COURSE GUIDE

PUL821
ADVANCED OIL & GAS LAW I

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INTRODUCTION

Generally, oil and gas law is concerned primarily with the impacts and damages by oil spillage and the compensation to those affected. It deals also, with the exploitation, production and funding of petroleum products.

Our discussion in this semester will focus on the origin and development of Nigerian Oil and Gas law. It looks at the law of the sea and how it affects oil and gas law in general. Other areas in focus in this semester are: state participation policy and the licensing of oil and gas.

COURSE LEARNING OUTCOMES

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

1) Explain the origin and development of Nigerian oil and gas law
2) Discuss how law of the sea affects oil and gas law
3) Explain what are state participation policy.

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevantcases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise,and at points in the course you are required to submit assignments for assessment purposes. Atthe end of the course there is a final examination. The course should take you about 11 weeks to complete. 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/Seminar Paper
e) Presentation Schedule.

MODULES AND STUDY UNITS

The discussion in this course is broken down to 13 (thirteen) study units that are broadly dividedinto FIVE modules as follows:

Module 1 Origin and Development of Nigerian Oil and Gas Law

Unit 1 Development of Nigerian Oil and Gas Law
Unit 2 Current Structure of Nigerian Oil and Gas Law

Module 2 Law of the Sea, Its Development and Impact on Nigerian Oil and Gas Law

Unit 1 Historical Development of the Law of the Sea
Unit 2 Current Application of the Law of the Sea and Nigerian Municipal Legislation

Module 3 State Participation and Policy

Unit 1 Definition of State Participation

Module 4 The Licensing of Oil and Gas Exploration and Production

Unit 1 Legal Basis for Licensing
Unit 2 Process of Award of Licenses
Unit 3 Types of License Under the Act
Unit 4 General Provisions Governing Licenses and Leases

Module 5 Contractual Arrangement for Exploration and Production

Unit 1 Categorisation of Joint Venture Agreements
Unit 2 The Joint Venture Agreements
Unit 3 Marginal Fields

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 commontheme. You will gain more from them if you have

first carried out work on the law of sea. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises *(SAE).* Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units andof the course.

REFERENCES/FURTHER READING

Certain books have been recommended in the course. You should read them where so directedbefore 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. Thework that you submit to your tutor for assessment will count for 30% of your total score.

SELF-ASSESSMENT EXERCISES

There is a self-assessment exercise at the end for every unit. You are required to attempt all theassignments. You will be assessed on all of them, but the best three performances will be usedfor assessment. The assignments carry 10% each. Extensions will not be granted after the due date unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and 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 course. You may find it useful to review your self-assessment exercises and tutor marked assignments before the examination.

COURSE SCORE DISTRIBUTION

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

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four counts at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

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, your 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. Examples are given in the study units. Work through these when you have come to them.

TUTORS AND TUTORIALS

There are 11 hours of tutorials provided 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. Your tutor will mark and comment on your assignments. 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. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Please do not hesitate to contact your tutor by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.
- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your tutor's comments onan assignment or with the grading of an assignment.

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.

SUMMARY

The development of Nigeria's oil and gas industries has resulted in a boost for the Nigerian economy and led to an expansive framework for petroleum resources governance in Nigeria.

MAIN COURSE

CONTENTS

MODULE 1 ORIGIN AND DEVELOPMENT OF NIGERIAN OIL AND GAS LAW

UNIT 1 Development of Nigerian Oil and Gas Law

Unit Structure

1.1 Introduction

Petroleum is a naturally occurring complex mixture, predominantly made up of hydrocarbon compounds and frequently contains significant amounts of nitrogen, sulphur and oxygen together with smaller amounts of nickel, vanadium and various elements. Petroleum compounds can occur in solid form as asphalt, liquid form as crude oil and/or gaseous form as natural gas.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss the historical development of Nigeria's oil and gas law;
- explain the pre- and post-1960 of the same; and
- analyse the effects of petroleum discovery on Nigeria's economy.

1.3 Development of Nigerian Oil and Gas Law

1.3.1 Historical Development of Nigerian Oil and Gas Law Pre 1960

Petroleum resources exploration in Nigeria dates back to 1908, when German surveyors for the Nigerian Bitumen Corporation began prospecting for Tar Sand deposit in the South–Western Nigeria. These pioneering efforts ended abruptly with the outbreak of the World War I in 1914. Exploration of petroleum resources did not begin until 1938, when Shell D'Arcy (a consortium of Iranian Oil Company (later British Petroleum) and Royal Dutch Shell) was granted a sole concessionary right over the whole country. However, World War II (1939-1945) terminated the initial oil exploration activities by Shell D'Arcy. Oil exploration in the Nigeria's Niger Delta resumed in 1946 after World War II and Shell D'Arcy drilled a number of oil exploratory wells in 1951. At the initial stage, Shell D'Arcy (later Shell–British Petroleum) enjoyed a complete monopoly of oil exploration for a considerable long time (1938-1955). Thereafter, Mobil Producing (Nigeria) Ltd, a subsidiary of American Socony–Mobil Oil Company, obtained license to explore for oil and began operations in Nigeria in 1955 under the name, Mobil Exploration Nigeria Incorporated (which was later incorporated as Mobil Producing Nigeria on June 16, 1969).The first commercial oil discovery in the Tertiary delta was confirmed at Oloibiri field in January 1956 by Shell D'Arcy (later Shell–British Petroleum) and a second oil field was later discovered at Afam [22,29, 0]. In February 1958, Shell British Petroleum (now Royal Dutch Shell) started exporting crude oil produced from Oloibiri and Afam oil field at Port Harcourt [30].

(***Briefly trace the history of Nigerian Oil and Gas Law before 1960).*** The first Cargo of crude oil left Nigeria in February 1958, when production stood at 6,000 barrels per day with revenue accounted for about ₦122 million. This contributed 0.08% to the National Revenue. As a result of Shell's success in the mid-1950s and thereafter, other companies, notably, Mobil, Gulf (Chevron), Agip, Safrap, (later Elf), Tenneco (later Texaco), Philips Great Basins Texaco Overseas and Union, joined Shell in exploration for Petroleum. The number of both international and local companies exploring for petroleum in Nigeria increased tremendously over time.

In 1959, the sole concession rights over the whole country granted to SPDCl was reviewed and extended to companies of other nationalities in line with the policy of increasing the pace of exploration while at the same time ensuring that the country was not too dependent on one company or nation. The successes of SPDC encouraged other companies to join in the exploration, and by 1961, Mobil, Gulf in 1964, Agip, Safrap [now ELF], Tenneco and Amoseas [now Texaco/Chevron] had joined the explorers for oil in the onshore and offshore area of Nigeria. The first offshore discovery of petroleum was by Gulf on the Okan structure of the then Mid-Western state [now Delta State] and many of the new comers also made significant discoveries.

Self-Assessment Exercises

1. When did exploration officially began in Nigeria?
   a. 1914
   b. 1938
   c. 1908
   d. 1969
2. Which company was granted the first sole concession rights of exploration
   a. Mobil oil company
   b. American Socony
   c. Shell D'Arcy
   d. Duke oil Company
3. The first company enjoyed monopoly for how long?
   a. 1938-1955
   b. 1939-1945
   c. 1904-1914
   d. 1960-1969
4. When did the first cargo of crude oil leave Nigeria
   a. February 1958
   b. December 1968
   c. August 1958
   d. April 1948
5. As at 1958 Petroleum Industry accounted for --------- percent of the national revenue
   a. 0.07%
   b. 0.08%
   c. 10%
   d. 80%

6. The licences given to companies for exploration increased after independence in 1960 to……
   a. Increase their profit
   b. Reduce monopoly
   c. Because of independence
   d. Allow development and production
7. The federal government started DPR in the year …… and joined OPEC in the year ……
   a. 1970, 1971
   b. 1969, 1970
   c. 1971, 1970

1.3.2 Historical Development of Nigerian Oil and Gas Law Post 1960

Petroleum is a sub-sector in the energy sector that began to play a vital role in shaping the Nigerian economy and political destiny of the country in the early 1960s. When Nigeria became an independent nation on 1 October 1960, Shell–BP began to relinquish its acreage and its exploration licenses were converted into prospecting licenses that allowed development and production. Following the increased dominance of the Nigerian economy by petroleum sub-sector, the sole concession policy was abandoned and exclusive exploration right was introduced to encourage other multinational oil companies aimed at accelerating petroleum exploration and production. Other multinational oil companies joined oil and gas exploration in Nigeria and these include; Texaco Overseas Nigeria Petroleum Company Unlimited in 1961, Amoseas in 1961, Gulf Oil Company in 1961 (now Chevron), Société Africaine des Pétroles (SAFRAP) in 1962 (which later became Elf Nigeria Limited in 1974), Tennessee Nigeria Limited (Tenneco) in 1962, Azienda Generale Italiana Petroli (AGIP) in 1962, ENIin 1964, Philips Oil Company in 1964 and Pan Ocean Oil Corporation in 1972. Most of these multinational oil companies recorded considerable successes in oil and gas exploration and production in both onshore and offshore fields in the Niger Delta.

The Federal Government of Nigeria started its Department of Petroleum Resources (DPR) Inspectorate in 1970 and Nigeria joined the Organisation of the Petroleum Exporting Countries (OPEC) in 1971. The

first national oil company, the Nigerian National Oil Corporation (NNOC), was created in 1971 and it later became the Nigerian National Petroleum Corporation (NNPC) in 1977. In order to take control of the country's petroleum industry, Nigeria nationalised BP's holding completely in 1979, and Shell–BP became Shell Petroleum Development Company of Nigeria (SPDC). Although several other oil companies have joined in exploration and production over the past decades, SPDC has the largest acreage in the country from which it produces some 39 percent of the nation's oil and remains the major producer in the Nigeria's petroleum industry. (***Discuss the historical development of Nigerian Oil and Gas Law after 1960*).** The Niger Delta region is richly endowed with 31 giant oil and gas fields and each has an estimated ultimate recoverable oil of more than 500 million barrels and produces in excess of 1 million barrels a day out of the nation's total production of about 2.1 million barrels per day. According to Vassiliou, 17 of giant oil and gas production fields are located offshore and some of the examples include Bomu, Oso, Ubit, Assan, Meren, Abo, Bonga, Bonga Southwest and Agbami, etc. Bonga and Bonga Southwest were discovered in 1996 and 2001, respectively and are operated by a joint venture led by SPDC [29]. Currently, there are over 18 multinational oil companies which are involved in oil and gas exploration and production in the Niger Delta [33] and the major players include Dutch Shell, ExxonMobil, ENI/Agip, Total Fina Elf and US– based Chevron Texaco.

Effects of Petroleum Discovery on Nigeria's Economy

Nigeria's petroleum industry has grown rapidly since its discovery in 1956 and is now Africa's largest oil producer and a member of the Organisation of Petroleum Exporting Corporation (OPEC). Nigerian's economy is heavily dependent on the oil sector, which replaced agriculture; the then cornerstone of the nation's economy, as petroleum accounts for over 95 percent of export earnings and about 40 percent of government revenues, according to the International Monetary Fund. According to the International Energy Agency, Nigeria produces about 2.53 million barrels per day, well below its oil production capacity.

At the top of the oil industry is the federal government-owned parastatals, Nigeria National Petroleum Corporation (NNPC) which operates a faint venture agreement with other foreign multinational oil companies in Nigeria to produce the nation's crude oil and gas.

However, the effects of petroleum discovery on Nigeria's economy are manifold. First, the discovery led to the considerable development of Nigeria via construction of roads, air and sea ports; building of various primary, secondary and public institutions across the country and the deployment of oil resources into other projects which have kept the company going. Despite these advantages, the discovery of oil and gas in Nigeria turned Nigeria into a monocultural economy, jettisoning its previous economical mainstay – agriculture and mining. This picture is aptly set out by Kokori:

> The advent of oil in Nigeria marked an unfortunate turning point in the nation's history as it led to the emergence of a crop of lazy citizens who lost the initiative to be productive…the country became a dumping ground for imported goods as cheap dollars flowed ceaselessly from petroleum…the sad commentary about Nigerian situation are that it is one of the few countries that pomp out more than two million barrel per day and still live in this primitive infrastructural situation…

Evidently, with over six decades of crude oil and gas exploitation, the sector has accounted for over 80% of Nigeria's foreign exchange earnings and has largely contributed to the growth of the Nigerian economy. Thus, it has been argued by various scholars and stakeholders in the oil and gas industry that the wealth gotten from crude oil exploration, instead of enhancing socioeconomic and human development, impoverished the local communities of the Niger Delta where the oil and gas operation in the country is nested. Poor management of the petroleum resources has led to socio–economic, socio–political and complex interaction problems involving the people, economic development and the environment. Despite massive influxes of oil revenues, Nigeria seems to suffer from the "oil curse" or the "natural resource curse" due to poor governance, lack of effective environmental and sustainability awareness. (***In what manners has the discovery of petroleum affected Nigeria's economy?***). The development of a sustainable society is vital in any nation's economic development both in the short and long term. Presently, the petroleum industry in Nigeria is battling against rising oil theft and oil bunkering has

become a major cost to the nation's treasury, which depends on oil for over 80% of its earnings. In spite of the enormous contributions of the petroleum resources in the nation's economy, the past and present petroleum exploration and production operations by the multinational oil companies has led to environmental contamination with associated adverse human health effects and socio– economic consequences in the Niger Delta.

Despite these issues, the discovery of oil pre and post 1960 has led to the adoption of various legislations and attendant regulations to effectively regulate the Nigerian petroleum industry. These laws are discussed in Unit 2 below.

1.4 Summary

The development of Nigeria's oil and gas industries has resulted in a boost for the Nigerian economy and led to an expansive framework for petroleum resources governance in Nigeria.

This unit has exposed you to the historical development of oil and gas in Nigeria, the effects of same on the Nigerian economy and perceptions on oil and gas emergence in the Niger Delta Region of Nigeria.

1.5 References/Further Readings/Web Sources

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1.6 Possible Answers to Self-Assessment Exercises

1.b
2.c
3.a
4.a
5.b
6.d
7.a

UNIT 2 Current Structure of Nigerian Oil and Gas Law

Unit Structure

2.1 Introduction

The Nigerian petroleum sub-sector is the major driver of the Nigerian economy, and the government of the Federal Republic of Nigeria regulates and actively participates in this industry through its national oil company, the Nigerian National Petroleum Corporation (NNPC). Since 1958 till date, various efforts have been made by government to regulate the industry through stringent legislation which guides the exploration and production activities of the operators and multinational oil companies (MNOCS).

2.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss the various legislation adopted by the government in regulating the petroleum sub-sector till date; and
- explain, the effectiveness of at least three key oil and gas legislations.

2.3 Current Structure of Nigerian Oil and Gas Law

The industry is in itself divided into three streams – the upstream, midstream and the downstream sectors.

The upstream sector, the most active sector of the Nigerian petroleum industry, is largely export-focused and until recently dominated

exclusively by international oil companies. It focuses on exploration, drilling, production and transportation of crude oil, while the downstream sector comprises refining, storage, importation, transportation, distribution and marketing of the petroleum products. The Nigerian government's marginal fields licensing regime[3] and its content development drive has led to increased participation of indigenous oil companies in the petroleum industry.

The midstream and downstream sectors are dominated by indigenous players. Both sectors, excluding liquefied natural gas (LNG), are significantly underdeveloped as Nigeria's refineries are currently producing approximately 10 million litres of petroleum products per day, which is remarkably low when compared with Nigeria's consumption of about 35 million litres per day. As a result, there is heavy reliance on the importation of petroleum products in the downstream sector, which, until May 2016, were heavily subsidised by the government. However, in an apparent move towards deregulation of the downstream sector, the government has removed and, in some cases, minimised subsidy on petroleum products. (***Describe the present Structure of Nigerian Oil and Gas Law***). It is noteworthy that these 'executive actions' are presently not backed by any regulation or legislation.

Self-Assessment Exercises 1

1.	Briefly Discuss at least 3 key legislation for the regulation of the petroleum industry in Nigeria

2.3.1 Legal and Regulatory Framework for Oil and Gas in Nigeria

The legislation regulating this industry are manifold, with various uses required for each legislation and are set out below:

a. **Domestic Oil and Gas Legislation**

i. Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 44 (3) of the 1999 Constitution vests ownership of mineral resources, including oil and gas, exclusively in the federal government and further confers on the federal government by virtue of

Item 39, Second Schedule, Part 1, exclusive powers to make laws and regulations for the governance of the industry.

ii. **The Petroleum Act**, including other Regulations made pursuant to the Act

The Act and Regulations provide the framework for the licensing of oil and gas companies to engage in activities connected with the exploration, production and transportation of crude oil. 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.

iii. Petroleum Profits Tax Act, Cap P13, LFN 2004

The PPTA provides the framework under which the federal government obtains revenue from oil and gas operations by way of signature bonuses, royalties and taxes. See sections 9, 20, 21-23 and 56.

iv. The Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, LFN 2004

This legislation facilitates tax relief incentives to oil and gas companies operating in the Deep Offshore and Inland Basin areas under production sharing contracts (PSCs). See sections 3, 4 and 5.

v. Associated Gas (Reinjection) Act, Cap A13, LFN 2004

vi. Nigerian National Petroleum Corporation Act, Cap N123, LFN 2004

This Act establishes the NNPC and empowers it to participate directly in petroleum operations on behalf of the federal government.

vii. Environmental Impact Assessment (EIA) Act, Cap E12, LFN 2004

This Act is the key legislation relating to impact assessment on all environmental projects in Nigeria. It provides the framework for assessing the impact of oil and gas projects on the environment.

viii. Federal Revenue Service (FIRS) Establishment Act 2007

It details the statutory powers of the FIRS to collect all taxes, fees, levies, royalties, rents, signature bonuses, penalties for gas flaring, depot fees, including fees for oil prospecting licences, oil mining licences, etc. It should be noted that section 10A (2) of the Value Added Tax Act 2007 obligates oil and gas companies to charge and collect VAT and remit same to the FIRS.

Education Tax Act, Cap E4, LFN 2004

It provides for the imposition of annual taxes at 2 per cent of assessable profits on oil and gas companies for the development of Nigeria's educational sector.

Niger Delta Development Commission (Establishment) Act, Cap N86, LFN 2004.

It requires the payment to the Commission by oil and gas companies of 3 percent of their annual budgets for the development of the Niger Delta from where oil and gas is exploited.

xi. Nigerian Oil and Gas Industry Content Development Act 2010

It provides a framework for promoting participation of Nigerians in the industry and laying down minimum thresholds for Nigerian content utilized by the industry. See sections 11 and 106.

xii. The Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007

It provides the framework for transparency and accountability by imposing reporting and disclosure obligations on all oil and gas companies upon requirement by NEITI of revenue due to or paid to the federal government. See section 3.

xiii. Oil Pipelines Act, Cap O7, LFN 2004; and

xiv. Oil in Navigable Waters Act, Cap O6, LFN 2004.

2.3.2 Petroleum Industry Act 2021: Overarching Legislation for the Nigerian Petroleum Industry

The Petroleum Industry Act (PIA) seeks to change the face of the Nigerian oil and gas industry in Nigeria. The PI Act aims to harmonise all the legislation in the oil and gas industry and significantly restructure the industry, particularly the functions of the various regulatory agencies, with a view to eliminating overlaps. The Act minister gives the powers to formulate, make and administer government policy relating to the petroleum industry and the general supervision over the affairs and operations of the petroleum industry.

The minister has the power to also report development in the industry, represent Nigeria at international oil petroleum matters, promote, negotiate treaties upon the recommendation of the commission. The minister has the power to grant petroleum prospecting license. He can also on the recommendation of the commission revoke license, assign interest in petroleum prospecting license, approve fees for services rendered to the commission or authority in regulation.

The minister may order cutbacks of crude oil levels in accordance to international oil pricing agreement in support by Nigeria. He shall have rights of preemption of petroleum and petroleum products in the event of a national emergency. (***List and discuss the sources of oil and gas law in Nigeria***).

The minister shall give general policy directives to the commission on matters concerning the upstream, midstream and downstream.

The Act is regulated through the Ministry of Petroleum Resources and by other bodies established under the Act as discussed below

Regulatory Authorities

By the provision of the Petroleum Industry Act 2011, Part II gives the Commission the powers to regulate for the upstream petroleum sector through the minister, under its recommendation to issue licenses renewal and revocation together with all other matters related. The Act makes provision for regulatory body of the upstream called Petroleum Regulatory Commission, that is responsible for the technical and commercial regulation of the upstream petroleum operations; its objectives includes:

a. To regulate the upstream petroleum operations, technical and commercial activities
b. To ensure compliance with all applicable laws and regulations
c. To ensure the upstream petroleum operates as commercial to minimise waste and achieve optimal governance
d. To promote healthy, safe and effective conduct of upstream petroleum and environmental acceptable and sustainable manner.
e. Including granting of lisences and leases.

Part III of Chapter 1 of the PIA establishes the Nigerian Upstream Regulatory Commission, whilst Part IV establishes the Nigerian Midstream and Downstream Petroleum Regulatory Authority.

2.4 Summary

The Nigerian oil and gas industry is structured in such a way as to encompass a plethora of legislation guiding each sub-set of the industry, and relevant agencies which may sometimes, have overlapping roles. This fragmentation of roles is elaborated on in Module 2.

This unit highlights the structure of Nigeria's petroleum industry and exposes you to the issues which they address. What happens if an oil and gas legislation is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999.

2.5 References/Further Readings/Web Sources

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<https://thelawreviews.co.uk/edition/the-oil-and-gas-law-review-edition-7/1210115/nigeria>

2.6 Possible Answers to Self-Assessment Exercises

i. The constitution which is the ground norm vest ownership of all mineral resources to the Federal Government including oil and gas and make laws and regulation for the governance of the industries.

ii. The Petroleum Industry Act 2022 is an act that harmonised all the legislations in the oil and gas industries and adumbrate the functions of the various regulation agencies.

iii. The petroleum act provides the framework for licensing of oil and gas companies engaging in activities connected with exploration production and transportation of crude oil and has seven different regulations in paragraph 4 of the fourth schedule of the act.

MODULE 2 LAW OF THE SEA, ITS DEVELOPMENT AND IMPACT ON NIGERIAN OIL AND GAS LAW

Unit 1 Historical Development of the Law of the Sea
Unit 2 Current Application of the Law of the Sea and Nigerian Municipal Legislation

UNIT 1 Historical Development of the Law of the Sea

Unit Structure

1.2 Introduction

The international legal principles governing the uses of the sea have evolved over the last 400 years. In the eighteenth and nineteenth centuries, the high seas beyond a narrow coastal belt were generally considered to be open to everyone for navigation, fishing and other purposes. This reflected the commercial and political interests of the major European powers at that time. However, the situation changed significantly in the twentieth century. The emergence of newly independent developing countries after the Second World War and the development of offshore technology led to increasing demands for national control over exhaustible marine resources - fisheries, oil and minerals.

At the same time, the strategic interests of the naval superpowers (the USA and USSR) demanded continuing freedom of communication. The

potential for conflict between competing uses of the sea resulted in pressure for fundamental changes in the international law of the sea, which has led to the adoption of a series of conventions dealing with particular marine issues and to the comprehensive framework of the UN Convention on the Law of the Sea.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss key concepts and areas of the law of the sea;
- analyse the sources; and
- explain its direct application to oil and gas exploration and development.

1.3 Historical Development of the Law of the Sea

The legal conception of freedom of the seas was launched in eloquent terms by Hugo Grotius in 1608, when he described the oceans as:

that expanse of water which antiquity describes as the immense, the infinite, bounded only by the heavens, parent of: all things the ocean which the ancients believed was perpetually supplied with water not only by fountains, rivers and seas, but by the clouds, and by the very stars of heaven themselves, the ocean which, although surrounding this earth, the home of the human race, with the ebb and flow of its tides, can, be neither seized nor closed, nay, which rather possesses the earth than is by it possessed.

This reflection by Grotius was true of the ancient times, but in modern day 2020, the ocean is not only very finite, but also constitutes a complex and delicate ecosystem facing injury from many sources. The idea of 'freedom of the oceans' has come to mean, in practice, the freedom from pollution and the freedom to exploit.

Self-Assessment Exercises 1

1. Mention the sources of the law of the sea
2. What is the full meaning of the word 'UNCLOS'?

1.3.1 Sources of the Law of the Sea

The law of the sea is part of the wider body of public international law, and its sources are closely related to the development of that subject. Its fundamental principles originated in the relationships between the European States in the post-medieval period (from the sixteenth century). The early rules of international law were largely based on Roman law, State practice and the writings of jurists (such as Hugo Grotius, who wrote in the first half of the seventeenth century).

The early works on the law of the sea were often written to support particular national interests. For example, Grotius' *Mare Liberum* (1609) sought to justify the Dutch East India Company's right to free commerce in the Far Eastern waters claimed by Portugal. Conversely, John Selden's *Mare Clausum* (1635) supported England's claim to the British Seas. Although the principles discussed in these treatises no longer represent the modern law of the sea, they have exerted important historical influences on its evolution.

The modern sources of international law are generally considered to be defined in Article 38 of the Statute of the International Court of Justice, which refers to:

(a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognised by civilised nations;

(d) [subject to the provisions of Article 59,] judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

[NB Article 59 states that a decision of the International Court of Justice has no binding force except between the parties and in respect of that particular case.] (***Discuss the sources and development of the law of the sea***)

1.3.2 International Conventions

A convention or treaty is defined in Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". A treaty is thus intended to create legal rights and obligations between the parties, and must be distinguished from non-binding "soft law" measures such as the Ministerial Declarations on the Protection of the North Sea.

While conventions may be classified in a variety of ways (e.g bilateral, multilateral, regional and global) those which lay down general rules of conduct between a large number of States have particular authority, and may be described as "law making". The 1982 UN Convention on the Law of the Sea is an example of a global law-making treaty.

1.3.3 Treaty-making Process

The creation and implementation of an international treaty is a protracted process. When the need to address an issue though international action is recognised by States, the first stage is to identify a forum or institution that will produce the legislation. This will normally involve an existing international organisation, the choice of which is often controversial. That body must then establish a negotiating process for the preparation and approval of a text, which may take place over a fixed or indefinite period. For example, the negotiation of the UN Convention on the Law of the Sea took nine years.

Interpretation of treaties

Most treaties provide definitions of some key words and phrases, but others are left open to interpretation. Article 31 of the 1969 Vienna Convention on the Law of Treaties states that; a treaty should be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." The "context" of a treaty includes its preamble and annexes, and additional agreements or instruments accepted by all the parties relating to it, such as protocols adopted after a framework treaty. It also includes some extrinsic factors and supplementary means of interpretation, such as "travaux préparatoires".

Entry into force

The signature of an agreed text at a conference does not usually impose binding obligations on a State, but only a duty of good faith to refrain from incompatible acts. After considering the domestic implications of a treaty, a State signifies its willingness to be bound by depositing an instrument of ratification. Treaties specify the requirements for their entry into force, which will normally depend on a prescribed number of ratifications. States that have not signed a treaty may normally still become a party to it by depositing an instrument of accession.

Reservations and interpretative declarations

Some treaties allow for States to opt out of their terms by making reservations. However, such reservations can defeat the purpose of a treaty, and none are permitted by the UN Convention on the Law of the Sea (art 309). Where reservations are permissible, there are guidelines on their use in the 1969 Vienna Convention on the Law of Treaties, and other parties may object to reservations that they consider inappropriate. Alternatively, instead of reservations, some States enter "interpretative declarations" explaining their understanding of certain treaty provisions. These are acceptable under Article 310 of the UN Convention on the Law of the Sea, provided that they do not exclude or modify the Convention's provisions.

Amendments

Treaties may need to be changed in order to take account of political or other developments. Some therefore, including the UN Convention on the Law of the Sea, provide for a formal amendment procedure allowing for the adoption of amended texts by the parties or for making adjustments to annexes.

Conflicts between international agreements

The number and range of treaties creates the possibility of conflict arising between them. Article 30 of the 1969 Vienna Convention on the Law of Treaties stipulates that, if a treaty states that it is subject to another treaty, the latter will prevail in the case of conflict. If the parties to an earlier treaty are also all parties to a subsequent treaty, the later treaty takes

precedence. However, if some States are party to only one treaty, the mutual rights and duties between two States will be governed by the treaty to which both are parties.

1.3.4 International Custom

Unlike treaties (which bind only the parties to them) customary international law creates obligations that are binding on all States, unless they have persistently objected to a particular practice. However, custom can be difficult to prove, because it requires evidence of consistent State practice, which may make its scope or precise content uncertain. It also needs evidence of *opinio juris*, i.e., that States have acted in a particular way because they believed that they were required or empowered to do so by law. The legal concept of the "continental shelf" emerged as a principle of customary international law through the claims of the United States (in the Truman Proclamation of 1945) and other States to the resources of their coastal sea bed.

In the *Anglo-Norwegian Fisheries Case* (1951) 18 International Law Reports 86, the United Kingdom failed to show sufficient evidence that there was general practice of limiting territorial sea baselines across bays to 10 miles. However, even if the UK had succeeded in establishing the existence of an international custom, Norway would not have been bound by such a rule, because it had consistently opposed its application to the Norwegian coast.

1.3.5 General Principles of Law

General principles of law are used to resolve issues that are not covered in treaties or customary international law and are inferred from the common practice of major national legal systems. These are of limited relevance to the law of the sea. The presumption of the exclusive jurisdiction of flag States over their registered ships on the high seas is sometimes regarded as such a principle, although it might better be explained as part of customary international law.

1.3.6 Judicial Decisions and Writings of Publicists

Although courts and commentators can only interpret rather than create international law, they are an important guide to the rules established by States through treaty or custom. The significance accorded to judgments and commentaries depends on the standing of the judge or writer.

The United Nations Convention on the Law of the Sea (UNCLOS) 1982

The Law of the Sea Convention was adopted by majority vote on 30 April 1982. There were 130 votes in favour, four against (including the United States) and 17 abstentions (including Belgium, Germany, the USSR and the United Kingdom). The Convention was opened for signature at Montego Bay, Jamaica, on 10 December 1982, and during the next two years was signed by 159 States and other entities (such as the European Community). However, some nations (including the United States, the United Kingdom and the Federal Republic of Germany) initially refused to sign it because of their opposition to aspects of the deep sea bed regime, which they considered would place excessive and costly limitations on commercial mining operations.

The United Nations Convention on the Law of the Sea (UNCLOS), serving as the 'constitution of the oceans', sets forth the jurisdictional framework and spells out the general environmental duties of States, among others, regarding offshore energy production. UNCLOS provides the obligation to exercise due diligence in preventing, reducing or controlling marine environmental pollution from offshore energy activities within their jurisdiction. However, UNCLOS is complemented by an array of global and regional environmental treaties. These agreements can put flesh on the bare bones of the seemingly evasive due diligence obligation to protect the marine environment from risks related to offshore energy production activities. In other words, relevant environmental obligations can inform and shape the standard of due diligence.

Implementation Agreement

The Law of the Sea Convention required 60 ratifications for entry into force (art 308); the 60th instrument of ratification was deposited by Guyana on 16 November 1993, and the Convention entered into force a year later on 16 November 1994. In order to persuade the remaining industrialised States to support the Convention, a compromise Agreement on the Implementation of Part XI of the UN Convention on the Law of the Sea (the "Implementation Agreement") was adopted by the UN General Assembly on 28 July 1994, and came into force on 28 July 1996. Despite the fact that reservations are not permitted by the Law of the Sea Convention (art 309) and amendments can only be made by States Parties (arts 312-314), the Implementation Agreement misapplies and modifies

certain provisions of Part XI. It also requires States who ratify or accede to the Convention after 28 July 1994 to accept the Implementation Agreement as well although in theory States which ratified the Law of the Sea Convention earlier could elect to be bound by the original terms of Part XI. As a result of the Implementation Agreement, Germany, the United Kingdom and many other industrialised nations (but not the United States) have now ratified the Convention, and by 1 January 2010 there were 160 ratifications. Nigeria deposited its instrument of ratification on 25 October 1994.

The Law of the Sea Convention is the principal treaty dealing with the public order of the oceans. However, there are many other global and regional conventions and institutions contributing to the international law of the sea. Examples are the various shipping conventions adopted under the auspices of the International Maritime Organisation (IMO), the regional seas conventions produced by the UN Environment Programme (UNEP), and regional fisheries conventions and bodies such as the South-East Atlantic Fisheries Organisation (SEAFO).

(*Discuss the maritime zones and rights of coastal states*)

a. Territorial Sea

Article 2 of the Law of the Sea Convention 1982 (LOSCO provides that:

> The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

Article 21 (1) also provides that:

> The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
>
> (b) the protection of navigational aids and facilities and other facilities or installations…
>
> (c) the protection of cables and pipelines…
>
> (c) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof…

This reference of section 21 (1) (c) alludes to the laying of pipelines in offshore oil and gas exploration and exploitation under the LOSC

b. **Continental Shelf**

Article 1 of the 1958 Convention defined the "continental shelf" as:

> the sea bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas ...

This vague approach based on the extent of exploitability inevitably led to difficulties of interpretation, which increased with advances in offshore technology. It was replaced in the 1982 Law of the Sea Convention with a more complicated definition in article 76(1):

> The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

The existence of rich reserves of oil and gas under the high seas in many parts of the world, and the development of technology to exploit them since the late 1930s, led to their appropriation by some coastal States. The first important national claim to exclusive rights over the continental shelf was made by President Truman on behalf of the United States on 28 September 1945. The Truman Proclamation on the *Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf* declared:

> Having concern for the urgency of conserving and prudently utilising its natural resources, the Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining

to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

Other States followed with similar claims, and in 1958 the Geneva Convention on the Continental Shelf endorsed the view that coastal States had certain sovereign rights over the continental shelf adjacent to their coast for the purpose of exploring and exploiting its natural resources.

Self-Assessment Exercises 2

1. What is the right of coastal states in relation to the sea?

Rights of the coastal State over the continental shelf

Article 77 defines the rights of the coastal State over the continental shelf:

"1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. 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.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the

> harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."

(***What is continental shelf?***). Thus, although the coastal State does not have complete sovereignty over the continental shelf, it automatically has exclusive "sovereign rights" for the utilisation of mineral and other non-living resources in the bed and subsoil, as well as sedentary species of living organisms. The definition of sedentary species would clearly include static species such as abalone, but doubts have arisen about the status of mobile crabs and lobsters.

Submarine cables and pipelines

Article 79 allows all States to lay submarine cables and pipelines on the continental shelf of another State, which must not impede their laying or maintenance (subject to its right to take reasonable measures for the exploitation of the natural resources of the shelf and the control of pollution from pipelines). However, the precise course of a pipeline is subject to the consent of the coastal State.

c. High Seas

Article 87 of the LOSC states the freedom of the high seas to include 'freedom to lay submarine cables and pipelines…' (Article 87) (1) (c). However, such a freedom shall be exercised by all States with due regard for the interests of other States in their exercise of freedom of the high seas.

Article 112 of the LOSC also makes provisions for the rights of States to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf. Article 113 also requires them to adopt laws and regulations making it a criminal offence for their nationals and ships to break or injure such cables and pipelines wilfully or through culpable negligence. In a similar fashion, States must also provide for the civil liability of the owners of cables and pipelines for damaging each other's works (art 114), and for the indemnification of ship owners who sacrifice an anchor, net or fishing gear in order to avoid injuring cables or pipelines (art 115).

1.4 Summary

These elaborations on the intricacies of the LOSC provide the basis for oil and gas development in the oceans under international law and the

rights of States to do so. This unit provides you with an overview of selected maritime zones which relate specifically to the issue of oil and gas exploration and development i.e. issues relating to submarine cables and pipelines as highlighted above. It is expected that you should be able to discuss key provisions of the LOSC in this regard**.**

1.5 References/Further Readings/Web Sources

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1.6 Possible Answers to Self- Assessment Exercises 1

1. **Sources of the law of the sea include:** International custom, treaty-making processes, international conventions and general principles of law.

2. **UNCLOS means:** United Nations Convention on the Law of the Sea.

1.7 Possible Answers to Self-Assessment Exercises 2

According to Article 77 of the UNCLOS, the Coastal State can exercise rights over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

UNIT 2 Current Application of the Law of the Sea and Nigerian Municipal Legislation

Unit Structure

2.1 Introduction

Recent decades have seen a marked increase in the development of offshore oil and gas activities. Due to increasing energy demand and technological innovations, drilling activities extended and moved into deep and ultra-deep water areas (Dragani and Kotonev, 2013). As of today, almost a third of the oil and a quarter of the natural gas consumed in the world come from underwater areas. This rush to offshore oil and gas exploration and exploitation is not about to end: forecasts show a continuing growth of production in traditional offshore regions (e.g. Western Africa, Gulf of Mexico) (PCF Energy, 2011) and significant development in new areas (Pike, 2013), such as Eastern Africa and the Eastern Mediterranean. Drilling more and deeper means increased threats to the environment, depletion of natural resources, and potential negative consequences for the human activities dependent upon these ecosystems. Recent accidents on offshore platforms have demonstrated that the environmental risks of offshore drilling activities concern all regions of the world and all types of companies. These transboundary nature of the impacts from these accidents have reinvigorated discussions regarding the suitability of the current international regulatory framework for offshore oil and gas activities (Rochette et al., 2014).

The United Nations Convention on the Law of the Sea addresses and allocates rights and obligations of States within each maritime zone. It also makes salient provisions relating to states obligations regarding oil and gas exploration and production. Nevertheless, the Law of the Sea Convention (LOSC) is not the only international treaty which regulates

oil and gas exploration and production in the oceans. These treaties are examined below.

2.2 Learning outcomes

By the end of this unit, you will be able to:

- discuss the provisions of the LOSC that alludes to oil and gas exploration and production;
- explain the role of other treaties adopted by the International Maritime Organisation (IMO) in this regard; and
- analyse current application of the law of the sea and Nigerian municipal legislation.

2.3 Current Application of the Law of the Sea and Nigerian Municipal Legislation

Self-Assessment Exercises 1

1. State the major provision of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention 1972).

2. What do you understand by EEZ?

i. Law of the Sea Convention

In regard to exploration and production of oil and gas, a coastal state within its Exclusive Economic Zone (EEZ) "has... sovereign rights for the purpose of exploring [for] and exploiting... natural resources" in those waters, as well as "the exclusive right to construct and to authorise and regulate the construction, operation, and use of... installations and structures for... economic purposes...," but the coastal state must exercise those sovereign rights with due regard for rights and obligations of other states. All these must be done within a State's exclusive economic zone or continental shelf. (Sections 58, 56 (1) (c) and 60.) (***What is the extent of the right of coastal state in the exclusive economic zone?***).

This means a coastal state has an exclusive right to authorise (or not) others to explore for and exploit natural resources, exclusive rights to grant (or not) licenses to construct and authorise, and exclusive rights to regulate offshore structures within the EEZ and on the continental shelf.

(Articles 58, 77 and 91, LOSC) The coastal state therefore has an exclusive right to authorise (or not) and regulate drilling in those areas. The expansiveness of the coastal state's exclusive rights means that the limiting language ("rights and obligations of other states") should not be taken to imply that other states have limited rights to drill or construct platforms without the consent of the coastal state. The limiting language rather refers to other unstated matters—probably navigation rights of vessels in the EEZ and rights under articles 58 and 79 granted to all states to lay and operate submarine cables and pipelines within other states' EEZs and continental shelves. And even with regard to noncoastal states' rights to lay and operate cables and pipelines on a coastal state's continental shelf, the coastal state retains jurisdiction to regulate in a reasonable way those cables and pipelines.

As with UNCLOS, customary international law generally has recognised the sovereign right of a state to explore for and exploit oil and gas offshore within the state's own continental shelves. While recognising lack of uniformity in state practice, however, some commentators have said there is no state right of ownership offshore: "... States do not 'own' the resources [offshore] but enjoy sovereignty to explore and exploit them. Nonetheless, several of the [EU] states... claim not only a right to regulate but also ownership of offshore oil and gas resources (e.g., Denmark, Norway, Spain, and the Netherlands)." The meaning and importance of the distinction between sovereignty and ownership here is not completely clear.

ii. Geneva Convention on the Continental Shelf

Art. 5(1) and 5(7) of the Geneva Convention on the Continental Shelf concern the exploration and exploitation of the continental shelf and its natural resources. The coastal state has to ensure that there is no unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, oceanographic or other scientific research. The coastal states shall also establish safety zones around the offshore installations and take measures for the protection of the living resources of the sea from harmful agents.

iii. International Convention for the Prevention of Pollution from Ships 1972/1978 (MARPOL Convention)

The MARPOL Convention became the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. For the first time, the whole issue of

marine pollution was addressed. This document became an innovation. If earlier anti-pollution conventions had been limited to pollution by oil, MARPOL aimed at all kinds of sea-borne pollution: oil, chemicals, sewage, garbage, and other harmful materials (Rosenne, 1999). However, MARPOL concerns mainly pollution from vessels. Exploration and other relevant offshore resources development activity is excluded.

iv. Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration of Seabed Mineral Resources, 1977 (CLEE 1977)

This is a liability convention for offshore oil and gas operations. The convention did not enter into force since there is a developed liability regime for oil industry under the bilateral agreements with the involved coastal states.

It should be noted that the issue of oil pollution, offshore drilling, exploration and exploitation activities concerned in a voluntary agreement amongst oil companies operating in northwestern Europe. The Offshore Pollution Liability Agreement (OPOL)27, according to its provisions; operators accept strict liability for pollution damage and remedial measures.

v. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention 1972)

Article XII (a) of this Convention merely enjoins parties to pledge themselves to promote, within the competent specialised agencies and other international bodies, measures to protect the marine environment against pollution caused by hydrocarbons, **including oil,** and their wastes.

In this regard, it is clear that there are regulatory gaps, both in terms of safety of offshore drilling activities and liability and compensation in case of accidents; gaps in the regulatory framework for the environmental safety of offshore drilling activities.

In view of the conventions examined above, there appears to be a regulatory gap at the international level. Despite the United Nations Convention on the Law of the Sea's (UNCLOS) relevant provisions, to date no international convention on the safety of offshore drilling activities has been adopted, and there is at present no ongoing process intended to fill this gap. Two attempts have previously failed. The 1977 draft Convention on offshore mobile craft, prepared by the Comité

Maritime International (CMI), aims to apply various existing conventions on navigation to offshore activities, but it has not been endorsed by the International Maritime Organisation (IMO).

The most recent project to develop an international agreement, discussed within the G20 framework, did not ultimately progress beyond the early discussions. These failures reflect the difficulty for the international community to agree on the development of a binding instrument regulating an economic activity that is considered vital for many States.

Regional Conventions

Gaps in the global legal framework progressively led to the development of regional instruments such as:

i. Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention), 1976

The provisions of this convention contain a non-binding obligation to undertake all possible steps in order to avoid the marine pollution of the Mediterranean Sea by means of the seabed exploitation. Another obligation of coastal states concerns the adoption of the national legislation regarding the disposal of the offshore installations not in use in accordance with international guidelines and standards.

ii. Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution, 1978

This convention devotes some of its provisions to the marine pollution from oil development activity. It provides that the Contracting States shall take all appropriate measures to prevent, abate and combat pollution in the Sea Area resulting from exploration and exploitation of the bed of the territorial sea and its sub-soil and the continental shelf, including the prevention of accidents and the combating of pollution emergencies resulting in damage to the marine environment (Article VII).

Sea Area is defined in Article 2(a) as sea area in the Region bounded in the south by the following rhomb lines: from Ras Dharbat Ali in (16 deg 39 min N, 35 deg 3 min 30 sec E) then to a position in (16 deg 00 min N 53 deg 25 min E) then to a position in (17 deg 00 min N, 56 deg 30 min E) then to a position in (20 deg 30 min N, 60 deg 00 min E) then to Ras Al-Fasteh in (25 deg 04 min N, 61 deg 25 min E). This definition excludes internal waters of the Contracting States except otherwise stated in the Convention of any of its protocols (Article II (b).

However, Article 2 of the Kuwait Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Pollution Emergency 1978 enjoins parties to taking the necessary and effective measures to protect the coastline and related interests of one or more of the States from the threat and effects of pollution due to the presence of oil or other harmful substances in the marine environment resulting from marine emergencies.

iii. The 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)

The OSPAR Convention also mentions the issue of marine pollution from offshore installations (Art. 5 of the Annex III). Member states to the convention are obliged to avoid marine pollution caused by the activity on offshore installations. Article 3 of the Annex VI requires to organise a special environment examination before the exploration and exploitation of the seabed. The convention requires to apply the standards of the MARPOL 73/78. Besides, the convention requires to cover all not used drilling holes and to dispose offshore installations not in use (Art. 8 Annex VI).

Despite provisions relating to oil and gas exploration in these regional treaties, they are highly fragmented and insufficient. For example, (i) Regional agreements differ in their comprehensiveness, some being more thorough (the Persian Gulf/Oman Sea Area, the Mediterranean, and the North-East Atlantic) than others (the Arctic for instance). Oil and gas exploration and exploitation are totally banned in Antarctica; (ii) Regional agreements have heterogeneous legal scopes: some are binding while others are only soft law instruments; (iii) There are different levels of implementation for regional agreements: some were adopted several years ago (the Persian Gulf/Oman Sea Area and North-East Atlantic) but others have only just entered into force (the Mediterranean) or still remain to be elaborated (Western, Central and Southern Africa and the Western Indian Ocean); (iv) There is no coordination and/or sharing of experience between the different regions involved in offshore drilling regulation.

Current Application of the Law of the Sea at the National Levels: Nigerian Municipal Legislation

National legislation regulating offshore oil and gas activities varies greatly. Some national legislation addresses every stage of the platform's lifecycle—from the exploration phase to the dismantling of offshore installations—while others are limited to the production stage. Some legislation aims at addressing the environmental impacts of offshore exploration and exploitation while others focus entirely on facilitating the development of offshore activities. Moreover, the effective implementation of national legislation also varies. In this regard, a lack of capacity in many developing States prevents them from effectively controlling and monitoring the development of offshore activities and enforcing regulations, when they exist. Nigerian legislation is examined here.

Nigeria is signatory to some international conventions creating certain obligations with respect to of offshore installations or construction of same. These include as set out in the conventions described above:

a. the Geneva Convention on the Continental Shelf 1958 (the Geneva Convention);
b. the United Nations Convention on the Law of the Sea 1982 (UNCLOS); and
c. the London Dumping Convention 1972.

Self-Assessment Exercise 2

1.	What is the primary legislation governing decommissioning in Nigeria?

i. The Petroleum Act and the Petroleum (Drilling and Production) Regulations

The primary legislation governing decommissioning in Nigeria is the Petroleum Act and the Petroleum (Drilling and Production) Regulations made pursuant to the Petroleum Act. Regulation 39 of the Petroleum (Drilling and Production) Regulations, and Regulation 32 of the Petroleum Refining Regulation provides that the written permission of the Director of Petroleum Resources is required for the decommissioning of oil wells. The dumping of harmful waste from decommissioned material is a criminal offence punishable under the Harmful Waste (Special Criminal Provisions, etc.) Act.

ii. EGASPIN 2002

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002 establishes an effective uniform monitoring and control programme for discharges arising from oil exploration and development and to ensure compliance with sound and efficient environmental management by all operators. It introduces new offshore decommissioning provisions that mirror the International Maritime Organisation 1989 guidelines (i.e., that oil platforms sited in less than 100m water depth and weighing less than 4,000 tonnes (excluding the deck and superstructure) must be completely removed and after 1 January 2003 and that no installation can be placed on the Nigerian Continental Shelf or Exclusive Economic Zone unless it is designed for complete removal).

Contractual decommissioning responsibilities for offshore assets are also provided for in the 2000 and 2005 model production sharing contracts (PSCs). These PSCs provide for a fund for decommissioning purposes. In the 2005 PSCs. the responsibility for decommissioning rests with the international oil company. However, the 1993 PSCs does not provide for offshore decommissioning and these are the operative PSCs in Nigeria.

iii. Exclusive Economic Zone Act, Cap E17, LFN 2004

This Act provides that sovereign or exclusive rights with respect to the exploration and exploitation of natural resources of the seabed, subsoil and superjacent waters of the Exclusive Economic Zone shall vest in the Federal Republic of Nigeria. These rights are imposed without prejudice to the Petroleum Decree 1969, Territorial Waters Decree 1967 or the Sea Fisheries Decree 1971 (section 2 (1). (***Examine the laws governing the decommissioning in Nigeria***)

Section 3 (1) also provides that for the purpose of exploring and exploiting, conserving and managing the natural resources and other activities for the economic exploitation and exploration of the Exclusive Zone, the appropriate authority may establish, or permit the establishment, operation and use by any other person subject to such conditions as may be prescribed, in designated areas - (a) artificial islands; (b) installations and structures.

2.4 Summary

The international legislation regarding the marine environmental protection during exploration and exploitation of seabed mineral resources is subject to surprisingly few international regulations as most international treaties focus on pollution as a result of oil exploration activities. It is not well developed. Operations in the Area are under the control of the International Seabed Authority according to the rules of the United Nations Convention on the Law of the Sea, 1982, but oil and gas drilling operations are conducted in the continental shelf under the direct control of the coastal state, usually through a state controlled oil company.

This unit discussed the current application of the law of the sea concerning oil and gas development and the paucity of local legislation relating to such activities in Nigeria.

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2.6 Possible Answers to Self-Assessment Exercises 1

i. **Article XII (a)** of this Convention merely enjoins parties to pledge themselves to promote, within the competent specialised agencies and other international bodies, measures to protect the marine environment against pollution caused by hydrocarbons, **including oil,** and their wastes.

ii. Exclusive Economic Zone

Possible Answers to Self-Assessment Exercise 2

The primary legislation governing decommissioning in Nigeria is the Petroleum Act and the Petroleum (Drilling and Production) Regulations made pursuant to the Petroleum Act.

MODULE 3 STATE PARTICIPATION AND POLICY

Unit 1 Definition of State Participation

UNIT 1 Definition of State Participation

Unit Structure

1.1 Introduction

The participation of Nigerian indigenous companies (i.e. companies owned by Nigerians) in the oil industry is one of the most complex issues confronting the country. As such, a discussion of the complexities associated with state participation in oil and gas industry in Nigeria is required for a broader understanding of this course.

1.2 Learning outcomes

By the end of this unit, you will be able to:

- evaluate the concept of state participation in the oil and gas industry;
- explain licensing in the industry; and
- analyse the types of state equity.

1.3 Definition and Structure of State Participation

(***What is State Participation?***). State participation means 'the commercial involvement of a State or its designated representatives which may be the national/state oil company of any other state-owned enterprise used for that purpose in the exploration and exploitation of petroleum resources'. It is also broadly defined as 'comprising a range of options from 100

percent equity participation, through partial or equity arrangements, to equity participation without financial obligation.'

State participation has been particularly prominent in the oil and gas sector since the 1970s, when a wave of nationalisations in Organiation of Petroleum Exporting Countries (OPEC) countries shifted the balance of control from private to state companies. State participation in oil, gas and mining often occurs through the involvement of state-owned companies in key extractive projects. Many governments take a direct ownership stake in oil or mineral and gas ventures, either as the sole commercial entity or in partnership with private companies. In many cases, this participation is exercised through a state-owned entity (SOE), though in some countries, the government exercises its ownership stake via ministries or other government institutions.

Self-Assessment Exercises

1. State the objective of State Participation
2. What do you understand by state participation?

The objectives of State Participation are manifold and include the following:

i. ***Nonfinancial Objectives***: The government may choose to participate directly in its country's oil and gas sector, typically through a national oil company, for a variety of reasons. Nonfinancial objectives include: the development of indigenous capacity (acquisition of managerial and technical expertise and operating experience); influence over domestic procurement; superior access to industry information; and policy implementation. While these objectives are often debated, they are not the focus of this report which focuses on the financial aspects of state participation.

ii. ***Financial Objectives***: A government's financial motivation for participating in the sector may include: an increase in its share of sector revenues beyond what the tax system would normally provide; and a considered judgment that participation represents a better investment option than available alternatives forms of Participation.

iii. ***Non-contributing Objectives***: Classic production sharing is the best-known form of non-contributing participation. The national oil company participates in a production sharing contract (PSC) with a non-state investor. Under the terms of the PSC, the government, through the national oil company, gains many of the nonfinancial and financial benefits of participation but contributes no money to the costs incurred under the agreement. In this case, the production share should be considered as part of the government take, since the national oil company invested nothing to collect it.

iv. ***Carried Interest***: Carried interest participation usually involves a "carry" or non-paying interest for the state during the exploration phase of operations, which becomes a paying interest (with or without reimbursement for the state's share in exploration costs) once a commercial find has been established. In a sense, the carried interest is a half-way house between a non-contributing interest and a full equity interest.

v. ***Full Equity***: This is the current Nigerian joint venture model. NNPC, the state oil company, contributes its full share of all costs incurred in the context of joint venture operations with non-state partners. NNPC's share differs among the six International joint ventures in Nigeria, but averages 58 percent. (***Discuss the objective and structure of state participation)***.

1.3.1 Goals of State Equity Participation

Proponents of government ownership of shares, or equity stakes, cite three principal benefits:

a. **Capacity building**: If a government holds equity through a national company, that company can become a domestic expert in commercial management of oil, gas or mining. Over time, this can promote broader industrial development and reduce dependence on foreign partners, as has been the case with Brazil's Petrobras and Malaysia's Petronas. However, state ownership alone does not ensure this kind of capacity building; many state-owned companies have failed to develop.

b. **Improved monitoring**: By having a seat at the table as a shareholder in an oil, gas or mining venture, officials in many

governments expect to enhance their ability to monitor the activities of private partners. Experience here has been mixed. While countries like Trinidad and Tobago have used equity as a tool for stronger enforcement, many government shareholders remain excluded from major decisions. In these nations, the arrangement provides scarcely more authority than the government's basic regulatory powers. Governments should negotiate shareholder agreements carefully, to ensure an active role and full information-sharing.

c. **Direct financial benefits**: In some countries, an equity ownership stake entitles the state to a share of the resources produced, which the state or a state-owned company might sell itself, or which might be monetised via cash payments from the private company to the state. In other cases, equity participation entitles the state to some form of dividend payment if a project is profitable, much like payments to shareholders in a publicly traded company. With this sort of arrangement, however, private companies often control the accounting procedures that lead to the declaration of dividends. As a result, dividends are paid only after a project has recovered all upfront costs, meaning that they are often awarded years after the project's start, leading to disappointing dividends for states.

1.3.2 Types of State Equity

With **paid equity**, the state pays a market rate for its shares and may have to meet cash calls for project development expenses, as a private partner would. This can increase a state-owned company's focus on maximising profits and accelerate its development as a viable, competitive entity. But in cash-strapped countries, the need to pay upfront or unanticipated costs can strain public resources and increase the economy's dependence on volatile oil, gas or mineral prices. Alternatively, governments can receive equity on preferential terms (or "**carried equity**"). In this case, the private-sector oil, gas or mining partner finances the operation upfront and the government pays for its equity via foregone dividends, which absolves the state of the responsibility to pay cash out of pocket, but delays financial returns to equity. With free equity, the government pays nothing for its equity, but it does not come without costs to the state. **Free equity** can deter investment and where instituted, typically obligates

states to make trade-offs elsewhere in the fiscal package, in the form of lower taxes or royalties.

NNPC's equity participation in upstream oil and gas projects is perceived as providing Nigeria with a number of nonfinancial benefits — greater control in a strategic sector, development of local capacity, and so forth. It is also seen as providing an attractive equity return, superior to that which might be earned in other sectors where public funds have been squandered. (***Identify the different types of state equity***). However, equity participation generates only a relatively small financial benefit relative to what would be collected through taxes with effective tax administration in any event. Further, that incremental benefit could be easily eroded by delays in project start-up caused by NNPC failures to meet funding obligations in a timely manner or by interest costs, chargeable to NNPC, incurred by NNPC's partners who borrow to meet NNPC's shortfall. Further, the sums required to maintain NNPC's financial participation at current levels are substantial, well in excess of funding going to other critical infrastructure and social sectors and can expose the government to significant technical and commercial risks.

Governance and Management of State-Owned Enterprises

Without strong mechanisms for oversight and accountability, holding equity through a state-owned company can exacerbate governance problems and lead to sizable losses of revenues for the state; extra-budgetary spending that bypasses parliament's budget oversight; and patronage. Inefficient companies can bog down oil, gas or mineral operations in poorly coordinated processes that slow or diminish revenue creation. They can become a "state within a state" pursuing internal priorities with little attention to broader national objectives but can also be used as an opaque vehicle to avoid public scrutiny. In Nigeria, for example, in 2011, the finance minister overestimated oil revenues by 3 39 percent, mainly due to non-remittance of funds by the national oil company.

Several measures can help reduce risks and promote effective and accountable state-owned enterprises:

a. The division of responsibilities between the national company and other institutions should be clearly defined in legislation and should avoid duplication that can serve to create parallel processes.
b. In accordance with the 2019 Extractive Industries Transparency Initiative (EITI) Standard, a global standard for the good governance of oil, gas and mineral resources, state-owned enterprises should report publicly on revenues, budgets, production, reserves, financial transfers to and from the treasury, and any "quasi-fiscal activities," such as infrastructure construction, in which they engage. They should be subject to independent audits, the results of which should also be published (Section 2.6)
c. Boards of national companies should be selected based on professional qualifications rather than political patronage; boards should make decisions independently.
d. State-owned enterprises should develop long-term commercial strategies, and should be held to account by the executive and/or parliament for the implementation of those strategies.

Parliamentary Strategies for Effective National Participation

Through their legislative role, parliaments can impact state participation initiatives via the following instruments:

i. Overarching upstream oil, gas or mining laws, which frequently spell out the nature of relations between various government entities or state and private investors.
ii. Laws establishing state-owned companies, which supplement the legal framework for oil, gas and mining laws in some countries and detail the roles and reporting requirements of the companies.
iii. Tax laws, which determine revenues gained by the state. These laws do not usually touch directly on state equity or local content, but they influence the overall balance of benefits between companies and the government, which is deeply intertwined with equity and local ownership.
iv. Contracts that contain details on equity, in countries where parliamentary approval is required.

It must be noted that these strategies are already employed in Nigeria and will be discussed in the last module of this course.

1.4 Summary

The importance of state participation in the oil and gas industry in Nigeria cannot be over-emphasised as the state interest is necessary for the economic development of the state and the country as a whole, in comparison with private investors or MNOCs whose sole aims are profit making.

This unit expatiates on the concept of state participation and how it should be structured, with references to joint venture agreement and licensing procedures in the industry which are discussed in subsequent modules for your purposes and to increase your knowledge of this course

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1.6 Possible Answers to Self-Assessment Exercises

i. They include**:** nonfinancial objectives, financial objectives, non-contributory objectives, carried interest, and full equity.

ii. State participation means 'the commercial involvement of a State or its designated representatives which may be the national/state oil company of any other state-owned enterprise used for that purpose in the exploration and exploitation of petroleum resources'.

MODULE 4 THE LICENSING OF OIL AND GAS EXPLORATION AND PRODUCTION

UNIT 1 Legal Basis for Licensing

Unit Structure

1.1 Introduction

Oil and gas exploration and production activities are regulated by the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Petroleum Act and the Exclusive Economic Zone Act which grants the rights to and control of all minerals, mineral oils and gas in Nigeria and its territorial waters and EEZ in the federal government. However, before any oil and gas exploration and production activities can occur, they are subjected to a process of licensing.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss the legal basis for licensing of oil and gas operations in Nigeria; and
- explain the elements of licencing policy.

1.3 Legal Basis for licensing

The upstream license award process is complex, competitive, capital intensive, potentially profitable and involves multiple interests. In Nigeria, the right to participate in the upstream sector is usually granted on the basis of licenses or leases.

Self-Assessment Exercises 1

1. What do you understand by licensing?
2. What is the reason for licensing in Nigeria?

A license generally encapsulates the express consent granted by a competent authority to execute specific undertakings within a delineated geographical area. Hence, failure or omission to secure the requisite consent renders subsequent actions by an affected party illegal or wrongful. In a more concise sense, it entails an authority to do something, subject to the stipulated terms and conditions. A licence as opposed to ownership, vests limited or qualified legal interest, coupled with the fact that it is also revocable subject to a contract duly signed, sealed and delivered by the respective parties. Licensing in the upstream petroleum sector refers to authorisation given by the federal government to upstream petroleum companies to carry out certain activities as expressed and implied by the licence. (***Why is licencing important?***). According to section 2(1) (c) Petroleum Act 2004, licenses in the oil sector are commonly referred to as concessions or leases and are usually granted in wide and extensive terms, that is, "to explore, acquire, produce and dispose of petroleum."

A robust licensing or contracting system is important for the following reasons:

a. It provides investors with clarity on their specific rights;

b. Clarifies procedures for performing exploration and production work;

c. Sets out how the risks and benefits relating to extractives projects are divided between the host government and the investor; and

d. Ensures that investors are eligible and fully qualified, both technically and financially, to undertake exploration and production activity in a timely and environmentally responsible, and socially acceptable manner.

1.3.1 Elements of a Robust and Proactive Licencing Policy

To reap substantive benefits from its natural resources, a country needs to have a considered and pro-active policy on exploration and production licencing. (***What actions are required of the government for maximum benefits from its natural resources?***) This can be based on ‘rounds’ of

competitive bidding or an open door/direct negotiation approach. Either will require several actions by government.

i. Adoption of an up to date exploration and production policy for the petroleum sector, setting priorities at a country level.
ii. Based on the policy, decide on an exploration strategy and a related plan of action for selected exploration areas within the country licensing regime.
iii. Review the comparative attractiveness of the terms under which exploration and production is offered to the private sector, including the fiscal and contractual conditions applicable to new awards.
iv. Based on the review outcomes, adjust the legal, regulatory, contractual and fiscal regimes in force.
v. Develop a plan of action for the international promotion of exploration and production opportunities and prospects to attract qualified companies and/or foster additional investment by companies already active in the country. Careful attention should be given to the preparation of the Licensing Terms of Reference (TOR) to be used for submitting applications, ensuring availability of relevant "data packages" for each opened area and organising "road shows" in the country and abroad for promoting the opportunities in the petroleum industry. Key questions and considerations relating to these steps are discussed under this module.

1.4 Summary

The licensing process in oil and gas exploration and licensing is an inextricable part of the industry. As such, a consideration of these factors in allocating licenses in any jurisdiction is necessary and the inclusion of these considerations influences the language when drafting oil and gas legislation.

This unit exposed you to the process of licensing and the legal basis of such. This unit is important to facilitate your understanding of the process of award of licenses under Nigerian oil and gas legislation.

1.5 References/Further Readings/Web Sources

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1.6 Possible Answers to Self-Assessment Exercises

1. Licensing is an express consent granted by a competent authority to execute specific undertaking within a delineated geographical area. To give license in the upstream sector is an authority to explore, acquire, produce and dispose petroleum products in the upstream sector as expressly stated in the agreement by the federal government

2. In Nigeria, the right to participate in the upstream sector is usually granted on the basis of licenses or leases.

UNIT 2 Process of Award of Licences

Unit Structure

2.1 Introduction

Oil companies cannot conduct surveys and drill exploration wells wherever and whenever they want. They first have to negotiate an oil and/or gas exploration license with the host country government. The license allows them to carry out exploration operations in a closely defined area; sometimes even the depth is specified.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss the process of award of licenses for oil and gas activities in Nigeria; and
- explain Bidding Guidelines for OPL.

The objective of this unit is to highlight the process of award of licenses for oil and gas activities in Nigeria.

2.3 Process of Award of Licences

The Minister of Petroleum is empowered under the Petroleum Act to grant an oil exploration license, an oil prospecting license or a lease called an oil mining lease. Such licenses or leases may be granted only to a company incorporated in Nigeria under the Companies and Allied Matters Act (1990) [Section 2].

Oil prospecting licenses are mainly acquired by two major means, which are the Bidding Rounds and the Grant on the application to the Minister of Petroleum.

Self-Assessment Exercises

1. Who can engage in petroleum prospecting in Nigeria?
2. What legislation regulates the licensing of oil and gas activities in Nigeria?
3. Discuss the key requirements which must be met before a license can be awarded to a prospective licensee.

2.3.1 Bidding Rounds

Only the holder of a concession can engage in petroleum prospecting in Nigeria. Concessions are allocated to operators based on an open competitive bidding process. The Government awards oil exploration and prospecting license through competitive bidding known as licensing rounds. The company must produce evidence of financial capacity that must not be less than the US $10,000,000 (Ten Million Dollars), which is about N1, 000,000,000.00 (One Billion Naira)

Oil companies compete in international licensing rounds to be allowed to explore a geographical basin. Interested companies submit to the government detailed proposal bids for prospecting; this bid sets out the commitment of the company concerning the commitment of the amount to be invested to explore the area and bear the entire cost of the operation and a commitment on the type and amount of work to be carried out by the company.

2.3.2 Bidding Guidelines for OPL

- The Department of Petroleum Resources will advertise all blocks available for bidding in the National Dailies and Magazines; international publications approved by the government and dedicated websites for bidding rounds.
- Interested investors will be required to pay the sum of US $10,000 for a bid processing fee.
- The bidders will be required to provide details of their shareholding structure, names of directors, track record in the oil and gas sector, audited financial statements, partnership or collaborations with indigenous firms and financial resources to bid and pay for oil acreages.

- After this stage, investors will pay the USD $15,000 each for data mining fees to enable them to gain access to the relevant data on acreages that will be placed on the offers.
- Investors will also avail information on the size of the fields, seismic surveys and past appraisals conducted among other information.
- The department of petroleum resources will commence a technical evaluation on the bids submitted and where investors fail to meet the criteria, they will be dropped while investors that have passed the technical evaluation process will be invited to submit their commercial bids in a process that will be opened to the public
- Finally, oil acreages will be given to the highest bidders who will be given a timeline to pay for the acreages

2.3.3 Recent Bids in Nigeria

(***In a nutshell, explain the recent bills in Nigeria***). The Nigeria National Petroleum Corporation (NNPC) received over 254 bids for its 2018 crude oil contracts. The tender was opened on the 10th of November 2017 and closed on the 9th of January 2018. On the 9th of January 2018, the Federal government considered about 254 bids from indigenous and foreign companies interested in the purchase of the Government equity crude oil under the 2018/2019 crude oil term contract. At the end of the event, the NNPC spokesperson said the winners would be selected as licensed off-takers to trade on Nigerians equity crude for a 12 months' period.

Some of the conditions the off-takers were required to meet are: having a minimum annual turnover of $500 million for 2016 and a net worth of $250 million for 2016. They were also required to demonstrate the capacity to establish an irrevocable power of credit. 50 companies have won the bids out of the 254 that applied, although it has not been formally announced.

2.3.4 Grants

Oil prospecting licence will be granted to the company or a joint venture that shows the highest interest and ability for the exploration of petroleum. Applications are made to the Minister for Petroleum, attaching a proposal on the economic terms governing the applicants' production activities. The application fee is $10,000 per block. The Petroleum (Drilling and Production) Regulations outlines the application process for companies incorporated in Nigeria to apply for oil exploration licenses.

Procedure for application for the Grant of OPL

1. The applicant is expected to pay a non-refundable fee of US$10,000 per block.
2. The applicant will also pay the annual rent of $10 per sq km, and provide the following documents:

a. Certificate of incorporation of the company
b. Evidence of financial standing to the tune of US $10,000,000 or N1,000,000,000.00
c. Evidence of the applicants' technical knowledge in oil prospecting
d. Evidence of detailed environmental policies referencing environmental impact assessment analyses
e. Evidence of payment of all necessary fees.

Where the minister is satisfied with the information provided, he will permit the Department of Petroleum resources to grant the permit.

Upon the grant of the Oil Prospecting License, there are certain obligations to be performed by the holder of the license, which includes; the holder upon grant is expected to start the geographical investigation within six months of the grant on the area leased. The holder of the OPL license is also required to train Nigerians on the act of drilling and production of crude oil; the holder also has financial obligations to pay rents and loyalties as stipulated by the Petroleum Profit Tax Act.

In conclusion, to acquire an interest in an oil field, a company must first acquire licenses which are granted subject to the approval of the Minister for Petroleum Resources. The Oil Prospecting Licence is granted for the purpose of exploiting petroleum found in commercial quantity. Before it can be granted, the applicant must satisfy and fulfil some conditions stipulated by the Minister.

Upon the fulfilment of the conditions set out by the Minister, the holder of the OPL License after discovering oil in commercial quantity and satisfies the Minister that it can produce a minimum of 10,000 barrels of oil per day, can apply for the license to be converted to an Oil Mining Lease, which will enable the company to produce and dispose of petroleum discovered for a long period of 20 years, subject to renewal.

An OPL holder cannot extend its scope of operations beyond the area covered by its license. This means that the holder cannot produce and dispose of petroleum until it converts its current license to an OML.

The process of award of licenses under the Petroleum Act is subject to the Minister's discretion and fulfilment of requirements set out under the Act by the prospective licensee. Whilst it may be argued that the power of the Minister is broad in respect to licensing, this is similar to what obtains in other jurisdictions similar to Nigeria. (***Examine the Procedure for application for the Grant of OPL*****)**

2.4 Summary

This unit discusses the process of licensing in Nigeria and the process of awarding same by the Minister. It provides an insight into the salient provisions of the Act pertaining to licensing.

2.5 References/Further Readings/Web Sources

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2.6 Possible Answers to Self- Assessment Exercises

1. Only the holder of a concession can engage in petroleum prospecting in Nigeria.

2. The Petroleum Act 2004 license or lease in Nigeria can be awarded to oil prospecting companies if they are first incorporated under the Companies and Allied Matters Act 2020 through two means 1. bidding rounds and 2. Grant on the application to the minister.

3. Bidding rounds is through an open competition bidding process called licensing rounds and the company must provide evidence of financial capacity of not less than 10 million dollars which is about one billion naira. Interested companies submit to the federal government a detailed proposal bid for prospecting including the amount to be invested and bear the cost of operations and pay a processing fee of 10 thousand dollars.

   Grants. This is an application to the minister of petroleum attaching a proposal on the economic terms production activities. They are required to pay 10 thousand dollars processing fees and. must pay annual rent at 10 dollars per sqm and provide certificate of incorporation alongside: evidence of financial standing, evidence of application of technical knowledge of prospecting. Evidence of detailed environmental policies and impact assessment analysis, and evidence of payment of all necessary fees.

UNIT 3 Types of License under the Act

Unit Structure

3.1 Introduction

The Petroleum Act grants oil companies' licenses for oil and gas (O & G) exploration activities. This license covers specific areas and stipulates specific terms and conditions. These include an oil exploration license (OEL), oil prospecting license (OPL), oil mining lease (OML).

3.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss the types of license which are stipulated under the Act; and
- explain divestment or transfer of assets.

3.3 Types of License under the Act

(***Discuss the various types of license provided for under the Petroleum Act***)

a. The Oil Exploration License (OEL)

This is a non-exclusive licence that permits a licensee to explore for petroleum in the licensed area. The OEL does not confer a right to oil prospecting licence (OPL) or oil mining lease (OML). It is granted for one year and is renewable upon satisfaction of certain conditions. Due to modern technology available in the oil and gas industry, the government rarely issues this license again.

b. The Oil Prospecting License (OPL)

This grants the licensee the exclusive right to explore and prospect for petroleum and allows the licensee to carry away and dispose of petroleum won during prospecting operations subject to fulfilment of obligations imposed under the Act, by the Petroleum Profits Tax Act or other law imposing taxes on petroleum. The duration is determined by the Minister and it is usually issued for a period not exceeding 5 years for onshore areas and shallow waters areas, while an OPL for Deep Offshore and Inland Basins issued for 10 years.

c. The Oil Mining Lease (OML)

This is granted only to the holder of an OPL upon satisfaction of all conditions of the licence or the Act and having discovered oil in commercial quantity (currently defined as a flow rate of 10,000bpd). The lease confers on the holder the exclusive right to search for, win, work, carry away and dispose of petroleum within the specified acreage for a period of 20 years. This may be renewed subject to the fulfilment of prescribed conditions.

Self-Assessment Exercises

1. What are the three types of licenses under the Act?
2. Briefly discuss revocation of license

3.3.1 Converting OPL to Oil Mining License

After petroleum resources have been discovered in commercial quantities, upon the expiration of the OPL, it is either relinquished back to the government or converted into an Oil Mining Lease. The OPL holder would need to apply for an Oil Mining Lease to allow full-scale commercial production in the leased area. OML is only granted to OPL holders, where the Minister is satisfied upon evidence adduced by the licensee, that the licensee is capable of producing at least 10,000 barrels of crude oil per day from the licensed area. This license grants the leaseholder the exclusive right to prospect, explore, produce and undertake market activities in a specified acreage for a period of 20 years.

Conversion of OPL to OML is provided under Section 31 of the Petroleum (Drilling and Production) Regulations. It states that within 6 months of the date of grant of the license, seismic data acquisition shall commence and continue until the area is fully investigated; not later than 18 months of the grant, drilling operations shall also commence with a modern oil well drilling outfit all through the prospective zones in the relevant area to satisfy the minimum obligation for the application for conversion of an OPL to OML.

3.3.2 Revocation of License

By virtue of the provision of paragraph 23(1) of the first schedule to the Petroleum Act, the Minister of petroleum may annul any oil licence if the licensee is being manage by a citizen or a company registered in any country other than Nigeria and where the laws do not permit Nigerians to run petroleum concessions on certain conditions which in the opinion of the Minister of Petroleum and Energy Resources is similar with the terms upon which such concessions are given to citizens of such foreign investor in Nigeria. Also, in paragraph 24 of the same First Schedule to the Petroleum Act further provides that the Minister of Petroleum and Energy Resources can annul OPL or oil mining lease to OML, if in his estimation, the concerned licensee or lessee is not carrying on its operations regularly and in a business-like tactics worthy of oil field practice, or refused to adhere to the provisions of the Act or any other procedures or failed to honour his duties as stated in the license or lease or failure to pay outstanding royalties demanded for or not by the Minister within the time stated or in accordance with Act or has refused to make available such details on his activities as the Head of Petroleum Inspectorate demand. The licensee or lessee shall become liable for all liabilities suffered before the actual date of such cancellation.

Hence, the revocation of a license can be done under the following circumstances:

a. At the expiration of the block, the operator fails to operate the block in line with what is stipulated in the relevant petroleum laws and regulations.
b) The operator fails to meet the stipulated minimum work programme for the conversion of the OPL to OML in the case OPL block.

There are no provisions for the renewal of an OPL in the petroleum laws. However, OML blocks can be renewed for another term of 20 years upon payment of the relevant statutory fees provided the blocks justify the need for the renewal. Holders of OPLs are required to relinquish 50% of the block at conversion to OML. The relinquished portion is returned to the Government. Similarly, holders of OMLs are required to relinquish 50% of the lease ten (10) years after conversion to OML.

3.3.3 Divestment or Transfer of Assets

Under the Petroleum Act (section 14, 35 (2(c), a holder of a license or a lease granted under the Petroleum Act is prohibited from transferring such license or lease or any right, power or interest in the same without the consent of the Minister and the payment of the prescribed fee or premium.

(***What do you understand by 'transfer of assets?***). This was confirmed by the Federal High Court in *Moni Pulo Limited V Brass Exploration Unlimited*, where the court confirmed that an indirect transfer of interest in an oil mining lease (by way of the sale of shares of a lessee resulting in a change of control) requires ministerial consent.

The Department of Petroleum Resources' Guidelines and Procedures for Obtaining the Minister's Consent for the Assignment of Interests in Oil and Gas Assets, aim to include (albeit not exhaustively) descriptions of transactions that constitute assignments requiring ministerial consent, including:

- assignments by way of an exchange or transfer of shares;
- share listings; and
- mergers or acquisitions to directly or indirectly take over or acquire the whole rights or interests in an underlying petroleum asset.

3.4 Summary

Oil prospecting licenses must be granted to oil companies before any legal oil and gas activities take place in Nigeria. As such, the Department of Petroleum Resources is principally responsible for processing all applications for licenses and leases in the oil and gas industry. This unit provides an exposition of the types of licenses in Nigeria. You should be

able to clearly discuss the types of license and the process of revocation or transfer of licenses as set out under the Petroleum Act.

3.5 References/Further Readings/Web Sources

‘Licensing, Contracts and Disclosures’ pp 1-4. <file:///C:/Users/Ire/Downloads/4-OG-Licensing-Contracts-Disclosures.pdf> accessed 15 February 2020

Udo Udoma & Belo-Osagie ‘Oil and gas exploration and production laws in Nigeria’ <https://www.lexology.com/library/detail.aspx?g=aefb69c4-fdf2-496c-92ab-d5c5bcc65e77> accessed 15 February 2020

Olusola, J. O. and Olabode, A. O. (2017). ‘Annulment of Oil Licenses in Nigeria’s Upstream Petroleum Sector: A Legal Critique of the Costs and Benefits’. *International Journal of Energy Economics and Policy* 7 (3) 364-369 at 366-367.

‘Oil Exploration Licenses in Nigeria’ ESQ Legal Practice Magazine, Feb 21 2018 <https://esq-law.com/oil-exploration-licenses-in-nigeria/> accessed 18 February 2020.

3.6 Possible Answers to Self-Assessment Exercises

1. The three types of license under the Act are:

a. The Oil Exploration License (OEL)
b. The Oil Prospecting License (OEL)
c. The Oil Mining License (OEL)

2. By virtue of the provision of paragraph 23(1) of the first schedule to the Petroleum Act, the Minister of petroleum may annul any oil licence if the licensee is being managed by a citizen or a company registered in any country other than Nigeria and where the laws do not permit Nigerians to run petroleum concessions on certain conditions which in the opinion of the Minister of Petroleum and Energy Resources is similar with the terms upon which such concessions are given to citizens of such foreign investor in Nigeria.

UNIT 4 General Provision Governing Licences and Leases

Unit Structure

4.1 Introduction

The grant of a license under the Petroleum Act is subject to the approval of the Minister of Petroleum Resources in Nigeria. The power to exercise such grants and/or approvals is set out under the Act and form the basis of this unit.

4.2 Learning Outcomes

By the end of this unit, you will be able to:

- evaluate the provisions of the Act;
- analyse the powers of the Minister with respect to licenses and lease; and
- demonstrate good knowledge on indigenous oil companies.

4.3 General Provision Governing Licenses and Leases

The grant of the above licenses is subject to approvals by the Minister of Petroleum and include the following under sections 8 (a), (e) – (h)

a. Prospective licensees are required to pay application fees and such other prescribed fees. (Sections 3(3) and 4 (4), Petroleum Act).
b. The Minister's powers relating to licenses include the following:
    i. exercise general supervision over all operations carried out under licences and leases granted under this Act;
    ii. shall have access at all times to the areas covered by oil exploration licences, oil prospecting licences and oil mining leases, and to all refineries and installations which are subject to this Act, for the purpose of inspecting the operations conducted therein and enforcing the provisions of this Act and any regulations made thereunder and the

conditions of any licences or leases granted under this Act or under any corresponding law for the time being in force in Nigeria;

iii. may by notice in writing require the holder of a licence or lease granted under this Act or any contractor working for the holder (or any servant or agent of the holder or the contractor) to appear before him at a reasonable time and place to give such information as he may require about the operations being conducted under the licence or lease, and every person so required to appear shall be legally bound to comply with the notice and give the information;

iv. may direct in writing that operations under a licence or lease granted under this Act shall be suspended in any area until arrangements have been made which in his opinion are necessary to prevent danger to life or property;

v. may direct in writing the suspension of any operations which in his opinion are not being conducted in accordance with good oil field practice; and

vi. may direct in writing the suspension of any operations where in his opinion a contravention of this Act or any regulations made thereunder has been or may have been or is likely to be committed.

Additionally, the importation, storage, sale or distribution of any petroleum products in Nigeria without a license is expressly prohibited under section 4 of the Act.

Self-Assessment Exercises

1. Who are the major players in the Nigerian upstream?
2. What is the aim of the Indigenous Concession Programme?

4.3.1 Stakeholders in the Nigerian Oil and Gas Industry

a. Federal Government/NNPC

The Federal Government participates in the oil industry through the NNPC. The NNPC was formed in 1977. It inherited the commercial activities of the NNOC and the supervisory/regulatory role of the Federal Ministry of Petroleum Resources. However, a de-merger took place in

1984 and presently, the NNPC undertakes commercial activities, whilst the Federal Ministry of Petroleum Resources acting through the Department of Petroleum Resources (DPR) is the regulatory authority.

b. The Multinationals

The major players in the Nigerian upstream are Shell, ExxonMobil, Chevron/Texaco, Total Elf Fina, Elf and Agip. These multinationals account for about 97% of Nigeria's oil reserves and production. They participate in the petroleum industry in Joint Ventures with NNPC, as operators/contractors in the Nigerian deep water under production sharing contracts with NNPC; and in one instance under a service contract with NNPC.

In addition, some multinational companies have farmed into indigenous oil company concessions where they provide the technical expertise and funding required for E & P operations.

c. Indigenous Oil Companies

The Indigenous Concession Programme's aim was to retain ownership and control of indigenous concessions in Nigerian hands and thereby encourage the growth of local expertise production in exploration, development and operations.

The first set of indigenous grants was in the 1970s/1980s to Henry Stevens Company, Nigus Petroleum and Niger Delta Oil Company. Later, Dubri Oil acquired a concession by assignment from Philips Oil Company Ltd. in 1987. However, it was not until 1991 that Professor Jubril Aminu, the Minister of Petroleum at the time, awarded eleven (11) concession blocks to Nigeria entrepreneurs on a discretionary basis.

This was followed by another round of allocations in 1993, and eventually resulted in more than 40 Indigenous E & P companies holding OPLs under the programme. In 1999, OPLs for nine (9) blocks were awarded and subsequently cancelled. Finally, during the current Year 2000 Licensing Round 22, blocks were offered to the entire industry, both onshore and offshore, through a process of competitive bidding.

d. Host Communities

Though not direct stakeholders, host communities are nevertheless one of the most important stakeholders in the petroleum industry. The critical role and interests of the host communities, long neglected, is finally being recognised and addressed by the Federal Government, *inter alia*, by the passing of the Niger Delta Development Commission Act.

4.4 Summary

Stakeholders in the oil and gas industry in Nigeria all play critical roles in the development of oil and gas. As such, the Minister exercises his powers diligently to ensure that such stakeholders can be held accountable for resulting effects of oil and gas activities when licenses have been granted or contractual agreements finalised.

(***Identify and discuss the major stakeholders in the Nigerian Oil and Gas Industry***). You should be able to identify the powers of the Minister under the Petroleum Act and juxtapose it with the provisions of the Act relating to licensing in the previous units under this Module.

4.5 References/Further Readings/Web Sources

Olajumoke Akinjide-Balogun 'Legal Framework of the Nigerian Petroleum Industry' 3 April 2001 <https://www.mondaq.com/Nigeria/CorporateCommercial-Law/10726/Legal-Framework-Of-The-Nigerian-Petroleum-Industry> accessed 20 February 2020.

Patrick Ndubisi Oche op.cit.

4.6 Possible Answers to Self-Assessment Exercises

1. The major players in the Nigerian upstream are Shell, ExxonMobil, Chevron/Texaco, Total ElfFina, Elf and Agip. These multinationals account for about 97% of Nigeria's oil reserves and production

2. The Indigenous Concession Programme's aim was to retain ownership and control of indigenous concessions in Nigerian hands and thereby encourage the growth of local expertise production in exploration, development and operations

MODULE 5 CONTRACTUAL ARRANGEMENT FOR EXPLORATION AND PRODUCTION

UNIT 1 Categorisation of Joint Venture Agreements

Unit Structure

1.1 Introduction

Oil and gas exploration and development are characterised by huge capital expenditures, high technological expertise and the ability to manage investment risks. Consequently, two major contractual arrangements emerge from the petroleum development rights, that is, joint venture arrangement (JV) and production sharing contracts (under the contractual agreement) made with multinational oil companies (MNOCs). The principal contract model for the purpose of exploration and production of petroleum resources, however, is the joint venture agreement.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- analyse the concept of joint venture agreements;
- discuss the meaning and types of same.; and
- write and explain Indigenous Oil Companies.

1.3 Categorisation of Joint Venture Agreements

The JVs typically govern onshore/shallow water projects. This was introduced in 1986 following the global oil glut. Under this arrangement, each of the partners to the JV has an obligation to contribute financially, to the extent of the percentages held in the contract towards the exploration and development of the oil and gas blocks. These are called cash calls. All parties are entitled to their share of oil after fiscal deductions have been made, including royalties paid to government and petroleum profit tax. The Joint Venture Agreements (JVA) is a special growth strategy between internal and external strategies.

Participant companies to a joint venture agreement relationship contribute assets, capital, unique enterprise, labour, risk sharing, market entry, tax benefits and so many others while it provides a benefit of maintaining the corporate independence of the participants and avoiding the economic and political risk associated with the merger or joint venture agreement.

In a joint venture arrangement with the government, the host government takes part in the concessionary system as working interest owners, where a Joint Operating Agreement (JOA) is drawn for the execution of the operations or a Participating Agreement. The latter sets out the terms and conditions of the acquisition by NNPC of the undivided percentage interest in the oil company. On the other hand, the former spells out the legal relationships among concurrent owners (the IOCs) of licenses, leases or concessions as the case may be and lays down the rules and procedures of the joint development of the licenses, leases or concessions for the benefit of the concurrent owners. (***Identify the different forms in which JVs may take***). The host government has ownership rates in the development and productions operation of the oil fields, and therefore, shares exploration; drilling and development expenditures accrued from the operations.

It should be noted that JVs can take the form of a corporation, limited liability company or partnership. In the oil and gas industry, JVs are usually unincorporated, which means that they do not have a distinct legal personality and therefore cannot be taxed, sued or sue in their own name.[2] Paragraph 35 of the first schedule to the Petroleum Act[3] provides for government participation in the oil and gas industry. It provides:

If he considers it to be in the public interest, the Minister may impose on a licence or lease to which this Schedule applies special terms and conditions not inconsistent with this Act including (without prejudice to the generality of the foregoing) terms and conditions as to –

(a) participation by the Federal Government in the venture to which the licence or lease relates, on terms to be negotiated between the Minister and the applicant for the licence or lease; and

(b) special provisions applying to any natural gas discovered, which provisions shall include-

(i) the right of the Federal Government to take natural gas produced with crude oil by the licensee or lessee free of cost at a flare or at an agreed cost and without payment of royalty;

(ii) the obligation of the licensee or lessee to obtain the approval of the Federal Government as to the price at which natural gas produced by the licensee or lessee (and not taken by the Federal Government) is sold; and

(iii) a requirement for the payment by the licensee or lessee of royalty on natural gas produced and sold.'

It is on the premise of the above provision that the JOA is executed between the federal government, represented by NNPC, and licensees/lessees.

Under a JV, the Nigerian Government through NNPC has about 60% participatory interest in all joint venture agreements. JVs appear to be most favourable in the level of participation in the entire projects as this affects the economic rent derivable from the contracts.

Currently, NNPC upstream operations are in joint partnerships with the major oil companies. These Exploration and Production companies are operating predominantly in the onshore of Niger Delta, coastal offshore areas and lately in the deep waters.

Primarily, the joint venture between the government (through its entity, the NNPC) and oil companies can take place by virtue of the joint participation in the oil prospecting license(OPL) or oil mining lease (OML) or production sharing contract(PSC).

NNPC, possessing majority of the shares in these arrangements, however, has been unable to fund its cash call in the joint ventures (JV) This has led this arrangement to be increasingly unmanageable.

Self-Assessment Exercises 1

1. How many types of Joint Ventures in the oil and gas industry do you know about?
2. Explain the term 'farm-out agreements'

1.3.1 The Importance of Joint Venture in the Oil and Gas Industry

There are several benefits attached to a Joint Venture Agreement in the oil and gas industries which include:

i. It reduces the control and requires a degree of collaboration between oil and gas related companies. For example, in an instance where the project developers seek to partner with technology owners where project success is predicated on access to technology.
ii. A joint venture can be entered into where oil projects are big for a single company to finance on its own in terms of accessing funds and cost exposure.
iii. A Joint Venture is necessary where pooling the assets of participants or leveraging collective political influence may allow a JV to develop a market-leading position in a particular geography, thereby providing advantages that no participant could attain working alone. Similarly, where a company wishes to de-risk a business project, a JV may be used to reduce exposure and the on-going investment required, without having to consider full exit/divestment.

iv. Also, a JV is necessary where some countries require foreign companies to work with local entities to participate in their markets.

(*What are the types of Joint Ventures in the Oil and Gas Industry?*)

1. **Operational Joint Ventures:** this venture exists where two or more companies create a new entity that holds full complements of operating assets and capabilities necessary for developing and executing an oil and gas project.

2. **Capability Sharing JV**: This type of JV conducts business by leveraging a combination of capabilities from the participants. For example, one participant may bring engineering and manufacturing capabilities, while the other brings political influence and resources in certain countries. For example, the JV itself may have limited operational assets; it then coordinates a mix of capabilities held by the various participants.

3. **Risk Sharing JV:** Two or more companies create a JV primarily for the purpose of sharing risk or financing. It occurs where one participant typically runs the entire operation, with the others contribute only funding and input on strategy-level decisions.

It should be noted that oil companies may engage in joint ventures within themselves by participating to work in respect of oil and gas venture. As stated above under the Petroleum Act and Regulations, the Minister's consent is sacrosanct for this type of partnership. The oil prospecting license and oil mining lease holders are not allowed from assigning their licenses or leases or any interest in it without the prior consent of the Minister of petroleum resources. Pursuant to the provisions of the Petroleum (Drilling and Production) Regulations, any takeover or assignment of interest in an OPL or OML's company is subject to the consent of the Minister.

It is noteworthy to also mention a type of agreement which is linked to joint venture agreements and this is referred to as 'farm out agreement.'

Farm-out agreements

When one Joint Venture partner assigns a portion of undivided interests in an area to a newcomer or an existing partner, they use a "farm-out" agreement. The party which assigns its rights is often referred as the

"farmor" and the recipient is called "farmer" or "farminee". The assignment is generally made in return for compensation, commonly paid via commitments to fund specific work such as well drilling, but sometimes in cash. The farm-out may be signed at any stage, from exploration to production, but host states may limit or prohibit farm-outs for a period shortly after winning the bid. Whilst industry practices vary considerably on terms and conditions of different farm-out agreements, model farm-out agreements based on industry practice are available through the AIPN.

1.4 Summary

In Nigeria, JVs are arrangements between the NNPC on behalf of the government and a counterpart IOC whereby the parties hold the Oil Prospecting License (OPL) or Oil Mining Lease (OML) jointly and funding for the exploration, development and production of petroleum, and the hydrocarbons produced are shared in proportion to the participating interest held by each party. This type of agreements is vital to the development of oil and gas in Nigeria.

In this unit, the various categorisation of JV Agreements has been identified including the intricacies of JVs.

1.5 References/Further Readings/Web Sources

Resolution Law Firm 'Joint Ventures in the Nigeria Oil and Gas Industry' <https://www.resolutionlawng.com/joint-venture-in-the-nigeria-oil-and-gas-industry/> accessed 28 February 2020

BudgiT 'How is the industry run?' <https://www.yourbudgit.com/oil/report/How%20is%20the%20industry%20run.html> accessed 28 February 2020

Usenu Inifomet 'The burden and benefit of the Joint Operating Agreement framework to the Nigerian government' 28 November 2019 <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=670C4B38-05B2-4FD1-84DF-6D1DFCBEFB51> accessed 28 February 2020

Patrick Ndubisi Oche op.cit

1.6 Possible Answers to Self-Assessment Exercises

1. Three types

2. When one Joint Venture partner assigns a portion of undivided interests in an area to a newcomer or an existing partner, they use a “farm-out” agreement.

UNIT 2 The Joint Venture Agreements

Unit Structure

2.1 Introduction

Nigeria joined the Organisation of Petroleum Exporting Countries (OPEC) in 1971. This signaled the commencement of its joint venture participation in oil companies operating within its territory. In fact, it started when the Nigerian government acquired participation interests in the concessions held by the IOCs. Nigeria's first JV was between the NNOC (as it then was) and the Agip-philips joint venture on 1st April, 1971. Since then, Nigeria has acquired participating interests in other companies including; Elf, Shell-BP, Mobil, Texaco-Chevron and so on, and in line with her nationalisation policy, Nigeria has acquired majority equity participation in all the companies. In Nigeria, the NNPC represents the interest of the government in the joint ventures whereas the respective Multinational Oil Companies (MNOCs) operate the different ventures with varying participatory interests.

This form of sharing under JV has a downside. Risks and costs must also be shared, hence the Nigerian state which holds 55 to 60 percent in all JVs, would bear higher cost and portion of risks; for example. clean-up activities for the environmental damage caused by petroleum operations. NNPC which holds 55 to 60 percent participating interest in all JVs, would bear higher cost and portion of risks. In 2004, the government funding to all the JV operations in Nigeria's oil industry was reported to be $3.4 billion, while the government had estimated to spend $4.4 billion for its JV operations in 2005. Hence, the JV was not deemed to be an ideal method of participation for the NNPC because Nigeria is a developing country and cannot shoulder the large proportion of financial costs and risks it was saddled with by virtue of its large participation interests. Indeed, Radon J. opined that the NNPC favoured this JV arrangement

until it could no longer meet its share of the JV's financial commitments. This was due to the fact that the government which had other pressures on its resources, thus leading to reduction in operations and consequential loss in revenue. This led to a consideration of other types of agreements to guide oil exploration and production in Nigeria.

2.2 Learning outcomes

By the end of this unit, you will be able to:

- explain other contractual arrangements which differ from a joint venture agreement; and
- analyse the nature of each one and the significance of same to oil exploration and production in Nigeria.

2.3 The Joint Venture Agreements

With the expansion of the Nigerian oil and gas industry, petroleum operations are now allowed to be carried out in the shallow and deep offshore areas and this introduced the need for a different regime, as it brought its own unique challenges in terms of funding and technical complexity. These reasons led to the introduction of Production Sharing Contracts (PSCs) in the new offshore and inland basin areas which is gradually assuming prominence in the entire industry. In fact, new petroleum contracts in Nigeria are mostly Production Sharing Agreements.

Self-Assessment Exercises

1. Differentiate between a concession and a production sharing contract.
2. What is concession?

2.3.1 Production Sharing Contract (PSC):

A PSC is defined as a contract pursuant to which the State (owner of the natural resources) agrees with the investor who is just like a contractor to conduct exploration, prospect and extraction of mineral resources within the confines of a defined subsoil area on a compensated basis and for an established time period during which the investor is obligated to conduct

the indicated work at its own expense and risk. The PSC is a legal arrangement in which the crude oil produced is shared by the parties in a pre-determined proportion. In a standard PSC, ownership of the petroleum discovered is vested in the host country or the national oil company and the contractor does not acquire title to its share of petroleum until production reaches a mutually agreed point (Commercial Quantity).

The oil company operates, manages and finances operations in the contract area and therefore bears all the risks of exploration. However, when oil is discovered in commercial quantities, the company is entitled to recoup its investments from the crude oil produced from the contract area by taking an amount of oil equal to the MNOCs cost for the petroleum operation and this is known as 'cost oil'. When the cost oil is taken by the oil company, what is left is called 'profit oil'. This profit oil is shared between the parties in pre-determined proportions. (***What is petroleum sharing contract PSC?***).

In addition to the specific contracts signed with the individual companies, the main law which regulates the operation of PSCs in Nigeria is the Deep Offshore and Inland Basin Production Sharing Contracts Act No. 9, 1999. Under the PSC arrangement in Nigeria, the state participates by holding the Oil Prospecting License and the Oil Mining Lease through the NNPC, which engages the MNOCs or indigenous private investor as a contractor to conduct petroleum operations on behalf of itself and the NNPC.

Some of the unique features of the PSCs help to foster state participation in Nigeria. For example, under this arrangement, the State remains the owner of the oil and gas produced and the ownership of the production only transfers at the export point usually established at the well head. This secures the states ownership and sovereignty over its territory and natural resources. The contractor pays a royalty, recovers the cost of operations and then shares the remaining production with the host. The remuneration of the contractor is made in kind, meaning that, the payment to the contractor is in oil known as profit oil. This does not attract any direct financial cost. The contractor is made to pay taxes on its share of profit oil although the contractor provides all the equipment and technology and bears the cost of operations and risk. The state has what some sort of tripartite benefit under a PSC. The state shares in the profit oil, does not pay for the costs of carrying out the petroleum operation and still taxes the profit made by the IOC after the sale of its own portion of the profit

oil. This is also another dimension to the states participation in Nigeria; the state uses taxation as a means to foster its economic development for the general good of its citizens whom it holds the natural resources for on their behalf.

Furthermore, the equipment for the operations reverts to the host government after installation except if leased or rented. This technological transfer makes it easier for the state to develop to a level where it can solely participate in petroleum operations. In fact, this type of arrangement fosters state participation in Nigeria because it enables the state to fully participate in oil and gas operations in the country whereas all the financial and operational risk rests solely on the IOCs.

The state using the NNPC does not bear the risk of making losses. At most, the host government (the state) loses an opportunity but suffers no material loss if an exploration or development project fails. However, if a project is not carried out in accordance with the terms of an exploration or development program, a government can still, if the PSA is drafted well, cancel or terminate the deal or bring in another oil company. The NNPC has the added advantage of sharing in the potential profits without having to make an investment, unless it agreed to do so. Following from the use of the technical know-how, skills and experiences of the companies in petroleum operations, the government is enabled to focus its energies in other areas of the economy while trusting that the oil and gas industry will develop at an acceptable pace without the usual trappings of cash call restraints which is the situation under the JV.

However, one drawback of the PSC in Nigeria is the fact that the contractor is usually allowed a relatively unfettered hand to draw up and execute its program which leads to allegations against the IOC of increasing the actual costs. Already, this trend is emerging with pioneer project operated under PSC by Shell Nigeria Exploration and Production Company Limited (SNEPCO), a subsidiary of Shell, where the Senate Committee recently summoned the company to explain the escalation of costs from the initial projected $2.9 billion at the stage of Final Investment Decision (FID) to the current cost estimate of $3.816 billion. FID means a determination made by directors and/or management as to how, when, where and how much capital will be spent on investment opportunities.

The long term nature of the transactions in the oil and gas industry has however made it possible for the parties to surmount some of these difficulties and strive to make room for flexibility in drawing up terms and also make provisions for renegotiation in the event that the particular provisions are found to be causing undue hardship.

2.3.2 Concessions

Concessions are arrangements between Governments and IOCs whereby the latter receives the exclusive right to explore for petroleum and if petroleum was discovered, to produce, market and transport the oil and gas products; and in return the former participates only by receiving royalties, rent and taxes which on the average is between 55 and 90 percent. It is still the most widely used type of agreement in other countries.

(***Identify and discuss the types of concessions you know***). It must not be forgotten that the petroleum in site remains at all times the property of the host government. However, the contractor still has extensive rights over the petroleum, having being granted the exclusive right to explore, search and drill for, produce, store and transport and sell petroleum within the concession area.

In Nigeria, the concession was the earliest form of petroleum arrangement. Its operation in the country entailed the grant of an OPL to an IOC and on discovery of petroleum in commercial quantities, the company is granted an OML. The IOC conducts petroleum operations on its own (subject to regulations by the appropriate authorities) and pays royalties and petroleum profit tax (PPT) to the government.

There are two main types of concessions:

a. Traditional concession

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 land in the nation. The duration was very long, usually between 40 and 75 years. They were in respect of very large areas of land of the host country. In Nigeria, the concession granted to Shell in 1938 was in respect

of the entire mainland of Nigeria. It usually had exclusive ownership of the oil and gas and was free to dispose of them as it deemed fit.

b. Modern Concession

A 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 is discovered, to produced, market and transport it. The company pays specified costs and taxes to the state that has the crude oil. 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 duration is normally for an initial period of 20 years. The area of coverage has also been reduced. The company is usually given rights only in respect of crude oil and sometimes natural gas. Petroleum remains at all times the property of the state in almost all agreements of this nature.

However, this type of arrangement has some negative effects on state participation and it does not allow the government to participate at the highest possible level. In fact, in a concession, the government is left in the dark as to the actual happenings in a petroleum operation or project. This is because for a concession, a public bidding system is used to set basic terms as is the case in Nigeria. It is correct beyond any cavil or peradventure that the essence of the state participating in petroleum operations is so that it taps into and substantially acquires the benefits that would result from such an operation. However, a concession arrangement does not allow the state amass such benefits that are likely to ensue from the petroleum operation.

The state is only entitled to the bidding price which is usually the license fee which the state keeps regardless of whether oil is found or commercial production takes place. Furthermore, there is normally a lack of adequate knowledge about the potential of a concession area because seismic explorations are usually not fully undertaken at the time of the bidding. The result is that the bidding system is often simply an auction. IOCs have no choice but to take calculated risks about what price to bid for a license. Hence, an IOC will be cautious in the amount it is prepared to bid since there is no guarantee the concession will cover the company's costs and return a profit. Where knowledge and facts are inadequate, the host government will not maximise its potential return from an auction system

especially since the bidding documents in Nigeria usually specify a minimum work program, a prescribed period of time within which to make the corresponding investments or run the risk of forfeiting, the license potential bidders will naturally be more judicious and conservative in their offers

However, if commercial production occurs, the host government also earns royalties based on gross revenue and/or a profit tax based on net income, both of which are based on the quantity of production and the price at which the production is sold. This gives room for the IOCs to deceive the state by stating a lesser quantity of oil than they actually produced. Hence, the state would even be getting less revenue than it is entitled to.

With such a situation, the state would not be able to advance at a high degree and hence the possibility of it becoming strong enough to participate solely in petroleum operations and projects would continue to decelerate.

2.4 Summary

Joint venture agreements are not the only type of agreements in oil production and exploration in Nigeria, as concessions and PSCs are now being used. In recent times, the key legal documents being utilised in the industry are PSCs, JOAs and JVs, with concessions being phased out. It is expected that whatever is being used in the industry, periodic reviews of the preferred agreements/contracts be made at least every three to five years.

In this unit, clear differences are shown between agreements and contracts in the Nigerian petroleum industry. You should be able to identify these key differences.

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2.6 Possible Answers to Self-Assessment Exercises

1. A concession is an agreement between an IOC international oil company and the government to allow the IOC explore petroleum on its land and when petroleum is found they can export, market and explore the products, and in return the government is entitled to loyalties, rent and profits of 50-90%.

2. Concessions are arrangements between governments and IOCs whereby the latter receives the exclusive right to explore for petroleum and if petroleum was discovered, to produce, market and transport the oil and gas products; and in return the former participates only by receiving royalties, rent and taxes which on the average is between 55 and 90 percent.

UNIT 3 Marginal Fields

Unit Structure

3.1 Introduction

The Nigerian Petroleum Act was amended in 1996 with a provision for farm out of marginal oil fields within Oil Mining Lease areas to indigenous companies. One of the major goals of this legislative step was to bring the marginal fields into production and increase Nigeria's daily oil and gas output and the reserve base through them.

3.2 Learning Outcomes

By the end of this unit, you will be able to:

- analyze the Indigenous Oil Companies
- explain what marginal fields are; and
- discuss their importance in the oil and gas industry in Nigeria.

3.3 Marginal Fields

Marginal fields are oil fields that have been discovered by major international oil companies (IOCs) in Nigeria in the course of exploring larger acreages and which fields have not been developed for more than 10 years. When identified, the IOCs may decide to farm out this field to another company to exploit it as a sole risk venture. This means the contractor would bear all the costs and risks of exploitation and also to earn the entire rewards from exploitation.

The Nigerian Petroleum Act was amended in 1996 with a provision for farm out of marginal oil fields within Oil Mining Lease areas to indigenous companies. One of the major goals of this legislative step was to bring the marginal fields into production, and increase Nigeria's daily oil and gas output and the reserve base through them.

Marginal Fields in Nigeria evolved from the Petroleum Amendment Act 1996, which introduced paragraph 17 of the First Schedule to the Petroleum Act. Paragraph 17 of the amended Petroleum Act reads as follows:

> *(1) The holder of an oil mining lease may, with the consent of and on such terms and conditions as may be approved by the President, farm-out any marginal field which lies within the leased area.*
> *(2) The President may cause the farm-out of a marginal field if the marginal field has been left unattended for a period of not less than 10 years from the date of the first discovery of the marginal field.*
> *(3) The President shall not give his consent to a farm out or cause the farm – out of a marginal field unless he is satisfied –*
> *(a) that it is in the public interest to do so, and in addition, in the case of a non-producing field, that the marginal field has been left unattended for an unreasonable time, not being less than 10 years; and*
> *(b) that the parties to the farm-out are in all respect acceptable to the Federal Government.*
> *(4) For the purpose of this paragraph –*
> *"Farm-out" means an agreement between the holder of an oil mining lease and a third party which permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a specified area during the validity of the leases;*
> *"Marginal field means such field as the President may, from time to time, identify as a marginal field.*

(***Explain the term 'marginal field' and its evolvement in Nigeria***). This amendment provides that the holder of an OML can farm out any marginal field which lies within the OML. Also, under the amendment,

the President may cause the farm-out of a marginal field which has been left unattended for a period of not less than 10 years from the date of the first discovery of the marginal field. For there to be a valid farm-out, there must be the consent of the President of the Federal Republic of Nigeria.

The President, by the provisions of the Petroleum (Amendment) Act of 1996 also has the power to declare a field as a marginal field where a discovery has been made in such a field but it has been left unattended for 10 years. The major reasons for awarding marginal fields are to create new and diverse investment and boost reserves.

Marginal fields in Nigeria are located onshore and in the shallow waters. There are about 178 marginal oil fields. In 2003, the government awarded 24 out of these. Currently, statistics show that 9 out of these 24 are productive while the others are under- utilised. Consequently, reports show that the marginal fields only contribute a minimal of 2.1% to the total crude oil production and 67% of marginal fields allocated; in the 2003 licensing round have not produced a single barrel of oil 10 years later.

The Marginal Fields programme was introduced to encourage indigenous participation in the oil industry and also to increase government's take on undeveloped acreages. The programme was developed to discourage continuous holding of undeveloped fields by International Oil Companies (IOCs). Thus, the creation of marginal fields was to reduce the rates of abandonment of depleting fields and assure the Government take in acreages that would otherwise have become unproductive.

From the provisions of Petroleum (Amendment) Act 1996, it appears that the holder of an OML can farm-out a marginal field, however, historically from the special licensing round conducted by the DPR in 2002 in respect of marginal fields (which appears to be the only licensing round for marginal fields till date) the farm–out of marginal fields has been conducted by the Nigerian Government. Thus, upon being a successful bidder in the marginal field bidding round, a bidder is empowered to enter into negotiation for farm –out with an OML holder. Thus, the role of a holder of an OML is limited to only negotiation of the farm-out agreement.

Marginal fields are not entirely governed by agreement of contracting parties but also regulated by the provisions of legislation, the Marginal

Field Guidelines, the practice and directives of the DPR in connection with the guidelines. When all these are examined holistically, it is arguable that a marginal field is separate and distinct from an OML.

Self-Assessment Exercises 1

1. What is marginal field?
2. Discuss the nature of title of marginal fields under Nigerian Regulation and the reasons for underutilisation of same under Nigerian law.

3.3.1 Nature of Title under Marginal Fields

The nature of title of marginal fields can be likened to a sub-lease in which there is a head lease between the Government as lessor and the OML holder as lessee on the one hand and a sub-lease between the OML holder (the "farmor") and a marginal field holder (the "farmee") on the other hand. Generally, a lease is a contract between parties which grants exclusive possession of land or part of it to hold for a term of years. A sublease like any other lease also confers interest in land[1] which must be in accordance with the terms of the head lease.

The 2013 Marginal Fields Guidelines provides that:

"If at the end of 60 months of consent to the farm-out agreement, a Farmee shows verifiable evidence of efforts made to progress the work on the fields according to approved plan and the DPR is so satisfied, the ***farm-out shall be renewed in accordance with the law."***

The Guidelines provide that upon a farm–out, the Marginal Field owner assumes the legal rights and obligations of the OML holder as it relates to the marginal field. Paragraph 20 (Rights and Obligations) of the Guidelines provides as follows:

I. *The Farmee shall have all the right of the OML leaseholder in respect of the Farm-out Area containing the fields once the farm-out is concluded and all the rights. interests and duties of the previous leaseholder shall be transferred to the new leaseholder;*
II. *Farmee shall have the right/obligation to deal directly with the DPR and other administrative authorities as the new leaseholder; and*

III. *All rights, interests, obligations and liabilities of the Farmor in respect of the Farm-out Area containing the fields shall automatically transfer to the Farmee and the Farmor shall be relieved of the same as from the date of the execution of the Farm-out Agreement."*

(***What are the factors limiting the maximal utilization of marginal fields in Nigeria?***). Practically, based on the provisions of paragraph 20(i) of the guidelines stated above, regulatory authorities such as the Department of Petroleum Resources (DPR) tend to treat a marginal field as separate and distinct from an OML. This no doubt lays credence to the fact that the holder of a marginal field has some form of legal interest in the field which is separate from the interest conferred on an OML holder.

Reasons for Underutilisation of Marginal Fields

The following major issues contribute to the under-utilisation of the marginal fields and its consequent minimal contribution to Nigeria's oil revenue:

a. Discretionary decision-making, political interference and lack of transparency are the bane of the process of awarding marginal oil fields. The Department for Petroleum Resources (DPR), the institution in charge of managing the exploration licenses, does not publicly provide the criteria for prequalification of awardees. This makes the entire process opaque. Reports show that in the past, many of the winning companies were closely associated to government officials. This factor alone significantly affects the field performance, as most of the awardees do not have the technical skills to exploit the skills. This is also the reason why most of the marginal fields are dormant.

b. Moreso, there is no consistency or reliability in the bid process. The sudden suspension of the 2013/2014 bid rounds is an evidence of this. This again deters investment. Again, because the marginal fields are onshore, the production growth is greatly affected by infrastructure constraints resulting from attacks on the pipelines and oil theft in the Niger Delta.

3.4 Summary

The discovery of marginal oil fields by MNOCs in Nigeria reveal the upward development of the oil and gas industry in Nigeria since the discovery of oil in 1958 till date. You are now aware of what constitutes marginal field and provisions of the Petroleum (Amendment) Act 1996 which regulate it.

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3.6 Possible Answers to Self-Assessment Exercises 1

1. Marginal fields are oil fields that have been discovered by major international oil companies (IOCs) in Nigeria in the course of exploring larger acreages and which fields have not been developed for more than 10 years

2. i. Discretionary decision-making, political interference and lack of transparency are the bane of the process of awarding marginal oil fields. The Department of petroleum regulation that is responsible for publishing the awardees and making it open to the public do not make is open and even when it is awarded the awardees are connected to the officials thereby making them mostly unqualified and making the acreages dormant.

ii. The bidding process is not transparent and because it is offshore the activities of oil thief on the pipelines is rampant and discouraging foreign investors