. In Nigeria, there has been development towards this type utilization of gas for power.

Energy experts are of the view that oil supplies may eventually become exhausted. Some estimate that world oil reserves will last from 63 to 95 years more. Consequently, attention is now being focused on other energy sources, such as solar, wind wave and hydro electric. However, major problems remain unresolved concerning their production and distribution. Today, oil continues to be the most important source of energy and its future availability is assured as long as the earth continues in its present form. Despite the environmental problems associated with oil exploration and production, oil will remain the largest international traded commodity.

Oil in its refined state is useful in many ways such as petrol for cars, otherwise known as Premium Motor Spirit (PMS), aviation fuel, diesel, Kerosene, synthetic rubber, bitumen for roads, tar for ships, medicine, lubricants, grease, jellies.

Oil is a non-renewable resource. The supply is limited. It takes millions of years for oil to form. Once oil is used up, it's gone. This was not a concern about 100 years ago. But over the years the world has used much oil and the demand for oil has increased yearly. New sources of crude oil will probably be discovered. So will new ways of draining the last drops of oil from known sources. Even so, most experts agree that the world's oil reserves will be largely gone by the year 2050.

Petrol makes vehicles and machines run. This liquid of nature is very important to all human beings. When a vehicle is running out of fuel, it's time to fill up the vehicle's tank at a gas station. When you're at a gas station, you're probably standing on top of a huge underground storage tank. The pump brings the petrol up from the storage tank, and a hose feeds it into the car's gas tank.

### **SELF ASSESSMENT EXERCISE**

1. How would you describe petroleum as a source of energy?

### **3.3 Oil Producing Countries and Oil Production.**

Oil is found and produced in practically all parts of the world: in North and South America, the Caribbean, the Middle East, the Far East, Australia, Europe, the former Soviet Union, the North Africa. Today, oil is found in nearly 80 countries of the world, the largest 10 accounting for nearly three-quarters of the total production. Nigeria was the eleventh largest producer. The United States is a substantial producer, but a net importer, of crude oil. The former USSR appears to be self sufficient for its oil needs and also exports to Eastern Europe and a few Western European countries. Some of the largest exporters of crude oil are developing countries and the major proportion of the world's proved oil reserves of crude oil are located in the Middle East. The Middle East accounts for more than 60 % of the world's proved reserves of crude oil, but the region accounted for only 20% of the world production.

The region could produce more oil but the weak oil market limited the amount of oil that could be exported and the Organisation of Petroleum Exporting Countries (OPEC) production ceiling also affected production. Saudi Arabia, Iran, Kuwait and United Arab Emirate (Abu Dhabi) are the major producers.

In North America, the US and Canadian production slightly exceeded that of the Middle East, but the reserve of crude oil represented less than 12 % of the world's total. Latin America and the Caribbean contained about 11 % of the world's proved reserves. The former USSR accounted for 22 % of the total world crude oil production and about 10 % of the reserves.

In Africa, the proved reserves were about 7.5% and the production 8% of the world total. The major producers in Africa are Algeria, Libya, Nigeria, Gabon, Angola and Egypt. Oil production, mainly by Britain and Norway, in the North Sea has made Western Europe an important oil producing region. Germany and a few others produce small quantities of onshore oil. Western Europe accounted for over 6% of world production and had 3.5% of the world's proved reserves.”

World output of crude oil in 1975 totaled about 19,481 million barrels; each of the leading oil producing countries including Nigeria made significant production around this period. Returns for the first five months of 1976 for the Soviet Union, the world's leading producer, indicated an increase of 3.9 percent over 1975 output; the others in order of output at the time were the United States, the second-ranked world producer. Other significant producing countries, with their 1975 standing among world producers were Saudi Arabia (third), Iran (fourth), Venezuela (fifth), Kuwait (sixth), Nigeria (seventh), and Abu Dhabi, Dubai, and Sharjah (three of the United Arab Emirates, collectively eighth), the People's Republic of China (ninth) and Libya, which was ranked tenth in 1975. These ten leading producers together accounted for 78 percent of total world output in 1975.

The gross production of the oil producing countries increased annually such that the estimated production of the leading producing nations in 1977 was put at 22,000 million barrels, about 5 percent above the 21,142 million barrels produced in 1976. Nigeria maintained its production level, now as the eighth leading producer of crude oil. The lesser crude oil producing countries like United Kingdom, India, Australia and Indonesia also made significant production that registered notable gains.

The type of crude oil found during exploration determines to a large extent the value to be placed on it. This is because crude oil condensates are in varying grades depending on their components. The crude with lighter contents of sulphur will not attract high value as the one with less sulphur. This in the long run affects the revenue to be got from the export of crude oil by the oil producing countries. With the exception of the United States and the former USSR, all major crude oil producers produce crude oil with high sulphur content.

The most important destination for Nigeria's crude oil exports are the United States, the Netherlands, United Kingdom, the West Indies, France and Germany, in descending order of magnitude.

#### **SELF ASSESSMENT EXERCISE.**

- Give an outline of the oil producing countries and how oil has contributed to their economy.
- Take note of the production output of these countries and especially that of Nigeria.

#### **4.0 CONCLUSION**

Oil has several uses. Its availability has made it a most sought after raw material in the world. It has become a main source of energy displacing the previously known sources like coal and fire wood. The discovery of petroleum has brought tremendous growth to the economy of many countries. Each of this oil producing countries has taken adequate measures to increase its production in order to sustain revenue that accrues to the nation. Nigeria ranks prominently within the ten highest oil producing countries in the world.

**5.0 SUMMARY**

We have dealt with the uses of oil in the society and its effects. The importance of as a source of energy has been examined along with the countries that produce oil. The discovery has had positive effect on these countries.

**6.0 TUTOR MARKED ASSIGNMENT**

Petroleum is the world's most important source of energy. Do you agree with this statement?

**7.0 REFERENCES/ FURTHER READINGS.**

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**UNIT 4: DISCOVERY AND DEVELOPMENT OF PETROLEUM IN NIGERIA.****Contents**

1.0 Introduction

2.0 Objectives

3.0 Main content.

3.1 History of petroleum in Nigeria.

3.2 Discovery of petroleum in commercial quantity.

3.3 Development of Petroleum in Nigeria.

3.4 Development of natural gas in Nigeria.

4.0 Conclusion.

5.0 Summary

6.0 Tutor Marked Assignment

7.0 Reference/further readings

**1. INTRODUCTION**

Nigeria is the thirteenth largest producer of crude oil in the world. The country has a chequered history as far as petroleum resources is concerned. Since over a hundred years ago there has been concerned as to the search for oil. When oil was discovered it has been explored and employed for export and other uses by the nation. This has brought numerous developments to the nation as oil and gas is the main stay of the economy of the country. In the following sections of this unit we shall treat the history of crude oil discovery and production in Nigeria and other issues.

**2. OBJECTIVES.**

At the end of this unit, you should be able to:

- i. Understand the history of oil exploration in Nigeria.
- ii. Outline the growth of petroleum since its discovery in commercial quantity to its legal development in Nigeria.
- iii. Understand how oil has become the mainstay of the Nigerian economy.
- iv. To understand the issues involved in the production of oil in Nigeria.

**3. MAIN CONTENT.**

### **3.1 History of Petroleum in Nigeria.**

Historically, the Nigerian petroleum scene opened as far back as 1908, when a German company, the Nigerian Bitumen Corporation, was attracted to what is now known as the south-western Nigerian Tar Sand deposit. This company in that year commenced exploration for oil in Nigeria at a place near Okitipupa in the present Ondo State. This attempt however was not successful but was the pioneering effort at other future attempts at oil exploration in Nigeria. The search was not successful because oil was not found in commercial quantity. The activities of the German Bitumen Company ceased as a result of the First World War. Interest in the possibility of discovering oil in Nigeria was rejuvenated in 1937 with the establishment of the Shell D'Arcy Petroleum Development Company of Nigeria, an affiliate of the mineral oil companies of Shell Petroleum Company and British Petroleum Company. In November 1938 Shell-BP received an oil exploration licence (OEL) covering the whole of Nigeria i.e. 357,000 square miles from the British colonial government.

After a five year interruption caused by the Second World War, Shell-BP intensified its exploration activities during the 1946-1951 period. In 1951 Shell-BP drilled its first well but it came up dry. During the next four years the company concentrated efforts in the areas around the Niger Delta in the southern part of Nigeria without discovering well that could produce oil. With continuous effort in the search for oil in these areas for few more years, Shell-BP discovered oil in commercial quantity in Oloibiri, in the present day Bayelsa State in 1956.

Towards the end of 1956 another discovery was made at Afam. According to Prof. M.A. Ajomo, these finds were rapidly developed and by 1958 production had reached 5,100 barrels per day and the first shipment of Nigerian crude oil was made to Europe. Nigeria was, thus, ushered onto the international oil stage.

From Geological and geophysical investigations the most favourable oil yielding structures lay in the Niger Delta situate in the southern part of Nigeria. By 1957, Shell-BP had voluntarily reduced its acreage to 40,000 square miles of its oil prospecting licences. Of this acreage Shell-BP converted nearly 15,000 square miles to oil mining leases (OML) in 1960 and 1962 and returned the remainder of its holdings to the Nigerian government. Until 1962, due to lack of competitors Shell was able to select at its leisure 15,000 square miles of the 40,000 square miles it had held

since 1962. The area it chose included the sites that geological and geophysical surveys indicated were most promising for the formation of crude oil deposits.

### **SELF ASSESSMENT EXERCISE**

1. How was oil found in Nigeria?

#### **3.2 Discovery of petroleum in commercial quantity.**

As stated earlier in the topic at hand, commercially viable oil was discovered by Shell at Oloibiri in 1956. Initially, a 50 – 50 profit sharing system was implemented between the company and the government.

Shortly after the discovery of oil in commercial quantity the other companies that had joined Shell also succeeded in their operations. Their exploration activities yielded the wealth of Afam field offshore. On the 7th February, 1958, the first crude oil export from Nigeria was shipped to Europe. The quantity of oil being produced at this time was an average of approximately 6,000 bpd. By 1959 this quantity had doubled. By 1962 concessionary rights was reviewed and therefore extended to more new comers. In the view of A. Ogbuigwe this was in consonance with the policy of increasing the pace of exploration while at the same time ensuring that the country was not over dependent on one company.

#### **3.3 Development of Petroleum in Nigeria.**

Since the discovery of oil in commercial quantity, exploration and mining had continued up till the present day. This has been done in the Niger delta area of Nigeria which contains crude oil reserves in large and considerable quantities. From an initial output of 5,100 barrels per day in 1956, the nation steadily rose to the sixth position on the production chart of the Organisation of Petroleum Exporting Countries.

This is due to the level of progress in the policy of the government to enter and participate fully in the oil industry which urge started in the early seventies. This came first with the establishment of the Nigerian National Oil Company (NNOC) in 1971. In 1972 the government announced the assignment to NNOC of all areas in the country not covered by existing licences or leases, and

also any concession areas presently being held by other companies which might be surrendered from time to time.

By the mid-1970s Shell, the leading producer had exceeded the one million barrels a day production mark.

In July 1977, the Nigerian National Petroleum Corporation (NNPC) was created, as the result of a merger between NNOC and the Federal Ministry of Mines and Power. By this time production had improved constantly, reaching the maximum of 2.3 million barrels per day. All this was the period of the oil boom for Nigeria before the glut set in.

Petroleum dominates the Nigerian economy. Virtually 100 percent of export earnings and about four-fifths of government revenues are derived from petroleum. Fluctuations in world oil prices therefore have a dramatic effect on the Nigerian economy. Discovered in 1956, petroleum was produced at a rate of 818 million barrels in 2004 from more than 150 oil fields, mostly in the Niger Delta. About one-fifth of the oil fields are offshore. Although Nigeria's petroleum is expensive to produce, it commands a high price because of its low sulfur content. Half of all exports go to the United States, and most of the other half to Europe.

Indigenous participation in the oil industry in Nigeria has been encouraged at various levels by government in Nigeria. This involves incentives and allowances given to the companies that intend to undertake petroleum production. After over three decades during which the oil industry was dominated by foreign companies, a private indigenous oil company, Consolidated Oil, recorded its first discovery, Bella - 1, in 1991. Since 1992, following the release of new concessions in the Niger Delta to indigenous exploration and production companies, the number of indigenous companies has increased to 12. So far, out of some 870 oil fields discovered in Nigeria, only 120 fields are currently producing. Most of the fields are not producing because the country has to abide by OPEC's production quota of 1.8 million barrels per day to Nigeria. Violence in the oil-producing communities has also disrupted production, causing the shut-up of most land and swamp wells. Production is sustained by offshore fields.

Nigeria's proven oil reserves are estimated by the U.S Energy Information Administration (EIA) as between 16 and 22 billion barrels but some other sources claim they could be as much as 35.3 billion barrels. These reserves make Nigeria the tenth most petroleum-rich nation, and by far the most affluent in Africa. In mid 2001 its crude oil production was averaging around 2.2 million barrels (350, 000 cubic metre) per day.

Nearly all of the country's primary reserves are concentrated in and around the Niger delta, while off shore rigs are also prominent in the well-endowed coastal region.

You should take note of certain notable achievements and developments in Nigeria's petroleum exploration and production ventures. In order to raise the country's proven petroleum reserves from 23 billion barrels to the target 25 billion barrels set for in 1995, the Federal Government not only opened new acreages for exploration, but also offered a package of fiscal incentives to petroleum companies. Among the incentives is the reduction of petroleum tax to boost exploration in the deeper offshore. Potential reserves in billion barrels are estimated for the new blocks which hold good prospects for smaller fields with less than 50 million barrels. Generally, in the Niger Delta, about 73 per cent of crude oil discoveries are in fields having less than 50 million barrels of proven reserves. Petroleum prospects in the offshore Niger Delta are most attractive, with a potential 1.10 billion barrels of crude awaiting discovery in recently awarded Oil Prospecting Licences (OPLs). Oil Prospecting Licences in the deeper Offshore (200-150m water depth) have received highly competitive bids, which extensive regional seismic and geochemical surveys have shown to be quite attractive.

A new development in Nigeria's petroleum prospecting is the unitisation scheme. Under this arrangement, petroleum prospecting companies, in order to reduce cost, conduct joint exploration and development of undeveloped oil fields which straddle their common concession boundaries. Shell Petroleum Development Company (SPDC) of Nigeria and Chevron Nigeria have formed such an alliance. Apart from reducing operating cost, the intention is to maximise the exploitation of adjoining fields.

New exploration technology has also made substantial impact on Nigeria's petroleum potential. Note that other companies like Chevron, Mobil Producing, Texaco, Total, have all taken steps in deep waters exploration and have been involved in various projects in the Niger Delta of Nigeria. In spite of its enormous crude oil reserves and substantial production by world standard, in 1992, Nigeria spent about 216 million pounds sterling importing heavy crude from Venezuela, at the rate of 50,000 barrels per day. Heavy crude is needed in the Kaduna refinery where it is used as base oil for blending with products such as lubricants and greases. Harnessing Nigeria's heavy crude from some Niger Delta oilfields and especially from the Tar Sand deposit in Ondo State (with 31 billion barrels of heavy crude), Nigeria will avert this import expenditure.

### **SELF ASSESSMENT EXERCISE**

Give a detail background and discovery of oil in commercial quantity in Nigeria.

#### **3.4 Development of Natural Gas in Nigeria.**

Gas utilisation is a primary goal of Nigeria's petroleum and energy policies. This is because, with a proven reserve of 260 trillion cubic feet of natural gas, Nigeria's gas reserve is triple the nation's crude oil resources. In the past, associated gas encountered during the normal course of crude oil production has been largely flared. Gas flaring has been a major problem in petroleum production in Nigeria. This is because of the environmental pollution it causes to the area where this gas is flared and the effect on the people of the area.

Furthermore, there is a continuous loss of revenue that would have been generated by the conversion of the natural gas. Nigeria is reputed to be the largest gas-flaring country in the world. By not fully harnessing its gas resources, Nigeria loses an estimated 18.2 million U.S. dollars daily.

On its part, the Nigerian Ministry of Petroleum Resources, in addition to imposing penalties which were intended to end gas flaring by 1994, has offered incentives to potential investors who are interested in gas exploration. Since the 1980s, there has been increasing utilisation of gas in Nigeria, for power generation, industrial heating, fertiliser and petrochemical manufacturing and as feedstock for direct steel reduction. But the largest gas users will be the Liquefied Natural Gas

(LNG) Project and the Aluminium Smelting Industry. Nigeria's LNG project had been on the drawing board since the 1960s.

It was not until 1990 that the NNPC concluded financial arrangements for the project.

Established in 1992, the Nigerian Liquefied Natural Gas Company commenced execution of the project in 1993. The shipment of gas from the Bonny Plant to overseas buyers in Europe commenced in late 1999. The Nigerian Gas Company, the gas marketing subsidiary of the NNPC, has signed a 10 billion Naira gas sale agreement with Shell, involving the later marketing gas from its Utorogu gas plant. To augment Government's as commercialisation efforts. Chevron has embarked upon the Escravos Gas Utilisation project in which it will process about 160 billion standard cubic feet (MSCF) of gas daily from the company's Mefa and Okan fields. The project entails the installation of gas gathering and extraction facilities at the Escravos terminal. About 130 MSCF of dry residue gas will also be available daily from this project to the Nigerian Gas Company for commercial and domestic use.

Liquefied Petroleum Gas is currently produced from the four local refineries, the current total refinery capacity being about 200,000 tonnes yearly. Apart from the above projects aimed at ending the flaring of associated gas in the Niger Delta, the Federal Government has offered incentives to investors in natural gas development under the Associated Gas Framework Agreement. The establishment of the Oil and Gas Export Free Zone at Onne will also enhance operations in the industry.

### **SELF ASSESSMENT EXERCISE**

1. Highlight the efforts at expansion of natural gas production in Nigeria.

### **4.0 CONCLUSION**

Oil production in Nigeria started about fifty years ago many years after the search for it began. Since this time there has been consistent growth in the operation and the laws. Because all the companies operating in Nigeria at the initial stage were foreign, the establishment of the national oil company was meant to improve Nigeria's interest in oil exploration in the country. Also, the

utilization of natural gas changed the landscape of the industry in Nigeria with major steps being taken to through the liquefied natural gas project.

### **5.0 SUMMARY**

There is continued search for oil in Nigeria to meet up with production levels for export and internal use. In the foregoing sections of this unit we have dealt with the background, discovery, growth and contribution of oil to Nigeria. This unit has also examined the present trends in the oil and gas industry.

### **6.0 TUTOR MARKED ASSIGNMENT**

1. The discovery of oil in Nigeria has brought significant development in the country. Discuss.

### **7.0 REFERENCES/ FURTHER READINGS**

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## **UNIT 5 THE LEGAL REGIME FOR PETROLEUM IN NIGERIA.**

### Contents

1.0 Introduction

2.0 Objectives

3.0 Main content.

3.1 The early legislations on oil in Nigeria.



3.2 The Petroleum Act.

3.3 Current legal development.

4.0 Conclusion.

5.0 Summary.

6.0 Tutor Marked Assignment.

7.0 Reference/further readings.

## **1.0 INTRODUCTION**

The exploration of petroleum in Nigeria is regulated by law. These laws have been made for the proper administration of the operation of the oil mining process and the general practice in the oil industry. We are going to examine the legal regime from the colonial era and through the discovery of oil and to the enactment of the Petroleum Act in Nigeria. This will form the foundation for further examination of the laws relating to be treated in the subsequent modules of this course.

### **1.0 OBJECTIVES.**

At the end of this unit, you should be able:

- i. To have a comprehensive knowledge of the early statutes made on mineral oil in Nigeria and their implications on.
- ii. To understand the legal process that characterized oil exploration in Nigeria towards its discovery and exploitation.
- iii. To understand the fundamentals of the Petroleum Act as a major statute on the oil industry in Nigeria.
- iv. To have an understanding of the legal development in natural gas production in Nigeria.

## **3. MAIN CONTENT.**

### **3.1 The Early Legislations on Oil in Nigeria.**

The earliest attempt at legislation on mineral oil (petroleum) in Nigeria was the **Petroleum Ordinance of 1889**. This legislation had existed for over ten years before exploration took place. The 1889 ordinance was followed by **Mineral Regulation (Oil) Ordinance of 1907**. Both of

these legislations laid down the basic framework for the development of petroleum and other minerals in Nigeria. Etikerentse opined that another piece of legislation was issued by the British colonial government in Nigeria in 1909. This was the Order 19 of 1909 of southern Nigeria. It was stated under these three pieces of legislations that only British subjects or companies controlled by British subjects would be eligible to explore for mineral oil resources.

After the unsuccessful attempt of the German Bitumen Company at oil exploration which started in 1908, the company terminated its operations following the outbreak of the World War I. By 1914 the Mineral Oil Ordinance was passed. This ordinance was a major legislation relating to petroleum in Nigeria. The ordinance was enacted to regulate the “right to search for, win and work mineral oils” in Nigeria. The German Bitumen Company that had earlier been granted the rights to explore for mineral oil did not resume its work after the World War I.

Thus, the Mineral Oil Ordinance remained in force for the next four decades and was damaging to Nigerians’ interest because it deferred competition from other technologically advanced countries outside Britain in the petroleum exploration. **Section 6(1) of the Mineral Oil Ordinance** provided as follows:

“No lease or license shall be granted except to a British subject or to a British Company registered in Great Britain or British Colony and having its principal, place of business within her majesty’s dominion, the Managing Director (if any) and the majority of the other director of which are British subjects.”

The ordinance had thereby restricted the granting of the oil exploration licence or lease to only British subjects and companies, excluding other nationals and even the citizens of Nigeria. By 1938 the colonial government had granted the State sponsored Shell D’Arcy Company monopoly over exploration of all minerals petroleum throughout the entire colony. The company was a Royal Dutch and Shell (English) Consortium, which carried out exploration activities as from that time from its base first at Owerri. In the absence of competition Shell was able to leisurely explore and select choice areas until 1962 by which time it had retained 15,000 square miles of the original concession area.

In 1959 the sole concessionary rights were reviewed, and various rights were extended to other companies of various nationalities such as Mobil, Gulf (now Chevron), Agip, Safrap (Elf), Teneco and Amoseas (Texaco/Chevron). However due to its previous monopolistic position, Shell remains the largest producer of oil in Nigeria. About eighty per cent of all existing concessions are held by Shell and half of Nigeria's oil is produced within these arrangements.

A new section 10 was added to the 1914 Ordinance by the **Mineral Oils (Amendment) Act 1950** whereby the submarine areas of Nigeria's territorial waters were brought under the ambit of the 1914 Ordinance. By another amendment in 1959, the legislative competence of Nigeria's Federal legislature was pronounced over the submarine areas of other waters which the legislature may decide to legislate upon in future, in matters relating to mines and minerals. In 1959 the **Mineral Oils Act** was enacted and it consequently repealed the Mineral Oil Ordinance of 1914.

### **SELF ASSESSMENT EXERCISE**

1. Analyse the laws made during the colonial era on petroleum in Nigeria.
2. Take note of the discriminatory effect of the laws with regards to who was capable of applying for a license for oil exploration in Nigeria.

### **3.2 The Petroleum Act.**

It should be noted that Nigeria's petroleum legislation evolved gradually through what can be classified as the colonial, post-colonial, and post oil boom phases. Prominent among the colonial legislations were the **Mineral Oils Act No. 17 of 1914; the Mineral Oils Act No. 17 of 1925; the Mineral Oils Act (Amendment) Ordinance 1959; and the Petroleum Profits Tax Ordinance 1959**. Not only did these laws cede Nigeria's mineral rights to the British crown; they also reserved exploration and production rights to only British companies which for the mere payment of token rental due and royalties, acquired proprietary rights over all mineral deposits in the country.

Upon attaining independence in 1960, certain numbers of petroleum-related laws were enacted within the first decade of independence. The most significant of these laws was the **Petroleum**

**Act** promulgated as Decree No. 51 of 1969. (now Cap. P10 Laws of then Federation of Nigeria 2004).

The Act repealed the existing legislations relating to petroleum. The Petroleum Act and the Petroleum (Drilling and Production Regulations) and other regulations made there under laid down the foundation of the legal framework for the regulation of the oil industry in Nigeria.

It has been suggested by some experts that the Act is deficient in many ways, but this was the nation's first comprehensive petroleum legislation, which covered among other things the definition of petroleum, land surface rights and rents, and compensation and many other things.

The Petroleum Act inter alia provides for the vesting of petroleum in the state. This is done by stating 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.*” See Section 1 (1) of the Act. This provision applies to all land (including land covered by water) which is:

- a. Nigeria; or
- b. Is under the territorial waters of Nigeria,
- c. Forms part of the continental shelf; or
- d. Forms part of the Exclusive Economic Zone of Nigeria.” See **Section 1 (2)**.

The Act also provide the oil exploration license, oil prospecting license and the oil mining lease which are the three types of licenses and lease that could be obtained on oil operation in Nigeria. **See Section 2.** The Act further states the provisions for refining oil in Nigeria by stating that “no refinery shall be constructed or operated in Nigeria without license granted by the Minister”. **See Section 3(1).**

The licenses granted under the section shall be in the prescribed form and shall be subject to the prescribed terms and conditions or where no form is prescribed or no terms and conditions are prescribed such form or subject to such terms and conditions as may be decided or imposed by the Minister. (**Section 2**) There shall be charged in respect of every license granted under this

section such application fees and such other fees may be prescribed. **Section (3)**. The provisions of the section are additional to the provisions of the Hydrocarbon Oil Refineries Act (Cap. H5, LFN 2004).

The Act provides for the control of petroleum products in **Section 4**. By Subsection 4 (1) of the Act no person shall import store, sell or distribute any petroleum products in Nigeria without a license granted by the Minister. It treats the modes of storage, sale or distribution of petroleum products that cannot be done without the license granted by the Minister. But by **subsection 4(2)** the requirement for obtaining a license shall not apply in respect of:

- (a) The storage, sale or distribution of not more than 5 litres of Kerosene and such other categories of petroleum products as may be exempted from the application of subsection (1) of the section by the Minister by order published in the Federal Gazette.
- (b) Storage of petroleum products undertaken otherwise than in connection with the importation, sale or distribution of petroleum products. Any license granted by the Minister under the section shall be subject to the prescribed terms and conditions where no form is prescribed or no terms or conditions are prescribed, in such form and on such terms and conditions as may be decided or imposed by the Minister. **See Section 4(3), supra.**

There is a penalty for failure to comply with the provisions for the license and any person that does any act which requires license without obtaining appropriate one shall be guilty of an offence and shall be liable on conviction to imprisonment for two years or a fine of N2,000 or both and in addition, the petroleum products in respect of which the offence was committed shall be forfeited. **See subsection (6)**.

The Act similarly creates offences in connection with the distribution of petroleum products which include inter alia the relationship between oil marketing companies in the sale and distribution of petroleum products etc. **See section (5)**.

In **section 7** of the Act the right of pre-emption is provided for the Minister that in the event of a state of emergency or war the Minister shall have the right of pre-emption of all

petroleum and petroleum products obtained, marketed or otherwise dealt with under any license or lease granted under the Act. **See Petroleum Act (Amendment) Act 1998, (Decree No. 22 of 1998)**. A penalty and punishment is prescribed for failure to conform to or obey a direction issued by the Minister.

Furthermore the Minister may advise the President to declare a state of national emergency if the Minister is satisfied that as a result of the low level of availability of petroleum and its products: -

(a) There is an actual breakdown of public order and public safety in the federation or any part thereof; or

There is a clear and present danger of actual breakdown of public order or public safety in the federation or any part thereof. **See section 7(5)**.

The Act states that the Minister may make regulations prescribing anything to be done for the purpose of the Act. Consequently, seven different regulations have been made at various times and for a variety of purposes. Some of the regulations were made under laws that have been repealed but the regulations have been retained having been deemed to have been made under the Petroleum Act which succeeds the previous legislations. **See Paragraph 4 of the Forth Schedule, Petroleum Act** which deems the Regulations to have been made under **section 9** of the Petroleum Act.

The seven regulations existing under the Act up till date are:

1. Mineral Oils (Safety) Regulations.
2. Petroleum Regulations.
3. Petroleum (Drilling and Production) Regulations.
4. Petroleum Refinery Regulations.
5. Crude Oil (Transportation and Shipment) Regulations.
6. Deep water Block Allocations to Companies (Back in Rights) Regulations.
7. Oil Prospecting Licenses (Conversion to Oil Mining Leases etc) Regulations.

The Petroleum Act has four schedules, each of the schedules contain provisions relating to oil exploration and Prospecting Licenses and the Oil Mining Leases; the prerequisite for the grant of each of the these licenses or lease; the conditions for assignment of same; termination and the revocation. It also contains provisions for the fees, rents and royalty payable. The second schedule deals with the rights of preemption of the Minister; the third schedule is on the repeals made to certain previous statutes on mineral oil etc. The Fourth Schedule relates to transitional and savings provisions.

The Act essentially reduced the duration of an oil mining lease from the previous 30-40 years to 20 years. However, the Act was still seen by many as a bonanza to foreign operators. But after entering into membership of OPEC in 1971 and having established its own national petroleum corporation (the Nigerian National Oil Corporation) in 1972, Nigeria began to establish joint venture participation, production sharing and risk service interests with the oil companies. Between 1973 and 1974, the NNOC, which was later changed to the NNPC in 1977, negotiated participation in all the major companies, thus acquiring large percentages in the operations of these companies.

The crash of oil prices in the world market in 1986, to below 10 dollars per barrel, rendered further exploration totally unprofitable to the foreign operators. The need, therefore, arose to offer them a new package of generous fiscal incentives to maintain the momentum in this strategic sector of the economy. This package is the Memorandum of Understanding which guarantees to the oil companies a notional margin of 2.3 to 2.50 U.S dollars per barrel and a royalty of 2 U.S. dollars per barrel. Oil companies operating under the various agreements include Shell, Exxon Mobil, Chevron, Elf, Nigeria Agip, Texaco Overseas, Express Petroleum/Conoco, Addax, Atlas, Amni International, Consolidated Oil, Pan-Ocean, Nigeria Petroleum Development Company, and Dubri Oil.

Currently, the Nigerian oil and gas industry is primarily regulated by the Petroleum Act and the Petroleum Profits Tax Act, Cap P13 LFN 2004 (“PPTA”). In addition there are other laws that are directly relevant to the oil industry in Nigeria. These include the Petroleum Equalisation Fund

(Management Board ETC.) Cap P11, the Petroleum Production and Distribution (Anti-Sabotage) Act., Cap P12, Petroleum (Special) Trust Fund Act, Cap P14, Petroleum Technology Development Fund Act, Cap P15, Petroleum Training Institute Act, Cap P16, Other laws that have direct bearing on the petroleum industry include the Oil Pipelines Act 1956, Associated Gas Reinjection Act, Oil Terminal Dues Act, NNPC Act and the Oil in Navigable Waters Act. All these laws regulate various aspects of the oil industry in Nigeria and have changed characters in many ways since they were first enacted. Later, certain other laws have been made such as the Nigerian Liquefied Natural Gas Act, the Niger Delta Development Commission Act and lately the Nigerian Local Content Act for the oil industry.

### **SELF ASSESSMENT EXERCISE**

1. Give an overview of the Petroleum Act.

### **3.3 Current Legal Developments.**

While the Petroleum Act at present has seven (7) regulations. This statute and the Petroleum Profit Tax Act have been amended severally over the past forty (40) years, nonetheless, both legislation remain substantially in the original forms in which they were enacted. The circumstances are therefore such that the primary laws regulating the industry, the Petroleum Act, Cap P10 LFN 2004 (and its Regulations), the Petroleum Profits Tax Act Cap P13 LFN 2004 and the NNPC Act Cap N123 LFN 2004 are 40, 50 and 32 years old respectively.

Over this period there has been substantial growth in the oil industry in Nigeria that these statutes and other made after them have not met with the challenges of operation and what obtains in practice. One of such issues is the natural gas project. The Nigerian Liquefied Natural Gas Act was enacted and it has been the major law on this field. It is important to note, however that there new developments which the existing statute have not envisaged.

Thus, a draft law the **Petroleum Industry Bill (PIB)** is currently under consideration by the Nigerian National Assembly which seeks to merge and/or repeal almost all the existing legislation in the petroleum industry. The Bill when finally passed will contain all these existing



Acts and regulations in a document with significant amendments and repeals of some provisions. It will also contain additional provisions that are deemed necessary in the industry today. The PIB is an outcome of the Oil and Gas Reforms Implementation Committee (OGIC) of the Federal Government of Nigeria. The PIB is also the mechanism for achieving the broader objectives stated in the OGIC report of July 2008 which include:

- Maximization of the nation's economic rent from the Oil and Gas Sector while not jeopardizing the growth and development of the industry.
- Separation and clarity of roles between the different public agencies operating in the industry.
- Infusion of strict commercial orientation in all relevant aspects of the industry
- Fostering an enabling business environment with minimal political interference
- Reposition the nation's Oil and Gas industry in view of contemporary challenges within the sector both globally and in the domestic sphere
- Meeting the nation's needs for fuels at a competitive price.
- Maximization of local content and development of Nigerian capacity.

These objectives have been incorporated into the Bill which is a large volume of document.

### **SELF ASSESSMENT EXERCISE**

1. In a concise manner state the legal developments on oil and gas in Nigeria.

### **4.0 CONCLUSION**

A number of statutes have been made to regulate the petroleum exploration in Nigeria from the colonial period. It is seen however that the laws at the time were discriminatory against the indigenous peoples of Nigeria in whose places these oil were found. These provisions similarly made discovery of oil exclusive reserve of the British companies and therefore delayed discovery of oil in commercial quantity in the country as only the companies of British origin were licensed to conduct exploration activities in the country. Since the enactment of the Petroleum Act there have been fundamental changes by the vesting of the ownership of petroleum found in Nigeria in the State.

There are some deficiencies in some issues that affect the industry which has called for a reform in statutory regulations. The result is the introduction of the Petroleum Industry Bill still under consideration in the National Assembly.

### **5.0 SUMMARY.**

A consideration of the legal developments in petroleum and natural gas issues in Nigeria has been done in this unit while an analysis of the basic provisions of the Petroleum Act has also been made. It is hoped that when it is eventually passed the Petroleum Industry Bill will reduce contradictions and unwieldiness that currently attends the petroleum legislations.

### **6.0 TUTOR MARKED ASSIGNMENT**

1. Examine in detail the legal developments in the oil and gas industry in Nigeria.

### **7.0 REFERENCES/ FURTHER READINGS**

1. Omorogbe, Y. The Legal Framework for oil Production in Nigeria. In *Journal of Economic and Resources Law*, 1987.
2. Etikerentse, G, 1985, *Nigerian Petroleum Law*, Lagos: Macmillan.

**MODULE 2:**

- Unit 1: Theories of Ownership and control of oil and gas.
- Unit 2: Ownership and control of petroleum in Nigeria.
- Unit 3: Ownership and control of petroleum in other countries.

**UNIT 1: THEORIES OF OWNERSHIP AND CONTROL OF OIL AND GAS.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Ownership and control defined.
  - 3.2 Absolute Ownership Theory.
  - 3.3 Qualified Interest Theory.
  - 3.4 Non Ownership Theory.
  - 3.5 Ownership under the United States Law.
  - 3.6 The Domanial system.
- 4.0 Conclusion.
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings.

**1.0 INTRODUCTION.**

Ownership of oil and gas is a paramount topic in any discussion of petroleum. It is important because it defines the extent of interest and rights that any person, individual or body has in crude oil. It has generated a lot of discussion and arguments amongst the people, scholars and government, the international oil companies and the generality of the people. This is so because oil is a source of wealth that has been held in esteem by many people and bodies involved in oil production, commerce, and energy supply. The issue of who owns and controls oil resources has caused major disagreements in some instances while certain theories have evolved in the process of determining who owns and control oil resources.

**2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Have a clear understanding of the concept of ownership and control of oil and gas.
- ii. Have the knowledge of the theories of ownership of oil and gas and how they have evolved.
- iii. Explain your own position on the theories from your understanding of the topic.

**3.0 MAIN CONTENT.****3.1 Ownership and Control, Defined.**

Due to its nature and importance, crude oil is not subject to ordinary ownership just as many commodity or substances which humans encounter daily are. Rather certain qualities have developed over the years on the issue of ownership of crude oil and natural gas. Ownership can be defined as the “fact of owning something”. To own means something belongs to somebody. Thus if a person is the owner of a thing, that thing belongs to him and he has all the right to use, enjoy and deal with the thing in any manner he wishes including the right to sell, hire, dispose of the thing. It is in this sense that ownership right is exercised on a property. This is however subject to the fact that the owner of a thing should not use it to disturb or interfere with the use of another persons’ property. Here the rights and duties of each individual are determined by existing norms and rules which form the basis of laws.

The Black’s Law Dictionary, 8<sup>th</sup> edition defines ownership as: “The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others”.

Ownership has been described thus: an owner of a thing may grant to another person many or all his rights for a stipulated time period and still remain as owner. Therefore ownership has been regarded as a magnetic coil which remains when all present rights of ownership are removed from it, and which attracts to itself the various elements temporarily held by others as they lapse.

Control is the direct or indirect power to direct the management and policies of a person or entity whether through ownership of voting securities, by contract, or otherwise. See the Black's Law Dictionary.

To control as a concept means to have the power to direct something. From this perspective ownership and control are connected. The law has been fashioned in different ways to regulate how this issue is handled. Ownership and control of petroleum would be discussed together in this unit.

Ownership matters have been of great significance in the oil industry around the world especially during the 1960s and 1970s. The issue of who owns oil among the major players in the oil business has continued to generate interest even today. The major players are the government, the people and the operators in the oil industry. These three bodies all have major stakes which interplay in the struggle for ownership of oil.

Certain theories have been developed and have evolved in the industry on the issue of ownership of petroleum. These theories are not sacred but are primarily guiding principles that have shaped the petroleum industry as far as the issue of ownership is concerned. These are considered in the subsequent units of this module.

### **SELF ASSESSMENT EXERCISE**

1. Define ownership and control of oil and gas.

### **3.2 Absolute Ownership Theory**

This theory states that the owner of a piece of land is regarded also as the owner of the petroleum lying underneath the land. Land in this regard includes everything down to the crux and up to the sky. This fee simple or absolute ownership is however capable of being defeated.

It is argued by Atsegbua that since oil and gas are fugacious substances and therefore wonder from one place to another beneath the surface of the earth, the fee simple or absolute ownership is defeatable. By way of illustration, if "A" owns petroleum underneath his land, we may rightly conclude that he owns the petroleum, but if the petroleum wonders from underneath "A"'s land to

“B”s land, then A no longer has any claim to the petroleum. Only B now has ownership. This theory is now well recognized in the State of Texas in the United States of America. It states that Petroleum (oil and gas) is capable of being owned in fee simple.

For instance oil resources could be owned exclusively by the State or in some cases by individuals or private enterprises. It could also be owned jointly by the State and the private sector. In Nigeria, it seems the absolute ownership by the States is the order of the day. This is clear from the provisions of section 1 of the **Petroleum Act**, which provides that the entire property in Petroleum shall vest in the State. Thus mineral oil is absolutely owned but by the State.

Comparative studies has now shown that petroleum is capable of been owned. In some province in Canada, private ownership of oil and gas in situ still exists. This is however, an exception rather than the rule. Some other provinces have vested oil and gas in the crown. For example, in the province of Alberta, private ownership of oil and gas in situ constitutes 10% of the mineral rights holdings, while in New Brunswick, all oil and gas are vested in the crown, just like in Nigeria.

### **SELF ASSESSMENT EXERCISE**

1. Explain briefly the absolute ownership theory.

### **3.3 Qualified Interest Theory.**

This theory states that petroleum cannot be owned until it is captured and reduced into possession. It follows therefore that ‘A’'s ownership of petroleum underneath his land is qualified. ‘A’ can also claim ownership of the oil and gas if he reduces them into possession. In the view of Atsegbua, this theory is derived from the concept of *ferae naturae* (i.e. wild animals). An analogy is often drawn between wild animals and petroleum. Since in law, wild animals are not capable of being owned until they are captured and reduced into possession, it is also argued that petroleum being similar to wild animals, cannot be owned until they are captured and reduced into

possession. This analogy is false and has been discredited in North America where it was first propounded as there is no similarity between wild animals and petroleum.

To **Omorogbe** this theory obtains in states such as California and Indiana in the United States of America. Under this theory the land owner is said not to have title to the oil and gas in situ because of the fact that he can be divested by drainage without consent and without any liability on the part of the person causing the drainage. However, he does have a property interest which is more than a right of capture. All the landowners over a common reservoir are designated as collective owners, equal rights to take oil from the reservoir. The respective landowners do not have title to the specific oil and gas underneath their respective land.

The effects of the two theories are similar in practical terms. In both the absolute and the qualified theories the land owner is not in fact entitled to oil and gas beneath his land. What he has are the rights to sink as many wells as he desires subject to good operating practices, and to extract as much oil and gas as he can produce.

### **3.4 The Non- Ownership Theory.**

This theory states that petroleum is not capable of ownership since it is fugacious. In essence, since petroleum is like a fluid that can move from one place to another it cannot be owned in the strict sense of the word. There is not much support for this theory as modern practice show that petroleum though may move form one place to the other is still subject to ownership by the person or authority that captures it at any particular point in time.

## **SELF ASSESSMENT EXERCISE**

1. What are the major features of the three ownership theories above? Compare and contrast these theories.

### **3.5 Ownership Under United States Law.**

The oil industry originated in the United States of America. America has ever been the home of free enterprise. It is therefore not surprising that unlike other parts of the world, there has been private ownership of mineral resources, including petroleum right from the inception of the industry.

Ownership in the United States of America is conceptually different in another major respect. In certain jurisdictions ownership of oil *in situ* is not recognized and ownership is said to occur only when the oil has been produced and reduced to possession. This was the position in the early days of oil industry when there was little knowledge about the movement of petroleum underground. It was only clear that it was capable of moving from under one piece of land to another. In the case of *Barnard V Monongahela Natural Gas Co.* 216, pa.362, 65A. 801 (1906) The court refused to enjoin drilling by an adjacent land owner alleged to be draining oil from a reservoir under the plaintiffs land, holding that the plaintiff remedy was “self help in drilling his own well”.

### 3.5 The Domanial System

The domanial law system provides for the vesting of ownership rights in the sovereign. This is the most prevalent system of ownership of minerals. Practically every country, with the major exception of the United States, retains sovereign rights over all mineral deposits. In many of these countries this right is enshrined in their various legislations and constitutions.

In Nigeria by **Section 44(3) of the 1999 Constitution** 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 zone of Nigeria shall rest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The same provision is in the **Petroleum Act** to the effect that

the entire ownership and control of all petroleum in, under or upon any lands including and covered by water) which is: (a) is in Nigeria or (b) is under the territorial waters of Nigeria, (c) forms part of the continental shelf; or (d) forms part of the Exclusive Economic Zone of Nigeria.

A similar provision is made in the **Exclusive Economic Zone Act** that:

.... Sovereignty and exclusive rights with respect to the of exploration and exploitation of the natural resources of the seabed, subsoil and superjacent



waters of the Exclusive economic Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercised by the Federal Government.....

These provisions mark the domanial theory by which the ownership of mineral oil is vested in the State. In the case of Nigeria it is the Federal Government which is the symbol of the State. In this, no individual or groups of persons or community can lay claim to ownership of any mineral resources including petroleum whether it is found on their land or not.

### **SELF ASSESSMENT EXERCISE**

In a concise manner state the legal developments of oil and gas in Nigeria.

### **4.0 CONCLUSION**

The fact that petroleum is capable of being owned is a truism. It is only the form in which it can be owned that has generated a variety of opinions from experts. Each of the theories is subject to peculiar circumstances of the country and the governments who are responsible for the management of the natural resources of that particular country. From a general view oil is capable of absolute ownership while on the other hand it may be said that it is not capable of absolute ownership because of its unstable character.

### **5.0 SUMMARY.**

The theories of ownership that we have examined in this unit have all been put to practice in one form or the other as it is suitable to different nations. While some are peculiar to some countries like the United States of America having originated from some states in that country, others are more universal in nature and can be found in many parts of the world like Nigeria. An example of this is the domanial system. It should be noted however that these theories are not immutable.

### **6.0 TUTOR MARKED ASSIGNMENT**

1. Discuss in detail any two theories of ownership of petroleum.

### **7.0 REFERENCES/ FURTHER READINGS**

1. Omorogbe, Y. The Legal Framework for oil Production in Nigeria. Journal of Economic and Resources Law, 1987.
2. G. Etikerentse, Nigerian Petroleum Law, Lagos: Macmillan, 1985.

## **UNIT 2: OWNERSHIP AND CONTROL OF PETROLEUM IN NIGERIA.**

### **Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 The Constitution.
  - 3.2 Under the Petroleum Act.

3.3 Under the Exclusive Economic Zone.

4.0 Conclusion.

5.0 Summary.

6.0 Tutor Marked Assignment.

7.0 Reference/further readings

## **1.0 INTRODUCTION.**

A cursory view of the statutes in Nigeria will show that it has demonstrated tendency towards the application of one or more of the theories of ownership of petroleum in its laws. These tendencies can be seen under certain major statutes. These are the Constitution, Petroleum Act, Exclusive Economic Zone Act and the Land Use Act. Each of them would be treated to bring out their provisions as related to ownership and control of oil and gas in Nigeria.

## **2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Have an understanding of the provision of the constitution on ownership of property as it relates to mineral oil.
- ii. Understand what vesting ownership of petroleum in the State means in view of the provisions of the Petroleum Act and the Exclusive Economic Zone Act.
- iii. Relate your previous knowledge of theories of ownership of oil and gas to what obtains in Nigeria and draw your own conclusion.

## **3.0 MAIN CONTENT.**

### **3.1 The Constitution**

The Constitution is the supreme law of any country. It is the fundamental basis upon which all other laws are based. It makes provision for the general structure of government and the administration of the machinery of state. It also provides for individual rights and duties, the powers of government authorities and agencies. The right to own property in Nigeria is a

fundamental right provided for in **Section 43** of the Constitution of the Federal Republic of Nigeria, 1999 (the Constitution) to the effect that

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

This is the general provision establishing the right to own immovable property in Nigeria by every citizen. Immoveable property normally includes land and building. By this provision the right to hold a land and use it for several purposes. The constitution continues in **Section 44 (1)** by taking measures to protect this right when it states that:

No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things-

- (a) requires the prompt payment of compensation therefore; and
- (b) gives to any person claiming such compensation a right of

access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

While the constitution gives these protections for the rights created for an individual to own both moveable and immovable property it nevertheless gives certain restriction to the enjoyment of this right. This occurs in any situation where any law imposes tax, duties or penalties on the property. Such restriction will also apply where there is any imposition of penalty or forfeiture for the breach of any law. See generally **subsection (2) of Section 44**.

**Section 44(3) of the 1999 Constitution** however states that 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 zone of Nigeria shall rest

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

This provision clearly vests the complete ownership and control of all minerals, mineral oil and natural gas in, under or upon any land in Nigeria in the Government of the Federation. It also covers mineral oil found in the territorial waters and the Exclusive Economic Zone of Nigeria. The constitution thus excludes the right of any person to own any of these minerals while it has been made the property of the State. This imposition is a major one as it is contained in the basic law of the land.

The constitution entrenches this provision of vesting ownership in the State to reinforce similar provisions in other statutes like the Petroleum Act, EEZ Act and the Land Use Act. As it were this provision will be very difficult to change or even discarded as such action will have to go through a rigorous amendment exercise of the Constitution.

### **SELF ASSESSMENT EXERCISE**

1. Explain the concept of ownership of mineral oil in the Constitution of Nigeria.

#### **3.2 Under the Petroleum Act.**

The Petroleum Act as we have noted in the course of this study is the major legislation on oil and gas in Nigeria. It states in Section 1(1) as follows: “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.” See **Section 1 (1) of the Act**. This provision applies to all land (including land covered by water) which is:

- a. Nigeria; or
- b. Is under the territorial waters of Nigeria,
- c. Forms part of the continental shelf; or
- d. Forms part of the Exclusive Economic Zone of Nigeria.” See **Section 1 (2)**.

By vesting the ownership in petroleum and natural gas in the State, the Act has made the Federal Government the only authority that has right of ownership in these resources. Before the

enactment of Petroleum Act there were statutes that laid the foundation for the State ownership of crude oil. These were the colonial enactments that were made to regulate mineral oil or petroleum exploration.

The **Mineral Oils Ordinance of 1914** was enacted to regulate the right to search for, win and work mineral oils in. By another amendment in 1959, the legislative competence of Nigeria's Federal legislature was pronounced over the submarine areas of other waters which the legislature may decide to legislate upon in future, in matters relating to mines and minerals. **Section 3 (1) of the Minerals Act 1946**, stipulated that: "The entire property in and control of all mineral oils, on, under or upon any lands in Nigeria, and all rivers, streams and watercourses throughout Nigeria, is and shall be vested in the crown."

The crown is the State which is represented by the Government of the Federation in Nigeria now. These provisions were thus inherited and reenacted into the Petroleum Act. It gave the colonial British Government the sole authority to determine who carries out mining of mineral resources in the country. This was a good way of increasing the revenue source of the colonial government as the crown was fully in control of who to grant the licence to search for petroleum. This is evident in **Section 6(1) of the Mineral Oil Ordinance** which provided as follows:

No lease or license shall be granted except to a British subject or to a British Company registered in Great Britain or British Colony and having its principal, place of business within her majesty's dominion, the Managing Director (if any) and the majority of the other director of which are British subjects.

The ordinance had thereby restricted the granting of the oil exploration licence or lease to only British subjects and companies, excluding other nationals and even the citizens of Nigeria.

The Petroleum Act repealed all existing law on mineral oil when it was promulgated and it had consequently vested the ownership of petroleum found in any land in Nigeria in the State thereby giving the Federal Government the strength to control all mining and exploration operation for oil in the country.

**SELF ASSESSMENT EXERCISE**

1. Evaluate how ownership of oil has been granted under the Petroleum Act.

**3.3 Under the Exclusive Economic Zone.**

In order to extend the area in which natural resources could be sought for the country, the Exclusive Economic Zone Act was enacted in 1978. The Act is now Cap E17 LFN 2004. The Act among other things states that the exclusive economic zone of Nigeria shall

be an area extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured. **See Section 1 (1) of the EEZ Act.**

In essence the area in which Nigeria can access mineral oil has been extended. The Act then makes the Federal Government the only authority that could explore petroleum and natural gas in the Exclusive Economic Zone of Nigeria by the following word in **Section 2 (1) of the Act:**

.... Sovereignty and exclusive rights with respect to the exploration and exploitation of the natural resources of the seabed, subsoil and superjacent waters of the Exclusive economic Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercised by the Federal Government.....

This has certainly consolidated the powers of the Federal Government in respect of ownership and control of mineral oil resources. The Act delimits the Exclusive Economic Zone of Nigeria. Within this zone, and subject to universally recognised rights of other States, Nigeria would exercise certain sovereign rights especially in relation to the conservation or exploration of natural resources of the sea bed, its subsoil and superjacent waters.

The control by the Federal Government only of the zone is further demonstrated by the power to establish operational structures on the area for the purpose of exploring and exploiting, conserving and managing the natural resources and other activities for the economic exploitation of the zone. The Federal Government may also permit anybody to erect any structure in the place for the same purpose. **See Section 3 (1) and (2) of the EEZ Act.** Any violation of the provisions

of the Act as to exploitation of natural resources in the zone is an offence which attracts punishment in form of fine or imprisonment. **See Section 3 (3).**

### **SELF ASSESSMENT EXERCISE**

1. What is the exclusive economic zone?

### **4.0 CONCLUSION**

The vesting of ownership of petroleum and natural gas in the State as demonstrated under certain Nigerian statutes have a far reaching effect on the rights of the citizens. It is an exercise of domanical right over the resources in the State. The Government assumes full and total control to the exclusion of any other person. While this may be a desirous position when viewed from the point that mineral resources explored would be jointly used for the over all benefit of the entire country, it is to be noted that the communities and clans that have direct linkage to the land in which these resources are found are more often neglected in the sharing of the income from these resources.

### **5.0 SUMMARY.**

In this unit we have discussed the form of ownership that is practised in Nigeria. This we have done by going through three main statutes: the Constitution, the Petroleum Act and the Exclusive Economic Zone Act. Other earlier statutes which form the basis for the present situation were also considered. All these have shown the extent of the powers of the Federal Government in the ownership and control of petroleum and natural gas.

### **6.0 TUTOR MARKED ASSIGNMENT**

With statutory references discuss the evolution of the concept of state ownership of petroleum in Nigeria.

### **7.0 REFERENCES/ FURTHER READINGS.**

1. G. Etikerentse, 1985. Nigerian Petroleum Law (London: Macmillan).
2. L.H. Schatzl, (1969) Petroleum in Nigeria Ibadan: Oxford University Press.



**UNIT 3: OWNERSHIP AND CONTROL OF PETROLEUM IN OTHER COUNTRIES.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 United States of America.
  - 3.2 Mexico.
  - 3.3 Canada.
  - 3.4 Britain.
  - 3.5 Developing countries.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment.
- 7.0 Reference/further readings

**1.0 INTRODUCTION.**

The various countries have different means of regulating ownership and control of oil. Each country has its peculiarities depending on its background and experiences as it relates to oil. We shall consider the way petroleum has been explored in some major oil producing countries and how it has been regulated.

**2.0 OBJECTIVES.**

At the end of this unit, you should be able to:

- i. Identify the various theories of petroleum that are practiced in certain oil producing countries.
- ii. Know the background to oil exploration in and control of same in the selected countries.
- iii. Understand in detail the idea behind the concept of petroleum ownership in these countries.

### 3.0 MAIN CONTENT.

#### 3.1 United States of America.

In the United States oil is found in many parts of the country. In these places where it is found there has been freedom of exploitation. This so because of the rule that applies in some of the States that the owner of the land in which petroleum is found may lay claim to it to some extent. There has been private ownership of petroleum in the country since the inception of the industry. Ownership in the United States of America is conceptually different in another major respect. In certain jurisdictions ownership of oil *in situ* is not recognized and ownership is said to occur only when the oil has been produced and reduced to possession. In the case of **Barnard V Monongahela Natural Gas Co. 216, pa.362, 65A. 801 (1906)** The court refused to enjoin drilling by an adjacent land owner alleged to be draining oil from a reservoir under the plaintiffs land, holding that the plaintiff's remedy was ""self help in drilling his own well".

Individual coastal states have some level of authority on the mineral oil that is found in such a State. Therefore the Federal Government does not hold absolute ownership as is the situation in some countries but holds the right jointly with the State government.

In the case of **United States Vs. Louisiana** decided in May 1960 the Supreme Court of the United States held that coastal states can have joint ownership of oil with the Federal Government.

The right of private ownership of mineral resources in the United States of America has also been canvassed by Jan G. Laitos, a Professor of Law in the University of Denver College of Law. In his words:

*The private property interest is what is owned by the would-be developer and user of the resource. In the United States, mineral, energy, and water resources may be privately owned*

#### SELF ASSESSMENT EXERCISE

Give an account of the ownership theory practiced in the United States of America..

### **3.2 Mexico.**

Prospecting for petroleum is a vital industry in Mexico. It has surpassed mining of silver and copper which are historically the most important industry in Mexico.

Until the 1930s many of Mexico's natural resources were primarily controlled and operated by foreigners. After the Mexican Revolution, the nation began to nationalize many of its basic resources and industries. The nationalization of the petroleum industry in 1938, which had been owned primarily by U.S. firms, signaled the new lengths Mexico was willing to go to assert its sovereignty and regain control of its resources. Petroleum in Mexico is extracted, processed, and sold by Petróleos Mexicanos (Pemex), a government-owned company. Although most mining firms that the Mexican government once owned have been privatized, or sold to private investors, the petroleum industry remains largely in government hands.

#### **SELF ASSESSMENT EXERCISE**

Briefly explain the ownership of oil in Mexico.

### **3.3 Canada**

In Canada oil production drives the economy alongside other factors. The country's vast areas of land have oil produced from several parts. Alberta is one of the major province that produces oil. Throughout the 1990s and early 2000s, growth in the oil and gas industries helped fuel a prolonged economic boom in Alberta.

Individual federating state ownership of oil is practiced in Canada. This has left each of the provinces that make up the country to develop its own exploration plans that are pursued locally and set to drive the national economy.

#### **SELF ASSESSMENT EXERCISE**

Take note that individual federating states or provinces hold ownership in interest in oil and gas in Canada.

### 3.4 Great Britain

In Great Britain, an attempt to vest ownership of petroleum in situ in the crown by a bill of 1917 was foiled by protests. The question of ownership of land, which supports the mineral, was not in dispute at all. Land belongs to the crown. Because of these protests, all that the Petroleum (Production) Act of the following year (1918) could do was to focus on competitive drilling problems by forbidding any searching or drilling for oil otherwise than by persons acting on behalf of the government.

It was the national government of the early thirties which settled the problem of ownership when the **Petroleum (Production) Act of 1934** vested in the crown the property in all petroleum in situ in Great Britain, together with the exclusive right of searching and drilling for it. The law has remained so since then.

### SELF ASSESSMENT EXERCISE

State the system practiced in Britain and the relevant law.

### 3.5 Developing Countries.

Among the developing countries, from the South America to Africa and Asia, there are various laws and policies in regards to ownership and control of petroleum and natural gas. In Venezuela, petroleum, dominates the economy. The **Venezuelan Mining Law of December 29, 1944**, as amended, declares all mines, seams, beds or mineral deposits to be public utility and under that country's constitution they are only to be exploited under a concession granted by national executive power. Thus, any international oil company or a private company that seeks to carry out any mining operation in that country must first enter into agreement with the government of the country which holds all executive authority on the mineral resources in the country.

The **Libyan Petroleum Law** is more categorical. It declares all petroleum in its natural state in strata to be the property of the state and no person may explore, mine or produce petroleum without a permit or concession.

The **Zambian Mines and Minerals Acts No. 32 of 1976** vests the property in all minerals in the state for the common benefit of the people notwithstanding any right of ownership or otherwise which any person may possess in and to the oil or land under which minerals are found or situated.

Similarly the **Mines and Mineral Act of Botswana** vests the ownership in all minerals including petroleum in the state for the common benefit of the people in spite of any right of ownership or otherwise which any person may possess in and to the oil or land under which minerals are found or situated.

In **Indonesia**, the government enacted two major laws in 1999 – namely **the Law of Regional Autonomy** and the **Law on Inter-Governmental Fiscal Relations**. The first law grants extensive authority to 26 provinces in all matters including small-scale mining except defense, foreign, judicial, monetary and religious affairs. The second law, to be enforced by the Ministry of Finance, provides a specific share of revenues from oil, gas and mining development to mineral resource-rich provinces.

In **Saudi Arabia**, the oil industry is the most important sector of the Saudi economy. Saudi Arabia's proven petroleum reserves amount to one-fourth of the world total. The major oil fields are in the eastern part of the country and offshore in the Persian Gulf. Because the country has relatively small internal demand for oil, it exports most of its production. It is the largest exporter of petroleum in the world—in 2002 Saudi Arabia exported about 6 million barrels per day—and has the power to influence world oil prices.

State ownership of oil is recognized in this country with the royal government holding the mineral oil in trust for the entire citizens of the country. The state-owned oil company engages in joint ventures with foreign partners for the production of petroleum.

### **SELF ASSESSMENT EXERCISE**

Carefully mention the laws of the countries that deal with ownership of oil.

#### **4.0 CONCLUSION**

The point must be made that there is no country specifically that is practicing one theory or another as it is not so stated in their laws on petroleum, but a thorough analysis of the provisions of these several laws will indicate the type of theory that is dominant in a particular legislation. Furthermore, the law of a country on the subject may contain a combination of application of theories of ownership of mineral oil resources. One thing that is common to all is that ownership is vested in the state in order to harness the resources for the benefit of the entire country.

#### **5.0 SUMMARY.**

We have considered the ownership theory in the United States of America which permits individual state ownership and even private ownership in few States. The situation is similar in Canada and Mexico where State ownership is practiced except that private ownership is not granted. In the developing countries mentioned absolute State ownership of oil is the system. This has been shown in the laws of these countries that have been treated in this unit.

#### **6.0 TUTOR MARKED ASSIGNMENT**

Make a comparative view of the ownership concept among the developing countries and others with specific reference to the laws of these countries.

#### **7.0 REFERENCES/ FURTHER READINGS**

1. African Network for Environment and Economic Justice [ANEEJ] 2004. Oil of Poverty in Niger Delta, publication.

#### **MODULE 3:**

- Unit 1: Types of interests in petroleum exploration.
- Unit 2: Production Contracts.
- Unit 3: Participation Agreements in Nigeria.
- Unit 4: Oil Exploration Licence and Mining Lease.

## **UNIT 1: TYPES OF INTERESTS IN PETROLEUM EXPLORATION.**

### **Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Concession.
  - 3.2 Traditional concession.
  - 3.3 Modern concession.
  - 3.4 Effect of concessionary rights on natural gas.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings.

### **1.0 INTRODUCTION.**

In oil and gas exploration there are certain interests that can be created. These interests are based on the parties' interests and background. Concession is one of the main interests that can be created. It is perhaps the longest existing form of interest in oil and gas. Many of the developing countries that are oil producing would easily give major concessions to the oil companies due to a number of factors. Concession would be considered in this unit in its traditional and modern form as it pertains to oil and natural gas.

### **2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Understand the meaning of concession.
- ii. Know the types of concession that can be found.
- iii. Identify the similarities and differences that are present in the traditional and modern concessions.
- iv. Understand the effect of concessionary agreements on natural gas.

### **3.0 MAIN CONTENT.**

#### **3.1 Concession.**

Concession is defined in the Black's Law Dictionary, eighth edition as "a government grant for specific privileges; the voluntary yielding to a demand for the sake of a settlement; a rebate or abatement." In international law, a contract in which a country transfer some rights to a foreign enterprise, which then engages in an entity (such as mining) contingent on state approval and subject to the terms of the contract."

The word concession means "grants; the regular method by the common law of transferring the property of incorporeal hereditaments or, such things whereof no livery can be had." See William Blackstone, Commentaries on the Laws of England, 317. 1766.

It is the agreement which hands over and transfers certain interest in a property to another person. It is very common in landed property like house, land and other infrastructure that requires to be worked upon. It is a common type of agreement in mineral oil transactions.

It has been used for a long time in many parts of the world for transfer of interest in land and resources from one party to the other. The interest is normally not an outright sale or purchase but for a certain period of time. This is usually between the company and the state that has petroleum embedded in its land. It does not involve complete transfer of the land as it were but it signifies the permission by the country owner to the company that wants to work upon and use the land.



### **3.2 Traditional Concession.**

Traditional concession was the earliest type of arrangement between governments and the international oil companies. This was an agreement whereby the oil company received the exclusive right to explore for petroleum and if petroleum was discovered, to produce, market and transport the oil and gas. In return, the company paid specified costs and taxes.

These concessions had certain characteristics. The area was often very large. In many cases it extended over the whole of the land in the nation. The duration was very long, usually between forty years to seventy-five years. They were in respect of very large areas of land of the host country. In Nigeria for example, the concession granted to Shell in 1938 was in respect of the entire mainland of Nigeria.

The rights granted were sometimes so extensive that they cannot be differentiated from a freehold interest, with the companies being granted plenary rights over the whole area.

The company was often granted extensive rights over all the mineral deposits in the area. It usually had exclusive ownership of and was free to dispose of them as it deemed fit. The following is an example of this type of clause found in a concession agreement in Oman in 1937:

In consideration of the payments described in Article (...) the Sultan hereby grants to the company for the remainder of the period of this Agreement the exclusive right to explore, search for, drill for, produce, win, refine, transport, sell, export and otherwise deal with or dispose of the substances and to do all things necessary for all or any of the above purposes within the Leased Area.”

This was the pattern during that time. In Saudi Arabia, a major country in the Middle East commercial quantities of oil were discovered in 1938, but large-scale exports was delayed until the 1950s. Initial exploration and drilling were carried out by the Arabian-American Oil Company (Aramco), the operating company of Standard Oil of California (Socal), an American company. Several other U.S. oil companies acquired shares in Aramco in 1948.

An oil concession covering the entire kingdom was granted to the Standard Oil Company of California. The King received for the concession an immediate payment of \$1,500,000 in gold. He was to receive \$750,000 yearly during the years of exploration and prospecting. As soon as oil production began, he would be entitled to royalties which would increase with production.

The Standard Oil Company had previously held a concession in El Hasa, a province on the Persian Gulf. This very important concession increased America's interest in the Arabian Peninsula.

The prospects of important oil fields in Saudi Arabia was very good and the advanced countries were able to use the concession to get what they wanted from the oil rich nations while the latter was willing to enter into such concessions for its seeming 'benefits'.

This was because it was thought that the resulting royalties would be of considerable importance to the financial strength of the Arabian Kingdom, and would enable the King to realize his intention of forming an army on modern lines.

The United States maintained friendly relations with Saudi Arabia during this period and was granted important concessions, especially for the exploitation of oil to American interests. The American Gulf Oil Corporation owned jointly with the Anglo-Arabian Oil Company also had concession on Kuwait on the Arab mainland.

For all the oil produced the companies working in Arabia on oil paid a royalty of 4 shillings in gold a ton or about 20 cents a barrel to the King of Saudi Arabia who, in addition, was being provided with his petroleum requirements free of charge.

Financial benefits in most cases were minimal and often ridiculous. In many cases the companies paid a nominal rent of 150 pounds for a whole concession plus a bottle of rum. Royalties were based on volume or output, rather than value. For example, the Iraqi Agreement with the Khanaquin Oil Company in 1926 called for payment of four gold shillings per ton of crude oil produced and saved; the 1949 Agreement between Saudi Arabia and Getty Oil provided for a royalty of US \$00.55 per barrel.

Originally, no income tax was levied, but by 1950 the concept had gained general acceptance, and was frequently at a rate of 50 per cent.

These characteristics of the concession were clearly inequitable and lopsided in favour of the oil companies, and therefore, such arrangements were unable to survive decolonization and the “new international economic order.” The traditional concession is therefore regarded as discredited form of contract and the very word ‘concession’ has bad connotation in many countries.

This prejudice stems more from the main features of the traditional concession, than from the contract type. Agreements similar in form to the concession thrive all over the world in a modernised form, and often in a different name such as licence, permit, lease or agreement.

### **SELF ASSESSMENT EXERCISE**

Assess the relationship of the oil companies and the oil producing countries under the traditional concession.

### **3.2 Modern Concession.**

Modern concession is similar to the traditional concession in many ways. It is also an arrangement whereby the oil company receives the exclusive right to explore for petroleum and if petroleum was discovered, to produce market and transport it. The company paid specified costs and taxes to the State that has the crude oil.

It means that under this type of concession “the company has rights over the produced petroleum and owns it as from the point of extraction.” It is now called by various names such as licence or lease, but it is still the most widely used type of agreement.

The terms that characterized the old concession are now changed. The duration is normally for an initial period of twenty years. The area of coverage has also been reduced. In Nigeria for instance, the maximum area that can be granted under the oil mining lease is 500sq. miles.

The company is usually given rights only in respect of crude oil and sometimes natural gas. Financial obligations are greatly increased, companies are liable to rents, royalties, and a higher tax rates which captures between 55 and 90 per cent of the economic rent for the state. Petroleum

in situ remains at all times the property of the state in almost all agreement of this nature. However the contractor still has extensive rights over the petroleum, being granted 'the exclusive right to explore, search and drill for, produce, store, transport and sell petroleum within the Concession Area.'

The contractual arrangements which form the underlying framework are usually not designed to cope with delimiting the rights and duties of parties whose circumstances are likely to change significantly during the contract period, which averages 25 years in respect of an industry which is volatile and unpredictable by nature.

In the twentieth century, the oil industry has had to accommodate far-reaching and fundamental changes. From the inception of the industry in the previous century, until about thirty years ago, all aspects were firmly under the control of the international oil companies. Originally these were the companies now commonly called the "Seven Sisters", the majority of whom were based in the United States. These companies originally operated within the Western hemisphere particularly in America, where there was, for a long period, an oil boom.

Later they diversified and started exploration in other countries. Somehow they do not appear to have diversified during that period into other European countries, but rather into Latin America, the Middle East, and later into Africa.

The company went forth with the full overt or covert backing of its government, to negotiate with a poor and comparatively ignorant country under colonial domination, in respect of its oil resources. Often the country had no option but to accede to the company's request.

The rights granted were known as concession or agreements "both of which names implied that the countries were on equal footing, in fact they were and are not." The truth is that they exist under two different legal systems. However, the company was invariably stronger politically, economically and financially, and these facts were reflected in the terms of the concessions.

As the oil producing grew more aware they also became dissatisfied with state of affairs. Thus the principle of profit-sharing was initiated at the instance of Venezuela in 1950, and a tax of 50 per cent was imposed by Saudi Arabia.

Another situation of the changing phase of the traditional to the modern concession is that of oil found in the Sahara. Until the early 1950s the only foreign capital participating in Saharan oil ventures was invested by Royal Dutch. Later, eight new British and American companies got interested in obtaining drilling and exploration permits. Permits were granted normally for five years and were made renewable for two similar periods. The applicant, however, must surrender half the territory on the first renewal and one quarter of the remaining area on the second renewal.

One of the most successful stories of nationalization has been the Venezuelan oil which occurred during the nineteen seventies. The Venezuelan nationalizations affected exploration and production concessions as well as pipeline, storage facilities and refineries. The Venezuela legislation authorising government could enter into agreements with various oil companies to continue to assist the oil industry.

The formation of Organisation of Petroleum Exporting Countries (OPEC) in 1960 can be seen as a response by the oil producing countries most of which were developing countries, to the domination of the system by the foreign oil companies.

### **SELF ASSESSMENT EXERCISE**

1. What are the essential features of a modern concession?

#### **3.4 Effect of concessionary rights on natural gas.**

The issue of concession of natural gas has a slightly different background from crude oil. This is due primarily to its nature and rather late discovery. Though it had been discovered a long time ago along with petroleum it was not harnessed until many years later. Although the traditional concessions provided for only petroleum, oil or mineral resources.

But with the changing times and improvements in technology, natural gas is considered specifically in many modern concessions. Moreover the introduction of new clauses in modern licences and leases envisage discovery and exploration of natural gas. For example in the Petroleum Act reference is made to natural gas. However other legislations that regulate natural

gas in Nigeria like the Nigerian Liquefied Natural Gas (NLNG Act) make explicit provision for natural gas production.

Another major example is Saudi Arabia which began producing natural gas liquids in 1962. By the late 1990s plans were put forward to exploit the kingdom's other gas fields. In June 2001 Saudi Arabia awarded concessions for the projects to several foreign companies, marking the return of foreign companies for the first time since 1975.

### **SELF ASSESSMENT EXERCISE**

1. The earlier concession agreements did not include natural gas but it was recognised later. Explain this statement in your understanding.

### **4.0 CONCLUSION**

Traditional concession being the earliest type of concession was able to assist the international companies to ride rough shod on the oil producing countries who are usually willing and ready to hand over large areas of land to the companies for exploration often for a long period of time. Under this system also the terms of contract were more favourable to the oil companies and their parent countries.

However with the changing times and awareness by the oil producing countries, concessions began to include more favourable terms under the modern concession, which often come in different modes.

### **5.0 SUMMARY.**

It has been seen that concession is the type of agreement that is made in respect of the use of land and its resources between the host country and the company. We therefore treated the traditional and modern concessions and examples of countries where they have been used in oil exploration. Furthermore, we have considered the issues involved in natural gas concessions to the effect that natural gas is often covered by oil concession and sometimes are not so covered.

## **6.0 TUTOR MARKED ASSIGNMENT**

The international oil companies were generally more favoured in exploitation of mineral oil under the traditional concession. Do you agree?

## **7.0 REFERENCES/ FURTHER READINGS**

1. Black's Law Dictionary, Eighth Edition, by Bryan.
2. Omorogbe Y. (1997), The Oil and Gas Industry, Exploration and Production Contracts. Lagos: Shaneson Publishers.
3. Asante S.K B "Restructuring Transitional Mineral Agreements 73 (1979) A.J.L.
4. Smith, D.L & LT Well 'Mineral Agreements in Developing Countries: Structures and Substance'. Vol.69 (1975) AJIL.
5. Atsegbua, L. 2004, Oil and Gas Law in Nigeria, Theory and Practice, 2nd Edition, New Era Publications, Benin.

## **UNIT 2: PRODUCTION CONTRACTS.**

### **Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Production Sharing Contract.
  - 3.2 Production Sharing Contract in Nigeria.
  - 3.3 Risk Service Agreement.
  - 3.4 Pure Service Agreement.
  - 3.5 Technical Assistant Agreement.
- 4.0 Conclusion.

5.0 Summary

8.0 Tutor Marked Assignment

9.0 Reference/further readings.

## **1.0 INTRODUCTION.**

In the last unit we dealt with the concessions in oil and gas and how these have evolved. This unit will discuss petroleum production contracts. These contracts exist alongside the concessions that have been granted in form of licence and lease. These agreements range from the production sharing contract, risk service contract, to the pure service contract and the technical assistance agreement which are treated in this unit in sequence.

## **2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Understand the various petroleum production contracts available.
- ii. Understand the type of production sharing contract applicable in Nigeria.
- iii. Distinguish among these various agreements.

## **3.0 MAIN CONTENT.**

### **3.1 Production sharing contract.**

Petroleum sharing contracts are legal arrangements in which crude oil is shared by the parties in prearranged proportions. The petroleum sharing contract originated in Indonesia where it was first used for agricultural contracts. According to some it was first used for crude oil in Iran. Since then it has proved extremely popular, and it is extensively used in several countries in the world.

In a standard PSC the company bears all the risks of exploration, and is often in charge of the operations and management of the contract area. When oil is discovered in commercial qualities, the company is entitled to recoup its investments from the crude oil produced from the contract



area. This portion of oil is often referred to as cost recovery oil. Percentages of production set aside for cost recovery vary between 20 percent to 50 per cent. The remainder is then shared between the National Oil Company (NOC) of the oil producing country and the company in predetermined proportions.

This is often referred to as the production split, and a great disparity exists world-wide between the ratio of production splits.

Unlike the concession, ownership of petroleum discovered remains vested in the State or its NOC and the contractor does not acquire title to its share of the petroleum until the oil reaches a mutually agreed point.

This is unequivocally stated in a Peruvian PSC:

- 1.1 “Petroperu is the title holder of the Contract Area. The hydrocarbons “in situ” belong to the State. The hydrocarbons extracted belong to Petroperu. Through the present contract PETROPERU engages, in exclusive form, the services of the CONTRACTOR to perform Petroleum Operations in the Contract Area, in accordance with, the provisions of the pertinent laws, established through Law Decrees 22774 and 22775 and other pertinent legislation.
- 1.2 It is understood and agreed upon that the contract does not grant to the CONTRACTOR the ownership of the Petroleum reserves ‘in situ’ which are at all times the property of the State, but the CONTRACTOR, shall have the right to extract Petroleum from these reserves in accordance with the provisions of the Contract.
- 1.3 All the Petroleum produced in the Contract Area shall belong to PETROPERU at the time of production. The CONTRACTOR shall have the obligation of producing said Petroleum and the right to receive in kind at the Inspection Point on the Contract Area a share of said production as remuneration for its services by virtue of the provisions of the Contract.

The PSC is by its very nature flexible, and the profit split could be used with many variations in accordance with the partner's wishes.

In Peru and Angola, both of which utilise graduated production splits, this presumption is rebutted through the use of clauses which guarantee profitability. The Peruvian clause is specifically for instances where a new tax is created on oil activities. In such a case the amount of the Contract remuneration shall be immediately increased by such an amount that this increase in the volume of Liquid Hydrocarbons shall compensate the CONTRACTOR for the said new tax.

### **SELF ASSESSMENT EXERCISE**

1. What is petroleum sharing contract? Give examples of some petroleum sharing contracts.

### **3.2 Production Sharing Contract in Nigeria.**

In Nigeria, the PSC has been used for quite some time. Like the service contract, the PSC has been utilized by the Nigerian government as a response to the government policy direction in 1972 to gradually do away with concessions and move towards contracts which emphasize the contractual status of the oil company. As a result the government entered into the first PSC, with Ashland Oil Company. As at 2001 Ashland's interests in Nigeria have been assigned to Addax Petroleum.

The PSC (referred to as Ashland PSC) was signed on 12 June 1973 for a term of 20 years, in respect of OPLs 48 and 98. This contract generated a lot of adverse criticism principally because of the way in which its fiscal terms were drafted.

According to these terms when a commercial discovery has been made, the costs were recoverable out of a minimum of 50 per cent per annum of the total crude oil produced. Of the balance, 55 per cent (slightly more than half) was allocated to Ashland as Tax Oil and the price received applied towards payment of Petroleum Profit Tax.

Outstanding amounts payable as tax were borne by the two parties in a manner proportional to their participating interest shares. The remaining crude oil, less than 25% of total production, was divided between the two parties. When the production was less than 50,000 barrels a day the production split was 63/35 in Ashland's favour, and 70/30 when production exceeded this amount. On the face of it these clauses appeared lopsided in favour of the oil company. This was the opinion of the Tribunal of Enquiry set up to investigate an alleged loss of \$2.8billion from the accounts of NNPC, who felt that the PSC certainly has no benefits whatsoever to Nigeria.

This PSC has undergone a few amendments, both formal and informal. For instance the Amendment Agreement of 1986 provides inter alia, for the provision and installation of petroleum laboratory of a kind and cost acceptable to the parties in the petroleum Training Institute, Warri. These costs are not to be chargeable as operating costs.

Between 1992 and 1993, having reached a consensus on the revised terms with various Contractors, NNPC negotiated PSCs with Ashland Exploration, Mobil Producing, Elf Agip, Statoil/BP, Esso and Shell Nigeria Exploration and Production Company (SNEPCO). These PSCs span a period of 30 years (10 years exploration and 20 years production) with provisions for relinquishment of parts of the contact area.

These terms and conditions in the PSCs are substantially the same, with some modifications. Generally, they provide for tax oil in negotiated quantities to be allocated to NNPC for payment of "petroleum profit tax".

However these contracts have a PPT rate of 50% indicated within their contacts. This rate, lower than what is contained in the PPTA, was recently given legal validity by section 3 (1), **Deep Offshore and Inland Basin Production Sharing Contracts Decree 1999** which amended the PPTA. Royalty oil is also allocated to NNPC for payment of royalty and concession rentals on behalf of itself and Contractor. The volume of royalty is determined on the basis of the realisable price established by NNPC in respect of crude oil produced and lifted under the contracts. Each

contract area is 'ring fenced', i.e. costs in one contract area cannot be deducted from revenues accruing from another area.

Cost oil is allocated to the contractor for the recovery of operating and capital costs. Operating costs are recovered in the year of expenditure while capital costs are recoverable in equal installments over a five year period or over the remaining life of the contract, which is ever is less.

### **SELF ASSESSMENT EXERCISE**

1. Discuss how petroleum sharing contracts have been used in Nigeria,

#### **3.3 The Risk Service Agreement.**

Risk service contracts are arrangements whereby the contractor provides the entire risk capital for exploration and production. If a discovery is made the contract ceases to exist with no obligations on either party. In the event of a commercial discovery, these expenses are recouped and the contractor is entitled to payment, which is in cash, although often an option for payment to be made in crude oil is included within the contract. This method of payment constitutes the major difference between the risk service contract and the production sharing contract.

Risk service contracts have been extensively used in Brazil, Argentina and Colombia, where a part of their appeal appears to lie in the fact that sovereignty over the resource at all times is assumed. As is common with these countries, this sovereignty is often declared in no uncertain terms. So, clause Thirteenth of a 1971 PSC between CVP and Occidental States:

“Inalienability of the rights of exploration and exploitation.

In accordance with the Provisions of Article 3 of the Law of Hydrocarbons and Article 4 of the By-Laws of “CVP”, “CONTRACTOR” shall not acquire any rights to the reserves discovered and CVP shall not alienate or encumber the rights of exploration and exploitation or hydrocarbons transferred to it and said rights may not be subject to levy by third parties. Service contractors are normally subject to company income tax.”

### **3.4 The pure service agreements.**

The pure service contract is a simple contract of mark. All risks are borne by the state, and the contractor performs its stipulated services and is paid a flat fee for this service. Arrangements of this sort exist mainly in the oil rich Middle East countries e.g. Saudi Arabia, Kuwait, Qatar, Bahrain, Abu Dubai. Barrows gives an example of the Saudi Arabian service contract with Aramco. Under the contract, Aramco carries on production operations for a net fee of 15 cents per barrel after tax. Often the service contract is accompanied with a legally unconnected but parallel purchase contract for part of the oil being produced from the contract area as is the case in Saudi Arabia.

#### **SELF ASSESSMENT EXERCISE**

1. Describe the nature of risk service agreement and pure service agreement.

### **3.5 Technical Assistance Agreements**

Technical assistance agreements are the newest type of agreement and are of great significance for a country that is interested in developing a viable indigenous petroleum industry. On the face of it they are remarkably similar to the pure service contract. The main difference is that the company in question is engaged to provide technical services, without any interest in the oil at any time. Its remuneration consists solely of a specified agreed fee. For these reasons, the technical assistance agreement has been described as the most radical departure from a traditional concession: it perfects the relegation of the transnational corporation from the status of owner to that of a contractor. There are only a few of these currently in existence, in countries such as Iran and Venezuela.

#### **SELF ASSESSMENT EXERCISE**

1. Define and explain technical assistance agreement.

### **4.0 CONCLUSION**

Petroleum production contracts are discussed in this unit highlighting their various features. These arrangements are meant to apply to production of oil in the countries, most of which are not advanced in technology to engage in direct production of oil by themselves. This is also due to the

fact that oil production requires huge sums of money that mostly only the international oil companies supported by their home countries are able to finance.

## **5.0 SUMMARY**

In this unit analysis has been made of the several production arrangements that exist including examples where applicable. All these form part of the interests that can be created in oil and gas.

## **6.0 TUTOR MARKED ASSIGNMENT**

1. In detail analyse the major features of a petroleum sharing contract.
2. Make a comparison and contrast of any two types of production contracts.

## **7.0 REFERENCES/ FURTHER READINGS**

1. Olisa, M.M. (1997), Nigerian Petroleum Law and Practice, 2<sup>nd</sup> Edition, Martin M. Olisa.
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## **UNIT 3: PARTICIPATION IN OIL EXPLORATION.**

### **Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 The Joint Venture.
  - 3.2 Participation Agreements.
  - 3.3 Operating Agreement.
- 4.0 Conclusion.
- 5.0 Summary
- 6.0 Tutor Marked Assignment

## 7.0 Reference/further readings.

### **1.0 INTRODUCTION.**

Every oil producing country desires participation in the production process. This is to ensure that production is not left in the hands of the oil companies which are mostly foreign. It also helps to monitor revenue that comes from crude oil. Participation agreements are made to complement the agreements that have been made in respect of oil exploration. They show the extent of a host country's interest in oil and gas production. The joint venture and other forms of participation agreements are treated in this unit with examples.

### **2.0 OBJECTIVES.**

The objectives of this unit are:

- i. To make you understand the meaning of participation agreements.
- ii. To identify what joint venture and other participation agreements entail.
- iii. To make you draw some conclusions on the applicable agreements in Nigeria.

### **3.0 MAIN CONTENT.**

#### **3.1 The Joint Venture.**

A joint venture is agreement between two or more companies/parties to jointly do a business or to jointly undertake the formation of a company/ business in which the parties shall jointly fund and bear the risks. It is common in the oil industry to have the joint venture agreement between the host country and the international oil company. This is made in order to have the two parties engage in the exploration and prospecting for oil in the country.

This type of agreement has been used for a considerable period of time and is still being used today. As from the 1970s participation by host countries in their mineral and oil rights became increasingly common. Now, it is commonplace, with the notable exceptions being the United

States and Britain. When the government participates, the resulting effect is what is commonly known as a Joint Venture.

When participation occurs the foundational contract often remains the same. That is, the contractual arrangement remains a concession, PSC, etc., as the case may be.

The Nigerian Government's desire to participate actively in the petroleum sector led to the popularity and growth of the Traditional Joint Venture ("the TJV") as they are usually tagged. Participation of the Government through the TJV meant Government was a participant in the day to day activities, derived all accruing benefits and bore all necessary costs corresponding to its interests through what is termed a "cash call".

With the competition for funding which is shared by the three tiers of the Government under the federal system of governance operational in Nigeria, namely the Federal, State and local Governments; the idea of an incorporated joint venture appears to be a good idea.

### **SELF ASSESSMENT EXERCISE**

1. Give an explanation of your understanding of joint venture agreement.

#### **3.2 Participation Agreements.**

This agreement sets out the respective rights of partners to the joint venture. Such agreements vary in detail, because they were individually negotiated, but they remain the same in substance.

The interest paid for and acquired by the government through the Nigerian National Petroleum Corporation (NNPC) is referred to as the "participating interest": in the oil mining lease; the fixed and moveable assets of the company in Nigeria without limitation, the company's exploration, development, production, transportation, storage, delivery and export operation and associated assets such as offices, housing and welfare facilities (the assets).

The working capital applicable to the operation of the oil-mining leases including, without limitation, material stocks including those in assets, debts of staff, debtors and repayment (the working capital).



Participation is most common in concessions. In Nigeria the government has a 60 percent share in the concessions of all the oil companies. As joint ventures, the respective projects come also subject to a number of agreements which define the relationships of the respective parties.

Participation options are also exercised in production sharing or risk service agreements; although in practice many of the advantages of participation can also be achieved through judicious use of these agreements. Participation enables the host country to exercise more effective control on the operations of its industry.

It makes for more effective technology transfer, since the host country is likely to become more familiar with the practical aspects of the petroleum industry. Through participation, the host country's objectives are potentially capable of fulfillment, although its effectiveness depends on the way it is implemented.

By 1970 the oil industry began to take another dimension with the boom in the oil production and increased revenue. The Nigerian National Oil Corporation (NNOC) was formed in April, 1971. In July of the same year the country joined the Organisation of Petroleum Exporting Countries (OPEC). Although the NNOC was formed before Nigeria joined OPEC, it appears that its formation was in response to OPEC resolutions and policy statements which showed that the existence of a state oil corporation was an essential prerequisite for state participation in the oil industry.

Negotiation for participation led to the first participation agreement being signed with Elf, in 1971. Under this agreement, the government acquired a 35% participation interest in the Elf concession. In 1973, 35% participation were acquired in the Shell-BP, Mobil and Gulf Oil concessions. Over the years these interests have increased to the current level of sixty per cent in all the concessions, except in that of Shell. Government participation in that of Shell increased to eighty per cent as a result of nationalization of British Petroleum, BP interests in 1979. Since then the government has reduced its interests in stages to the present level of 55 percent, to accommodate the other Nigerian liquefied natural gas partners, Elf and Agip.

Participation agreements have been used in many countries but with variant contents according to each countries objectives and individual needs. In Kuwait for example, the country which had already attained unparalleled affluence, laid the foundations in 1974 for an even more prosperous future.

The government reached an agreement with the Kuwait Oil Company (KOC) to take over 60 percent ownership of the company by payment of compensation of \$112 million to KOC. The agreement was subsequently rejected by the National Assembly when it first came up for ratification, primarily because many delegates wanted to take over the company completely. Only when the delegates were convinced that Kuwait lacked the technological expertise necessary for such an undertaking did the Assembly ratify the agreement in May. The overall effect of the agreement was to dramatically boost the Kuwaiti oil income.

Another example can be found in Iran. Following the nationalisation law of May 1, 1951, the new agreement provided for the formation of two operating companies to operate the oil fields and the refinery at Abadan, which were to receive the necessary rights and powers from the Iranian government and the National Iranian Oil Company and to exercise them on their behalf to the extent specified in the agreement.

The Consortium was to pay the National Iranian Company for all oil required for export and to sell the crude products exported. The agreement covered a 25-year period, with provisions for three 5-year extensions. Through payments to the Company and the application of Iranian tax laws, it was estimated that the total direct income to Iran from the increased scale of operations for the first three full years, following an initial period of three months, would be \$420,000,000.

### **SELF ASSESSMENT EXERCISE**

1. What is a participation agreement and how has it been used in the oil industry in Nigeria?

### **3.3 Operating Agreement.**

This type of agreement spells out the legal relationships between the owners of the respective leases, and lays down rules and procedures for the joint development of the area concerned, and of property jointly owned by the two parties.

Under these agreements the property are jointly owned by the oil company and the host country and relates to all the activities and services of the oil company. In all the agreements the private company is designated operator, and is responsible for the conduct of all joint venture operations.

It gives the details of the workings and activities that the oil company is expected to do, while also stating the roles of the host country. The national oil company's scope of work in the operation is clearly defined in this type of agreement and each party is fully aware of its responsibility under the joint venture.

### **SELF ASSESSMENT EXERCISE**

- Take note that this type of agreement is made in respect of the legal procedure and operations of the parties in addition to the other participation agreements.

### **4.0 CONCLUSION**

Apart from the production contacts the participation agreements depict the quest of the country to have some level of control on the oil production. In Nigeria like many other oil producing countries, the national oil company is the vehicle by which the country engages in oil production with the international oil companies.

The objectives of the parties are of paramount consideration in determining which type of participation agreement to enter into.

### **5.0 SUMMARY.**

In this unit we have considered the nature of joint venture agreement, other participation agreements and the operating agreements. The features of each of them have been considered while it has been stated that they are essential in all oil industry relationships.

**6.0 TUTOR MARKED ASSIGNMENT**

1. With the aid of examples discuss participation agreements in crude oil production.

**7.0 REFERENCES/ FURTHER READINGS**

1. M. M. Olisa, 1997, Nigerian Petroleum Law and Practice, 2<sup>nd</sup> Edition, M. M. Olisa.
2. Etikerentse, G. 1985. Nigerian Petroleum Law (London: Macmillan).
3. Omorogbe Y. (1997), The Oil land Gas Industry, Exploration and Production Contracts. Lagos: Shaneson Publishers.

**UNIT 4: OIL EXPLORATION LICENCES AND LEASE.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Oil Exploration Licence.
  - 3.2 Oil Prospecting Licence.
  - 3.3 Oil Mining Lease.
  - 3.4 Assignment of Rights.
  - 3.5 Revocation of Licence and Lease.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment.
- 7.0 Reference/further readings.

## **1.0 INTRODUCTION.**

Before any oil production takes place in Nigeria, certain permits must be taken from the appropriate authority. This is in form of licence or lease. They are as follows:

1. Oil exploration licence. (OEL)
2. Oil prospecting licence. (OPL).
3. Oil mining lease. (OML).

These licences and lease are created under the Petroleum Act. They are the form of concession that can be found in Nigeria. We shall consider each of them in sequence in this unit and examine their legal effect on oil operation.

## **2.0 OBJECTIVES.**

The objectives of this unit are:

- i. To understand the types of oil mining rights that may be granted under the Petroleum Act.
- ii. The student should be able to identify and explain the conditions for the grant of each of the OEL, OPL and OML.
- iii. To be able to analyse the procedure for assignment and revocation of these rights.

## **3.1 Oil Exploration Licence.**

The Petroleum Act provides in Section 2 (1) that the Minister of Petroleum may grant any of the licences or lease created subject to the provisions of the Act. The power to grant the licence or lease will be subject to certain conditions to be fulfilled by the applicant which will be considered in detail in this unit. A licence or lease under the Act may be granted only to a company incorporated in Nigeria. See Section 2 (3) of the Act.

Paragraph 1 of the First Schedule provides: An oil exploration licence shall apply to the area specified in the licence which may be any area on which a premium has not been placed by the Minister. The licence shall authorise the licensee to undertake exploration for petroleum in the area of the licence, excluding land in respect of which the grant of an oil prospecting licence or

mining lease has been approved by the Minister and land in respect of which an oil prospecting license or oil mining lease is in force.

Exploration in this sense means to make preliminary search by surface geological and physical methods, including area surveys but excluding drilling below 91.44 metres.

An oil exploration license shall not confer any exclusive rights over the area of the licence, and the grant of an oil exploration licence in respect of any area shall not preclude the grant of another oil exploration license or of an oil prospecting licence or oil mining lease over the same area or any part thereof.

An oil exploration license shall terminate on 31 December next following the date in which it was granted, but the licensee shall have an option to renew the license for one further year if :

- (a) He has fulfilled in respect of the license, all obligations imposed upon him by the Act or otherwise.
- (b) The Minister is satisfied with work done and the reports submitted by the licensee in pursuance of the license, and
- (c) An application for renewal has been made at least three months before the date of expiry of the license. See paragraph 3 of the schedule.

An oil exploration license shall not confer any right to the grant of an oil prospecting license or an oil mining lease on the holder of the oil exploration licence. See paragraph 4

### **SELF ASSESSMENT EXERCISE**

1. Define an oil exploration licence and state the conditions for its grant.

#### **3.2 Oil Prospecting Licence.**

Oil prospecting in strict terms under the Petroleum Act, would include the right to explore and carry away and dispose of petroleum won during prospecting operations. An oil prospecting licence (OPL) can only be granted to a company incorporated in Nigeria. The holder of an oil prospecting license has the exclusive right to explore and prospect for petroleum within the area of his license.

The duration of an oil prospecting license is determined by the Minister but must not exceed five years (including any periods of renewal).

The holder of an oil prospecting license may carry away and dispose of petroleum won during prospecting operations, subject to the fulfillment of obligations imposed upon him under the Act (including any special terms or conditions imposed under paragraph 34 of the Schedule) or by the Petroleum Profit Tax Act or any other law imposing taxation in respect of petroleum. See generally the First Schedule Paragraphs 5, 6 and 7 of the Petroleum Act.

### **SELF ASSESSMENT EXERCISE**

1. Explain what you understand by oil prospecting licence.
2. Take note of the term it may cover.

### **3.3 Oil Mining Lease.**

Oil mining involves the exclusive right to conduct exploration and prospecting operation and to win, get, work, store, carry away, transport export or otherwise treat petroleum discovered in or under the leased area. See First Schedule Paragraphs 11 of the Petroleum Act. An oil mining lease (OML) may be granted only for the holder of an oil prospecting license who has

- (a) Satisfied all the conditions imposed on the license or otherwise imposed on him by the Act, and
- (b) Discovered oil in commercial quantities. See Paragraph 8 of the Schedule.

Oil is deemed to have been discovered in commercial quantities by the holder of an oil prospecting licence if the Minister, upon evidence adduced by the licensee, is satisfied that the licensee is capable of producing at least 10,000 barrels per day of crude oil from the licenced area.

It is provided in the Act that the term of an oil mining lease shall not exceed twenty years. This term may however be renewed in accordance with some procedure stipulated by the Act.

The lessee of an oil mining lease shall have the exclusive right to conduct exploration and prospecting operation and to win, get, work, store, carry away, transport export or otherwise treat petroleum discovered in or under the leased area. This is subject to any provision of the Act and any special terms or conditions imposed under paragraph 34 of the Schedule. See paragraph 11 of the schedule.

The oil mining lease is renewable. This can be done by following the prescribed procedure. The lessee of an oil mining lease is entitled to apply in writing to the Minister, not less than twelve months before the expiration of the lease, for a renewal of the lease either in respect of the whole of the leased area or any particular part thereof; and the renewal shall be granted if the lessee has paid all rent and royalties due and has performed all his obligations under the lease.

### **SELF ASSESSMENT EXERCISE**

1. Describe the oil mining lease and what it entails.

#### **3.4 Assignment of Rights.**

The holder of an oil prospecting licence or an oil mining lease shall not assign his licence or lease or any right, power or interest therein or there under, without the prior consent of the Minister. See paragraph 13 of the schedule.

The prescribed fee shall be paid on an application for an assignment under paragraph 14, of the schedule and the Minister's consent for the assignment may be given on payment of such other fee or such premium, or both, and upon such terms, as he may decide: provided that the Minister may waive payment of that other fee or that premium, or both, if he is satisfied that the assignment is to be made to a company in a group of which the assignor is a member, and is to be made for the purpose of re-organisation in order to achieve greater efficiency and to acquire resources for more effective petroleum operations.

By paragraph 16 of the Schedule it is provided that the Minister shall not give his consent to an assignment unless he is satisfied that-



- a. the proposed assignee is of good reputation, or is a member of a group of companies of good reputation;
- b. there is likely to be available to the proposed assignee (from his own resources or through other companies in the group of which he is a member, or otherwise) sufficient technical knowledge and experience and sufficient financial resources to enable him to effectually carry out a programme satisfactorily to the Minister in respect of operations under the licence or lease which is to be assigned; and
- c. the proposed assignee is in all other respects acceptable to the Federal Government.

The oil prospecting licence or an oil mining lease granted under the Act may be terminated in a number of ways which are stated as follows:

The holder of an oil prospecting licence or oil mining lease may, at any time, terminate his licence or lease by giving to the Minister not less than three month's notice in writing to that effect.

The holder of an OPL or OML shall be entitled at anytime on giving three month's notice in writing to the Minister to surrender the licence or lease in respect of any particular part of the licensed or leased area. See generally paragraphs 18 and 19 of the First schedule.

### **SELF ASSESSMENT EXERCISE**

1. What is an assignment and how is it done under the Act?

### **3.5 Revocation of Licence and Lease.**

An Oil Prospecting Licence (OPL) or Oil Mining Lease (OML) may be revoked in the occurrence of certain events. The causes for which an OPL or OML may be revoked by the Minister of Petroleum Resources are contained in paragraph 23(1) of Schedule 1 of the Act. Under this paragraph, the Minister may revoke any OPL or OML if the licensee or lessee becomes controlled directly or indirectly by a citizen or subject of, or a company incorporated in, any country which is:

- (a) A country other than the licensee's or lessee's country of origin,

(b) A country the laws of which do not permit citizens of Nigeria or Nigerian companies to acquire, hold and operate petroleum concessions on conditions which in the opinion of the Minister are reasonably comparable with the conditions upon which concessions are granted to subjects of that country.

In addition, under paragraph 24 of schedule 1 of the Act, the Minister may revoke any OPL or OML if in his opinion the licensee or lessee:

- (a) Is not conducting operations continuously and in a vigorous and businesslike manner in accordance with good oil field practice, or
- (b) Has failed to comply with any provisions of this Act or any regulation or direction given thereunder or in fulfilling his obligations under the special conditions of his license or lease, or
- (c) Fails to pay his due rent or royalties, whether or not they have been demanded by the Minister within the period specified by or in pursuance of his Act, or
- (d) Has failed to furnish such reports on his operations as the Head of the Petroleum Inspectorate may lawfully require.

If the government decides to revoke any license, it shall inform the licensee or lessee of the grounds on which the revocation is contemplated and shall invite the licensee or the lessee to make any explanation if it so desires. If the government is satisfied with the explanation, it may invite the licensee or lessee to rectify the matter complained of within a specified period. If the licensee or lessee makes no sufficient explanation, or does not rectify the matter complained of within the specified period, the Minister may revoke the license or lease.

The notice of revocation is then published in the Federal Government official gazette, but the licensee or lessee remains liable for all obligations incurred before the effective date of such revocation.

### **SELF ASSESSMENT EXERCISE**

1. In what circumstances can a licence or lease be revoked?

### **4.0 CONCLUSION**

Each of the licences and lease have certain elements common them. The holder of an oil prospecting licence after making the necessary prospecting activities mostly on the surface of the ground, proceeds to apply for the oil exploration licence and then the oil mining lease. Each of these licences or lease is granted subject to the fulfillment of the requirements laid down by law.

### **5.0 SUMMARY.**

From this unit the whole extent of rights that are granted by the State through the Minister is limited to a maximum of twenty years in the case of a lease. We also considered the grounds for the revocation an oil exploration licence and an oil mining lease.

### **6.0 TUTOR MARKED ASSIGNMENT**

Epo Robi Petroleum Ltd has approached you seeking your legal advise on how to assign its rights in the oil mining lease it is currently holding. It has also been faced with a threat of revocation of its licence by the appropriate authority. On what grounds can its licence be revoked?

### **7.0 REFERENCES/ FURTHER READINGS**

1. Atsegbua, L. (2004), Oil and Gas Law in Nigeria, Theory and Practice, 2nd Edition, New Era Publications, Benin.
2. Etikerentse, G, (1985). Nigerian Petroleum Law (London: Macmillan).

**MODULE 4:**

- Unit 1: The concept of traditional ownership of land as natural resources.
- Unit 2: Divestment of rights in mineral oil resources.
- Unit 3: Legal effect of Divestment of interest in mineral oil.
- Unit 4: Resource control agitation.
- Unit 5: Compensation and Allocation of petroleum gains.

**UNIT 1: THE CONCEPT OF TRADITIONAL OWNERSHIP OF LAND AS A  
NATURAL RESOURCE.**

**Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main Content.
  - 3.1 Land as a natural resource.
  - 3.2 Traditional Ownership of land in Nigeria.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings.

**1.0 INTRODUCTION.**

Land is a primary natural resource from which other natural resources are found. Its use has changed over centuries just as the issue of ownership has changed. The development that was brought with the coming of the colonial master increased the value that was placed on land and mineral resources in many parts of Nigeria. It also changed the nature of traditional ownership of land in Nigeria with particular reference to mineral resources. These are the issue this unit will discuss.

## **2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Have an understanding of the nature of land as natural resources.
- ii. Understand the concept of traditional ownership of land in Nigeria before and during the colonial period.
- iii. Explain the changing process in the system as a result of certain enactments.

## **3.0 MAIN CONTENT.**

### **3.1 Land as natural resources.**

Land is the source of many natural resources. It is itself a natural resource from which many minerals are found. It is composed of a lot of mineral matters that make it to be a source of wealth. For many reasons land is a source of wealth.

Many people want to own land because of the inherent good in so doing. Land is usually held either communally or individually by people in many parts of the world. Under the prevailing customary law up till the early twentieth century in Nigeria, the exclusive use and enjoyment of the land usually carried with it the full right to its minerals.

Crude oil is mineral oil found in the ground under the land. The developments of man brought about the need for mining for coal, for the use of locomotive engines and emerging local machines. Other minerals like tins, columbites and metals are sources of raw materials for production of goods.

However, the discovery of mineral oil has been the greatest drive for economic growth and development in Nigeria. Mineral oil has emerged to become the greatest source of energy of the twentieth century and the early twenty first century.

### **SELF ASSESSMENT EXERCISE**

1. Describe briefly the concept of land as a natural resource.

### **3.2 Traditional Ownership of land in Nigeria.**

In the country which is called Nigeria today, before the advent of the British colonial rule, there existed at various times several sovereign states known as emirates, kingdoms and empires made up of the ethnic groups in Nigeria. Each of these groups was independent of the other while its mode of government was indigenous to it. At one time or another, these sovereign states were either fighting wars with one another or making alliances on equal terms.

This state of affairs existed throughout Nigeria. In the coastal areas for instance there were the Okrikas, Ijaws, Kalabaris, Efiks, Ibibios, Urhobos, Itshekiris etc. Indeed some of these communities asserted exclusive rights over the narrow waters in their area. All the coastal communities took advantage of the sea and the network of rivers and lagoons, using them as means of transportation to travel far and wide along the coastline on trading expeditions to fish and to wage wars.

The Europeans depended on the coastal rulers not only for securing trades, but also for the safety of their lives and property. Thus, European traders went out of their way to ensure they were in the good books of natural rulers.

The British colonial rule commenced with the cession of Lagos to the British monarch in 1861 after the Treaty of Cession entered into force in 1861. The King of Lagos and his chiefs ceded to the British crown the Port and Island of Lagos in the following words:

“ I Docemo, do, with the consent and advice of my council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors forever, the Ports and Island of Lagos, with all the rights, profits, territories and appurtenances whatsoever there unto belonging.....”

At this period land was used primarily for cultivation, fishing and trading. The outcome of the Berlin Conference, 1885 was the carving out of the African continent into various areas and regions to be governed by the European powers

The nations in the territory now called Nigeria were parceled off to Britain at the conference. Based on the protection treaties and Berlin conference, the British in 1885 proclaimed the establishment of the Oil Rivers Protectorate, which later became the Niger Delta Protectorate.

With effect from 1<sup>st</sup> January 1900, the remaining part of the present day Nigeria that did not form part of the protectorates of Northern Nigeria was added to the Niger Coast protectorate which had earlier been established for the communities of the Niger Delta, to form the protectorate of Southern Nigeria

Ownership of the land within these various communities resided in the people indigenous to those communities or nations prior to the colonial administration explained thus far. The treaty of cession is frequently cited in favour of British Crown ownership of land in Nigeria consequent upon the British colonial administration in the country.

In the case of *Attorney General of Southern Nigeria V John Holt (1910) 2 NLR 1*, the Privy Council, per Lord Shaw while delivering judgment held that property or ownership in the land of the colony was not excluded from the grant in the Treaty of Cession but that the ownership by the colonial government was subject to the condition that all property existing in the inhabitants under the grant or otherwise from King Dosunmu and his predecessors were to be respected.

In the case of *Amodu Tijani V Secretary, Southern Provinces (1921) 3 NLR 21* Viscount Heldane held that there was a cession to the British crown, along with the sovereignty, of the radical or ultimate title to the land in the new colony, but that the rights of the indigenous owners were to be protected.

A pertinent question to ask at this point is whether the State's title is subject to customary rights. Various problems arose as to the actual ownership of the lands mostly taken over by the British colonial administration which is the precursor of the Federal government now.

The effect of the annexation of the lands within the country at that time is what the reality is today. There have been several legal tussles on the issue of customary ownership of land especially in respect of customary land and government acquisition in Nigeria. Here are a few examples *Amodu Tijani V. Secretary Southern Nigeria supra, Oduntan Onisiwo V. Attorney Genera, 2 NLR 77, Ajibola V Ajibola (1947) 18 NLR 125, Edun V. Thomas (1948) 19 NLR 15.*

A clear view of the state of the customary rights before the infusion of the British Colonialism and subsequent administration in Nigeria is stated in the following dictum:

It is not admissible to conclude that the crown is generally speaking entitled to the beneficial ownership of the land as having so passed to the crown as to displace any presumptive title of the nations ..... A mere change of sovereignty is not to be presumed as meant to disturb rights of private owners and the general terms of a cession are prima facie to be construed accordingly.

See *Amodu Tijani V Secretary, Southern Provinces 1921 AC 399 at 407*, per viscount Heldane.

This statement of principle goes very far towards whittling down in practice what in theory at first seems, at least to colonial eyes, an extreme position taken up by the crown (Colonial government) with regards to colonial lands.



The various treaties signed with the native chiefs, Obas, Emirs, Obis etc of the various communities in Nigeria have the same effect and caused similar confusions to the existing customary ownership of land and the mineral resources therein.

Land in Nigeria, before the advent of the Europeans was, like under the pre - Columbian times in America or the manorial system of England, communally owned, that is, it was regarded as property belonging to the community and it was not unusual for the village head to make allotments to individuals or families for cultivation.

By section 18(1) of the Interpretation Act 1964 now Cap I 23 Laws of the Federation of Nigeria 2004, the word land “includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals”. Though, under the customary law relating to land, no such distinction appears to have been made.

### **SELF ASSESSMENT EXERCISE**

1. What do you understand by traditional ownership of land?

### **4.0 CONCLUSION**

The element of property right coupled with the notion of harnessing the resources available have taken a serious turn in Nigeria. The economic interest of the citizen of a nation is connected to ownership and control of their mineral resources. This issue has generated a lot of problems for the people over the years.

### **5.0 SUMMARY.**

We considered the various issues connected with land as a natural resource, while we treated the issue of ownership of land and mineral resources in Nigeria by the individuals and traditional communities prior to modern legal developments.

### **6.0 TUTOR MARKED ASSIGNMENT**

Discuss the concept of traditional ownership of land as natural resources in Nigeria.

**7.0 REFERENCES/ FURTHER READINGS**

- 1 Elias, T.O. 1971: Nigerian Land Law 4<sup>th</sup> Edition, London: Sweet & Maxwell.
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**UNIT 2: DIVESTMENT OF RIGHTS IN MINERAL OIL RESOURCES.**

## Contents

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Divestment of Rights in Mineral Resources.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings.

**1.0 INTRODUCTION.**

Under the prevailing rules of ownership of land there was exclusive enjoyment of the land and to some extent any minerals found in it. However, with the coming of the colonial administration, new legislation and policies were made which divested the people of the rights that they had in mineral resources. This unit will discuss this issue.

**2.0 OBJECTIVES.**

The objectives of this unit are:

- i. To make you understand the meaning of divestment of rights in mineral resources.
- ii. To make understand how the rights of Nigerians have been divested from the mineral resources including petroleum.

**3.0 MAIN CONTENT.**

### **3.1 Divestment of Rights in Mineral Resources.**

The exclusive use and enjoyment of the land usually carried with it full right to its minerals, subject of course to the requirements of the prevailing custom and the relation of the particular occupier of the land. Otherwise, land usually includes minerals. The position is, however, now largely governed by legislation.

Nigeria inherited a colonial system in which ownership of mineral resources was vested in the crown in England. When constitutional development led to the transfer of power to Nigeria the crown in Britain was replaced by the State which now assumes sovereignty over the mineral oil previously vested in the crown.

Comparatively it will be shown that ownership of mineral resources, (including mineral oil), like that of land varies from country to country. It all depends upon a country's legislation and in some cases upon generally accepted practice. For instance, oil resources could be owned exclusively by the State or in some cases by individuals or private enterprise. It could also be owned jointly by the State and private sector.

Prof M. A. Ajomo (1982) noted that whereas land in the strict sense is not subject to absolute ownership because it cannot be destroyed, mineral oil on the other hand is a wasting effect and is capable of absolute ownership in the legal sense, in that rights in respect of it may include right of free as well as exclusive enjoyment including the right of using, altering, disposing of or destroying.

Where mineral resources are owned by the State, development operations are then subject to the acquisition of rights from government authorities usually in the form of concessions or leases. See section 2 of Petroleum Act where provisions are made for the grant of oil prospecting licence, oil exploration licence and oil mining lease.

As it has been stated earlier where mineral resources are owned by the state, exploitation may be undertaken by private enterprises, foreign or indigenous in accordance with the mining legislation of the state or special arrangement e.g. Britain.

The various legislations, since the first unsuccessful attempt at drilling in Nigeria in 1908 have reflected the trend of crown (or state) ownership of mineral resources.

The first of these legislations was the Colonial Mineral Oil Ordinance of 1914, No 17 of 1914 which was amended in 1925 (No 1 of 1925) and 1950. Under its terms the entire property in and control of all minerals and mineral oil was vested in the then colonial government.

Also during the colonial era in Nigeria, the Minerals Acts, 1946 Cap 121 Laws of the Federation of Nigeria and Lagos 1958 was enacted to amend and consolidate the laws relating to mines and minerals. Section 3(1) of the Act provides that the entire property in and control of all minerals in under or upon any land in Nigeria and of Rivers, streams and water that coursed throughout Nigeria, is and shall be vested in the crown. This Act is now enacted as Minerals and Mining Act. Cap M12 LFN 2004.

The continuous raging issue of ownership and control of mineral oil that is petroleum and its revenue was given a stable position with the promulgation of Petroleum Act of 1969. As we have noted in the course of this study section 1 of the Act provides for the vesting of the entire ownership and control of all petroleum in, under or upon any lands, the territorial waters, the continental shelf's and the part of the Exclusive Economic Zone of Nigeria in the State (that is the Federal Government of Nigeria).

The purpose of the above provisions is to make the Federal Government of Nigeria the exclusive owner of petroleum resources extracted from anywhere in Nigeria including the Niger Delta region, the rain forests of the south western and south eastern parts and the upland savannahs of the northern part of the country.

Consequently, all indigenous right or whatever rights previously held over mineral oil resources had been completely expropriated from the previous holder and vested absolutely in the State. This is major problem of expropriation. Even owners of lands where mineral oils are found would have to give up the land for the purpose of mineral oil exploration, though with some conditions in that respect.

The combined effect of the Petroleum Act, the Territorial Waters Act, the Exclusive Economic Zone Act and the Land Use Act 1978 is to vest ownership and rights of exploitation of mineral and natural resources in the territorial waters, exclusive economic zone of Nigeria in the Federal Government of Nigeria.

In the view of Prof. Ajomo, while stating the effect of the series of legislations and government intentions on the petroleum resources:

In respect of onshore, claims, in particular, the laws preserved the triangular relationship between the Federal Government, the producing oil companies and the individual or community owners of land and its surface rights, that is, the Federal Government as owners of minerals farm them out to producing oil companies who in turn, armed with Federal Government authority, enters into lands owned by communities or families for exploitation purposes and pays compensation to the land owners in accordance with the laws regulating relationship between them.

The imposition of the Land Use Act since 1978 has brought in many problems relating to the ownership of land and the mineral resources embedded in it.

The main problem that the various communities in Niger Delta have with the Land Use Act is that the decree (Act) only recognised what we call 'surface right'. The people are denied the

planting of some agricultural products on this land. So compensation is based on that. It does not recognize the rights of those communities below the surface. Prof. I. Sagay says:

In other words, where there are minerals and other resources underneath the ground, these are not recognised. So the communities, the people of the Niger Delta, the whole of the Southern States of Nigeria are calling for the total repeal of that Act.

The Land Use Act has since been incorporated into the 1979 and 1999 constitutions and can only be repealed or amended through a cumbersome constitutional amendment procedure in accordance with section 9 of the 1999 constitution. To cap it all, there is a provision in Section 44(3) of the 1999 constitution which gives the Federal Government of Nigeria the authority and right over all mineral oil resources in the country.

These constitutional provisions seemed to finally settle the issue of who owns the oil in the Niger Delta region or any part thereof in Nigeria. The Federal Government of Nigeria has the sole authority to grant oil mining lease to any one who desires to carry on exploration activities for oil.

As already stated entire ownership and control of mineral oil or petroleum and natural gas in Nigeria is vested in the Federal Government. The Federal Government may grant the following rights to companies incorporated in Nigeria: an oil exploration licence OEL, to explore for petroleum; an oil prospecting licence (OPL) to prospect for petroleum and an oil-mining lease (OML) to search for, win, work, carry away and dispose of petroleum.

These forms of concessions are made by the Federal Government to oil companies in Nigeria when the process of expropriation of rights in mineral resources has been completed.

The companies basically from the advanced western and more recently Asian countries involve in the oil exploration and maintain a form of might in the extraction of mineral oil from the

indigenous owners of the land i.e. Nigerians. This is done under the supervision of the Federal Government as constituted by a few elite. It is then clear that while the Niger Delta yields oil and gas worth billions of dollars annually, the region has remained one of the most undeveloped parts of the country, while transnational co-operations and elites have accumulated vast amounts of wealth from the oil business.

This has been the case because of the revenue that comes from oil production. There was a steady increase in Nigeria's oil production from 0.90 million b/d in 1970 to 2.9 million b/d in 1972, and it reached a peak of 2.4 million b/d in 1979. This steady increase in oil production fetched Nigeria the status of a major oil producer, and she has grown to become the sixth-largest oil-producing country within OPEC. The increase in the number of active oil companies in Nigeria necessitated a change in Nigeria's existing petroleum laws.

Despite the huge revenue that accrues to the nation from these resources, there is little to show for it as far as the oil producing areas are concerned. Rather they have suffered consequences of environmental pollution and other disturbing issues.

### **SELF ASSESSMENT EXERCISE**

1. How has mineral resources been divested from the owners in Nigeria?

### **4.0 CONCLUSION**

In the foregoing we have considered the issues that have to do with expropriation of rights in mineral resources in Nigeria. The important question is who now owns the land? To whom should oil companies pay rent or compensation for use of land on which an oil pipeline is to be constructed or on which a mining lease is to be enjoyed.

### **5.0 SUMMARY.**

This situation calls for fundamental changes in the way and manner land is held as the customary or statutory owner, and also in the way and manner compensation is done to the people.

### **6.0 TUTOR MARKED ASSIGNMENT**

1. Explain in detail the Nigerian situation of expropriation of rights in mineral resources including petroleum, highlighting the relevant statutes.

### **7.0 REFERENCES/ FURTHER READINGS**

1. African Network for Environment and Economic Justice [ANEEJ] 2004. Oil of Poverty in Niger Delta, publication.
2. Sagay, I. (2001) "No True Federation Without Resource Control", The Guardian.
3. Ajomo,, M.A. (1982) "Ownership of Mineral Oil and the Land Use Act" Nigerian Current Law Review.



### **UNIT 3: EFFECT OF DIVESTMENT OF INTEREST IN MINERAL OIL.**

#### **Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Effect of Divestment of Interest in Mineral Oil.
  - 3.2 Protection of the rights of the people.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings.

#### **1.0 INTRODUCTION.**

This unit is intended to examine the effect of divestment of rights in mineral oil. It shows the rights of the people that exist and the ones that have been violated in the process. The unit also considers the agitation for resource control and the legal tussle that resulted in some of those agitations.

#### **2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Give a clear explanation of the effects of taking over the rights in mineral oil by the State.
- ii. Understand the manner of rights that should be protected in the expropriation process.
- iii. Understand the legal and political issues of resource control in Nigeria.

#### **3.0 MAIN CONTENT.**

##### **3.1 Effect of Divestment of Interest in Mineral Oil.**

The various legal processes that have occurred in the oil sector in Nigeria have significantly affected the country. There is a crisis which is only contained by some temporary measures. The

crisis started brewing as from the 1960s during the early years of exploration and export of oil in large quantities. This is due partly to the sharp reaction of the oil producing communities to the years of despoliation of their environment.

The oil and gas sector in Nigeria is undoubtedly going through serious crisis, due to the agitation of the oil producing communities, which suffer grievous hardships resulting from the operations of the laws governing the sector.

Government's awareness of the importance of oil in the national economy culminated not only in the enactment of laws but also in direct involvement in oil exploration and exploitation. Government's interest in petroleum was further awakened when it gradually replaced agricultural products as the main export commodity. In order to strengthen and establish government control in the industry, the Nigerian National Oil Corporation (NNOC) was established in 1971 by Act No. 18. This transformed into Nigerian National Petroleum Corporation (NNPC) established by Act No. 33 of 1977.

The discovery of Petroleum in commercial quantities at Oloibiri in 1956, further reinforced the Niger Delta's position as a region of international importance (for the British colonial administration), and ushered in an aggressive disregard, indeed contempt, for customary practices and indigenous institutions.

The situation caused by the taking over land for oil operation has been described thus by Ayodele-Akaakar: "One observed a gradual erosion of culture in the various communities in the Niger Delta. These communities, hitherto were peaceful, friendly and hospitable, are almost always involved in one conflict or the other, due to oil and gas operations, or the location of oil and gas facilities and consequential benefits; fostered by the 'divide-and-rule' strategy of the oil and gas producing companies".

Furthermore, the nature of the terrain and the need to maximize profit subject the oil mining areas to devastating environmental abuse and consequential degradation. It is no overstatement to maintain that the Nigerian oil industry has inflicted unprecedented agony on the indigenous

communities by completely disrupting the waterways, by destroying soil, water, air, and animal and plant life, and indeed cutting off the fundamental means of livelihood of the communities.

Many arguments have been put forward in justification of the Federal Government expropriation of all minerals on, in or under the totality of Nigeria's territories, both land and marine, at the expense of other entities within the state:

That ownership and control of petroleum has been an important political symbol in most developing countries.

It is also said that the question of which government or authority, to whom oil revenues should be paid, and the power and resources derived from oil, was an issue in the crisis that led to the Nigerian civil war, prompting the Federal Government to claim that right exclusively.

Oil has a virtual influence on the life of the people because of the benefits of petroleum on the economy. Thus exclusive federal control permits the promulgation of uniform regulations in the oil industry.

But these arguments do not seem to be valid because instead of promoting unity, the Federal Government' exclusive ownership and control of oil resources, has caused deep bitterness, resentment and a sense of majority oppression of the minority producers of oil. The fact is that the people of all oil-producing areas feel "cheated and exploited" by a policy under which the wealth under their lands is carted away, leaving them with nothing but a polluted and devastated environment.

The adoption of national ownership of all minerals in, under or upon any land, contiguous continental shelf, and of all rivers, streams and water courses throughout Nigeria notwithstanding, the law recognises and retains the title of the community to certain minerals if it has been the custom of the members of the community to win such minerals before the law came

into force. On that premise any citizen of Nigeria who belongs to a community that has customarily won such minerals, can win and exploit them.

Furthermore, where a mining lease has been granted over any land from which such community had customarily win minerals, the lessee shall, during the continuance of the lease, pay to the members of that community compensation as may be prescribed by the Minister. See First Schedule of the Petroleum Act.

### **SELF ASSESSMENT EXERCISE**

1. In what way has the divestment of rights in mineral affected the people?

### **3.2 Protection of the rights of the people.**

We have to consider that there is the need for the recognition of the rights of the people to the natural resources in their environment and for the utilisation of these resources for the use and enjoyment of the people. The oil producing areas of Nigeria is the case in point. There are some laws and rules in place in protection of these rights but they have not been properly employed to exercise these rights. Some of these statutes are highlighted as follows:

**(i) African Charter On Human And Peoples' Rights** enacted into law and incorporated into Nigerian legal system by the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP A10 LFN, 2004 which sets out as a Schedule thereto, the full text of the African Charter on Human and Peoples' Rights. The provisions of this law are particularly relevant in appraising the case of the oil producing areas of the Niger Delta of Nigeria.

**Article 21** states specifically with reference to natural resources that:

“1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the disposed people shall have the right to the lawful recovery of its property as well as to an adequate compensation...”

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principle of international law.”

**(2) The Constitution of the Federal Republic of Nigeria.**

The provisions of Sections 14 (2) (a), (b) & (c) respectively of the 1999 Constitution say that:

“14 (1) The Federal Republic of Nigeria shall be a State based on the principle of democracy and social justice. (2) It is hereby, accordingly declared that – (a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its power and authority; (b) the security and welfare of the people shall be the primary purpose of government;”

Further to the above quoted provisions Section 16 (1) (a) & (b); and Section 16 (2) (b) respectively of The 1999 Constitution of the Federal Republic of Nigeria also states that:

“16 (1) The State shall within the context of the ideals and objectives for which provisions are made in this Constitution -

- (a) harness the resources of the nation and promote national prosperity and an efficient, dynamic and self reliant economy;
- (b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;

By these statutes the Federal Government undertook to ensure that, in furtherance of the State social order, which is founded on ideas of freedom, equality and justice, exploitation of human or natural resources for any reason whatsoever, other than the good of the community, shall be prevented.

The provisions of the Constitution in Chapter II relating to the Fundamental Objectives and Directive Principles of States Policy though has been held not to be justiceable. Section 6(6)(c) in the Nigerian Constitution states that except as otherwise provided by the constitution, the judicial

powers vested in accordance with the foregoing provisions of the section shall not extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of States Policy set out in Chapter II of the Constitution.

Thus, the provisions for the “social and economic rights” cannot be enforced in court by the judicial process. This has also been decided in some cases in court..

The foregoing notwithstanding, there are provisions for the Fundamental Rights in Chapter IV of the Constitution which recognise the rights to life among other rights that can be duly enforced in the appropriate circumstances.

From the foregoing, there is an urgent need for a review of the system of ownership with respect to mineral oil resources.

It is contended that the issue of national interest in oil can be addressed and expressed easily. National policies can be established and followed without expropriation of the right of the producing area. The Federal Government could very much regulate the operations of this major sector of the economy while at the same time ensuring the recognition and security of the rights and interests of the producing community.

It has been suggested that Federal Government should hold the mineral resources in trust for the states where the minerals are found while the States should be the equitable owners and beneficiaries of the crude oil. The states should also receive a reasonable proportion of the proceeds of the minerals taken from their land at the determined proportion while the Local Government of production also takes a proportion.

This should invariably lead to the amendment of the Petroleum Act. From this perspective it is the view of some people that it amounts to oppression to:

- Dispossess the oil-producing communities of their land- (through the confiscatory laws- like the Land Use Act);

- Compulsorily acquire every natural resource yield from this land (and waters);
- Deny the people the benefit of participating in the use and management of these resources and a fair share of the revenue yield.

### **SELF ASSESSMENT EXERCISE**

1. Describe the effect of expropriation on the constitutional rights of the people.

### **4.0 CONCLUSION**

Property right is an essential part of social and economic rights, which should be recognised. It is the inalienable right of the community to own the land in totality including all resources below and above it. This is not an outrageous demand neither is a novel or unpatriotic one. This and other agitations have continued in many quarters and become constitutional issues.

### **5.0 SUMMARY.**

The legal effect of divestment of right in mineral oil has been examined in this unit with all the relevant constitutional issues.

### **6.0 TUTOR MARKED ASSIGNMENT.**

Discuss the legal and constitutional effect of divestment of rights in natural resources.

### **7.0 REFERENCE**

1. F.O. Ayodele-Akaakar See, Appraising The Oil & Gas Laws: A Search For Enduring Legislation for The Niger Delta Region.
2. Constitution of the Federal Republic of Nigeria, 1999.

**UNIT 4: RESOURCE CONTROL AGITATION.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Resource Control Issues.
- 4.0 Conclusion.
- 5.0 Summary.
- 5.0 Tutor Marked Assignment
- 6.0 Reference/further readings.

**1.0 INTRODUCTION.**

The unit also considers the agitation for resource control and the legal tussle that resulted in some of those agitations.

**2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. Understand the legal and political issues relating to natural resource control in Nigeria.

**3.0 MAIN CONTENT.****3.1 Resource Control Issues**

Individual and communal right to natural resources in land has been eroded. By virtue of the power of ownership of the Federal Government, section 2 of the Petroleum Act authorizes the Minister of Petroleum Resources to grant licenses and leases for the exploration, prospecting and mining of petroleum. Oil companies wishing to explore for petroleum in Nigeria are therefore required to apply for either, an oil exploration license or an oil prospecting licenses and lease. The Nigerian National Petroleum Corporation (NNPC) acting on behalf of the Federal Government has the right, power and authority to enter into other forms of contractual joint ventures with the oil companies.



The government's ownership of all petroleum in Nigeria has therefore meant that the revenue accruing to her has increased considerably. However, there has not been any remarkable increase in the fortunes of the oil producing communities in the Niger Delta. Despite the government's efforts to alleviate the sufferings of the inhabitants of these oil producing communities, little development has taken place in these communities.

The setting up of Niger Delta Development Commission (NDDC) by the Federal Government has only further exposed the inadequacies of the present system of ownership of oil and gas in Nigeria.

There has been incessant call for resource control by various ideological and militant groups in the South-south region of Nigeria. These states are often called the Niger Delta States. The quest is to have a large share of the revenue that accrues to the nation from oil resources that is excavated from these states. In this sense it is demanded that the states should have ownership and considerable control over the mineral oil.

It should be noted however that the various formula put forward by the people at different times were not considered by the government. Instead the Federal Government went to court for a judicial interpretation of certain provision of the Constitution dealing with oil revenue allocation in the federation and other connected matters bordering on the ownership of the mineral resources on land and off the shore of Nigeria. This was the crux of the matter in the celebrated case of *Attorney General of Federation of Nigeria vs. Attorney General of Abia & 35 ors (No 2) (2002) 4 SCNJ 1*.

The Federal Government filed this suit at the Supreme Court against the states of the Federation seeking an interpretation of the seaward boundary of littoral states within the Federal Republic of Nigeria for purposes 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.

The states had countered claimed variously the substance of which is that the Federal Government disbursements from the Federation Account amounted to a violation of the principle of fiscal federalism. The eight littoral states (Delta, Akwa Ibom, Cross River, Ondo, Rivers, Lagos, Bayelsa and Ogun) further contended that their territory extends to the continental shelf and the exclusive economic zone, and are therefore entitled to not less than 13% of the on-shore and off-shore natural resources in their land or territorial waters. The relevant issue for the present discourse, as formulated for determination of the Supreme Court was:

What is the southern or seaward boundary of each of the eight littoral states of Delta, Akwa Ibom, Cross River, Ondo, Rivers, Lagos, Bayelsa and Ogun for the purpose of calculating the amount of revenue accruing to the federation account directly from any natural resources derived from the state pursuant to the proviso to section 162 (2) of the Constitution of the Federal Republic of Nigeria.

Section 162(1) of the Constitution of the Federal Republic of Nigeria 1990 established the Federation Account into which all revenues collected by the Government of the Federation, with a few exceptions not relevant to the case in hand, should be paid. Section 162 (2) of the Constitution empowers the National Assembly to determine the formula for the distribution of funds in the Federation Account: 162 (2) the President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Accounts, and in determining the formula, the National Assembly shall take into account, the allocation principle especially those of population, equality of states, internal revenue generation, land mass terrain as well as population density:

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than 13% of the revenue accruing to the Federation Account directly from any natural resources.

The proviso to the subsection entrenches, with respect to natural resources, the principle of derivation in any formula the National Assembly may come up with. By this principle not less

than 13% of the revenue accruing to the federation account directly from any natural resources shall be payable to a state of the federation from which such natural resources are derived. For a state to qualify for this allocation of funds from the federation account, the natural resources must have come from within the boundaries of the state; that is, the resources must be located within the state.

There arose a dispute between the Federal Government, on the one hand, and the eight littoral states, Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo, Rivers, on the other hand as to the southern (or seaward) boundary of each of these states. The Federal Government contended that the southern boundary of each of these states is the low-water mark of the land surface of each state, or the seaward limit of inland waters within the state as the case so requires. The Federal Government, therefore, maintained that natural resources located within the Continental Shelf of Nigeria are not derivable from any state of the Federation.

The eight littoral states did not agree with the Federal Government's contentions. Each claimed that its territory extends beyond the low-water mark onto the territorial water and even onto the continental shelf and the exclusive economic zone. They maintained that natural resources derived from both on-shore and off-shore are derivable from their respective territories and in respect thereof each is entitled to not less than 13% allocation as provided in the proviso to section 162 (2) of the constitution.

The Supreme Court decided *inter alia* as follows:

1. 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 is the low water mark limit of the surface or the seaward inland waters.

The Supreme Court thus affirmed the federal government's ownership and control of all natural resources within its territory. It also confirmed that littoral states have no title to off-shore natural resources. Wali J.S.C said:

“None of the littoral states is sovereign despite the historical narration by some of them they are all part and parcel of the sovereign independent state of Nigeria. None of them can exercise any control beyond the land mass of their respective states. They cannot claim that revenue accruing from mineral resources off-shore belongs to any of them. Whatever revenues accrues from drilling off -shore belongs to the whole federation of Nigeria based on section 199 Constitution, their claims that they are entitled to not less than 13% of the total revenue accruing from off-shore drilling must therefore fail and same is hereby refused and dismissed”

2. The Court held however that the exclusion of natural gas, capital gains tax and stamp duties as constituents of derivation was unconstitutional. Ogundare J.S.C said:

“Natural gas is a natural resources and any revenue accruing from it qualifies for the application of the principle of derivation in favour of any state from which it is derived”.

The Supreme Court further held that by section 163 of the 1999 Constitution, the net revenue collected from capital gains and stamp duties should be distributed among the states on the basis of derivation. It follows therefore that what net revenue is collected from any state by the Federal Government is paid back to the state.

The Court also held that payment of derivation funds should have commenced on May 29, 1999 and not in January 2000.

### **SELF ASSESSMENT EXERCISE**

1. Give an account for the resource control agitation in Nigeria.

### **4.0 CONCLUSION**

There has been consistent agitation for control of mineral resources since the late 1960s in Nigeria and this has continued up till the present day. The history of agitation for natural resources has been connected with the exploration of petroleum and natural gas in Nigeria. The

people have made known their grievances through various means ranging from peaceful talks to violence.

### **5.0 SUMMARY.**

The height of the agitation in the legal perspective has been the suit in *Attorney General of the Federation Vs Attorney General of Abia State & ors*, but this has not seemed to resolve the problems raging as there has continued to be agitation which went violent in some years after.

### **6.0 TUTOR MARKED ASSIGNMENT.**

Critically examine the agitation for resource control and the legal consequences.

### **7.0 REFERENCE/ FURTHER READING.**

1. Constitution of the Federal Republic of Nigeria, 1999.
2. Oluyede P. A.: Constitutional Law in Nigeria.

**UNIT 5: COMPENSATION AND ALLOCATION OF PETROLEUM GAINS.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 . Revenue Allocation and Management.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment
- 7.0 Reference/further readings.

**1.0 INTRODUCTION.**

Oil exploration introduced an entirely new element into the structure of the Nigerian state, namely internal rapacious elite that identified crude oil as God-sent and saw itself as unaccountable to the communities that produced it. Oil revenue is a major factor in the Nigerian federation and the struggle for power has been interwoven with crude oil resources. This unit examines these issues as they affect the country.

**2.0 OBJECTIVES.**

At the end of this unit you should be able to:

- i. To identify the problems of compensation for exploration of oil on the land of the people.
- ii. To understand the system of oil revenue and allocation in Nigeria.
- iii. To understand the issues involved in revenue allocation.

**3.0 MAIN CONTENT.****3.1 Revenue Allocation and Management.**

From the beginning, and since the oil boom of the 1970s, the revenue allocation system in Nigeria has remained one of the critical destabilising factors in the Nigerian Federation. Petroleum and natural gas are the fiscal basis of the Nigerian State, accounting for over eighty percent of all Federal Revenue and 90 percent of all foreign exchange earnings. As Cyril Obi puts it revenue allocation largely implies the allocation of oil revenue. “Oil is central to the politics of inter – governmental relations in Nigeria, the economic crisis, and the transcendence of the destabilizing tendencies within the system”

The issue of revenue allocation is at the basis of the existence of the Nigerian nation. The country has witnessed major crisis by the problems relating to revenue allocation, due to the fact that petroleum is the main stay of the economy. It is exported daily from the shores of the nation.

Thus the struggle for control over mineral resources in the country is fierce among the identifiable classes with the aim of having more or much revenue allocated to their own interests.

Revenue allocation according to Olowononi, “has a very great potential for conflicts, especially between rich and poor regions or states in Nigeria. In fact, it was ethnic conflict which largely explains the origin of centralization of fiscal powers in Nigeria today.”

With central control over a wide range of policies the federal government has been able to effect a redistribution of income from the richer to the poorer states.

With the discovery of petroleum in commercial quantity and exportation of the same shortly before independence the dimensions with which revenue allocation had taken has been appalling. The problems of the formula and struggle for the ethnic or sectarian interest rather than national interests became more intense and continued for a long time.

A variety of effort was made to solve the already identified problem of revenue allocation at independence. To address the issue and perhaps in contemplation of the mineral producing

regions the 1960 and 1963 constitutions provided for derivation as the revenue allocation principles.

Both constitutions state that fifty percent of proceeds of any mineral extracted from any region be paid to that region. **Section 134 of 1960 Constitution** specifically provides:

- (1) “There shall be paid by the Federation to each region a sum equal to fifty percent of:
  - (a) The proceeds of any royalty received by the federation in respect of any minerals extracted in that region and
  - (b) Any mining rents derived by the federation during that year from within any region.
- (2) The Federation shall credit to the Distributable Pool Account a sum equal to thirty percent of
  - (a) The proceeds of any royalty received by the federation in respect of minerals extracted in any region; and
  - (b) Any mining rents derived by the federation from within any region.
- (3) For the purpose of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or other repayments relating to these receipts have been deducted there from or allowed for.
- (4) Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.
- (5) In this section “minerals” includes oil.
- (6) For the purpose of this section the “continental shelf of a region “shall be deemed to be part of that region”.

The above provisions were enacted verbatim in **Section 140 of 1963 Constitution**.

Despite these provisions there were still burning issues of revenue allocation that plagued the period of 1960s through the years and up till date. After independence, another commission was again, inaugurated to find solutions to the endemic problem of revenue allocation. This was the



Binn's Commission of 1964. However, within one year of the Binn's report, the First Republic was aborted by a military Coup.

Between 1968 and 1980, income from Petroleum constituted over eighty percent of federal revenue. The importance of the Federal Centre therefore increased proportionately.

The issue of revenue allocation also became a fundamental legal factor which characterised the political landscape. The federal government is at the centre of power. Therefore it became the ultimate goal in politics and all attention shifted to the contest for access to power and the capacity to authoritatively allocate resources at the centre.

Worse still, the nature of oil wealth initiated a political culture in which emphasis was on how to share the oil wealth rather than how to engage in the production of "renewable and viable alternatives". In effect, other sources of revenue like agriculture were neglected in the rush for oil resources at the centre, thereby giving the Federal Government leverage, which unfortunately was channeled into unprofitable pursuits.

While oil has contributed to the development of Nigeria by strengthening the centre i.e. the Federal Government, the same oil has only impoverished the people of the oil producing areas. This is the irony of it all.

Between 1967 and 1969 petroleum had become the major resource in terms of total income and foreign exchange earnings in the country. It was easy for the majority groups in the Federal Government to reverse the basis of revenue with regard to petroleum resources from derivations to Federal Government exclusive ownership. This was evidenced by the enactment of the Petroleum Act in 1969.

The foregoing has painted the picture of the control of mineral oil resources as it affects allocation of revenue in Nigeria.

### **SELF ASSESSMENT EXERCISE**

In what ways have the revenue allocation system in Nigeria affected the Nigerian society?

**4.0 CONCLUSION.**

Revenue sharing has introduced a new dimension into government financing portrayed by an accelerated de-emphasizing of internally-generated revenue. This has serious implication for good governance and the need to assuage the needs of the people with respect to allocation of revenue from petroleum resources.

**5.0 SUMMARY.**

You have gone through the issues that relate to revenue allocation from oil proceeds in Nigeria. You should be able to address in your mind how equity should be done on the matters raised.

**6.0 TUTOR MARKED ASSIGNMENT.**

Give an overview of the relationship between oil revenue and distribution in Nigeria.

**REFERENCE/FURTHER READINGS.**

1. Obi, C.I. (1998), "The Impact of Oil on Nigeria's Revenue Allocation System: Problems and Prospects for National Reconstruction" in Federalism and Political Restructuring in Nigeria, Kunle Amuwo, et al (eds) Ibadan: Spectrum Books.
2. Olowononi, G.D.(1998) "Revenue Allocation and Economics of Federalism" in Kunle Amuwo et al (eds.). Federalism and Political Restructuring in Nigeria, Kunle Amuwo, et al (eds) Ibadan: Spectrum Books.

**MODULE 5:**

Unit 1: Natural Resources in the history of the United Nations.

Unit 2: The role of international law in natural resources exploitation.

Unit 3: The role of international law in natural resources exploration  
continued.

## **UNIT 1: NATURAL RESOURCES IN THE HISTORY OF THE UNITED NATIONS.**

### **Contents**

1.0 Introduction.

2.0 Objectives.

3.0 Main content.

3.1 Brief History of the United Nations.

3.2 The United Nations and Natural Resources.

4.0 Conclusion.

5.0 Summary.

6.0 Tutor Marked Assignment.

7.0 Reference/further readings.

### **1.0 INTRODUCTION.**

This is the first unit of this module in which you are going to learn about the United Nations and its role in the protection of natural resources. This unit will specifically take you through a brief history of the United Nation as an international organization and its role in international development. It will also look at the protection of the rights of some peoples to the natural resources in their environment. All these and more are to be considered in view of the exploitation of mineral resources that takes place daily in all parts of the world where these minerals could be found. The law has a role to play in the regulation of the environment for a just and equitable distribution of the resources.

### **2.0 OBJECTIVES.**

At the end of this unit you should be able to:

i. Have the basic knowledge of the history of the United Nations.

- ii. Know how the United Nations have responded to exploration of natural resources.
- iii. Understand the basic considerations of the United Nations with regards to natural resources preservation.

### **3.0 MAIN CONTENT.**

#### **3.1 Brief History of the United Nations.**

The United Nations (UN) is an international organisation of countries created to promote world peace and cooperation. The UN was founded after World War II ended in 1945. Its mission is to maintain world peace, develop good relations between countries, promote cooperation in solving the world's problems, and encourage respect for human rights.

The UN is an organisation of countries that agree to cooperate with one another. It brings together countries that are rich and poor, large and small, and have different social and political systems. Member nations pledge to settle their disputes peacefully, to refrain from using force or the threat of force against other countries, and to refuse help to any country that opposes UN actions.

The UN is the result of a long history of efforts to promote international cooperation. In the late 18th century, German philosopher Immanuel Kant proposed a federation or "league" of the world's nations. Kant believed that such a federation would allow countries to unite and punish any nation that committed an act of aggression. This type of union by nations to protect each other against an aggressor is sometimes referred to as collective security. Kant also felt that the federation would protect the rights of small nations that often become pawns in power struggles between larger countries.

In 1945 representatives from 50 nations met in San Francisco, United States of America and drafted the Charter of the United Nations (UN). The Conference recognized the failure of the League of Nations, the UN's predecessor, to contain the conflicts that led to World War II (1939-1945). The conference sought to create an organisation that could represent all of the world's

nations and deal effectively with a broad range of issues. The charter provides the framework for the UN, which continues to work toward its primary goal of maintaining world peace.

Due to the devastation of the First World War, countries were inspired to come together and work toward peace. They formed a new organisation, the League of Nations, to achieve that goal. The League would last from 1920 to 1946 and have a total of 63 member nations through its history, including some of the world's greatest powers: France, the United Kingdom, Italy, Japan, Germany, and the Union of Soviet Socialist Republics (USSR).

Despite this failure, the idea of a league did not die. In 1942 representatives of the Allies signed a Declaration by United Nations accepting the principles of the Atlantic Charter. The declaration included the first formal use of the term *United Nations*, a name coined by President Roosevelt. A year later, four of the Allies—the United States, the United Kingdom, the Soviet Union, and China—agreed to establish a general international organization. The four countries met in 1944 in Washington, D.C., USA and drafted a charter for the new organization. They called the new league the United Nations. But they still could not agree to certain details, such as membership and voting rights.

The UN officially came into existence on October 24, 1945, with 51 member countries. Like the League of Nations, the UN was founded to promote peace and prevent another world war. The UN recognised it would not be successful unless it had the ongoing support of the world's most powerful countries. The organisation took several steps to ensure that support.

The UN placed its headquarters in New York City. To reassure the world's most powerful countries that it would not threaten their sovereignty, the UN gave them veto authority over its most important actions. Five countries received this veto power: the United States, the United Kingdom, France, the Soviet Union, and China. (Russia inherited the Soviet Union's veto after the breakup of that country in 1991.)

The Charter of the United Nations (UN) organized the UN into six distinct bodies: the General Assembly, the Security Council, the Secretariat, the Economic and Social Council, the International Court of Justice, and the Trusteeship Council. The General Assembly has input into

the other bodies, but its powers are limited. For example, it elects the UN secretary general, but the Security Council is responsible for nominating the secretary general. The Trusteeship Council is the only UN body that no longer functions, although it continues to exist. It was established to help former colonial countries achieve independence or self-government, a goal that was accomplished in 1994.

### **3.2 The United Nations and Natural Resources.**

All over the world the question of who the ownership, control and development of natural resources lay with has been a subject of debate among the nations. Consequently the issue has assumed a controversial dimension in the world. It is on this premises that the United Nations (UN) held several Conferences on the Law of the Sea with the agenda of solving the problem of ownership, control and development of natural resources. The immediate result of this is the Law of the Sea Convention (LOSC).

Prior to the birth of the United Nations the politics of States were polarised and divided into two. They could be described as the powerful and the powerless states. Then, the powerful states still had firm grip over their protectorate states. Colonialism was still in vogue.

It was however the claim of these colonial powers (while trying to legitimize their presence in their rule over their satellite states) that the metropolitan states (colonialists) bring development and progress to the dependent and undeveloped colonies. Quoting the Covenant of League of Nations and later the UN Charter, colonial powers consider it to be part of their sacred trust to promote to the utmost, the well being of the inhabitants of these territories, who were not yet able to stand by themselves under the strenuous conditions of the modern world. They also argued that the exploitation of the natural resources was not only a right but even a duty on them.

Consequently, the colonial rules exploited and exported the mineral resources within their colonies at the expense of the local population. In the case of mineral resources, the processing of the resources mined in colonized territories often takes place in the metropolitan states.

It is therefore glaring now that the scramble for Africa of the 19<sup>th</sup> century, which culminated into the famous Berlin Conference (1884-1885) was driven by the profit expected to be gained from the various mineral wealth which abound in the continent. Thus, one of the major objectives of the imperialists in seizing colonies was to loot their natural resources.

Between the mid 20<sup>th</sup> century and hind 20<sup>th</sup> century (1945-1997) the decolonization and decline in colonization had virtually completed. During this period, virtually all the colonies had been liberated. However, in spite of the political independence, the newly independent countries had yet to achieve technological and economic independence. In most cases, their natural and mineral resources were still under the control of foreign companies or trans-national corporations.

However, as the years go by the developing countries, as those colonies are usually dubbed, began to struggle for economic sovereignty. These out cries arouse the attention of the United Nation. It should be noted that prior of the U.N intervention on the question of ownership of Natural Resources, there appears to be defined global position on the subject.

While the developed countries had used their economic and technological advancement to explore and exploit natural resources within their areas of jurisdiction, the developing countries were heavily plundered by the agents of the developed countries, particularly the trans-national corporations. This period, prior to the U.N, intervention, was known as the era of traditional concession under which the state granted right over vast expanse of territory for a long duration, for exploration and exploitation purpose with little or no financial benefits.

These concessions were the classical contractual frame work in which transnational corporations operated in the extractive sector namely: Petroleum, solid Minerals, Timber etc in the developing countries during this era. The concession rights were not just over particular minerals but also found in the entire concessions areas, yet no royalty was paid to the local authorities, because what they gave out and described as royalty was a provision for the payment a percentage of 3-5 percent of the declared profit of the corporation.

However before the advent of the law of the sea, the prevailing rules concerning the control, ownership and development of natural resources was the freedom of the sea concept which dated back to the 17<sup>th</sup> Century.

Under the concept national rights were limited to a specified belt of water extending from nations' coast lines, usually three nautical miles, according to the Cannon Shot rule developed by a Dutch jurist, Cornelius Bynkershoek. All waters beyond national boundaries were considered international water – free to all nations, but belonging to none of them. This is also known as the *mare liberum* principle promulgated by Hugo Grotius.

This principle remained in force till 20<sup>th</sup> century when some nations expressed their desire to extend national claims, that is, to include natural resources, to protect fish stock, and provide the means to enforce pollution controls. However, since the 1950s, the U.N has attempted to convince the nations of the world to agree to a set of rules that would govern the law of the sea. This led to the first U.N conference on the law of the sea. The conference held in Geneva in 1958.

This conference led to the codification of four other treaties that dealt with some areas of the law of the sea. This approach certainly marks the beginning of the United nations' interference over the control; development and ownership of mineral resources, as it gave birth to various laws, rules and treaties that loosen the grip of the super power over the resources of the lower countries.

The conference worked for more than 10 years on a comprehensive treaty that would codify international law concerning territorial waters, sea lanes and ocean resources.

On 10<sup>th</sup> December, 1982, 117 nations signed the UN Convention on the law of the sea, (UNCLOS) in Montego Bay, Jamaica.



The convention which went into effect November 16, 1994 claims the mineral on the ocean floor beneath the high seas as “the common heritage of mankind”. The exploration of minerals was to be governed by global rather than national authority. Production ceiling has been set to prevent economic harm to land based producers of the same minerals.

There have been continuing negotiations with the United States and other nations to resolve this issue, which is the one of the serious obstacles to universal acceptance of the treaty. A 1994 agreement amended the Mining provisions, which led the United States to submit the treaty to U.S Senate for ratification.

The convention further provides that every nation that has a continental shelf is granted exclusive right to explore and exploit the oil, gas and other resources in the shelf up to 200 miles from shelf and more under specified circumstances.

The convention provides thus:

*“The coastal state expertise over the continental sovereignty rights for the purpose of exploring it and exploiting its natural resources”.*

*“The rights referred to in paragraph 1 are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state.”*

It should be mentioned that from the above provisions of the UNCLOS, it can be safely stated that the fishing and mineral extraction within the continental zones are entirely within the control of the Coastal nations.

Thus, in 20<sup>th</sup> Century, coastal nations progressively widened their claims over offshore waters, especially in the face of the competition from foreign fishing fleets and in anticipation of rich oil, gas and mineral finds on the continental shelf.

The UNCLOS further provides for the specific legal regime of the exclusive economic zone which is an area beyond and adjacent to the territorial sea, under which the rights and freedom of other states are governed by relevant provisions of this convention.

It states thus:

“In the exclusive economic zone, the coastal has:

- (a) Sovereign right for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living”.

Therefore, the coastal state has sovereignty to ownership, control and development of natural resources.

### **SELF ASSESSMENT EXERCISE**

In what ways have the United Nations responded to utilization of natural resources?

#### **4.0 CONCLUSION.**

The UN and the international community have recognised the need for preservation of natural resources and the rights of nations over them. We have seen how this has been done in this unit in the process of international instruments like the Law of the Sea and other principles that have evolved.

#### **5.0 SUMMARY.**

In this unit an attempt has been made to introduce the United Nations to the student as an international organisation with long history of securing peace, protection and preservation of natural resources.

#### **6.0 TUTOR MARKED ASSIGNMENT.**

Give an account of the United Nations in the development of natural resources.

**7.0 REFERENCE/FURTHER READINGS.**

1. Basi, R. (2003), *The United Nations, Structures and Function of an International Organisation*, New Delhi, Sterling Publishers.
2. Atsegbua, L (2004), *Oil and Gas Law in Nigeria: Theory and Practice*, (2nd Edition) Benin: New Era Publications.

**UNIT 2: THE ROLE OF INTERNATIONAL LAW IN NATURAL RESOURCES EXPLORATION.**

**Contents.**

1.0 Introduction.

2.0 Objectives.

3.0 Main content.

3.1 The Role of International Law in Natural Resources Exploration.

3.2 Permanent Sovereignty Over Natural Resources.

4.0 Conclusion.

5.0 Summary.

6.0 Tutor Marked Assignment.

7.0 Reference/further readings.

## **1.0 INTRODUCTION**

The UN as a body of nations has been involved in the development of principles of international law. It has contributed in no small measure to the growth of rules that guide nations in the exploitation of natural resources. It has concerned itself with the protection, preservation and improvement of the life and living of the people. This is done through the evolution of several rules and principles in Conventions, Treaties and Pacts. Among these rules are the Laws of the Sea Convention and the Permanent Sovereignty on Natural Resources. This unit deals with these themes in sequence, underscoring their impact on the countries.

## **2.0 OBJECTIVES**

The objectives of this unit are:

- i. To make you know how the UN has contributed to international law principles on natural and mineral resources.
- ii. To make you understand the role of international law in natural resources.
- iii. To analyse in detail the principle of permanent sovereignty over natural resources.

## **3.0 MAIN CONTENT.**

### **3.1 The Role of International Law in Natural Resources Exploration.**

Since the 1950s the UN has attempted to convince the nations of the world to agree to a set of rules that will govern the law of the sea. The first UN Convention on the Law of the Sea, (UNCLOS) which was held in Geneva 1958, led to the codification of four treaties that dealt with some areas of the law of the sea. In the 1970s, the Third UN Conference on the law of the sea began its work.

The principles of the right of the people and nations to permanent sovereignty over their natural resources had received international recognition in various UN General Assembly Resolutions.

The principle of permanent sovereignty over natural resources was first raised by the Chilean delegation at the Eighth Session of the Human Rights Commission, when it was working on the preparation of the Draft International Covenants on Human Rights in pursuance of General Assembly Resolution No. 545 (IV) of February 5, 1952. In this Resolution, the General Assembly decided to include the rights of all peoples and nations to self determination as part of the Human Rights Covenants and requested the Commission to prepare a draft on the subject. After a long discussion, the Commission's working party agreed to include in the covenants the following words: *"The right of the people to self determination shall also include permanent sovereignty over their natural wealth and resources. In no case may people be deprived of its own subsistence on the ground of any rights that may be claimed by other states"*

Once the principle was linked with self-determination, it became directly involved with the colonial issue, and the debate in the United Nations became polarised between the developed and the developing countries. Historically, therefore, the principle of permanent sovereignty over natural resources is a logical outcome of the principle of self determination which brought about the dissolution of the colonial empires after the Second World War.

After attaining political independence, it was felt that the independence was meaningless if foreign control endured in the economic sector. This was the more so since most developing countries soon realized that their natural resources generally represented their only economic assets.

It was therefore, not surprising that the objectives which the developing countries established for their natural resources conflicted with the interests of foreign based companies in protecting their usually advantageous investment conditions.

### **SELF ASSESSMENT EXERCISE.**

Describe the role of international law in exploitation of natural resources.

### **3.2 Permanent Sovereignty Over Natural Resources.**

The history of the PSNR can be seen in the words of R. Kemper:

*“as the history of struggle between private foreign investment and the interests of the capital-exporting countries on the one hand and the interests of the capital-importing countries and their economic and development goals on the other side”.*

The main controversy over the permanent sovereignty over natural resources was whether, in the exercise of the right, states were also obliged to act in accordance with the governing principles of international law. Most developing countries asserted that sovereignty meant, *inter alia*, the freedom of the state to explore and dispose of its natural resources, unrestrained by any political, economic or legal limitations imposed or maintained by an external authority.

According to these developing countries, a state cannot attain independence until it is able to control its natural wealth and resources. This economic aspect of sovereignty is important because it enables the developing countries to carry out their development plans and raise their standard of living. Emancipation from economic colonialism was still required for many developing states.

The right of a state to dispose of its natural resources was a natural right, an inalienable right, an absolute right, a permanent right according to spokesmen of developing countries.

Atsegbua opined that while some developing countries spoke of sovereignty in absolute terms, many of them expressly and repeatedly affirmed their respect for all contracts with foreign firms or government freely entered into. These countries were not oblivious to the need for foreign investment, if it were available on mutually agreeable terms.

They were also perfectly conscious of the compelling needs of interdependence of nations and had no desire to encourage economic isolation which might be counter productive to their

national interest. The claim for an unlimited sovereignty by some developing countries bears a severe economic risk irrespective of the understandable political reasons for these demands.

There was the danger that the developing country, flushed with its new power, might force its leverage to a point where it will inevitably come to suffer in the eventually. For example, the claim for an unlimited sovereignty may severally affect the flow of foreign investment to a developing country.

The developing countries, on their part, argued that while territorial sovereignty was a legal attribute of every state, it was limited by the duties and obligations imposed on states by international law and by the economic and political necessities imposed by the growing interdependence of states. They therefore, did not think it worthwhile to spend much time on proclaiming it, affirming it and elaborating it like the spokesmen of the developing countries.

The attitudes of the developing and developed countries do not appear to be irreconcilable apart from the fact that some developing and developed countries expressed views which cut across the general, dominant attitude of the groups to which they belonged. According to Rajan:

“They are speaking about the same concept, but only from two different ends of the same spectrum of interdependence which connects them together, and on the same common basis of membership of the United Nations, namely sovereign equality”

The only difference largely and only apparently seems to be that the developing states emphasis not exclusively however the obligations of sovereignty incumbent on both groups of states. Both of them equally recognise the compulsions of interdependence and international co-operation in mutual interest.

The reasons for this difference of opinion are partly historical. Many developing countries were newly independent and wanted to assert their sovereignty/independence and equality with other members states, while the older states took their sovereignty/independence for granted and spoke of them as a matter of course.

The origin and development of the principle of permanent sovereignty over natural resources can be divided into four phases. During the first phase, that is, from 1952, the adoption of resolution 1803 (XVII) of 14 December 1962, the UN was pre-occupied with the formation of the right of peoples to use and exploit their natural resources as a right inherent in their sovereignty.

The **Declaration on Permanent Sovereignty Over Natural Resources, Resolution 1803 (XVII)** of 14 December 1962, popularly known as the landmark resolution has been identified as the most important resolution passed during this period. The Declaration states, *inter alia*, that:

(1) *“the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and well being of the people of the state concerned,”*

(2) *“The exploration, development and disposition of such resources as well as import of the foreign capital required for these purpose should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary and desirable with regards to the authorisations, prohibition of such activities;”*

(3) *“In case where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profit derived must be shared in the proportions freely agreed upon, in each case between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State’s sovereignty over its natural wealth and resources”*

The implication of the resolution is that the exploitation of natural resources including mineral oil and import of capital should be in conformity with freely negotiated agreements, that capital and profits thereon should be in terms of authorization by national legislation and by international law. It also implies that the nationalization and exploration shall be based on grounds of public



utility, security or national interest and on appropriate compensation in accordance with national legislation of the country nationalizing and in accordance with international law. This declaration finally settled the debate between the developing and developed countries. It rejected the claim for an unlimited sovereignty but recognized the right of a state to nationalize property to the payment of appropriate compensation.

The resolution goes further to say that nationalisation, expropriation, or requisitioning shall be based on grounds or reasons of public utility, security or the national interest, which are recognized as overriding pure individual or private interest, both domestic and foreign.

In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to controversy, the national jurisdiction of the state taking the measure shall be exhausted. However, upon agreement by sovereign states and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

### **SELF ASSESSMENT EXERCISE**

What is the permanent sovereignty on Natural Resources?

#### **4.0 CONCLUSION.**

The attainment of independence by many of the developing countries in the 1950s and early and 1960s brought about growth in the quest for economic independence. This meant that resources of these nations would have to be controlled by their own people and government. International law affected the situation in a number of ways to protect the interest of these mineral bearing nations and nations. The principle of Permanent Sovereignty to Natural Resources evolved in the process as a strong point for development of many of these countries.

#### **5.0 SUMMARY.**

We have been able to take you through the evolution of international law in the perseverance of the rights of the countries to natural resources within their territory and how this has led to the UN Resolution on Permanent Sovereignty over Natural Resources. The reasons for passing the resolution have been considered in the unit.

### **6.0 TUTOR MARKED ASSIGNMENT.**

The developing nations have strived to deal with natural resources in a way to protect themselves from exploitation by the developed countries. Do you agree with this assertion?

### **7.0 REFERENCE/FURTHER READINGS.**

1. Atsegbua, L. (2004), Oil and Gas Law in Nigeria, Theory and Practice, 2nd Edition, New Era Publications, Benin.
2. Benerjee S.K. “The Concept of Permanent Sovereignty Over Natural Resources” (1968) 8 Indian Journal of International Law 515 at 517).
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**UNIT 3: THE ROLE OF INTERNATIONAL LAW IN NATURAL  
RESOURCES EXPLORATION CONTINUED.**

**Contents**

1.0 Introduction.

2.1 Objectives.

3.0 Main content.

3.1 Importance of the Resolution.

3.2 The Legal Status of the Resolutions.

3.3 Exploitation of Mineral Resources in some Developing Countries.

4.0 Conclusion.

5.0 Summary.

6.0 Tutor Marked Assignment.

7.0 Reference/further readings.

**1.0 INTRODUCTION**

This unit is a continuation of the unit 3 that deals with the role of international law in exploration and exploitation of natural resources. This unit will look further at the UN resolution on permanent sovereignty on natural resource. It is also intended to look at the importance of the resolution and its legal status. This is essential to the lawyer and the law student alike because of the subject of natural and mineral resources. It is the more so because of the role that such UN Resolutions play in the affairs of nations.

## **2.0 OBJECTIVES.**

The objectives of this unit are:

- i. To make the student understand the importance of the UN Declaration under discussion.
- ii. To make the student understand the issue of legal status of the resolution.
- iii. To analyse the issues that are raging in some selected developing country on natural resources exploitation.

## **3.0 MAIN CONTENT.**

### **3.1 Importance of the Resolution.**

The importance of this resolution **Declaration on Permanent Sovereignty Over Natural Resources, Resolution 1803 (XVII)** lies in the fact that it received the support of the developed and developing countries. This resolution represents a compromise between the interests of developing countries in the protection of their rights over their natural wealth and resources and those of the developed countries in securing adequate guarantees for the protection of foreign investments. It is the last resolution which explicitly recognizes within this context, the relevance of international law for the protection of foreign investment. It contains both the traditional norms of international law relating to the protection of foreign investment as well as the new norm of permanent sovereignty over natural resources.

During the second phase, from 1962 to 1973, the landmark resolution was adopted, reiterated and reaffirmed in a number of other resolutions. In resolution 88 (XIII) of 19 October 1972, the Trade and Development Board of the UN Conference on Trade and Development (UNCTAD)

reaffirmed the sovereign right of all countries freely to dispose of their natural resources for the benefit of their national development. It was specifically provided that this resolution is without prejudice to what is set forth in General Assembly resolution 1803. Other resolutions were adopted during this period. These resolutions led to other developments.

During the 1970s and early 1980s, several investment agreements concluded by some developing countries, particularly the oil exporters went through a series of amendments in order to bring them in line with the principle of permanent sovereignty over natural resources.

### **SELF ASSESSMENT EXERCISE**

Describe the importance of the UN Resolution on Permanent Sovereignty on Natural Resources.

### **3.2 The Legal Status of the Resolutions.**

There is a divergence of legal opinion as to the precise legal status of the resolutions on permanent sovereignty over natural resources. On this issue, there are two schools of thoughts. The first school of thought is held by the developing countries and is succinctly described by Chowdhury:

“The right of permanent sovereignty, emanating as it does from the right to self determination, has the same status of *jus cogens* in contemporary international law. Consequently, the exercise of such right is not defeasible by treaty or by contract. This position is not affected by the fact that there are still differences of opinion with regard to the legal status of some of the corollary rights flowing from the peremptory principle of permanent sovereignty”

The developing countries regard the principle of permanent sovereignty over natural resources as inalienable, as a rule of *jus cogens*, a norm accepted and recognized by the international community of states as a whole and from which no derogation is permitted unless by a subsequent form of general international law having the same character. The effect of this proposition put forward by the developing countries is that foreign investments agreements which are inconsistent with the principle of permanent sovereignty over natural resources would lose validity in law.

However, *Atsegbua:(2003)* submitted that the argument that the principle of permanent sovereignty has received acceptance in the world community as *jus cogens* has been resisted particularly by the developed countries who advance the second school of thought. It is argued by these countries, that although resolution 1803 has enjoyed the support of developed and developing countries, this resolution in itself does not create public of international law. The developed countries regard resolution 1803 has expressing an opinion *juris communis*, a declaration of existing principles of international law. The same cannot, however, be said of the resolutions on the NIEO and the CERDS. These resolutions appear to contradict resolution 1803, in that reference to international law rules relating to the protection of foreign investment is omitted.

In *Texaco Petroleum Development Company and California Asiatic Company vs. Libya*, the sole arbitrator, Professor Dupuy, rejected the resolutions on the NIEO and the CERDS as having any law creating effect. He regarded them as essentially *de lege ferenda*, and considered that they have validity only in the eyes of the states which have adopted them. This was because, unlike resolution 1803, they did not have the support of the developed countries, and in the view of Professor Dupuy, they purported to modify existing principles of international law.

A similar view was expressed by the arbitrators in *American Independent Oil Company vs. The Government of Kuwait*. The arbitrators said:

“On the public international law plane it has been claimed that permanent sovereignty over natural resources has become an imperative rule of *jus cogens* prohibiting states from affording by contract or by treaty, guarantees of any kind against the exercise of the public authority in regard to all matters relating to natural riches. This connection lacks all foundation. Even if Assembly resolution 1803 (XVII) adopted in 1962, is to be regarded, by reason of the circumstances of its adoption, as reflecting the then state of international law, such is not the case with subsequent resolutions which have not had the same degree of authority.....”

Atsegbua argued further that although it is generally accepted that resolutions of the General Assembly are not legally binding, this is not to say that they are without legal effect whatsoever. Whatever may be the content of the recommendation and the circumstances of the majority by which it has been reached, it is nevertheless a legal act of the principal organ of the UN, whose members are under a duty to treat with some degree of respect. It is submitted that despite the divergence of legal opinion as to the legal status of the resolutions on the NIEO and CERDS, recognized legal norms under existing international law, while others indicate emerging norms or directory principles relating to economic relations.

It has also been argued that assuming that this argument contesting the law creating force of the resolutions is valid it nevertheless loses force because the principle of permanent sovereignty has been acted upon so consistently that it has become a principle of international law through state practice. This argument has merit. The adoption of the principle can be seen in national legislation, in constitutional provisions and in the new types of foreign investment agreements.

Even if it is accepted that the General Assembly resolutions only succeeded in creating a weak norm its continued acceptance by many states, in their practices relating to investment agreements, converts it into a principle of customary international law. Its historical and political links with the principle of self determination may establish permanent sovereignty over natural resources as a part of *jus cogens*, even if this evolution has not already taken place.

The validity of the principle of PSNR has been questioned on the grounds that General Assembly resolutions are not binding and cannot create law. It is submitted that through “successive assertions in General Assembly resolutions, through state practice and through being embodied in municipal legislation, this principle is now part of public international.”

It should be noted however that this opinion is a mere assertion. Some of these are based on the argument that once there has been an agreement between two parties as to exploitation of mineral resources this should be respected despite any resolution that may seem to protect the

nation in which the natural resources are found. Another issue is that of enforcement of the resolution in the face of possible withdrawal of the 'offending' party from the agreement.

### **SELF ASSESSMENT EXERCISE**

What is the nature and status of the resolution in your own point of view?

### **3.3 Exploitation of Mineral Resources in some Developing Countries.**

The essence of this section is to examine incidences of exploitation of mineral resources in some developing countries, especially in Africa. It is intended to show the way the mineral resources have been legally and illegally mined and the implications for the countries.

The central and eastern parts of Africa have experienced considerable conflict because of exploitation of mineral resources many of which are illegally done. Some of these illegal mining have occasioned conflicts and strife. In some cases it has led to economic backwardness of the countries. In the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo for example, it is stated that illegal exploitation of the mineral and forest resources of the Democratic Republic of the Congo is taking place at an alarming rate. This involves two phases: mass-scale looting and the systematic and systemic exploitation of natural resources.

These pre-existing structures were improved over time and new networks for channelling extracted resources were put in place. However, the systemic exploitation used the existing systems of control established by Rwanda and Uganda. In both cases, exploitation was often carried out in violation of the sovereignty of the Democratic Republic of the Congo, the national legislation and sometimes international law and it led to illicit activities. Key individual actors including top army commanders and businessmen on the one hand, and government structures on the other, have been the engines of this systematic and systemic exploitation.

The consequence of illegal exploitation has been the continuation of various conflicts in these regions.



The Democratic Republic of the Congo, located in the heart of equatorial central Africa has an area of 2,267,600 square kilometres and a current population estimated at 50 million. The Democratic Republic of the Congo is endowed with a unique biodiversity, vast mineral and forest resources, and rich soils conducive to agriculture. These favourable conditions, concentrated in the eastern regions, are the setting for the current ongoing occupation and struggle to exploit these natural resources.

The illegal exploitation of resources by Burundi, Rwanda and Uganda took different forms, including confiscation, extraction, forced monopoly and price-fixing. Of these, the first two reached proportions that made the war in the Democratic Republic of the Congo a very lucrative business. Illegal exploitation by foreigners aided by the Congolese began with the first “war of liberation” in 1996.

#### **SELF ASSESSMENT EXERCISE**

Take note of the examples from other countries cited and relate them to the Nigerian situation.

#### **4.0 CONCLUSION.**

The concept of sovereignty over natural resources has been given proper recognition in the international community and it has served the interest of the nations that are bearing these resources while the advanced countries with their technology have not been short-changed. The principle has favoured the parties depending on how it is applied. The recognition given to all these resolution has partly given them a status of law and they are often enforceable without much strain. Nevertheless, this is not always the case as there are other considerations for their enforcement in the sphere of jurisprudence.

#### **5.0 SUMMARY.**

In the course of this unit you have been made to understand the importance of the resolution on natural resources and its effect on the people. We also considered the nature of the resolution and its legal status. The practices of exploitation of mineral resources in some African countries were treated with the problems faced by the people in the process.

**6.0 TUTOR MARKED ASSIGNMENT.**

The resolution on Permanent Sovereignty on Natural Resources is a turning point in the history of international law and protection of natural resources of some countries. Discuss.

**7.0 REFERENCE/FURTHER READINGS.**

1. Atsegbua, L. (2004), Oil and Gas Law in Nigeria, Theory and Practice, 2nd Edition, New Era Publications, Benin.
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**MODULE 6.**

- Unit 1: Nature of oil and gas pipelines
- Unit 2: Legal status, regulations for oil pipelines.
- Unit 3: Conditions for grant of rights to lay pipelines.
- Unit 4 : Rights and Duties of the Licence holder.

**UNIT 1: NATURE OF OIL AND GAS PIPELINES.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Nature of oil and gas pipelines.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment.
- 7.0 Reference/further readings.

**1.0 INTRODUCTION**

After crude oil has been produced it is transported to refineries by pipelines and oil tankers. This is the situation whether oil is being exported or being used locally since the usefulness of oil only becomes apparent after it has been refined. The different products from the refinery are usually transported by pipelines and oil tankers. It is intended in this unit to express the nature of oil pipelines and the uses for which it is put.

**2.0 OBJECTIVES**

At the end of this unit you should be able to:

- i. Understand the nature of oil pipelines.
- ii. Know the uses of oil pipelines.

### **3.0 MAIN CONTENT.**

#### **3.1 Nature of Oil and Gas Pipelines.**

Pipelines are a unique form of transportation used to move liquids, gases, or solid/liquid mixtures over great distances. Pipelines consist of two major components: pipes and pumping stations. Under the Oil Pipelines Act, Cap O7 Laws of the Federation of Nigeria, 2004, an oil pipeline means, for the purpose of the Act, a pipeline for the conveyance of mineral oils, natural gas and any other derivatives or components and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas and any other derivatives or components. See section 11 (2) of the Act.

Pipelines are commonly used to transport crude oil. Oil pipelines have been constructed in all parts of the world, primarily in oil-producing regions such as the Middle East, the North Sea, southern Russia, the South China Sea, Texas, Oklahoma, Alaska and Nigeria.

Pipelines are also used to transport solids suspended in liquids, such as coal slurry, which consists of powdered coal suspended in water.

There are networks of oil pipelines in the southern part of Nigeria where crude oil is produced. The pipelines run from oil fields and terminals to the refineries. Some of the oil pipelines run on land while others run from the off shore oil rigs to the land where oil is transported to the refineries. Perhaps the longest oil pipeline in Nigeria is the NNPC pipeline running from Port Harcourt to Kaduna Refinery built between 1977 and 1980.

Many of the oil pipelines run from the tank farms to the petroleum depots that are scattered around the country's major cities. The pipelines run through specific route created for it by the NNPC or the company following the procedure laid down by the government ministry

responsible for petroleum resources. Several of the oil pipelines in Nigeria have been constructed for many years with the earliest being constructed in 1956.

One of the most interesting aspects of freight transportation in the United States is the intensive use made of pipelines to transport oil and natural gas. From the time that natural gas began to be utilized as a fuel, instead of being wasted during petroleum-extracting operations, pipelines were constructed to transport natural gas.

Refined petroleum products also move by pipeline into the interior of the United States. One of the most ambitious pipeline projects undertaken to date, about 2,480 km (about 1,540 mi) long, was built in the early 1960s. It brings refinery products from Houston to points in the eastern United States.

Oil pipelines have remained very important in the transportation of oil and gas. Gas pipelines are made to transport natural gas from the points of extraction to the point where they are to be used or exported. It has become the major means of transporting crude oil because of its versatility and advantage over the use of vehicle tankers. The tankers only complement the pipeline on the road while rail transportation which was previously in use in Nigeria now play a negligible role because of the poor state of the railways.

In some countries a lot of revenue is made from the operation of oil pipelines by the companies that undertake such project. The companies upon obtaining the requisite approval construct oil pipelines underground and make it available not only to their own crude oil but for the use of other oil companies on agreed conditions. In such situation, every oil producing company does not have to construct oil pipeline, but make arrangement to use already existing pipelines.

In Nigeria, apart from the Federal Government whose oil pipelines are controlled by the Petroleum Pipelines and Marketing Company (PPMC), a subsidiary of NNPC, the international oil companies mostly operate their own oil pipelines.

Gas pipelines are also constructed in their respective uses. The Nigeria Liquefied Natural Gas Company operates the gas pipelines in Nigeria. It runs from the natural gas fields to the export terminals and also to the few gas stations that are making use of gas to power.

### **SELF ASSESSMENT EXERCISE**

What is an oil pipeline and what are its uses?

### **4.0 CONCLUSION**

Oil pipelines are important aspect of oil and gas industry due to the need to move crude oil that has been won from the ground to where it is to be refined or exported. It is thus an aspect of transportation of the oil.

### **5.0 SUMMARY.**

We have considered the nature, uses and make up of oil pipeline in this unit. Some important uses of pipeline have also been considered. The unit in a nut shell is an introduction to other aspects of oil pipeline including the legal status for it which is discussed in the subsequent units of this module.

### **6.0 TUTOR MARKED ASSIGNMENT.**

Discuss the nature, uses and importance of oil pipeline.

### **7.0 REFERENCE/FURTHER READINGS.**

1. Michael D. Meyer, Oil Pipelines. Georgia.

**UNIT 2: LEGAL STATUS AND REGULATIONS FOR OIL PIPELINES.****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Permit to survey land for oil pipeline.
  - 3.2 Oil Pipeline licence.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment.
- 7.0 Reference/further readings.

**1.0 INTRODUCTION**

Oil Pipelines are regulated by the **Oil Pipelines Act, Cap O7**. Laws of the Federation of Nigeria, 2004. The Law was first made in 1956 and has remained the main law regulating this important segment of the oil industry. There are two types of permits that can be obtained under the Act. These are the permit to survey routes for oil pipelines and license to construct, maintain and operate oil pipelines. These will be treated in this unit while their effect will be highlighted.

**2.0 OBJECTIVES**

At the end of this unit you should be able to:

- i. Understand the legal status of an oil pipeline.
- ii. Know the types of permit and licence that must be obtained in respect of oil pipeline.

**3.0 MAIN CONTENT****3.1 Permit to survey land for oil pipeline.**

Before any pipeline can be installed under the ground permit to survey the land must be obtained. The survey permit precedes the oil pipeline licence. A survey would have to be carried out on the land on which the oil pipeline will be laid in order to ascertain its fitness for the oil pipeline. This is done after following the procedure laid down by the law.

The Oil Pipelines Regulations provides the procedure as follows: No oil pipeline license shall be granted or renewed unless the route of:

- a. The pipeline has been surveyed; or
- b. In the case of a renewal, the pipeline has been re-surveyed.

No survey or re-survey shall be carried out under Regulation 1 of the regulations unless a permit to survey has been obtained in accordance with the provisions of sections 4 and 5 of the Oil Pipelines Act.

An application for a permit to survey shall be accompanied with ten copies of the topographical map of the proposed route of the pipeline drawn on scale:

- a. 1:50,000 for a pipeline that is not more than fifty kilometres long.
- b. 1:100,000 for a pipeline that is over fifty kilometers but not more than 100 kilometres long; and
- c. 1:250,000 for a pipeline that is over 100 kilometres long. See generally Regulations 1, 2 and 3 of the Oil Pipelines Regulations.

The Power to grant Permit to Survey and Oil pipeline License is vested in the Minister by Section 3 which states that the Minister may, grant permits to survey routes for oil pipelines and licenses to construct, maintain and operate oil pipelines. This power is however subject to the provisions of the Act. Each license shall be issued in respect of and authorise the construction, maintenance and operation of one pipeline only.

By Section 4 of the Act, any person may make an application to the Minister in accordance with the provisions of the Act and of the Oil Pipelines Regulations made thereunder for the grant of a permit to survey the route for an oil pipeline for the transport of mineral oil, natural gas or any



product of such oil or such gas to any point of destination to which such person requires such oil, gas or product to be transported for any purpose connected with petroleum trade or operations. Every application for a permit to survey should specify the approximate route or alternative routes proposed.

The Minister may either grant the permit to survey on payment of the fees required by section 31 of this Act to be paid by the applicant on the submission of the application and on grant of the permit to survey respectively or for reasons which to him appear sufficient, refuse to grant the permit to survey.

If the Minister refuses to grant the permit to survey he shall notify the applicant in writing of such refusal and the reasons for the refusal. An applicant for the survey permit must pay the prescribed fees.

### **SELF ASSESSMENT EXERCISE**

In a concise manner discuss the law relating to oil pipeline in Nigeria with reference to permits obtainable under the law.

#### **3.2 Effect of Permit to Survey.**

The effect of permit to survey is that it entitles the holder to enter together with his officers, agents, workmen or other servants and with any necessary equipment or vehicles, on any land upon the route specified in the permit or reasonably close to such route for the following purposes:

- a. To survey and take levels of the land;
- b. To dig and bore into the soil and subsoil;
- c. To cut and remove such trees and other vegetation as may impede the purposes specified in this subsection and
- d. To do all other acts necessary to ascertain the suitability of the land for the establishments of an oil pipeline or ancillary installations;

The permit also entitles the holder, with such persons, equipment or vehicles mentioned above, to pass over land adjacent to such route to the extent that such may be necessary or convenient for

the purpose of obtaining access to land upon the route specified. *See section 5.* All these are obtainable only after the holder has given not less than fourteen days' notice to the owner or the lawful occupiers of the land through which a proposed pipeline would run, and on obtaining the prior consent of such owners or lawful occupiers and the payment of adequate compensation to them.

This provision is subject to the provision of Section 6 which states that the Minister may, upon application by the holder of a permit to survey, vary the route specified in such permit, but such variation shall not invalidate or make illegal any act done by the holder pursuant to the permit prior to such variation, nor prejudice the rights of any person under the Act with reference to any act done by the holder pursuant to the permit prior to such variation.

The abovementioned represents the preliminary work which the grantee of a Permit to Survey may undertake in a proposed pipeline route. Further, the grantee may apply to the High Court to eject persons who hinder his entry upon such land.

**Notice before entry, damage and compensation.**

Except with the previous consent of the owner or occupier no person shall under the authority of section 5 of the Act enter any building or upon any enclosed court or garden attached to any building, without previously having given the owner or occupier at least fourteen days notice of his intention to do so. See section 6 of the Act.

Furthermore, the holder of a permit shall not enter upon any cultivated land without having given such notice to the owners or occupiers of the land. He may also affix the notice in some prominent position upon the land.

The consent of the owner of the land must be sought by the holder of the licence before he enters the and as Act says that no person shall under the authority of section 5 of the Act may enter any of the lands described in section 15 of the Act except with the prior assent of the owners or persons in charge of such lands.

The holder of a permit to survey acting under the authority of section 5 of this act shall take all reasonable steps to avoid necessary damage to any land entered upon and any buildings, crops, or profitable trees thereon, and shall make compensation to the owners or occupiers for any damage done under such authority and not made good.

In the event of dispute as to the amount of compensation to be paid or as to whether or to whom any compensation shall be paid, the provisions of part iv of the Act shall apply. See generally section 6(1) (2) (3) (4).

### **SELF ASSESSMENT EXERCISE**

Discuss a permit to survey and its effect in oil pipelines.

### **3.3 Oil Pipeline License**

By Section 7 of the Act, the holder of a permit to survey may make an application to the Minister for the grant of an oil pipeline license in respect of any oil pipeline. The oil pipeline must be the one for which the applicant has completed the survey of the route.

#### **Application for license and notice required.**

An applicant for a license shall deliver to the Minister an application for the same stating the terminal points and giving a description of the pipeline. The application shall also be accompanied by a plan of the proposed route of the pipeline sufficient to identify the land affected thereby and the proposal of any pumping stations, tanks or other ancillary installations. See Section 8 of the Act.

The Minister shall upon receipt of the application appoint a date not less than six weeks ahead for the hearing of any objections, The Minister will also nominate the person or persons by whom and the place(s) at which any such objections will be heard. He shall thereupon cause a notification of such date and other particulars and of the places at which objections shall be lodged. The notification is to be made in the Federal Gazette and in the Gazette of each state concerned.

Before or upon application being made notice of the application shall be given by the applicant in the following manner:

- a. By publication in the state Gazette of each state through which the route of the projected pipeline passes;
- b. By publication in the newspapers circulating in the areas through which the route of the projected pipeline passes as the Minister may require;
- c. By posting or delivering the same to the following persons entitled to be carrying on operations in the area which would be affected by the grant of a license:
  - i. Holders of exclusive prospecting licenses, mining rights, oil exploration licenses and oil prospecting licenses;
  - ii. Lessees of mining leases, temporary mining leases or oil mining leases;
- d. By publication in areas likely to be affected by the license in such other manner as the Minister may direct.

### **SELF ASSESSMENT EXERCISE**

Analyse the procedure for obtaining an oil pipeline licence.

#### **4.0 CONCLUSION.**

The requirement for permit to survey land normally precedes that of the oil pipelines licence. This is so because the land upon which the pipeline would be laid should be fit for the purpose for which this is to be done. It is also important to ascertain the route which the oil pipeline will follow. This helps a lot in eliminating mistakes, danger of bursts close to human beings dwelling.

#### **5.0 SUMMARY.**

We have taken you through the nature of oil pipeline, the necessity of survey permit and the oil pipeline licence. The requirements of the law in respect of these permits and licence have been looked into with the conclusion that oil pipeline is an important feature of the petroleum industry.

**6.0 TUTOR MARKED ASSIGNMENT.**

Mr. Kigbodo is the Chief Executive of Ketiki Petroleum Company Ltd. The company wishes to construct oil pipeline to carry crude oil from its oil field to the refinery. Advise Kigbodo and the company on how to get this done under the law in Nigeria.

**7.0 REFERENCE/FURTHER READINGS.**

1. Etikerentse, G, (2004) Nigerian Petroleum Law, (2<sup>nd</sup> Ed) by Dedrew Publishers.

**UNIT 3 CONDITIONS FOR GRANT OF TO LAY OIL PIPELINE****Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Procedure for Application for Oil Pipeline Licence.
  - 3.2 Terms and Condition of the licence.
  - 3.3 Use of Oil pipelines by other persons.
  - 3.4 Termination of oil mining lease.
  - 3.5 Effect of breach of terms.
  - 3.6 Disposal of pipelines on termination.
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment.
- 7.0 Reference/further readings.

**1.0 INTRODUCTION**

After looking at the permit and the oil pipeline licence, we need to look at the terms and conditions for the grant of the licence. The terms and conditions go with the oil pipeline licence. They are the series of the situations that would occur in the process of application, after the grant and during the pendency of the licence. The Oil Pipelines Act makes provisions for the terms and conditions which are examined below.

**2.0 OBJECTIVES**

At the end of this unit you should be able to:

- i. To understand further the procedure for application for oil pipelines licence.
- ii. Know the terms and conditions of the oil pipeline licence.
- iii. Understand the legal implications of the terms and conditions.
- iii. Understanding the effect of breach of the terms and conditions.

### **3.0 MAIN CONTENT**

#### **3.1 Procedure for Application for Oil Pipeline Licence.**

The procedure for application for an oil pipeline licence to erect and operate an oil pipeline is stated in the Oil Pipelines Regulations to the effect that an application for a license to construct a pipeline shall be made during the validity of a permit to survey. It shall also be made in accordance with the provisions of Part III of the Oil Pipelines Act.

The application must be accompanied with the following:

A statement indicating:

- (i) The services to be rendered by the pipeline
- (ii) The specification of the pipeline
- (iii) The characteristics of the fluids to be conveyed through the pipeline; and
- (iv) The total estimated cost of construction of the pipeline;

The Minister is authorised to grant the license on payment of the fees required by section 31 of the Act to be paid by the applicant on the submission of the application and on the grant of the license respectively. The Minister may also refuse to grant the license for reasons which he considers sufficient. If the Minister refuses to grant the license, he shall notify the applicant in writing of such refusal and the reasons for such refusal.

No person other than the holder of a license shall construct, maintain or operate an oil pipeline. Every person who acts in contravention of the of the Act provisions with respect to obtaining the licence shall be guilty of an offence and shall be liable on conviction to a term of imprisonment or to a fine or to both imprisonment and fine.

The Minister may require any person who is convicted of an offence under that section to have the pipeline in respect of which the offence was committed and any ancillary installation removed to the extent that the minister does not elect to purchase such pipeline or any such

installation or any part thereof; and in the event of failure to agree on the purchase price the same shall be determined by arbitration.

An offender who is required by the Minister under subsection 6 of this section to have a pipeline or any ancillary installation removed shall make good any damage done to any land by such removal.

**Requirement of Notice of application to land owners/occupiers**

In addition, when the application for licence is made the applicant must give notice of the application by delivering to administrative officers having responsibilities in such area or to such other officers as the Minister may specify such numbers of copies of such notice as the Minister may require for distribution to the owners of land in the area so affected who might not otherwise become aware of such notice.

Such notice shall contain a description of the proposed pipeline and its route and the proposed ancillary installations and shall set out a list of places and times at which copies of a plan sufficient to identify the land affected thereby may be inspected; and each copy of such notice shall require that objections if any shall be made at least seven days before the date to be appointed by him for such lodgment. See Section 9 of the Act.

Any person whose land or interest in land may be injuriously affected by the grant of a license may within the period specified for objections lodge verbally or in writing at one of the specified addresses notice of objection stating the interest of the objector and the grounds of objection.

Matters relating to quantum of compensation shall not be material grounds to include a notice of objection under section 9.



It shall be the duty of any public officer who receives a verbal objection in the course of his duties to record the name and address, interest and grounds of objection of any person lodging such a verbal objection in accordance with the section.

Upon the date fixed for the hearing of objections, the person appointed by the Minister shall inquire into any such objections, giving all parties concerned an opportunity to be heard, and a report thereof shall be made without delay to the Minister. See section 10.

Matters relating to quantum of compensation shall not be material grounds for objection under this section.

If, after consideration of the report, the Minister considers that the license should be granted he shall inform the President accordingly. But if the Minister considers that a license should not be granted in respect of the proposed route or any part of it, he shall so inform the applicant and the objectors concerned, and thereupon the applicant shall be entitled to receive a permit to survey such other routes as he may propose or to submit an application for a license in respect of another route.

### **SELF ASSESSMENT EXERCISE**

Take note of the procedure for the licence and the need for notifying the owners and occupiers of the land on the route of the proposed oil pipeline.

### **3.2 Duration of the Oil Pipeline licence.**

The Oil Pipelines Act, Section 17 (1) stipulates that a licence may be granted for such period not exceeding twenty years as the Minister may direct. Regulation 1 of the Oil and Gas Pipelines Licence Regulations 1995 contains provisions which make the resurveying of an existing pipeline and the obtaining of a permit to the survey as the preconditions for the renewals. The duration of such pipeline renewal should not be less than the residue of the oil mining lease.

### **3.3 Use of oil pipelines by other persons.**

Where any person other than the owner of the pipeline seeks to have a right to convey any petroleum product in an oil pipeline constructed, maintained and operated in pursuance of a licence granted under the Act he must make an application to the Minister. See section 18 (1) of the Oil Pipelines Act.

Every such application shall be made in the prescribed manner and form containing the prescribed particulars. The Minister shall consider such application in consultation with the applicant and the owner of the pipeline to which the application relates.

If upon such consideration the Minister is satisfied of certain things he may grant the use. The Minister would have to be satisfied that that the pipeline could, without prejudice to the proper and efficient operation of the pipeline by the owner and also that it will be used for the thing which it is designed and permitted to conveyed.

Subsection (5) states that subject to subsequent provisions of the section, the conditions of the use of the pipeline by the applicant may be determined by agreement between the owner and the applicant and failing such agreement, shall be determined by the Minister.

### **SELF ASSESSMENT EXERCISE**

What do you think is the relevance of the provision on use by another person?

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### **3.4 Termination of oil pipeline licence.**

Apart from the right of the holder of an oil pipeline licence to terminate the licence in respect of the whole route or part thereof at any time during the currency of the term granted, by the giving of not less than three months prior notice of his decision (to so terminate) to the Minister (in accordance with the provisions contained in section 17 (3) of the Pipelines Act), the termination of a licence may be brought about as follows:

i. By effluxion of term: this occurs at the end of the term granted under section 17 (1) which is for a period not exceeding twenty years) and of any renewals where such renewals had been granted.

ii. Cessation of operations: Cessation of operation occurs where the holder of the licence either by reason of the exhaustion of petroleum produced from the reservoir or of other petroleum, or petroleum products or of the other substances listed in section 11 (2) of the Oil Pipelines Act and formally transported through the pipeline. The effect of such cessation would make the continued retention of the licence and the maintenance of the pipeline by the holder meaningless in the circumstance. It should be mentioned however, that the licensee where applicable, may desire a change in the nature or type of the substance originally conveyed by the pipeline. In such a case, he shall apply to the DPR as provided in Regulation 22 of the 1995 Oil and Gas Pipelines Regulations.

iii. Revocation for cause: Should the holder of an oil pipeline licence fail to remedy a breach of any of the terms or conditions upon which the licence was granted after due written notice thereof has been given to him in accordance with the provisions of section 27 (1) and 27 (2) of the Oil Pipelines Act, the Minister may by notice to such holder, proceed to revoke the licence. Revocation may also be effected by the Minister because of the holder's failure to comply with certain requirements imposed by the Minister relating to the use of the pipeline by persons other than the licensee. Such revocation would be effected in accordance with section 18 (9) of the Act.

Upon the expiration or sooner determination of an oil pipeline licence, the holder shall within three months after such termination be free (upon giving notice of three weeks to the Minister) to remove such pipeline and the ancillary installations to the extent that the Minister does not elect to purchase such pipeline and ancillary installations or any part thereof. In the event of a disagreement as to the purchase price, the price payable therefore would be determined by arbitration. See section 28 (1).

### **SELF ASSESSMENT EXERCISE**

Under what circumstances is an oil pipeline licence terminated?

### **3.5 Effect of breach of terms.**

If there is a breach of any of the conditions upon which a licence has been granted the Minister may by notice in writing require the holder of the licence to remedy the breach within such period being not less than three months as may be specified in the notice. If the holder of the licence fails within the period specified to remedy such breach the Minister may by notice to the holder revoke the licence, without prejudice to anything lawfully done thereunder and without prejudice to any claims for compensation against the holder made in accordance with the provisions of the Act. See Section 27 (1) and (2).

### **3.6 Disposal of pipelines on termination. S. 28.**

Upon the expiration or sooner determination of a licence the holder of a licence shall before or within three months after the termination of such licence be at liberty upon giving three weeks notice to the Minister to remove such pipeline and any ancillary installation to the extent that the Minister does not elect to purchase such pipeline or any such installment or any part thereof. In the event of the Minister and the holder of the licence not agreeing as to the purchase price the same shall be determined by arbitration.

The holder of a licence shall make good any damage done to the land included in the licence by the removal of a pipeline or ancillary installation.

### **SELF ASSESSMENT EXERCISE**

What is the effect of a breach of the terms?

### **4.0 CONCLUSION.**

The application for oil pipeline licence is usually made to the Minister in the prescribed manner which has been treated above. Requisite notification must be made to the owners and occupiers of the land along where the pipeline would be laid. Also, the pipeline may be used by someone else apart from the licensee upon taking the necessary permission from the Ministry of Petroleum Resources.

### **5.0 SUMMARY.**

We have treated in general the conditions for the oil pipeline licence by going through the procedure for application for oil pipelines licence, the duration and termination of the licence, the effect of the breach of the terms of the licence and the disposal of pipelines on termination.

#### **6.0 TUTOR MARKED ASSIGNMENT.**

Critically analyse the duration and the reasons for the termination of an oil pipeline licence.

#### **7.0 REFERENCE/FURTHER READINGS.**

1. Etikerentse, G, (2004) Nigerian Petroleum Law, (2<sup>nd</sup> Ed) by Dedrew Publishers.

## **UNIT 4 RIGHTS AND OBLIGATIONS OF THE HOLDER OF A LICENCE**

### **Contents**

- 1.0 Introduction.
- 2.0 Objectives.
- 3.0 Main content.
  - 3.1 Rights and Obligations of the Holder of a Licence.
  - 3.2 Obligations of the Holder of a Licence
- 4.0 Conclusion.
- 5.0 Summary.
- 6.0 Tutor Marked Assignment.
- 7.0 Reference/further readings.

### **1.0 INTRODUCTION**

In the last unit we discussed the conditions for the grant of oil pipeline licence; we shall look at the rights and obligations of the holder of the licence in this unit. These are the things the holder is permitted to do and to enjoy under the law. We will also treat the obligations that he is expected to perform.

### **2.0 OBJECTIVES**

At the end of this unit you should be able to:

- i. To understand the rights and duties of an oil pipelines licence holder.
- ii. Have an understanding of the obligations of the oil pipeline licence holder.

### **3.1 Rights and Obligations of the Holder of a Licence.**

A license shall entitle the holder, his officers, agents, workmen or other servants with any necessary equipment or vehicles, to enter upon, take possession of or use a strip of land of a

width not exceeding 200 feet or of such other widths as may be specified in the license upon the route specified in the license. The licence shall also entitles the holder to construct, maintain and operate an oil pipeline and ancillary installations on, over or under the land. This provision is subject to the provisions of sections 14, 15 and 16 of the Act. See Section 11.

For the purpose of the Act, an oil pipeline means a pipeline for the conveyance of mineral oils, natural gas and any other derivatives or components and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas and any other derivatives or components.

The power to construct, maintain and operate an oil pipeline includes the power to construct, maintain and operate on the route of such pipeline all other installations referred to in the Act as ancillary installations. These are installations that are ancillary to the construction, maintenance and operation of oil pipeline, including railways, telephone and telegraph lines, electric power cables, pumping stations, storage tanks and loading terminals.

The holder of a license shall have power to dig and get free of charge any gravel, sand, clay, stone or any other similar substance (not being a mineral within the meaning assigned thereto in the Minerals and Mining Act) within any land included within the area covered by the license to the extent that such gravel, sand, clay, stone or any other substance, will facilitate the construction or maintenance of a pipeline or any ancillary installations.

The holder shall also have the right to apply to the President to make an order ancillary to the licence, prohibiting, restricting the construction of any building or type of building, or the carrying of cultivation or industrial mining or mining activity within a specified distance, not exceeding 32 meters from the boundaries of the land or any part thereof in respect of which the pipeline licence was granted.

In order to take possession of the land the Act states in section 25 that the licence holder may apply to the High court exercising jurisdiction in the area through an ex parte motion for the ejection of any person who hinders or obstructs the grantee's entry and taking possession of or

using any lands in pursuance of his licence. Such court, in reviewing the facts presented before it by the grantee, may proceed to issue a warrant of possession addressed to the sheriff, upon which a sheriff or police officer shall immediately eject the obstructing person from the place.

The licence holder is entitled to receive compensation for the costs of relocating or rerouting (by way of deviation) the “oil pipeline” route by reason of the Federal or State Government requiring land for public purpose. **Section 26 of the Oil Pipelines Acts.** Although oil pipeline is itself included in the meaning of “overriding public interest” in Section 28 (3) of the Land Use Act in respect of which the state Governor may revoke in existing right of occupancy. Where the quantum of compensation is not mutually agreed upon between the grantee and the government the issue becomes determinable by arbitration. See sections 17 (6) and 26 of the Oil Pipelines Act.

### **3.2 Obligations of the Holder of a Licence**

The holder of a license shall pay compensation to the following:

- a. any person whose land or interest in land is injuriously affected by the exercise of the right conferred by the license, for any such injurious affection not otherwise made good; and
- b. any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work, structure or thing executed under the license for any such damage not otherwise made good; and
- c. any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or any ancillary installation, for any such damage not otherwise made good.

And if the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part IV of this Act. Section 11 (5).

The Act further declared that for the avoidance of doubt the powers granted to the holder of a license under the Act shall be exercisable only subject to the provisions of this Act and of any



other enactment or rule of law. This means that the powers are not absolute, but may be qualified by other laws.

In respect of oil pipeline routes which traverse non-land areas, the following should be the basis of the compensation for the effected rights. For example the rights to fishing:

Regulation 23 of the Petroleum (Drilling and Production) Regulations stipulates that fishing rights which are affected by the operations of a lessee of an oil mining lease be adequately compensated for. Also under this regulation, it seems that the owners of the fishing stakes, hooks, nets etc. are entitled to compensation if damage results from an unreasonable exercise of the lessee's right.

The licence holder is under obligation to compensate any person who suffers damage as a consequence of any breakage of or leakage from the oil pipeline or any ancillary installations. Take note that the licensee does not have any obligation for any losses and or damage that are as a result of sabotage or by a person not responsible to the licence holder or whom the licensee is not expected to control. See section 11 (5)c.

### **SELF ASSESSMENT EXERCISE**

Take note of the obligations of the holder in respect of the specified persons.

### **5.0 CONCLUSION.**

The grantee of the licence has a number of rights once he has obtained the licence. This includes the rights to enter and take possession of the land specified in the license. It also includes the right to construct, maintain and operate an oil pipeline and ancillary installations on the land. The obligations of the licence holder include among other things payment of compensation to the people who are affected by the installation of the pipelines. This is done in a determined manner specified by law.

### **5.0 SUMMARY.**

We have considered the rights, duties and obligations of the licensee under this unit. The licensee has the right to enforce his right over any land granted under the licence by applying to the High court for an order to eject any person who hinders him from taking possession of the land.

#### **6.0 TUTOR MARKED ASSIGNMENT.**

Examine in detail the nature of rights and obligations of the oil pipeline licence holder

#### **7.0 REFERENCE/FURTHER READINGS.**

1. Etikerentse, G, (2004) Nigerian Petroleum Law, (2<sup>nd</sup> Ed) by Dedrew Publishers.