COURSE GUIDE

PUL822
ADVANCED OIL & GASL LAW II

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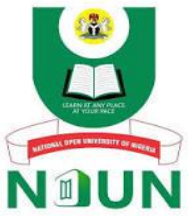

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CONTENT **PAGE**

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 impacts of oil pollution and compensation for oil spillages in Nigeria. We will also look at exploitation, production, funding as well as taxation regimes on oil and gas in Nigeria. The application of environmental laws is also in focus.

COURSE LEARNING OUTCOMES

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

1) Explain oil and gas law
2) Discuss the legal regimes on oil and gas
3) Appreciate the impact and compensation for oil spillage

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevant cases 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. At the 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 makeout 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 FOUR modules as follows:

Module 1 Impacts of Oil Pollution and Compensation for Oil Spillage in Nigeria

Unit 1 Impact of Oil Pollution in Nigeria
Unit 2 Compensation for Oil Pollution Damage in Nigeria

Module 2 Exploration and Production: Financing Arrangements

Unit 1 Funding of Oil and Gas Exploration
Unit 2 Funding of Oil and Gas Development
Unit 3 Oil and Gas Financing Structure
Unit 4 Alternative Funding

Module 3 Taxation and Fiscal Regimes of Oil and Gas

Unit 1 Nature of Petroleum Profits Tax
Unit 2 Indirect Taxation
Unit 3 Taxation in the Joint Development Zone
Unit 4 Local Content Law

Module 4 Exploration and Production: Environmental Laws and Practices

Unit 1 General Environmental Law Legislation applicable to Oil and Gas in Nigeria
Unit 2 The Petroleum Industry Bill
Unit 3 Regulatory Institutions
Unit 4 Decommissioning of Oil and Gas Platforms and Facilities
Unit 5 Trade in Crude Oil and Products

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 used for 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 yourself 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 on an 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

As we can see shortly, an oil spill caused by human interference happens when liquid petroleum is released into the environment by vehicle, vessel or pipeline. It happens on a large scale and is mostly seen in water bodies. It happens due to human negligence and is a major form of pollution. The sources of the spill are many. For instance, crude oil can be released by tankers on land or by vandals or saboteurs. In water bodies, the spill can occur due to drilling rigs, offshore oil platforms and well.

MAIN COURSE

CONTENT

MODULE 1 IMPACTS OF OIL POLLUTION AND COMPENSATION FOR OIL SPILLAGE IN NIGERIA

UNIT 1 Impacts of Oil Pollution/Spillage in Nigeria

Unit Structure

1.1 Introduction

An oil spill caused by human interference happens when liquid petroleum is released into the environment by vehicle, vessel or pipeline. It happens on a large scale and is mostly seen in water bodies. It happens due to human negligence and is a major form of pollution. The sources of the spill are many. For instance, crude oil can be released by tankers on land or by vandals or saboteurs. In water bodies, the spill can occur due to drilling rigs, offshore oil platforms and well. Oil spills and their effects can also be experienced with refined petroleum or even waste oil from large scale industries. What is common in all of them is that the damage caused by them is permanent and takes a long time to clean up.

1.2 Learning Outcomes

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

- define the term ‘oil spills and pollution’;
- analyse the impacts of oil pollution on our environment; and
- explain the general effect of oil pollution.

1.3 Impacts of Oil Pollution/Spillage in Nigeria

The shiny substance that is seen sometimes on top layer of large bodies of water such as rivers is nothing but oil, which makes it difficult for plants and sea animals to survive. As such, the cleaning up of oil spill is no easy task as various factors need to be considered before carrying out cleaning operations. Such factors include the amount of oil spilled, temperature of water, type of beaches and many more.

The United States Fish and Wildlife Service classify oil spills into five categories, namely: very light oil, light oil, medium oil, heavy oil and very heavy oil. Of particular importance to this module are the light oil and very heavy oil which is common in Nigeria. Light oil such as crude oil in its raw form can be cleaned effectively. (***What circumstances make cleaning up of oil spill difficult?***). However, they do not evaporate quickly and are capable of devastating entire marine communities and areas between high and low waters. On the other hand, very heavy oils have the capacity to hover and diffuse into water and they affect living organisms on the ocean floor. Though they are not as toxic as the lighter oils, they are difficult to find and clean up, can prove fatal for plant, animal and human life.

The impacts of oil pollution include; habitat degradation, pollution from gas flaring and these are cumulative and have acted synergistically with other environmental stresses to impair ecosystems and severely compromise human livelihoods and health. Oil spill penetrates into the plumage and fur of birds, breaks down the insulating capabilities of feather which makes them heavier, disallow them to fly and kill them via poisoning or hypothermia.

Even though the public attention towards oil spills has grown in the last three decades, they have been happening for over a century. Since the coming of the industrial revolution, such accidents have been happening. However, the large-scale problems that follow oil spills, pipe lines vandalism and sabotage and their effects are more obvious to us today. MNOCs in Nigeria appear to deliberately understate incidents of oil pollution perhaps to escape public outcry and official reprimand. As such, the causes of oil spill in Nigeria are varied and include corrosion of pipes and tanks, pipeline and tanker accidents, sabotage and inadequate or non-functional production equipment.

Self-Assessment Exercises

1. List at least three types of effects of oil spill and pipeline vandalism in Nigeria
2. Briefly explain the effects of oil spill and pipeline vandalism on tourism industry

1.3.1 Effects of Oil Spills/Pipeline Vandalism

There are four main types of effects of oil spill or pipeline vandalization in Nigeria:

i. ***Environmental Effect:*** First of these is the environmental effect. The animal life that lives in the water or near the shore are the ones most affected by the spill. In most cases, the oil simply chokes the animals to death. Others that live face a number of other problems. The oil works its way into the fur and plumage of the animals. As a result, both birds and mammals find it harder to float in the water or regulate their body temperatures. Many baby animals and birds starve to death, since their parents cannot detect their natural body scent. Birds that preen themselves to get rid of the oil accidentally swallow the oil and die due to the toxic effects. In many cases, the animals become blind due to repeated exposure to the oil. Dolphins, sea otters, fish, countless species of birds and many oceanic mammals face these consequences. Countering these effects and cleaning the oil can take anywhere between a few weeks to many years, depending on the damage caused.

ii. ***Effect on the Economy:*** The second major effect of the oil spill is seen on the economy. When precious crude oil or refined petroleum is lost, it affects the amount of petroleum and gas available for use. This means more barrels have to be imported from other countries. Then comes the process of cleaning the oil spill, which requires a lot of financing. Although the company responsible for the oil spills and their effects has to clean it up, a lot of government help will be required. The workers that are brought on board to clean up the spill face tremendous health problems later in life as well. Their medical treatment has to be paid for and becomes the responsibility of the government. Putting all the methods of recovery into place and monitoring them takes away resources from other more important work and hits the economy in subtle but powerful ways. For instance, the BP oil spill that flowed for three months at the Mexican Gulf. The spill was stopped after it had released about 4.9 million barrels of crude oil. An estimated 53,000 barrels per day escaped from the well just before it was capped.

iii. ***Effect on Tourism Industry:*** The local tourism industry suffers a huge setback as most of the tourists stay away from such places. Dead birds, sticky oil and huge tar balls become common sight. Due to this, various activities such as sailing, swimming, rafting, fishing, parachute gliding cannot be performed. Industries that rely on sea water to carry on their day-to-day activities halt their

operations till it gets cleaned. One of the biggest oil spills seen in history happened during Gulf war when approximate of 240 to 336 million gallons of crude oil flowed into the Persian Gulf. It was considered one of the worst disasters, beating the Ixtoc 1 Oil spill in Mexico. Recent major oil spill happened when oil rigs, Deepwater Horizon sank in the Gulf of Mexico. The spill released somewhere between 172 to 180 million gallons of crude oil into the environment. In the year 2010 alone, six oil spills were seen in the USA. Oil spills have happened in Canada, Nigeria, France, United Kingdom and China. While the long-term issue caused by oil pollution and their effects is yet to be fully observed, the daily problems are clear. However, most corporations still do not have a solid plan in place for when this emergency may strike.

iv. ***Effect on human life and activities:*** The effect of oil pollution on humans cannot be overemphasized as this can be clearly seen from the state of environmental degradation of the Niger Delta region of Nigeria. As the spilled oil flow into their rivers, they lack adequate and clean water for consumption. The professional fishermen have all lost their jobs. Recently, it was proven that people from that region were prone to lungs cancer as a result of the contaminated water and sea food they consume. And they are also prone to diseases associated with lack of protein because sea food being a major source of protein in Nigeria has been destroyed.

(***Discuss the various effects of oil spill in Nigeria***). Oil pollution and spillage in Nigeria is an issue that spans over two centuries as these issues of spillage have occurred as far back as the 1960s and 70s. Nevertheless, the subsequent unit examines legal approach to oil pollution management in Nigeria and concerted efforts by government to protect the environment.

1.4 Summary

Oil spill is one of the main sources of environmental degradation and it affects all aspects of human life. As can be seen from their impacts above, they take a long time to clear and are most times permanent.

1.5 References/Further Readings/Web Sources

Jehwo Yalaju Laws Regulating Oil Pollution in Nigeria: A reappraisal, available at http://www.legaloil.com/download%20file/laws-regulating-oil-pollution-in-nigeria.pdf, accessed 23 March 2020

Ugbe, R. O. and Ekpoudo, A. (2017). 'Legal Approach to Causes and Consequences of Oil Spillage in Nigeria'. *The Nigerian Law Journal* 20 (1) 150.

Anzaki, M. B. (2010). 'Oil Spillage: Liability and Regulatory Framework

Baird, J. (2010). 'Oil Shame in Africa' Newsweek, July 26, 2010, p 27.

Nwilo, P. C. and Badejo, O. T. (2001). 'Impacts of Oil Spills along the Nigerian Coast. The Association of Environmental Health and Sciences Patrick Ndubisi oche op. cit

1.6 Possible Answers to Self-Assessment Exercise(s)

1. Types of effects of oil spill and pipeline vandalism in Nigeria include: environmental effect, effect on economy, effect on tourism and effect on human activities.

2. An oil spill is when liquid petroleum is released into the environment by vehicle, vessel or pipeline, caused by human activities. It happens on a large scale and is mostly seen on water bodies. This is due to human negligence and is a major form of pollution.

UNIT 2 Compensation for Oil Pollution in Nigeria

Unit Structure

2.1 Introduction

The downside of petroleum development has left profound adverse effect on the global environment whilst countries around the world promote economic growth, at the same time, most of them have committed themselves to reduce environmental impacts and to reverse global environmental deterioration. Generally speaking, in the face of conflicting economic and environmental goals, it is often hard to reconcile new developments with environmental protection and nature conservation. In order to encourage sustainability of development projects and to maintain current levels of natural capital, among other things, it is necessary to innovatively use planning and decision-making tools. In this context, environmental assessment (EA) has emerged as an important support tool. Whilst it is an instrument that ultimately seeks to avoid environmental impacts and to enhance positive effects, in practice its main role has often been to reduce and mitigate, and at times to compensate for negative environmental impacts. This chapter therefore looks at the mitigation and compensation elements of EA.

2.2 Learning Outcomes

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

- discuss compensation principles in Nigeria;
- analyse the compensation methods in Nigeria; and
- explain the Legal Framework on Compensation.

2.3 Compensation for Oil Pollution in Nigeria

Compensation can be distinguished from 'mitigation' in the sense that it involves undertaking measures to replace lost or adversely impacted environmental values that should have similar functions equaling existing environmental values. Environmental compensation can be defined as the provision of positive environmental measures to correct, balance or otherwise atone for the loss of environmental resources. (***What is the difference between compensation and mitigation with regard to oil pollution?***). Compensation may be viewed in terms of the creation of new values, which are equal to the lost values if the lost values are irreplaceable. Compensation concerns the creation of values which are as similar as possible. In the USA, for the purposes of the Clean Water Act, under which wetland permits are issued, mitigation is defined as: 'sequentially avoiding and minimizing impacts and compensating for remaining unavoidable impacts.' This sequential approach is also favoured by Canada.

Compensation may take either the form of a restoration project implemented by the Responsible Party (RP), a cash settlement to be used by Trustees for project implementation, or a combination of both. The objective of both restoration projects and cash settlements is to restore or rehabilitate the injured natural resources, or, if that is not possible, to replace or acquire the equivalent of those natural resources and services which were lost or impaired.

Compensation in environmental assessment normally aims at biological functions and other aspects, such as landscapes and non-biotic factors are not covered. In case no adequate functional compensation can be found, most systems that have compensation rules in place allow for monetary compensation. An element that is recognized as a form of compensation is enhancement which distinguishes those compensation measures that result in greater or better environmental values than those replaced.

Under international law, there are different compensation schemes for the damage caused by oil pollution from oil tankers, most notably the Civil Liability Convention (CLC) and the Fund Convention. The extent to which oiled wildlife response can be compensated for, is assessed on a case-by-case basis and the CLC and Fund Conventions provide the necessary guidance to make this assessment. The capture, cleaning and rehabilitation of wildlife and also wildlife impact assessment are activities that can be compensated for.

Self-Assessment Exercises

1. What is your observation about the legal framework on compensation in Nigeria?

2. Name at least three factors affecting compensation for oil spillage victims in Nigeria

Factors to consider

The cogent question to be asked at this juncture is, who bears the responsibilities of compensating victims of oil spill when it is due to the activities of pipeline vandals and oil thieves; would it be the oil company or the government – (local, state or federal) or who? So many Nigerians have lost their lives in the struggle to ensure adequate compensation to oil spill victims.

2.3.1 Legal Framework on Compensation in Nigeria

Although Nigeria has a number of statutes that provide for compensation in matters relating to land or landed property acquisition, only the Oil Pipelines Act Cap 07, LFN 2004 contains provisions that are directly related to compensation arising from oil spillage. Other statutes such as the Land Use Act Cap L5, LFN 2004 and Petroleum Act Cap P10, LFN 2004, Mining and Mining Act 20 of 2007, Oil in Navigational Waters Act Cap 06, LFN 2004. These statutes make only tangential reference to compensation for oil spillage as they deal primarily with acquisition rather than injurious affection. The latter does not transfer interest in land in any way.

The Oil Pipelines Act (Cap 145 LFN 1990)

Section 11(5); of the Oil Pipeline Act provides that the holder of a 1icence shall pay compensation to any person whose land or interest in land is injuriously affected by the exercise of the right conferred by the license, for any such injurious affection not otherwise made good: and any person suffering damage as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for such damage not otherwise made good. Damages arising from sabotage and malicious acts of third parties are exempted.

Section 11 of the Act further provides that where the amount of such compensation cannot be agreed between any such person and the licensee, it shall be fixed by a court in accordance with the relevant section of the Act. According to Section 20 of the Act, the court may award such

compensation as it considers just, having regards to: a. any damage done to any buildings, crops, or profitable trees by the holder of the license; b. any disturbance caused by the holder the exercise of such right; c. any damage suffered by any person as a consequence of any breakage of or leakage from the pipeline or an ancillary installation and the loss (if any) in value of the land or interests in land by reason of the exercise as aforesaid. (***Highlight the relevant laws on compensation in Nigeria***)

Furthermore, Section 20 (3) provides that in determining the loss in value of land and or interest in land of a claimant, the court shall assess the value of the land or the interest injuriously affected at the site immediately before the grant of the license and shall access the residual value of the claimant of the same land of interest consequent upon and at the date of the grant of the license and shall determine the loss suffered by the claimant as the difference between the values so found, if such residual value is a lesser sum. Compensation shall not be awarded for unoccupied land as defined in the Land Use Act, except to the extent and in the circumstances specified in the (Act Section 20(4)).

Section 20(5) stipulates that in determining compensation in accordance with the provisions of this section, the court shall apply the provisions of the Land Use Act as far as they are applicable and not in conflict with anything in the Act as if the land or interests concerned were land or interests acquired by the President for a public purpose. Section (29) of the Land Use Act provides for calculation of compensation according to rent, building, installation or other improvement thereon

2.3.2 Factors Affecting Compensation for Victims of Oil Spillage in Nigeria

Some factors limiting the compensatory rights of victims of oil pollution are set out below:

a). ***The issue of pipeline vandalization by saboteurs, vandals and oil thieves***

Section 15 (c) of the Oil Pipelines Act states that any person who suffers damage as a result of his own fault or the act of the third party, is not liable to compensation. It is recommended here that a compensation fund be set up by the federal government to ensure award of compensation to victims of oil spill resulting from sabotage. However, the question that rises is: how can a group of people deliberately sabotage oil pipelines and expect the victims which may be other community members to be compensated. The community needs to be reoriented on the disadvantages of this unpatriotic act of sabotage.

b). ***The lack of legal cost***: The lack of funds by victims of oil spill to seek compensation from court is a major factor.

c). ***Complex and protracted class action litigation in Nigeria and limitation of time***:

The *Ejamah-Abube Community V Royal Dutch/Shell* case was in court for over 33 years due to all these procedural hitches.

Also, under the Limitation Law of Lagos State 1994, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. In deciding whether or not a statute of limitation applies to an action, two factors are considered by the court: is there a cause of action and when did the cause of action arise? Once the cause of action accrues, time continues to run. However, time shall not continue to run when parties to a dispute engage in negotiation for the purpose of settling a dispute. See *Eboige v NNPC (1994) 5 NWLR (Pt 347) 660, per Adio JSC.* In *Gulf Oil (Nig.) Ltd v Oluba (2002) NWLR (Pt 780) 92*, the respondents/plaintiffs brought an action against the appellant/defendant in 1986 to recover damages for pollution of their lands, fishing ponds, swamps, channels and lakes as a result of seismic and other oil exploratory activities within their community in 1973. The Court of Appeal held that the cause of action was statute-barred.

2.3.3 Towards a New Oil Spill Compensation Regime in Nigeria

A detailed analysis of the major global legislation on compensation from oil pollution from the International Convention on Civil Liability for Oil Pollution Damage via the US Oil Pollution Act, to the latest EC Directive on the subject, concludes that there is no standardised compensation rate internationally. (***State the important steps to having strong compensation regime in Nigeria***). It does however show that the major compensation schemes do have a number of principles in common.

1. Damage to property tends to be calculated by reference to the actual cost of repairing or replacing the property, or the difference between the value before and after the spill;
2. Compensation for damage to natural resources (where this is provided for) tends to be calculated by reference to the cost of remediating or replacing the lost or damaged natural resources. The compensation schemes do not generally provide for additional, independent compensation for damage to natural resources;
3. Damages for loss of subsistence use of natural resources can be included;

4. Compensation for consequential losses and pure economic losses (such as loss of income) are generally provided;
5. It can include the cost of bringing a claim, including the use of advisers where appropriate;
6. The heads of loss identified in the compensation schemes are generally not exhaustive or exclusive: for example, the French court awarded damages for non-pecuniary losses in addition to those provided for by the International Convention on Civil Liability for Oil Pollution Damage 1992; similarly, the American OPA does not contain damages for personal injury but these can be claimed under state or admiralty law;
7. Non-pecuniary losses (save to the extent that these might be recoverable as damage to natural resources of loss of subsistence use) and punitive damages are generally not expressly recoverable under the compensation schemes.

2.3.4 The Role of the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act 2006

The most significant and forefront agency regarding oil spillages within the Nigerian context is the National Oil Spill Detection and Response Agency. The agency is mandated with the statutory responsibility for preparedness, detection, response and investigation to all oil spillages in Nigeria under section 1(1) [20]. However, Olawale observes that most oil spill investigations are headed by oil multinationals instead of NOSDRA and or combinations of both organisations, and thereby hinders the supply of accurate technical data from spill site. This further contributes to inaccuracy of information regarding the extent of damage and number of incidences reported. For example, the National Oil Spill Detection and Response Agency certified 327 oil impacted sites in 2006, while in 2007, 253 oil spill incidents were reported, 588 incidents reported and 419 oil spills reported in the first two quarters of 2008. Between 2012 and 2015, Nigerian experienced 1,527 incidents recorded, with numerous unrecorded incidents. While in the same vein, the oil multinationals reported 400 incidences with preventive measures to stop investigation from the responsible agencies, making the joint investigation process reliant on the oil multinational corporations.

According to NOSDRA "the progressing trend of the sad incidents of oil spill is indicative of a grave danger ahead as a nation, in terms of polluted environment and its poor health index as well as colossal loss of revenue which is aptly required for economic and physical development". (***Briefly examine the responsibility of the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act 2006*****).** The incidents pose challenges to the agency in terms of clean-up, remediation and rehabilitation due to the frequencies. Hence, the agency has commenced

action on the development of a National Oil Spill Compensation Rate (NOSCR) which will serve as guide for oil industry arriving at acceptable and appropriate compensation to host and transit oil communities. There remains little or no physical/practical evidences and intermediary measures in relation to oil spill impacts and environmental devastation reductions and or compensations for the affected. It is necessary to emphasise that, among the numerous legislations provided for the environment and the oil and gas sector, section 102,103 of the PI Act, the Oil Pipeline Act, Cap 145, LFN 1990 is the only Act that contains provision directly related to compensation occurring from oil spillage.

Compensation for oil spill damages should be an integral part of a coherent and rational environment policy.

2.4 Summary

The Nigerian regime on compensation for oil spills and oil pollution is set out clearly under the Oil Pipelines Act and the NOSDRA Act. As such, you should be able to effectively advise a future client on the steps to take if he/she intends to institute a class action suit on behalf of his community. It is also important to read up on more cases pertaining to oil pollution and compensation in Nigeria

2.5 References/Further Readings/Web Sources

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2.6 Possible Answers to Self-Assessment Exercise(s)

1. Despite the fact that Nigeria has a number of statutes that provide for compensation in matters relating to land or landed property acquisition, only the Oil Pipelines Act Cap 07, LFN, 2004 contains provisions that are directly related to compensation arising from oil spillage.

2. Factors affecting compensation for oil spillage victims in Nigeria are: lack of legal cost, limitation of time and complex and protracted litigation in Nigerian justice system

MODULE 2 EXPLORATION AND PRODUCTION: FINANCING ARRANGEMENTS

UNIT 1 Funding of Oil and Gas Exploration

Unit Structure

1.1 Introduction

Oil and gas exploration and production by multinational oil companies (MNOCs) is an expensive venture which cannot be solely funded. Funding remains one of the major challenges faced by the MNOCS. In financing an oil and gas upstream project, most financial institutions especially the foreign institutions put weighty consideration on factors such as the risks and the price of oil which determines the feasibility and rate of return on the investment. The ability of the borrower to repay is also taken into account, and the lender may require a form of security such as take or pay contracts for gas projects. Although there are various sources for project finance, most of the funds obtained for projects in Nigeria have been sourced from foreign banks. Previously, the local banks were not capable of providing the amount of funds required for such projects but in recent times have seemed able to do so by means of loan syndication.

1.2 Learning Outcomes

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

- discuss how sectors of petroleum industry are financed; and
- explain how oil and gas exploration is funded.

1.3 Funding of Oil and Gas Exploration

There are various ways in which oil and gas exploration can be funded and these include; through private equity, reserve-base lending and initial public offers (IPO).

Self-Assessment Exercises

1. Briefly discuss the term 'reserve-based lending'
2. What is 'initial public offer'?

1.3.1 Private Equity

This involves a group of investors - usually institutional or private investors, committing their funds to a private company or buy-out and delisting of a public company in order to realise a profit at the exit point. Equity issuance is often the first or only option for pure-play exploration companies, which lack tangible assets but offer material upside in the event of exploration success. (***How does MNOCs operate?***). These companies generally have low debt capacity due to a lack of proved reserves and cash flow. Investors took flight from perceived riskier stocks in the aftermath of the financial crisis and confidence in exploration companies in particular, has yet to fully return.

MNOCs will look to their own balance sheets to source funds or alternatively seek corporate loans or high-yield debt. Their proven track record means that they are more likely to be able to raise unsecured corporate debt. A smaller to mid-cap player will not, however, have this option and will typically either seek third party secured financing, to bring in additional partners to acquire a stake in the field, or inject further equity. However, private equity is not a popular means of financing in Nigeria.

1.3.2 Reserve-Based Lending

A common source of financing employed in the upstream sector is reserve-based lending (RBL), which enables the raising of debt across a number of assets at various development stages and retention of a degree of operational flexibility. Independent oil and gas companies are the largest users of reserve-based lending (RBL) facilities. These players typically use RBL structures for development financing and general corporate purposes. Structures have developed differently between the longer standing (***Explain the main features of Reserve-Based Lending RBL***). North American markets and those financed internationally. This product is often used in a refinancing context.

The key features of RBL in an international project context are:

a. Commercial banks make funds available to cover capital expenditure, operating expenditure and the development costs of a number of specified assets (in doing so they spread the risk) and for general corporate or working capital purposes. In addition, drawings may cover the refinancing of existing equity/debt (including bridge financing) or the finance of an acquisition.
b. Available loan commitments usually fluctuate on a six-monthly basis by reference to the "borrowing base amount", calculated using the most recently delivered banking case that covers each of the included oil and gas fields and identifies:
    - the net present value (NPV) of future cashflows from each field, taking into account their current status (producing, non-producing or undeveloped);
    - availability of sponsor collateral; and
    - concentration limits on the borrower.
c. As commodity prices fluctuate, also does the available loan commitment. If key ratios are breached, the borrower must prepay a corresponding proportion of its loan.
d. RBL lenders consider only proven and probable reserves (not possible and contingent reserves) and the extent to which projected production figures enable debt service. ("Proven reserves" means those with a 90% (known as a P90) chance of recovery and "proven and probable reserves" constitute those with a 50% (known as a P50) chance of recovery.)

Banks typically require:

- loan tenors to match production profiles as lenders seek full repayment by the earlier Reserves Tail Date and a short-to-medium term maturity of five to seven years;
- maintenance of coverage ratios: loan life cover, project life cover and debt service coverage ratios (see for example, RBL coverage ratios);
- fixed amortisation schedule and prepayment of cash (a cash sweep) to the extent that the outstanding of a loan facility exceed the borrowing base amount;
- secured project accounts (including those of the sponsor party to the Joint Operating Agreement (JOA) through which revenues are to pass in accordance with a payment waterfall;
- restrictions on further indebtedness;
- security including over borrower shares, collection and collateral accounts, borrower and group assets (including licences, JOAs, production sharing contracts, project documents), accounts,

insurances, hedge agreements, cross-guarantees by the companies owning the relevant assets; and

- an ability to add, or dispose of, the field assets on which the borrowing base is founded, subject to various conditions being met, including in relation to the provision of security and ability to service debt.
- Sponsor support may be required in the event that the offtake arrangements do not match the field's production capacity and, in a gas field context, long term gas sale and purchase agreements are usually required.

1.3.3 Capital Markets/Initial Public Offer

This involves raising funds for the project through the issuing of securities. This can be on the primary or secondary market by trading in equity or debt securities.

Equity involves the selling of ordinary and preference shares in the capital market. It is regarded as an Initial Public Offer (IPO) it is the company's first time of selling shares. Subsequent sales are referred to as Public Offers. Listing on the Stock Exchange has several advantages for companies, in that it provides an easy access to funds from the public and also gives the company prominence and credibility. Nevertheless, only ten oil companies are listed on the Nigerian Stock Exchange and the only MNOC among them is Oando, which is an indigenous integrated oil and gas company. (***What does the Nigerian Stock Exchange (NSE) require for new company to be listed?***). The capitalisation of the oil and gas sector is N235,170,000,000 representing 1.49 percent of the total market capitalisation.

The listing requirements of the Nigerian Stock Exchange (NSE) can be daunting for new companies. It stipulates that in order for a company to be listed, it must submit its financial statements and business records for the past five years with audited accounts of not more than nine months. Furthermore, the level of liquidity of the NSE is too low to finance oil and gas projects.

Recently, MNOCs involved in exploration and production activities began listing their companies on foreign stock exchanges in order to fund their projects. These companies include Afren Oil, Heritage Oil, Eland Oil and Gas, Lekoil, Mart Resources and MP Nigeria which are listed on the London Stock Exchange (LSE) and the Alternative Investment Market (AIM). Lekoil in recent times raised the sum of £50,000,000 on the LSE to finance its oil exploration and production activities in Nigeria.

1.4 Summary

Opportunities exist in the industry to finance MNOCS and their affiliations with the NNPC and the Nigerian government. However, parties to agreements must be able to identify the best possible option for funding Oil and Gas activities before commencing any legally binding arrangement.

You have been introduced in this unit to various corporate financing terms which will further improve your knowledge of this course.

1.5 References/Further Readings/Web Sources

EY 'Funding Challenges in the oil and gas sector: Innovative financing solutions for oil and gas companies' pp 3-5. <https://www.ey.com/Publication/vwLUAssets/EY-Funding-challenges-in-the-oil-and-gas-sector/$FILE/EY-Funding-challenges-in-the-oil-and-gas-sector.pdf> accessed 13 March 2020

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Ronke Alonge Funmilayo 'Financing Oil and Gas Projects in Nigeria' LLM Dissertation, University of Cape Town, pp 58-62. <https://open.uct.ac.za/bitstream/handle/11427/9158/thesis_law_2014_ronke_af.pdf?sequence=1&isAllowed=y> accessed 13 March 2020

1.6 Possible Answers to Self-Assessment Exercise(s)

1. Reserve-based lending (RBL) is a common source of financing employed in the upstream sector which enables the raising of debt across a number of assets at various development stages and retention of a degree of operational flexibility

2. Initial Public Offer involves raising funds for the company through the issuing of securities. This can be on the primary or secondary market by trading in equity or debt securities.

UNIT 2 Funding of Oil and Gas Development

Unit Structure

2.1 Introduction

Opportunities for MNOCs to optimise financing exist worldwide, including Nigeria. However, the benefits and drawbacks of each funding option must be carefully considered before embarking on same. For oil and gas development, funding usually requires reliance on bonds, bank loans and multilateral development banks.

2.2 Learning Outcomes

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

- discuss the funding measures utilised in the petroleum industry;
- explain the term ‘bond’; and
- analyse other funding mechanisms.

This unit discusses the possible funding measures utilised in the downstream sector of the petroleum industry.

2.3 Funding of Oil and Gas Exploration in Nigeria

The key sources of oil and gas funding in its development and production include public bonds/retail bonds and multilateral development banks.

Self-Assessment Exercises

1. What is the use of bonds?
2. Explain the ways in which loan from World Bank can occur.

2.3.1 Bonds

Bond markets are increasingly being accessed to finance new development opportunities within the mid-cap exploration and production (E&P) sector. Bonds provide capital with fewer continuing obligations than bank loans. Most bonds are issued in the public bond market and this will continue to be the case, although the private placement market also provides an important liquidity source. Companies are increasingly using private transactions to place subordinated notes with selected investors. The attraction of private placement is around flexibility on maturity and greater certainty around execution. Retail bonds are also likely to be more widely used by small to mid-cap companies looking to diversify from traditional bank funding at the same time as extending repayment periods. This could be an alternative option for companies where issue sizes have been too small to access the wholesale bond market.

However, there is a risk that if a company publicly states how much it wants to raise and then fails to reach that target, this may negatively impact investor sentiment. Also, retail bond demand can be volatile, with many governments seeking to maximise in-country value.

2.3.2 Multilateral Development Banks

Multilateral Development Banks offer financial assistance and analogous professional advice for developing countries. They are very essential in funding projects in developing countries as they are prominent participants in privatisation policies, provide financial assistance in countries with high political risk, and encourage financing in the private sector.

a. International Bank for Reconstruction and Development (IBRD)

The IBRD which is otherwise known as the World Bank was established in 1944 and caters for developing countries with average income and high credibility. It provides long-term finance for infrastructural projects. The World Bank assists in creating a conducive environment to encourage financing by the private sector. This is done through provision of loans, guarantees, technical assistance and rendering of advice on diverse issues. Furthermore, it assists in financing oil and gas projects by providing guarantees for the loans from the lenders against the country's political and economic risk. For the World Bank to lend money for a project, it must be considered successful; that is, must have a ten percent rate of economic return. The World Bank also ensures adherence to best environmental practices and requires the host country (HC) to maintain

transparency in the management of the oil revenue and protection of the public interest.

b. The World Bank

The World Bank is better suited to deal with political risk better than commercial banks. Loans from the World Bank can occur in two forms. Firstly, it can be directly to the project company. It can also lend funds to the host country (HC) which re-lends it to the project company. The direct lending to a project company entails a loan agreement between the World Bank and the project company while the HC acts as a guarantor. The World Bank also offers partial risk guarantees (PRGs) to countries eligible for borrowing from the International Bank for Reconstruction and Development (IBRD) and International Development Agency (IDA). They are used in private sector investments to protect lenders against political risk. It guards against risks by government of the HC such as currency convertibility, expropriation, change of law and breach of contract. In return, the government of the HC covers risks such as political violence, war and expropriation and indemnifies the IBRD for the repayment of any advances made to the lenders under the PRG. This is set out in a government support agreement. This guarantee is not popular in project finance as it is mostly accessible to investors who are in financing agreements with the government or special purpose vehicle (SPV) guaranteed by the government.

Currently, the World Bank does the following, including:

- Assisting governments in the environmental clean-up of existing oil and gas facilities and in establishing standards and institutions required for monitoring the environmental impacts of oil and gas projects.
- Facilitating international trade projects (mainly gas pipelines but also liquefied natural gas projects and oil pipelines). Gas pipeline projects may particularly benefit from Bank support because, as investments with long payback periods, no alternative uses, and often uncertain local markets, they are seen by private investors as relatively risky. World Bank participation as a facilitator is warranted in projects that are very complex and that require direct participation by the state or a state company.
- Financing urgent, economically sound projects in oil development, processing, transmission and distribution - but only in the absence of sufficient private sector resources.

c. The African Development Bank

The AfDB provides financial assistance to both the public and private sector through loans, equity investments of either ordinary or preferred shares in a SPV and provision of PRGs to private investors to cover government risks. In addition, it also renders technical assistance and advisory services. The AfDB has provided financial support for few oil and gas projects in Africa. In 2010, the AfDB financed the Hasdrubal oil and gas field development project in Tunisia with a $150,000,000 corporate loan. (***Discuss the major sources of oil and gas funding in Nigeria***). The loan agreement was entered into and signed by the AfDB Group and the Enterprise Tunisienne d'Activités Pétrolières (ETAP) which is the Tunisia State Oil Corporation and the project includes the construction of a stand-alone gas, condensate and oil production system, an offshore gas pipeline and six offshore horizontal producing wells. The project is a joint venture by British Gas Tunisia Limited and ETAP and is expected to be a source of revenue for the government. The AfDB has been supportive towards some of its infrastructural and agricultural projects. In 2002, the AfDB granted a 10-year term loan to NLNG expansion project.

2.4 Summary

The use of bonds and multilateral development banks as a source of funding for oil and gas development in Nigeria has its drawbacks which include greater ancillary business requirements, timeline for repayments, etc. Nevertheless, these options remain the most popular for oil and gas industry.

This unit further introduces you to financial terms and requires further study of the student on these financial alternatives utilised in the oil and gas industry.

2.5 References/Further Readings/Web Sources

Hossein Razavi ‘Financing Oil and Gas Projects in Developing Countries’ (1996) /finance and Development, pp 4-5, <https://www.imf.org/external/pubs/ft/fandd/1996/06/pdf/razavi.pdf> accessed 16 March 2020

Oil and Gas Policy Issues, available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,menuPK:463288~contentMDK:20219974~pagePK:148956~piPK:216618~theSitePK:336930,00.html> accessed 16 March 2020.

World Bank Guarantees: 'Countries and Project Eligibility', <http://web.worldbank.org/external/default/main?theSitePK=3985219&piPK=64143448&pagePK=64143534&menuPK=64143511&contentMDK=20191697> accessed 11 March 2020

World Bank :Affiliates, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040612~menuPK:8336267~pagePK:51123644~piPK:329829~theSitePK:29708,00.html> accessed 13 March 2020.

Ronke Alonge Funmilayo 'Financing Oil and Gas Projects in Nigeria' LLM /dissertation, university of cape town, pp 66-70-71. <https://open.uct.ac.za/bitstream/handle/11427/9158/thesis_law_2014_ronke_af.pdf?sequence=1&isAllowed=y> accessed 13 March 2020

EY 'Funding Challenges in the oil and gas sector: Innovative financing solutions for oil and gas companies' pp 2-3, 5-6. <https://www.ey.com/Publication/vwLUAssets/EY-Funding-challenges-in-the-oil-and-gas-sector/$FILE/EY-Funding-challenges-in-the-oil-and-gas-sector.pdf> accessed 13 March 2020

Suzanne Szczetnikowicz and John Dewar 'Financing options in the oil and gas industry' pp. 28 <https://www.milbank.com/images/content/9/7/v2/97930/Financing-options-in-the-oil-and-gas-industry.pdf> accessed 13 March 2020

2.6 Possible Answers to Self-Assessment Exercise(s)

1. Bonds provide capital with fewer continuing obligations than bank loans.

2. Loans from the World Bank can occur in two forms. Firstly, it can be directly to the project company. It can also lend funds to the host country (HC) which re-lends it to the project company.

UNIT 3 Oil and Gas Financing Structure

Unit Structure

3.1 Introduction

The oil and gas sector in Nigeria remains the major source of revenue in Nigeria. Despite fluctuating prices of oil and gas in the global market, it is still a major source of economic development all around the world. However, it is important to identify and understand the nature of the financing structure in the oil and gas industry in Nigeria, which is the purport of this unit.

3.2 Learning Outcomes

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

- discuss the funding structure of oil and gas industry in Nigeria; and
- analyse the challenges associated with the structure.

3.3 Oil and Gas Financing Structure in Nigeria

The financing structure for the upstream oil and gas sector in Nigeria consists of the following:

a. **Joint Venture**: This is a financing arrangement where the Nigerian Government represented by the NNPC and MNOCS contribute to funding oil operations and share crude oil discovered in the same ratio.

b. **Production Sharing Contracts**: This is a financing arrangement where the NNPC engages the MNOCS as a contractor on behalf of itself and the NNPC. The contractor is entitled to recover cost of operation upon successful completion.

c. **Service Contract**: Under this financing arrangement, the NNPC engages the MNOCs as a contractor solely on behalf of NNPC with NNPC retaining ownership of the concessionary right.

The financing structure for the downstream oil and gas sector in Nigeria is as follows:

a. Refineries are publicly owned.
b. Bank loans or other financing alternative are used in financing importation of crude oil.
c. Government fixes the prices of fuel rather than allow for the market to determine the price.
d. Subsidy on fuel prices.

Self-Assessment Exercises

1. Identify the challenges of the financing structure
2. How can these challenges be tackled?

3.3.1 Challenges Associated with the Financing Structure

i. Upstream Sector:

The challenges associated with financing in this sector include the following: insufficient funding by Government failing to honor the financing terms of the contract promptly; unavailability of long-term financing; and financing structure does not give room for development of other ancillary sectors. For example, development of rail and pipelines for transportation of crude oil, multiple tax and tax evasion.

ii. Downstream Sector:

The challenges associated with financing this sector include the following: bank loans are short term; poor financing as loans is usually expensive; subsidy does not allow room for competition; government involvement crowds out private investors; and viability of financing infrastructure projects.

(*Discuss the challenges associated with Oil and Gas Financing Structure in Nigeria*) The solutions to these challenges include: switching from public private partnership to private public partnership; private investors being more proactive with regards to oil and gas financing with the government providing the conducive environment for same; and government adopting a risk mechanism framework which facilitates private financing.

3.4 Summary

The financing structure of the oil and gas industry in Nigeria varies according to the requirements of the MNOCs, players in the industry and the Nigerian government. This unit has identified the financing structure of the upstream and downstream sector of the oil and gas industry and challenges associated with same. You should be able to effectively discuss these among yourselves and identify other possible solutions to these challenges

3.5 References/Further Readings/Web Sources

‘Financing the Oil and Gas Sector in Nigeria – A critical evaluation’ <https://www.slideshare.net/orjiugo/financing-the-oil-gas-sector-in-nigeria> accessed 13 March 2020

3.6 Possible Answers to Self-Assessment Exercise(s)

1. The challenges include: insufficient funding by Government failing to honor the financing terms of the contract promptly and unavailability of long-term financing.
2. There should be a switch from public private partnership to private public partnership.

UNIT 4 Alternative Funding

Unit Structure

4.1 Introduction

The sourcing of funds for oil and gas development and financing is not usually an easy task, as has been identified in the previous three Units of this Module. However, there are additional sources of funding which could be considered by parties who seek to become involved in the oil and gas industry.

4.2 Learning Outcomes

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

- discuss the alternative funding;
- explain the term ‘refinancing’; and
- analyse expansion financing.

4.3 Alternative Funding

Self-Assessment Exercises

1. Discuss the term ‘expansion financing’
2. What is refinancing?

4.3.1 Expansion Financing

It is not uncommon in an oil and gas financing context for the sponsors to seek a change in project scope, whether by way of neighbouring field development for which the sponsor already has permits and licences, or whether by constructing a new complementary unit within an existing complex. Production from complex petrochemical plants or refineries can be enhanced through a process known as "debottlenecking", through

which existing operating components of the project are modified to enable them to run more efficiently. The loan agreements will often permit a pre-agreed quantum of project revenues to be applied from the project company's accounts waterfall for debottlenecking, but only after first meeting any principal and financing cost payment, prepayment obligations and ahead of the making of any distributions. Such expansion projects can also be achieved through the application of the project's revenue streams, but the finance documents may specifically provide for expansions. Existing third-party financiers will be concerned to ensure that there is no material impact on the existing operations to the detriment of the cashflow applied to meet the project's debt service obligations.

In a downstream project financing context, the sponsors may agree upfront with their financiers that the documents provide for such potential expansion, subject to various conditions being fulfilled including that: it will not occur until completion of construction and there is an identified acceptable offtake arrangement for products from the expansion facilities.

The lenders may allow the project to incur further secured debt from the existing banking group or, alternatively, the sponsor parties may consider refinancing in full if more favourable or cheaper terms are available in the market. Hedging typically, minimum and maximum hedging requirements are specified in the terms of the finance documents. The commodity hedging element of this is particularly important in an oil and gas context to the extent that the offtake (and therefore the borrower and its ability to service debt) is exposed to changing commodities prices (that is, external market forces over which the borrower has little or no control) without any floor.

(***Compare and contrast 'expansion financing' and 'refinancing' as aspects of alternative funding***). The inclusion of commodity hedging within a financing structure will be in addition to: any interest rate hedging that may be required to mitigate the extent of floating rate facilities and any currency hedging in respect of the offtake arrangements, which may be payable in an alternative currency to that of the loan repayments. It is critical also in an RBL context that the calculation of the borrowing base amount should be negotiated to take into account any hedging payments or receipts, and that the lenders are protected from the borrower over-hedging (that is, hedging an amount greater than the total risk exposure).

4.3.2 Refinancing

As noted in a number of sections above, it is not uncommon for the financing of an oil and gas developmental project to contemplate or even incentivise refinancing at a later juncture through step-up adjustments to

margin over time (a margin "ratchet") and often using alternative financing structures. Project bonds have been used to refinance loan facilities in the midstream and upstream sectors. Once construction is complete, the sponsors may consider refinancing on more advantageous terms due to the lower risk associated with operational projects and investors no longer having to assume construction risk, but market terms may, at that point, not be sufficiently favourable or the conditions as liquid to provide an attractive financing alternative. One option for the generation of cash when a project is operational is to transfer all or part of a sponsor's shareholding or working interest in the project, subject to the existing transfer restrictions in the constitutive documents and any third party financing documents already in place. Pension funds and insurers, for example, have long-term investment horizons but seek to minimise volatility of returns, which means that operational assets will tend to be more attractive to them.

4.4 Summary

These alternative sources of funding in the oil and gas industry merely serve to broaden the realm of possibilities for players in the industry, and a consideration of the risks associated with a proposed project. Overall, these funding sources help to facilitate growth of the industry and provide scope for government and potential investors to participate in industry.

This unit contains financial terms associated with financing of the oil and gas industry. It serves to expose you to terms beyond law which are an inextricable part of the industry.

4.5 References/Further Readings/Web Sources

Suzanne Szczetnikowicz and John Dewar 'Financing options in the oil and gas industry' pp. 28 - 30 <https://www.milbank.com/images/content/9/7/v2/97930/Financing-options-in-the-oil-and-gas-industry.pdf> accessed 13 March 2020

4.6 Possible Answers to Self-Assessment Exercise(s)

1. An oil and gas sponsors can seek expansion through financing context for the sponsors to seek a change in project scope, whether by way of neighbouring field development for which the sponsor already has permits and licences, or whether by constructing a new complementary unit within an existing complex through which existing operating components of the project are modified to enable them to run more efficiently, called debottlenecking through a loan agreement.

2. Refinancing - for the financing of an oil and gas developmental project to contemplate or even incentivise refinancings at a later juncture through step-up adjustments to margin over time and often using alternative financing structures; sponsors consider refinancing on more advantageous terms due to the lower risk associated with operational projects and investors no longer having to assume construction risk, but market terms may, at that point, not be sufficiently favourable or the conditions as liquid to provide an attractive financing alternative.

MODULE 3 TAXATION AND FISCAL REGIMES OF OIL AND GAS

UNIT 1 Nature of Petroleum Profit Tax

Unit Structure

1.1 Introduction

A tax is defined as an involuntary fee that is levied on corporate organisations and individuals and is enforced by a government entity to finance government activities. The imposition of tax by the government is one of the ways that government can finance its expenditure which includes public debt, printing of currency, sale of assets, and drawing down of cash reserve with the Central Bank.

A tax system offers itself as one of the most effective means of mobilising a nation's internal resources and it lends itself to creating an environment conducive to the promotion of economic growth. Oil is the dominant source of government revenue, accounting for about 90 percent of total exports, and this approximates to 80% of total government revenues. This unit thus examines the nature of petroleum profit tax in Nigeria in relation to the oil and gas industry.

1.2 Learning Outcomes

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

- identify and explain petroleum profit tax;
- discuss its applicability to the petroleum industry in Nigeria; and
- understand the objectives of petroleum taxation in Nigeria.

1.3 Nature of Petroleum Profit Tax

Definition of Petroleum Profit Tax

Petroleum Profit Tax (PPT) is a tax applicable to upstream operations in the oil industry. It is particularly related to rents, royalties, margins and

profit-sharing elements associated with oil mining, prospecting and exploration leases. It is the most important tax in Nigeria in terms of its share of total revenue contributing 70 and 95 percent of foreign exchange earnings and government revenue, respectively.

Self-Assessment Exercises

1. What do you understand by petroleum profit tax?
2. Discuss the benefits of the Petroleum Profit Tax Act to the oil and gas industry in Nigeria.

Objectives of Petroleum Taxation in Nigeria

The following are the objectives of petroleum taxation in Nigeria:

a. To achieve government's objective of exercising right and control over the public asset, government imposes very high tax as a way of regulating the number of participants in the industry and discouraging its rapid depletion in order to conserve some of it for future generation. This in effect will achieve government's aim of controlling the petroleum sector development.
b. The high profit profile of a successful investment in the oil industry makes it a veritable source for satisfying government objective of raising money to meet its socio-political and economic obligations to the citizenry.
c. To redistribute wealth between the wealthy and industrialised economics represented by the multinational organisations, who own the technology, expertise and capital needed to develop the industry, and the poor and emerging economies from where the petroleum resources are extracted.
d. The high potential for environmental pollution and degradation stemming from industry activities makes it a target for environmental taxation, as a way of regulating its activity and promoting government quest for a cleaner and healthy environment.
e. Cleaner production may be achieved by imposing tax on it for pollution and environmental offences. Under the Petroleum Profits Tax Act Cap P13, LFN 2004 an oil company, in computing its taxable profits from petroleum operations, is entitled to deduct all outgoings and expenses which are wholly, exclusively and necessarily incurred by such company for the purpose of such petroleum operations.

(***Enumerate the Objectives of Petroleum Taxation in Nigeria***)
The petroleum tax system has also been designed to provide neutrality, so that an investment project which is profitable for an investor before tax

will also be profitable after tax. This makes it possible to harmonise the desire to secure significant revenues for the community with the requirement to provide sufficient post-tax profitability for the companies.

Nigerian Legislation on Petroleum Profit Tax

Petroleum Profits Tax Act (PPTA)

The Petroleum Profits Tax Act (PPTA) is the primary legislation that deals with the taxation of petroleum activities in the upstream petroleum sector. The Act subjects exploration and production companies to pay the rate of 85% of their assessable profits to the government. The key points addressed in the legislation are as follows.

i. Pursuant to Section 21, assessable tax is charged at 85% of the chargeable profits of the company for an accounting period. However, for companies that have not fully amortised their pre-production capitalised expenditure, the PPTA imposes a tax rate of 65.75%.
ii. Under Section 9, a mechanism for the ascertainment of adjusted, assessable and chargeable profits is provided.
iii. The Act provides for the deductions allowable in ascertaining the adjusted, assessable and chargeable profits of a company. Such deductions include:
    i. rents incurred by the company in respect of land or buildings occupied under an oil prospecting license OPL or an OML;
    ii. royalties payable by the company on the chargeable value of natural gas, crude oil and casing-head petroleum spirit produced in Nigeria;
    iii. interest payable on amounts borrowed where such sums borrowed are used in the carrying on of petroleum operations; and
    iv. expenses incurred in the repair of premises, plant, machinery or fixtures for the carrying on of petroleum operations.

Current rates under the PPTA are as follows:

a. 85 percent on onshore operations (but 65.75 percent of the chargeable profits for the first five accounting periods of a new company);
b. 50 percent on offshore operations in territorial waters and continental shelf area up to and including 1,000m water depth;

c. Under The Deep Offshore (and Inland Basin) Production Sharing Contract'

d. (i) 50 percent investment tax credit (ITC) for PSC signed before 1999. Companies operating under a PSC with NNPC can claim ITC as an offset against tax in accordance with the provisions of the PSC. The ITC rate applicable to the contract area shall be 50 percent flat of the chargeable profit for the duration of the PSC; and (ii) 50 percent investment tax allowance for contracts signed post-1999.

Sections 11 and 12 provide the incentives for companies engaged in the utilisation of associated and non-associated gas.

Note that there is a bill (Petroleum Industry Fiscal Bill) pending before the national assembly that, if passed, will repeal the PPTA.

PPTA and the Gas Sector

Section 11 of the PPTA sets out provisions as to the incentives available for utilisation of associated gas. Although the primary purpose of these incentives is to encourage companies already carrying out petroleum operations to utilise rather than flare the associated gas encountered in the course of oil production, these incentives are also applicable to non-associated gas-utilisation projects. (***Discuss the relevance of PPTA in relation to gas sector in Nigeria***). The incentives are allowable expenses for upstream operations (investment for separating crude oil and gas from a reservoir into usable products are treated as part of oil field development and therefore treated as an allowable expense); and investment in gas infrastructure (treatment of capital investment on facilities equipment to deliver gas in usable form as part of capital investment for oil development, therefore, is tax deductible).

Critique of the Petroleum Tax Administration in Nigeria

The institutional capacity to administer petroleum taxes effectively is woefully lacking. Procedures, reinforced by third party audits, appear to ensure that taxes are paid and received albeit with potentially serious and costly internal lags. However, Nigeria lacks capacity (a) to assess the reasonableness of the returns submitted by taxpayers, including costs; (b) to develop petroleum tax policy; or (c) to assess or negotiate proposals for change. Staffing, skills, pay scales, other funding, computer and IT infrastructure are all issues that need to be addressed urgently. These comments apply to each of the several agencies involved in oil and gas tax administration: FIRS, CBN, NAPIMS, DPR, and the Ministry of Petroleum Resources.

Companies Income Tax Act

The Companies Income Tax Act is the primary legislation governing the taxation of companies in Nigeria and applies to companies operating in the downstream petroleum sector. The current companies' income tax rate is 30% of the profits of a company.

Oil Pipelines Act

The Oil Pipelines Act 1965 provides the framework for the establishment and maintenance of pipelines incidental and supplementary to oilfields and oil mining. The key points addressed in this legislation include (i) the power of the Minister to grant permits to survey routes for oil pipelines and (ii) the power of the Minister to grant licences to construct, maintain and operate oil pipelines.

Deep Offshore and Inland Basin Production Sharing Contract

The Deep Offshore and Inland Basin Production Sharing Contract Act 1993 provides for the fiscal terms and incentives given to companies operating in the deep offshore and inland basin area under PSCs with the NNPC. The applicable petroleum profit tax rate for these companies is a flat rate of 50% of the chargeable profits made for the duration of the PSC.

Other applicable taxes

The NDDC tax requires the payment to the Commission of 3 percent of the total annual budget of any oil-producing company operating, onshore and offshore, in the Niger Delta Area; including gas processing companies for the development of the region. The Education Tax Act provides for the imposition of annual taxes at 2 percent of assessable profits on oil and gas companies for the development of Nigeria's educational sector. Royalty is also charged at a graduated rate of zero percent in areas beyond 1,000 metres water depth to 20 percent in onshore areas of operations. The National Petroleum Fiscal Policy provides a flat royalty rate of 5 percent to small fields. Royalties can be paid in cash or by delivery of an equivalent volume of petroleum.

Applicable Tax authority

The Board of Inland Revenue of the Federal Inland Revenue Service is the policymaking body that administers matters of federal tax and has exclusive jurisdiction over petroleum taxation in Nigeria. (***Briefly evaluate the petroleum, tax administration in Nigeria***).

1.4 Summary

The Petroleum Profits Tax regime in Nigeria is well provided for, with a significant impact on the revenue and economic development in Nigeria. As such, this regime must be continually monitored to prevent corruption in the petroleum profit tax administration.

This unit introduces you to the various types of taxes utilised or charged in the petroleum industry in Nigeria and the attendant legislations.

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Patrick Ndubisi Oche op.cit

1.6 Possible Answers to Self-Assessment Exercises

1. Petroleum Profit Tax - is the primary legislation that deals with the taxation of petroleum activities in the upstream petroleum sector.
2. The Act subjects exploration and production companies to pay the rate of 85% of their assessable profits to the government. It is particularly related to rents, royalties, margins and profit-sharing elements associated with oil mining, prospecting and exploration leases.

UNIT 2 Indirect Taxation

Unit Structure

2.1 Introduction

Every modern state or nation requires a lot of revenue to provide and maintain essential services for its citizens. One of the sources of revenue for the government is through the imposition of tax. The primary function of a tax system is to raise enough revenue to finance essential expenditures on the goods and services provided by government; and tax remains one of the best instruments to boost the potentials for public sector performance and repayment of public debt.

In Nigeria, there are two types of taxation system: direct taxation and indirect tax (i.e. sales tax, per unit tax, valued added tax VAT or goods and services tax (GST)). The direct taxes are usually collected by government from the persons (legal or natural) on whom it is imposed, while the indirect tax is paid indirectly by the final consumer of goods and services while paying for the purchase of goods or for enjoying services.

2.2 Learning outcomes

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

- discuss the nature of indirect taxes in Nigeria;
- explain the types of indirect tax; and
- differentiate indirect tax from the petroleum profits tax.

2.3 Indirect Taxation

The various types of indirect tax are set out below.
Value Added Tax is a consumption tax levied on the increase in value of goods and services in the course of their production or supply. Value Added Tax (VAT) was introduced in Nigeria by the recommendation of a study group. This group recommended that VAT should be administered by an independent committee which was inaugurated by the government

under the decree 102 of 1993. This marked the passing out of sales tax decree no 7 of 1986. The decree took effect from the 1st of December 1993 but due to the administration's arrangement involving tax purposes, the implementation of VAT did not commence until 1st January 1994. The announcement on the implementation was delivered by the then Head of state, Late Gen. Sani Abacha, during a budget broadcast. The general administration of VAT in Nigeria is placed under the administration of the Federal Inland Revenue service (FIRS).

The aim of this tax was to increase the revenue base of government and make funds available for developmental purposes. It is currently charged at 10% of the value of all taxable goods and services in Nigeria, compared to the usual 5%.

Self-Assessment Exercises

1. What are the advantages of Value Added Tax to the Nigerian economy?
2. Explain the term 'Customs and Export Duties'

Requirement of Registration for VAT

Every person that qualifies as a taxable person under the VAT Act is required to register with the Federal Inland Revenue Service (FIRS). A taxable person is defined by the VAT Act as any person who carries out economic activity in a place for the purpose of obtaining income by way of trade or business. (***Define with examples, the term 'indirect tax'***). This would include resident and non-resident companies, partnerships, sole proprietorships, etc. The registration should be completed upon registration of a business entity in Nigeria.

Monthly Returns on VAT

This is required to be submitted monthly, or before the twenty-first day of the month following the tax period.

Penalties for Non-compliance with provisions of the VAT Act

In the event of non-compliance, the following penalties are charged:

- NGN10,000 for non-registration the first month and NGN5,000 for each subsequent month not registered;
- NGN5,000 per month for late submission and outstanding returns;
- 5 percent and interest at the prevailing commercial lending rate (currently about 21 percent per annum) for non-payment of VAT;

- 50 percent of the cost of the goods or services for which tax invoices were not issued; and
- 150 percent of VAT not collected by a registered person and 5 percent interest above the Central Bank rate.

Customs and Export Duties (CED)

Custom duties are commodity taxes on imports and exports. Custom duties are the highest yielding indirect tax. Customs duty is based generally on the value of goods or upon the weight, dimensions, or some other criteria that will be determined by the state. The tax is administered by the Nigerian Custom Services (NCS). It is believed that duties on imports are against the principle of comparative cost thereby restricts the full development of international trade. Import duties are also used in protecting infant industries in the country. The burden of export duties is passed on to the foreign country in form of increased prices. The burden of import duties falls on the consumers of the goods and services that it is levied on. Excise duties are commodity taxes levied on goods manufactured within the country. They are charged either as a percentage of the value of import or a fixed amount on specific quantity. This indirect tax does not only serve the purpose of raising revenue for the country but also to discourage the consumption of certain goods.

2.4 Summary

Indirect taxes are very relevant in Nigeria's economy. VAT affects a larger spectrum of the society because it is based on consumption. The introduction of the Value Added Tax to replace the former sales tax is very good, since it has a great impact on government revenue which has made significant attempts to increase revenue for the society**.**

This unit highlights briefly the kinds of indirect taxes which obtains in Nigeria. You are now properly acquainted with nature of VAT and CED tax in Nigeria

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2.6 Possible Answers to Self-Assessment Exercise(s)

1. The Advantages of VAT is to increase the revenue base of government and make funds available for developmental purposes, currently charged at 10% of the value of all taxable goods and services in Nigeria, compared to the usual 5%.

2. Custom and excise duties - Custom duties are commodity taxes on imports and exports. They are the highest yielding indirect tax. Customs duty is based generally on the value of goods or upon the weight, dimensions, or some other criteria that will be determined by the state.

UNIT 3 Taxation in the Joint Development Zone (JDZ)

Unit Structure

3.1 Introduction

The Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of petroleum and other resources, in respect of Areas of the Exclusive Economic Zone of the Two States (hereafter the Treaty or the N/STP-JDZ Treaty) it was signed on February 21, 2001 in Abuja, the Nigerian capital. It entered into force on 16 January 2003. It was registered by the United Nations (hereafter UN) General-Secretary by 03 October 2003. It provides for the joint development of transboundary resources within a maritime zone where the two countries have overlapping claims in respect to their Economic Exclusive Zone (hereafter EEZ). It sets up a Joint Development Zone (here after JDZ) for the joint exploration and exploitation of petroleum and fishing resources in the disputed areas.

Thus, Meese defines joint development as an arrangement between countries that authorises the cooperative development of petroleum resources in a geographic area that has (or had) disputed sovereignty.

3.2 Learning outcomes

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

- discuss taxation within defined joint development zones.

3.3 Taxation in Joint Development Zones

The Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of petroleum and other resources, in respect of Areas of the Exclusive Economic Zone of the Two States (hereafter the Treaty or the N/STP-JDZ Treaty) 2001 was adopted, inter alia, in recognition of the existence of possible petroleum and other resources in the Area, and to enable the

exploration and exploitation of these resources without delay. (Paragraph 5 and 6, Preamble to the Treaty).

Article 1 (10) of the Treaty defines 'financial terms' to include all obligations in the nature of taxation (whether production or income based) and any other financial obligations including royalties, payments in kind, production sharing arrangements and resource rentals. Article 1 (2) defines 'Authority' to mean the joint Authority established by Part 3 of the Treaty. (***Explain the term 'zone'***). The Authority shall have juridical personality in international law and under the law of each of the States Parties and such legal capacities under the law of both States Parties as are necessary for the exercise of its powers and the performance of its functions. In particular, the Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings (Article 9.2).

The 'Zone' is defined as the area of seabed and subsoil, including the superjacent waters, established as a joint development zone under Article 2. Revenues (earnings) of Federal Government from oil and gas: section 100, chapter four and section 310 of the PI Act 2021.

Self-Assessment Exercises

1. What do you understand by joint development?
2. Which year did the Joint Development Authority (JDA) launch two licensing rounds?

3.3.1 Taxation under the Joint Development Zone (JDZ)

The taxation regime under this treaty in the JDZ are set out as follows:

a. Article 12. 3 provides that The Executive Directors, officers and other personnel of the Authority who are nationals of one or other State Party shall be subject to taxation in respect of any remuneration for services performed under this Treaty only by the State Party of their nationality, irrespective of where the services in question are performed.

b. Article 21 sets out the regulatory and tax regime for petroleum activities in the JDZ. It provides that within 3 months of entry into force of the Treaty, the Authority shall prepare for the approval of the Council, a regulatory and tax regime consistent with this Treaty, which shall be the applicable law relating to the exploration for and exploitation of petroleum in the Zone. Such draft

regulatory and tax regime shall be adopted by the Council within 6 months of the Treaty entering into force and such a regime shall be promptly published by the Authority.

Customs and Duty Exemption – Article 22
The Treaty provides as follows with respect to customs and duty exemption:

a. Petroleum equipment shall not be subject to any customs duties or other taxes and duties in respect of its import into, use in or export from the Zone unless and to the extent the Council otherwise decides. Nothing in this article shall affect a State Party's rights in respect of export or import, following the completion of its use in the Zone of petroleum equipment having the territory of that State Party as its country of, respectively, origin or destination. Article 22.2 defines "petroleum equipment" to include installations, plant and equipment (including drilling rigs) and any materials and other goods necessary for the conduct of petroleum activities in the Zone.

b. The shipment of petroleum extracted from the Zone to areas within the jurisdiction of the States Parties shall be free of all taxes and duties other than those provided for in the financial terms of the relevant development contract.

c. In addition to the financial terms imposed by the regulatory and tax regime established pursuant to article 21, the Authority may impose such other terms, not inconsistent with the foregoing, as it may formulate, having regard to the requirement to balance the following needs:

a. To obtain optimum revenues for the Authority and through the Authority the States Parties, from commercial exploitation of the resources;
b. To encourage commercial exploitation and provide incentives for investment;
c. To ensure clarity and certainty of operation;
d. To ensure as far as possible that contractors' tax payments under the financial terms qualify for double taxation relief, including in third States;
e. To ensure optimum utilisation of any fields wholly or partly within the Zone over the life of those fields (Article 24), as such, neither State Party shall commence tax development activities in the Zone or the proceeds deriving therefrom except in accordance with this article.

With regards to arrangements for non-petroleum development activities, Article 34 of the Treaty provides that in the absence of any special regulatory and tax regime proposed under the Treaty, the States Parties shall apply the provisions of their own laws relating to the exclusive economic zone to the activity of their own nationals in the Zone, but shall refrain from applying those laws to the conduct of persons who are nationals of the other State Party.

Additional Incentives of the JDZ

Since 2003, the Joint Development Authority (JDA) has launched two licensing rounds and awarded six blocks (blocks 1 to 6) in the Joint Development Zone (JDZ). Following the 2003 Licensing Round, in which Block 1 was awarded to ChevronTexaco with a signature bonus of US$123 million, the first JDZ production sharing contract (PSC) was signed between the JDA and the Contractor (a consortium comprised of ChevronTexaco, as operator, 51% equity; ExxonMobil, 40% equity; and Dangote-Energy Equity Resources, 9% equity), on 1st February, 2005.

On October 1, 2003, just before the end of the bidding process in the 2003 Licensing Round – the JDA released an Investors' Memorandum. The Investors' Memorandum introduced an Investment Tax Allowance (ITA) as an integral part of the fiscal terms applicable to that Licensing Round. Under the Memorandum, the ITA is an additional allowance for Tax (50% of qualifying capital costs except financing interest) and it was aimed to enhance the competitiveness of the JDZ fiscal regime and is tax deductible. (***List and discuss the Incentives of the JDZ*).** In addition, several other issues were reviewed and a number of clarifications were made and incorporated into the Model PSC. The Investment Tax Allowance is a usual incentive device that has been adopted in other countries, namely in Angola, Indonesia and Norway.

3.4 Summary

Joint development zones are not only concerned with the exploitation, sharing and management of petroleum and other resources, but involve other maritime boundary delimitation issues. Consequently, the taxation regime under the established JDZ treaty provides a blueprint for action for other developing countries in the management of their oil and gas resources.

This unit discusses a treaty between Nigeria and the country of Sao Tome and Principe, highlighting the useful nature of taxation in a JDZ established between jurisdictions. You are expected to take note of the taxation regime which the JDZ treaty establishes.

3.5 References/Further Readings/Web Sources

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3.6 Possible Answers to Self-Assessment Exercises

1. Meese defines joint development as an arrangement between countries that authorises the cooperative development of petroleum resources in a geographic area that has (or had) disputed sovereignty.
2. 2003.

UNIT 4 Local Content Law

Unit Structure

4.1 Introduction

The role of the multinational oil companies (MNOCs) in Nigeria is very crucial because, although it is arguable that the NNPC as the state-owned indigenous oil company can undertake the projects, it is necessary to have privately-owned indigenous oil companies performing similar roles as the NNPC as this increases the revenue accruing to Nigeria, encourages the local content capacity and further strengthens the oil and gas sector.

In recent years, the Nigerian National Petroleum Corporation (NNPC) and some other agencies of the Nigerian Government have steadily intensified efforts to expand participation by Nigerians in various aspects of the nation's upstream petroleum industry. These efforts described as the promotion of 'Nigerian content' have been primarily aimed at securing greater employment for Nigerians and increasing opportunities for Nigerian companies to supply goods and services. The passage into law in 2010) of the Nigerian Oil and Gas Industry Content Development Act 2010 marked a watershed in this drive to increase Nigerian content.

4.2 Learning outcomes

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

- discuss the Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010;
- explain the prospects of local content development in the oil and gas industry; and

- discuss the challenges to the development of local content in Nigeria.

This unit provides a detailed examination of the Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010.

4.3 Local Content Law: The Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010

For purposes of giving fresh impetus and vigour to the push for local content development in the petroleum industry, the National Assembly enacted the Nigerian Oil and Gas Industry Content Development Act 2010.

The essence of the Act, as stated in its long title, is to provide for the development of Nigerian content in the Nigerian oil and gas industry; to provide for the Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content; and for related matters.

Section 1 makes the provisions of the Act applicable to all matters relating to Nigerian content in respect of all operations in the oil and gas industry notwithstanding anything to the contrary contained in any other statute. (***What do you understand by 'local content law' as it relates to gas industry?***). All regulatory authorities, operators, contractors, and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution. The Act makes it mandatory for Nigerian independent operators to be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and in all projects for which contract is to-be-awarded in the Nigerian oil and gas industry subject to their fulfillment of such condition as may be specified by the Minister. (Article 3 (1) & (2) and Article 70 (c).

Self-Assessment Exercises

1. Analyse how the NOGCID Act has facilitated local content with respect to the oil and gas industry in Nigeria
2. What do you understand by local content?

4.3.1 Nigerian Content Development and Monitoring Board (NCDMB)

The NCDMB was established pursuant to the Nigerian Oil and Gas Industry Content Development Act (Local Content Act) 2010. Its primary objective is to ensure that Nigerian content in terms of human capital, resources and contracts is given priority in the oil and gas industry. The primary functions of the NCDMB include:

- monitoring Nigerian content compliance by operators and service providers in terms of cumulative spending, employment creation and sources of local goods, services and materials utilised on projects and operations;
- reviewing, assessing and approving Nigerian content plans developed by operators within the sector;
- setting guidelines and minimum content levels for project-related activities across the oil and gas value chain;
- engaging in targeted capacity building interventions that would deepen indigenous capabilities in terms of human capital development, infrastructure and facilities, manufactured materials, and local supplier development;
- awarding Certificates of Authorisation for projects that comply with Nigerian content provisions; and
- conducting studies, researches, investigations, workshops and trainings aimed at advancing the development of Nigerian content.

Prospects of Local Content Development in the Oil and Gas Industry

Since the signing into law of the Nigerian Oil and Gas Industry Content Development Act in 2010, and with a visionary and dynamic agency, the Nigerian Content Development and Monitoring Board (NCDMB) driving its implementation, there has been a systematic but gradual improvement in local content in the industry. With Nigerians developing competence in jobs that were the exclusive preserve of expatriates, most of the jobs that were executed outside Nigeria are now being performed by Nigerians and in Nigeria. This has led to the retention of a large chunk of the industry expenditure in the country, with the attendant positive impact on employment generation and growth of Gross Domestic Product (GDP). Driven by the NCDMB, the Act recorded its major achievement when Mobil Producing Nigeria Unlimited (MPNU) built three wellhead platforms locally for the development of 20 new oil fields in the country. MPNU, operator of the joint venture (JV) with the NNPC, used a local company to execute two of these facilities at the Snake Island Integrated Free Zone in Lagos. Mobil's feat was a landmark achievement as the facilities were the largest fabrication contracts carried out in the country by Nigerian companies for the NNPC/MPNU Joint Venture.

Before the enactment of the Act, this kind of project was executed in foreign fabrication yards, with its attendant capital flight. Also, for the first time in the history of the industry, ExxonMobil has used locally-made pipes, while other International Oil Companies (IOCs) have also committed to use locally-made pipes for crude oil transportation. With this commitment, many companies have also commenced the setting up of pipe mills in Nigeria. Offshore living quarters have also been fabricated in Nigeria for the first time in the history of the industry, for Ofon Phase II project being developed by French oil giant, Total. The Ofon Phase II Living Quarters platform and topside was built for Total Exploration and Production Nigeria by EIFFEL construction Metallic of France, with OOP Engineering Limited as local content partner.

4.3.2 Challenges to the Development of Local Content in Nigeria

It has not been an all-success story for local content development in the Nigeria petroleum industry, despite the robust policy and legal frameworks for same. The several challenges faced in this regard, with particular emphasis being placed on the regime of the Nigeria Oil and Gas Industry Content Development Act may be summarised thus:

1. **Uncertainties and imprecision of most key provisions of the Act**

A lot of uncertainties trail the meaning and practical application of most key concepts and provisions in the Act. For example, the term 'first consideration' was not defined in the Act, nor did the Act spell out the guidelines for the Board to determine the veracity of the criteria employed by the operator in determining first considerations within the provisions of the Act. The Act also failed to define the terms 'management position' and 'intermediate cadre. In the absence of clear statutory guidance on the import of such key terms in the Act, its implementation is being undermined as various companies adopt their own interpretations while the NCDMB remain helpless. Consequently, this has seen the influx of all kinds of expatriates into Nigeria to do jobs that ordinarily should be ‘Nigerianised.’

2. Insufficient sanctions for breach

The sanctions for non-compliance under the Act are negligible (5% of the project amount) and therefore insufficient to prevent breach. Remember that many countries give tax advantages and incentives to these companies for obeying their home country's local content policies, laws and directives. Moreover, under the Nigerian JV system, some 60% of

this negligible penalty (5%) will eventually be paid for by Nigeria through NNPC. This means that only 2% will be the actual penalties payable by the IOC for breach as against the heavy tax benefits for obeying their home country's local content laws and policies to Nigeria's detriment.

3. No role for PENGASSAN and NUPENG in the Act

The implementation of the Act can only be effective to the extent that the NCMB is effective. Thus, any lapse by the Board spells doom as the benefits of the Act will elude Nigerians. It is therefore very pathetic to note that unlike similar laws in the industry, the oil workers' unions (PENGASSAN and NUPENG) and the labour unions, i.e., Trade Union Congress (TUC) and Nigeria Labour Congress (NLC) are not represented on the board of the NCMB. The omissions of unions who are on the field and whose members have been fighting for the greater and effective involvement of Nigeria creates doubt as to whether the government really wants the Act to be effective or whether it was merely passed to stave off domestic pressure. (***Identify the prospects of local content development in the oil and gas industry*).**

4. Implementation difficulties

The implementation of some provisions in the Act portends serious difficulties. For instance, the Board is statutorily required, within a timeframe of 30 days, to issue a Certificate of Authorisation for every project. This certificate is to be issued after a review and assessment of the Nigerian content plan for the project. This raises serious issues as to the credibility of the review to be done within 30 days and as to how all unclear issues in the plan can be resolved within this period without undermining the objectives of the Act. Furthermore, the requirement to submit a Nigerian content plan as a pre-condition for the award of any contract in the industry will pose serious administrative bottlenecks to the Board in view of the heavy traffic of contracts executed in the industry.

5. Exploitable lacunae in the Act

Many operators now hide under the provisions of the Act to embark on all manner of contract staffing and casualisation, contrary to the intents of the Act and the dictates of the 'Guidelines on Labour Administration issues in Contract Staffing/Outsourcing in the Oil and Gas Sector' as issued by the Federal Ministry of Labour and Productivity in May, 2011 is also clear.

6. Ministerial waivers

Section 11(4) of the Act gives the Minister of Petroleum the power to grant waivers where there is insufficient capacity to meet the targets set by the Act. This is a huge discretionary power that is susceptible to abuse, especially in view of the fact that the infrastructural base for the development of the required technology is still largely undeveloped. Indeed, experience shows that discretionary powers are a major source of corruption and like vices in Nigeria.

4.4 Summary

The Local Content Act is a favourable development to indigenous participation and financing for indigenous companies. Since 2010 when the Act was enacted, several MNOCs have become holders of oil blocks which have been divested by IOCs. This feat could not have been achieved without the enactment of the Act.

This unit provides a detailed analysis of the NOGCID Act 2010 and facilitates your understanding of the intent of the Act and its stated objectives.

4.5 References/Further Readings/Web Sources

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4.6 Possible Answers to Self-Assessment Exercises

1. With the coming of the Act, most of the jobs that were executed outside Nigeria are now being performed by Nigerians and in Nigeria. This has led to the retention of a large chunk of the industry expenditure in country, with the attendant positive impact on employment generation and growth of Gross Domestic Product (GDP). Mobil Producing Nigeria Unlimited (MPNU) built three wellhead platforms locally for the development of 20 new oil fields in the country. MPNU, operator of the Joint venture (JV) with the NNPC, used a local company to execute two of these facilities at the Snake Island Integrated Free Zone in Lagos. Mobil's feat was a landmark achievement as the facilities were the largest fabrication contracts carried out in-country by Nigerian companies for the NNPC/MPNU Joint Venture for the first time in the history of the industry, ExxonMobil have used locally-made pipes, while other International Oil Companies (IOCs) have also committed to use locally-made pipes for crude oil transportation. With other countries this commitment, many companies have also commenced the setting up of pipe mills in Nigeria. Offshore living quarters have also been fabricated in Nigeria for the first time in the history of the industry, for Ofon Phase II project being developed by French oil giant, Total. The Ofon Phase II Living Quarters platform and topside was built for Total Exploration and Production Nigeria by EIFFEL construction Metallic of France, with OOP Engineering Limited as local content partner.

2. Local content is primarily aimed at securing greater employment for indigenous citizens and increase opportunities for local companies to supply goods and services.

MODULE 4 EXPLORATION AND PRODUCTION: ENVIRONMENTAL LAWS AND PRACTICE

UNIT 1 General Environmental Law Legislation applicable to Oil and Gas in Nigeria

Unit Structure

1.1 Introduction

Over the past years, the Nigerian Federal Government has promulgated laws and regulations so that oil and gas exploration and production operations, on both onshore and offshore oilfields, could be controlled by systems of limits which aim at minimising the associated environmental impacts. Some of the related environmental laws and regulations in the oil and gas sector include Oil Pipelines Act (amended in 1965); Petroleum Acts (1969); Environmental Impact Assessment (EIA) Act (1992), and Environmental Guidelines and Standard for the Petroleum Industry in Nigeria (EGASPIN) (2002), sections 102, and 103 of the PI Act 2021etc. Most of these statutory laws and regulations provide the framework for petroleum resources exploration and exploitation in Nigeria with some of these environmental regulations giving guidelines on issues of petroleum pollution.

1.2 Learning Outcomes

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

- discuss the key general environmental laws applicable to the oil and gas; and
- explain the above in relation toe exploration and production in Nigeria Analyse other funding mechanisms.

1.3 General Environmental Law Legislation Applicable to Oil and Gas in Nigeria

The key legislation relating to oil exploration and production activities in Nigeria are examined below:

The Petroleum Act 1969 and Its Regulations

This is the principal Act governing the oil industry and its operations. Section 9 mandates the Minister of Petroleum to make regulations for the oil industry in Nigeria. This power has been exercised by the Minister, and regulations including the Petroleum (Drilling and Production) and (Mineral Oils and Safety) Regulations have been adopted.

In practice, however, the Department of Petroleum Resources (DPR) exercises this power granted to the Minister under section 9 pursuant to its mandate to enforce safety and environmental regulations. In carrying out this regulatory function effectively, the DPR issues environmental guidelines which cover the control of pollution from various aspects of petroleum exploration, production and processing operations. (***Explain how the Petroleum Act 1969 was regulated)***

With regards to the location of oil facilities in the upstream sector, the Petroleum (Drilling and Production) Regulations provide that operators must prevent the escape of petroleum into the environment, specifically into any water, well, spring stream, river, lake, reservoir, estuary or harbor (Paragraph 36 of the Regulations).

With regards to the downstream sector, viz refining of crude oil and transportation of same through a network of pipelines, Regulation 25 provides that the operator shall cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property thereon.

Self-Assessment Exercise

1. Briefly discuss the significance of the Petroleum Act and Its Regulations in Nigeria.

1.3.1 The Mineral Oil (Safety) Regulations

Mineral Oil (Safety) Regulations is created by the Petroleum Minister as provided in Section 9 of the Petroleum Act. This Regulation defines 'good oil field practice', the standard required of oil companies operating in Nigeria by the Petroleum Act.102 While this phrase 'good oil field practice' is not defined in the Petroleum Act, Section 7 of the Nigerian Minerals Oil (Safety) Regulations provides insight regarding its meaning thus: where no specific provision is made by these Regulations in respect thereof, all drilling, production and other operations necessary for production and subsequent handling of the crude oil and natural gas shall conform with good oil field practice, which for the purpose of these regulations shall be considered to be adequately covered by the appropriate current Institute of Petroleum Safety Codes, the American Petroleum Institute's Codes or the American Society of Mechanical Engineers Codes.10

Oil Terminal Dues Act

This Act deals with the exportation of crude oil by the oil companies after production

Oil Pipelines Act, Cap O7, LFN 2004

This provides for a right of access for any licensee or an operator of an oil concession to construct pipelines for the purpose of transporting crude oil and gas. It regulates the issuance of permits to survey the route for an oil pipeline for the transport of mineral oil, natural gas, or any product of such oil (sections 4 (1) and 5 (1). It also provides for the payment of compensation for trees, crops and farm produce that are in the right of way of the pipelines.

Section 9 (1) (b) of the Oil Pipelines Regulation made pursuant to the Act establishes the requirement of environmental plans. Regulation 26 provides punishment for any contravention of section

9. The fine for such contravention is N500,000 and/or imprisonment of up to six months.

N*ational Environmental Standards and Regulations Enforcement Agency (Establishment) NESREA Act 2007*

NESREA is the umbrella legislation for environmental matters in Nigeria. It repealed the Federal Environmental Protection Agency (FEPA) Act 1988. It creates an administrative agency – NESREA- which is charged with the enforcement of environmental standards, regulations, rules, laws, policies and guidelines (section 1 (2).

However, though NESREA has broad powers to deal with matters of environmental degradation, including enforcing compliance with the provisions of international treaties in the area of oil and gas, chemicals, wildlife, etc, its authority in the oil and gas sector is merely nominal as it is prohibited from investigating or dealing in oil and gas related matters (section 21 (1) – (2).

Environmental Impact Assessment (EIA) Act 1992

The chief objective of this Act is to establish and take into account the extent to which any activity to be authorised by any level of government may affect the environment (Section 1). The Act prohibits the undertaking of, or embarking on projects, which may significantly affect the environment without prior consideration of their environmental effects.

Petroleum operation activities such as oil and gas field development are listed in the mandatory study list provided in the EIA Act in the Schedule to the Act. For such activities, the Agency can either ensure that a mandatory study is conducted, and a report is prepared and submitted to it; or in the alternative, refer the project to the Council, who will then refer it to mediation or a review panel (section 23). The Council refers the project to mediation or review where it determines that it is likely to cause immitigable and significant adverse environmental effects or public concerns on the environmental effects of the project warrant on it (Section 26.) Where the project is likely to result in unjustifiable, immitigable and significant adverse environmental effects, the Agency will not permit the project to be carried out.

Environmental Guidelines and Standard for the Petroleum Industry in Nigeria (EGASPIN) (2002)

EGASPIN outlines environmental and safety standards that must be complied with by oil operators in Nigeria, to prevent, minimise, and control pollution from the various aspects of petroleum operations. It sets out comparatively robust environmental standards and requirements that must be met by operators during the project approval, operations, and closure or decommissioning phases. It identifies three primary sources of pollution in the oil industry: oil spills, discharge of effluents and gas flaring. It also provides guidelines on how to minimise noise and vibration associated with seismic and blasting operations. It sets out express prohibitions and limitations that set to minimise and eliminate the negative environmental footprint of these categories of pollution.

Section 4.1.4 of the EGASPIN also provides that licences and permits are to be obtained from the DPR for all aspects of oil-related effluent discharges from all sources (ie, gaseous, liquid and solid) and oil-related project development.

Part VIII of the EGASPIN states that "[a] spiller shall be liable for the damage from a spill for which he is responsible. Settlement for damages and compensation shall be determined by direct negotiation between the operator(s) and the landlord(s)."
EGASPIN grants a significant level of discretion to the DPR to intervene and permit discharges even when limitation standards are exceeded. The phrase 'unless otherwise permitted by the Director of Petroleum Resources' appears in a number of key sections of EGASPIN.

National Oil Spill Detection and Response Agency (NOSDRA) Act

The National Oil Spill Detection and Response Agency (NOSDRA) is one of the Federal Government parastatals vested with the responsibility of managing oil spill incidents with respect to recovery, clean-up, remediation of impacted sites as well as damage assessment. The specific objective is to ensure that all operators and stakeholders in the petroleum sector are provided with relevant regulations for the purpose of achieving standardised procedure of practice and enforcement in the sector. The functions of NOSDRA include surveillance and ensuring compliance with existing environmental legislation, the detection of oil spills in the petroleum

sector and coordinating oil spill response activities in Nigeria. Failure to report spills and to clean up affected areas are offences which are punishable with fines (section 6). (***Summarily discuss the relevant laws on environmental regulation in nigeria***)

1.4 Summary

There is a variety of legislation which regulates the oil and gas industry in Nigeria, as has been highlighted above. Whilst the effectiveness of these legislation have been critiqued for paucity of stringent penalties and lack of enforcement and adherence to same in practice, the regulatory framework provides a blueprint for action for operators and defaulters in order to effectively manage the industry.

In this unit, you have obtained a broad overview of oil and gas regulations in Nigeria. Whilst these laws are not exhaustive, it is expected that you study these legislations to improve your knowledge of the oil and gas industry in Nigeria.

1.5 References/Further Readings/Web Sources

Eghosa, O.E. (2016). 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation'. *Annual Survey of International and Comparative Law* 21 (1), pp 21, 77.

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Oyende, K. (2017). Oil Pollution Law and Governance in Nigeria. Ibadan: Stirling-Horden Publishers Ltd. 175.

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Patrick Ndubisi Uche op.cit

1.6 Possible Answers to Self-Assessment Exercise 1

1. The Petroleum Act is an act governing the oil and gas industries and its operations. The act in Section 9 gives the minister of petroleum power to make regulations. These regulations are attached to the act. The Minister has in turn empowerd the DPR the mandate to enforce safety and environmental regulations. DPR issues environmental guildelines that covers control of pollution from various aspects of petroleum exploration, exploitation production and processing operations.

UNIT 2 The Petroleum Industry Bill

Unit Structure

2.1 Introduction

In considering the emergence of new regulations in the Nigerian petroleum industry, this is evidenced bythe adoption of a Petroleum Industry Act 2021in Nigeria. The Petroleum Industry Act is an omnibus law that regulates the entire sphere of the oil and gas industry by consolidating and repealing all extant petroleum. It was adopted by the National Assembly in 2008.

2.2 Learning Outcomes

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

- discuss the purport of the PI Act;
- analyse how it will revolutionalise the Nigerian oil and gas industry in future; and
- explain the term ‘bond’.

2.3 The Petroleum Industry Act

The PI Act 2021 harmonises 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 create resourceful institutions and efficient governance structures in the Nigerian petroleum sector. (***What are the main focus of the Petroleum Industry Act?***). It falls within other proposed legislative reforms of concomitant arrangements in the sector, including a fiscal host community relations and upstream and midstream administration arrangements.

It seeks to:

- establish a framework for the creation of commercially oriented and profit driven petroleum entities;
- promote transparency and accountability in the administration of petroleum resources, thus foster a conducive business environment within the sector;
- create efficient and effective governing institutions with clear and distinct roles for the petroleum industry; and
- foster a conducive business environment for petroleum operations.

To this end, the PI Act was enacted:

- to curb the existing powers of the minister of petroleum resources) by limiting his primary function to that of national petroleum policy driver and adviser/representative to the federal government on petroleum matters;
- to establish a Nigeria Petroleum Regulatory Commission that will be vested with the combined functions of the Petroleum Inspectorate, the Department of Petroleum Resources (DPR) and the Petroleum Products Pricing Regulatory Agency. A key function of the proposed commission is the issuance, modification, amendment, suspension, review and cancellation of upstream licences – functions that are currently exercised by the minister;
- the unbundling of the NNPC and establishment of three commercial entities – the Ministry of Petroleum Incorporated, the Nigeria Petroleum Assets Management Company (NPAMC) and the National Petroleum Company (the NPC). It provides that the Management Company will be responsible for managing the NNPC's interest in production sharing contract (PSC) assets and 'back-in right' assets, while the NPC will take over all other NNPC assets, excluding PSCs and 'back-in right' assets. A fourth entity, the Nigeria Petroleum Liability Management Company, is expected to assume certain liabilities of the NNPC and the DPR.

To ease its enactment into law, the 8th Assembly unbundled it into four smaller pieces of legislation, with each bill seeking to address a key aspect of the challenges faced in the Nigerian petroleum industry. They are as follows;

a. Petroleum Industry Governance Bill ('Governance Bill') – which deals mainly with the governance and institutional framework for the petroleum industry.
b. Petroleum Industry Fiscal Bill ('Fiscal Bill') – which seeks to establish a robust fiscal framework that ensures the development and exploitation of petroleum resources in a rational and sustainable manner;
c. Petroleum Host Community Bill ('Host Community Bill' – which provides a legal framework for cost and benefit sharing among the government, oil and gas companies and host communities; and
d. Petroleum Industry Administration Bill ('Administration Bill') – which seeks to establish a robust fiscal framework that addresses the new licensing and regulatory arrangements across the value chain in the oil and gas sector and ensures the development and exploitation of petroleum resources in a rational and sustainable manner.

Self-Assessment Exercise

1. What does the PI Act 2021 seek to do?

On 28 March 2018, the Petroleum Industry Governance Bill was harmonised and passed by the two Nigerian legislative arms: the Senate and House of Representatives. The other three bills have stalled at the Nigerian National Assembly. Nonetheless, their enactment into law would generate much needed changes in the Nigerian petroleum industry. After the passage of the bill, it was sent to the President for his assent. However, the President withheld his assent to the bill on the grounds that the funding of the Nigerian Petroleum Regulatory Commission (NPRC) through its proposed retention of 10% of the funds that it collects on behalf of the federal government was regarded as inordinately high and would deprive the federal, state and local governments of a significant proportion of available revenue. (***What steps has the Nigerian government taken to incentivise increased participation in its petroleum industry?***).

Although the provisions of these bills appear to be diluted versions of the reforms proposed in the original Petroleum Industry Bill (PIB), these emerging regulations collectively seek to create a stable framework that encourages investment in the industry and in order to achieve this, they provide for several institutional reforms and incentives, which are further discussed below in this module.

Notably, the Nigerian government intends to incentivise increased participation in its petroleum industry by adopting different restructuring measures such as the unbundling and vesting of the Nigerian National Petroleum Corporation (NNPC) assets into a new profit-oriented, state-owned enterprise and the establishment of a single regulatory body, to govern all segments of the industry. The proposed consolidation of existing regulatory authorities could eliminate regulatory overlaps, which hinder effective operation in the industry. The proposition that these new entities will be largely independent might however only be a fallacy as they will remain under the supervision of the Minister.

Although the separation of NNPC's corporate and regulatory interests would have an impact on transparency and accountability in the industry, this could be ineffective if its corporate governance challenges and other bureaucratic inefficiencies are not addressed in the new entity. The regulations also commendably seek to incentivise investors through the creation of a network code rooted in competition and anti-trust regulation, which would provide non-discriminatory access to all infrastructure within the oil and gas supply chain.

Another prospective incentive for investment in the industry is the establishment of the National Petroleum Policy Directorate to provide technical support to the Ministry of Petroleum Resources and create specialist centres, which will operate in collaboration with the Nigerian Investment Promotion Council to provide trustworthy information to potential investors. Although this would improve the ease of information dissemination in the industry, it can be argued that in order for this reform to be effective, it must leverage extensively on the digital age and information technology.

Additionally, the existing fiscal framework for the petroleum industry has proved to be complex and outdated and in response, the national policies seek to introduce a new regime, to attract

investors while ensuring the accrual of government revenue. The purpose underlying this new framework is the promotion of a fiscally sustainable industry that will foster the socio-economic development of Nigeria. This will be contained in a single legislation for easy access as opposed to the current disparate regime.

Further, the bill will extend the scope of activities of the Petroleum Equalisation Fund (PEF) in contradiction to the policies of the federal government. Reports suggest that a Petroleum Industry Administration Bill, a Petroleum Industry Fiscal Bill and a Petroleum Host and Impacted Communities Development Bill passed second reading at the Senate on 27 July 2017 and have been referred to the relevant committees (which may invite public consultation on the bills) for deliberation. Nigeria's legislative process requires that bills are deliberated on for a second time at the third reading stage and thereafter sent to the President for assent. However, the House of Representatives is required to pass the bills following a similar process before they can be signed into law by the President.

In addition, the NNPC recently announced that 40% of its shares will be floated on the Nigerian Stock Exchange (NSE) once the President assents to the PIGB. The floating of NNPC's shares on the NSE is the need to raise money from the stock market to make the NNPC commercially driven.

2.4 Summary

The PI Act is set to transform oil and gas operations in Nigeria as its provisions have been well thought out and drafted by stakeholders in the industry. This unit highlighted key areas of the PI Act and the role of the NNPC under this proposed legislation.

2.5 References/Further Readings/Web Sources

Israel Aye, Laura Alakija, Olaoluwa Duntoye and Uche Odigili 'Nigeria' (2019) The Oil and Gas Law Review - Edition 7 <https://thelawreviews.co.uk/edition/the-oil-and-gas-law-review-edition-7/1210115/nigeria> accessed 10 February 2020

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2.6 Possible Answers to Self-Assessment Exercise

1. The PI Act seeks to:

- Establish a framework for the creation of commercially oriented and profit driven petroleum entities

- Promote transparency and accountability in the administration of petroleum resources, thus foster a conducive business environment within the sector;

- Create efficient and effective governing institutions with clear and distinct roles for the petroleum industry; and

- Foster a conducive business environment for petroleum operations.

UNIT 3 Regulatory Institutions

Unit Structure

3.1 Introduction

The oil and gas industry in Nigeria is regulated by specified agencies/institutions established by legislation and the provision of chapter one part III and part IV of the PI Act 2021. These institutions/agencies are responsible for ensuring compliance of MNOCS and individuals to the stated legislations.

3.2 Learning Outcomes

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

- discuss the oil and gas regulatory institutions in Nigera; and
- evaluate the Department of Petroleum Resources.

3.3 Regulatory Institutions

This unit focuses on a discussion of the oil and gas regulatory institutions in Nigera.

3.3.1 The Federal Ministry of Environment

The Ministry of Environment was established in June 1999 to ensure effective coordination of all environmental matters. It exercises its powers in the area of policy awareness, enforcement and intervention with respect to pollution and waste management matters, coastal management and environmental standards and regulations. The Ministry is also responsible for conducting

environmental impact assessments in respect to projects in the oil and gas industry. It acts in collaboration with other agencies and departments, such as the DPR, to ensure environmental protection and the sustainable use of natural resources.

Self-Assessment Exercises

1. Differentiate the role of NOSDRA from that of the DPR?
2. Briefly explain the Department of Petroleum Resources

3.3.2 The Nigerian National Petroleum Corporation (NNPC)

The NNPC is the state oil corporation established on April 1, 1977 pursuant to the NNPC Act. It was formed as a result of the merger of Nigerian National Oil Corporation and the Ministry of Mines and Power. The Federal Government channels its participation in the Nigerian petroleum industry through the NNPC. The NNPC plays a supervisory role and is charged with managing all government interests in the Nigerian petroleum industry (section 5 (1), NNPC Act).

The core functions of the NNPC include inter alia: petroleum production and exploration, refining, prospecting and disposal, processing and handling of petroleum for the production of petroleum products, purchasing and marketing of petroleum, its products and by-products, providing and operating pipelines, etc.

The NNPC holds all petroleum assets vested in the government under the 1999 Constitution and the Petroleum Act on behalf of the government . This includes the government's interest in various joint ventures with the multinational oil companies. The NNPC has wide powers to enter into contracts or partnerships as set out in section 5 and 6 of the NNPC Act. (***Briefly discuss the regulatory institutions in the oil and gas industry***).

3.3.3 The National Oil Spill Detection and Response Agency (NOSDRA)

The NOSDRA is an agency under the Federal Ministry of Environment with the responsibility of co-ordinating the implementation of the National Oil Spill Contingency Plan for

Nigeria in line with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990. Its main role is to ensure rapid and efficient response to oil spills, and to identify and protect high risk/priority areas in oil-producing environments.

3.3.4 The Department of Petroleum Resources

The DPR is referred to as the 'oil industry regulator'. It is a parastatal of the Ministry of Petroleum Resources with the responsibility of regulating activities in the oil and gas industry. It works in collaboration with the Ministry of Environment and other agencies to ensure that petroleum industry participants comply with environmental laws in carrying out their activities.

3.4 Summary

These environmental agencies are an inextricable part of the oil and gas industry in Nigeria and have the mandate to regulate the exploration, production and development operations in the industry.

This unit briefly highlighted the roles of environmental agencies with regards to oil and gas in Nigeria.

3.5 References/Further Readings/Web Sources

Damilola, S. O. (2015). The Principles of Nigerian Environmental Law (Revised Edition) Ekiti: Afe Babalola University Press 202-206

Chambers and Partners 'Energy: Oil and Gas 2019' <https://practiceguides.chambers.com/practice-guides/energy-oil-and-gas-2019/nigeria> accessed 20 March 2020

3.6 Possible Answers to Self-Assessment Exercises

1.. NOSDRA- is an agency of the federal government that coordinates the implementation of the national oil contingency plan in Nigeria in line with the international convention on oil pollution preparedness response (OPRC) 1990 to identify and protect highest priority areas in oil producing environment.

1b. DPR- this is a parastatal of the ministry of petroleum in collobaration of the ministry of enviroment charged with regulation activities of oil and gas industries to ensure petroleum industry participants comply with environmental laws in carrying out their activities

2. The DPR is referred to as the ‘oil industry regulator’. it is a parastatal of the Ministry of Petroleum Resources with the responsibility of regulating activities in the oil and gas industry.

UNIT 4 Decommissioning of Oil and Gas Platforms and Facilities

Unit Structure

4.1 Introduction

During the course of oil exploration and exploitation operations, pollutants are introduced into the environment, including the risk of unsafe decommission or abandonment of disused oil and gas platforms and facilities.

Decommissioning refers to the process of removing, disposing or abandoning obsolete or disused oil exploration facilities and installations from oil exploration fields. It is the process of shutting down operations at the end of an oil field's life. It covers closing the oil wells, removing some or all of the facilities and disposing them. It also includes flushing, plugging and cementing oil wells to make them safe for rig removal and the shutting down of operations at the end of an oil fields' life.

4.2 Learning Outcomes

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

- explain the decommissioning in Nigeria; and
- discuss the legislative framework for same in Nigeria.

4.3 Decommissioning of Oil and Gas Platforms and Facilities

Decommissioning happens as the final stage of oil exploration activities, mostly after a long period of oil production when platforms have reached the end of their productive lives. Studies show that on average, offshore fields mature for decommissioning between 20-50 years after they are opened for exploration activities.

The primary legislation governing decommissioning in Nigeria is the Petroleum Act and the Petroleum (Drilling and Production) Regulations made pursuant to the Act and section 232 of the PI Act 2021. (***How does cecommissioning come about?***). The written permission of the Director of Petroleum Resources is required prior to the abandonment or decommissioning of a borehole or an existing oil well (Article 36 of the Petroleum (Drilling and Production) Regulations, Article 32 of the Petroleum Refining Regulation.) The dumping of harmful waste from decommissioned material is a criminal offence punishable under the Harmful Waste (Special Criminal Provisions, etc.) Act. Nigeria is signatory to some international conventions creating certain obligations with respect to decommissioning. These include:

a. the Geneva Convention on the Continental Shelf 1958 (the Geneva Convention) – Article 5;
b. the United Nations Convention on the Law of the Sea 1982 (UNCLOS); and
c. the London Dumping Convention 1972.

For pipelines, the Oil Pipeline Act provides that the holder of an Oil Pipeline Licence is permitted to remove a pipeline within three months of expiration of the licence upon giving notice to the Minister, provided that the Minister does not intend to purchase the pipeline or any connected installation.

Under Part VIII-H Section 1 of the EGASPIN, lessees and licensees are required to appropriately dismantle and remove structures from oil and gas installations after such installations and facilities have been abandoned. Decommissioning activities are to be commenced at least one year after such facilities have been abandoned, and such decommissioning activities should be completed within six months.

EGASPIN (2002) also 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 the 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 do not provide for offshore decommissioning and these are the operative PSCs in Nigeria.

Self-Assessment Exercises

1. Discuss the laws applicable to decommissioning of oil platforms in Nigeria
2. What is decommissioning?

4.3.1 Environmental Impact Assessments for Fixed Offshore Platforms

The DPR Guidelines for the Construction and Maintenance of Fixed Offshore Platforms 1992 provides that an environmental impact assessment should be carried out before the construction of an offshore platform. The programme for construction is to be in accordance with the National Environmental Guidelines and Standards for the Petroleum Industry in Nigeria.

Part VIII Section 1.6 provides for the type of activities that would require an environmental impact assessment (EIA). These activities include seismic operations, laying of crude oil pipelines, construction of petroleum product depots, and construction and installation of waste treatment and disposal facilities.

The Offshore Safety Permit (OSP)

The DPR recently released a new guideline titled the "Guidelines and Procedure for Travel to Offshore/Swamp Location and Obtainment of Offshore Safety Permit", which provide for an online application process for an OSP as well as safety requirements to be complied with for travelling to offshore facilities.

The OSP was designed and established by the DPR as a personnel accountability system for monitoring personnel working in onshore and offshore locations, and for managing installations owned by

operators in Nigeria, and contains records of the holder, such as personal details, medical fitness, training certification and competence assurance status. (***What do you understand by 'offshore'?***).

Any person travelling to an offshore/swamp facility, a marine vessel, a barge or a rig being operated in the Nigerian oil and gas industry must possess a valid OPS card. An application for an OSP may be made under any of the seven types of OSPs set out in Section 3.4 of the guideline. The permit is issued by the DPR and takes the form of a barcode strip on the E-card issued by the DPR.

Decommissioning Plan Report

Part VIII-H Section 1 of the EGASPIN provides that decommissioning programmes are to be planned during the initiation and design phase of a project. Pursuant to Part VIII-H Section 1.1.1.1, prior to the commencement of decommissioning activities, a licensee or an operator shall be required to provide, amongst other things, a Decommissioning Plan Report, which should contain information such as the peculiarity of the project, degree of abandonment, methods for the removal of the structure and the disposal of the removed structures.

Security and Liability

Holders of interests in oil prospecting licenses (OPLs), oil mining leases (OMLs) and production sharing contracts (PSCs) are jointly and severally liable for joint operations and all liabilities arising therefrom, including decommissioning or abandonment liabilities. There are no statutory requirements for the security.

4.4 Summary

The process of decommissioning oil platforms poses a risk for safety and health personnel such as mechanics, welders, electricians and divers. As such, it is important that Nigeria has put in place legislation and strategies to guide decommissioning.

This unit highlighted the process of decommissioning and the regulatory framework for same in Nigeria.

4.5 References/Further Readings/Web Sources

Chambers and Partners 'Energy: Oil and Gas 2019' <https://practiceguides.chambers.com/practice-guides/energy-oil-and-gas-2019/nigeria> accessed 20 March 2020

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4.6 Posssible Answers to Self-Assessment Exercises

1. Petroleum Act and the Petroleum (Drilling and Production) Regulations made pursuant to the Act - any prior decommissioning should be through a written approval of the director of petroleum. For pipelines, the Oil Pipeline Act provides that the holder of an Oil Pipeline Licence is permitted to remove a pipeline within three months of expiration of the licence upon giving notice to the Minister of petroleum and in pursuant to the Section 232 of the PI Act 2021.

2. Decommissioning - this is a process of removing, disposing or abandoning obsolete or disused oil exploration facilities and installations from oil exploration fields. It is also the shutting down operations at the end of an oil field's life. It covers closing the oil wells, removing some or all of the facilities and disposing them. It also includes flushing, plugging and cementing oil wells to make them safe for rig removal and the shutting down of operations at the end of an oil fields' life.

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UNIT 5 Trade in Crude Oil and Products

Unit Structure

1.5 Introduction

Nigeria is an oil producing country which depends on its oil income for most of its federal revenue. The share reached 80% in 2008. The Foreign Trade Statistics issued by the Nigerian National Bureau of Statistics suggest that more than 90% of Nigerian exports are crude oil and natural gas, with about 97% of foreign revenues from oil and gas.

1.2 Learning outcomes

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

- discuss the trade, marketing, distribution and pricing of oil and gas products in Nigeria;
- demonstrate the good knowledge of the same; and
- analyse importation of crude oil in Nigeria.

1.3 Trading and Distribution of Crude Oil in Nigeria

Crude oil trading is primarily determined by contract. A joint operating agreement, or any other related agreement, prescribes the terms for the valuation, allocation, lifting and marketing of crude oil produced from a licensed area.

The sale of the Nigerian National Petroleum Corporation's (NNPC) crude entitlements involves bids for crude oil sale and purchase term contracts by potential off-takers, which may be refiners with retail outlets; trading subsidiaries of upstream companies operating in Nigeria; established large-volume crude traders; or indigenous

companies engaged in the Nigerian downstream sector. (***How are Trading and Distribution of Crude Oil conducted in Nigeria?*****).**

The NNPC sets pre-qualification requirements for prospective off-takers, including: the requirement to demonstrate significant annual turnover; the ability to establish significant lines of credit; compliance with the Nigerian Oil and Gas Industry Content Development Act; and commitment to develop other sectors of the economy.

The trading regime for gas in Nigeria is similar to the regime for crude oil, which is subject to domestic gas supply obligations imposed by the Ministry of Petroleum, pursuant to the National Domestic Gas Supply and Pricing Regulations. Operators are prohibited from exporting gas until they fulfil their domestic gas supply obligations.

Self-Assessment Exercise

1. Discuss how crude oil is traded and marketed in Nigeria.

Regulation of cross-border transportation of oil and gas resources

Cross-border transportation is generally governed by the contract between the vessel owner and the charterer on 85tilizing85n85 terms of international time or voyage charter contracts.

A petroleum exporter will also require export permits issued by the Department of Petroleum Resources and the Federal Ministry of Industry, Trade and Investment to export oil or gas.

The Pre-shipment Inspection of Exports Act subjects exports from Nigeria (including crude oil exports) to inspection by pre-shipment inspection agents. The act also requires exporters of goods, including petroleum products, to open, maintain and operate a foreign currency domiciliary account in Nigeria, into which all export proceeds must be paid.

Importation of Crude Oil in Nigeria

Nigeria does not import crude oil or gas as the demands for both are met from domestic production. However, Nigeria imports refined petroleum products of kerosene, diesel and premium motor spirit (PMS), since the country does not have sufficient refining capacity to meet its fuel needs. The open system account was a contractual method of importing refined products to meet domestic needs, where traders delivered fuel to Pipeline and Products Marketing Company (PPMC), a subsidiary of Nigerian National Petroleum Corporation (NNPC) in exchange for cash. However, with debt overrun of over 3 billion dollars to fuel importers under the open system import account and local refinery capacity dropping to 20%, NNPC inevitably turned to swaps in 2010. Between 2010 and 2015, the commercial model for crude oil trade was premised on the controversial oil-for-product swaps until NNPC signed its first round of Direct Sale of Crude Oil and Direct Purchase of Products (DSDP) contracts, worth up to 330,000 barrels of oil per day (b/d), in 2016.

Oil-for-product swap deals are the barter type arrangements for exchanging crude oil with the equivalent of refined products such as kerosene, premium motor spirit (PMS) and diesel used by NNPC in its crude oil trade deals. The 2016 DSDP contract replaced the Off-shore Processing Agreement (OPA) that provided the commercial template for previous oil-for-product swap deals in Nigeria.

(***Explain how cross-border transportation of oil and gas resources is regulated in Nigeria***). The 2016 DSDP, going forward was conceived to improve transparency with better terms for the government, though structurally the same with previous oil-for-product swap deals, except for clearer terms and tighter rules embedded in the 2016 DSDP.

Contractual Importation Models for Oil Swap Deals

The following methods have been utilised by Nigeria over the past few years to meet its domestic fuel requirements:

a. NNPC, through subsidiary PPMC, imported products using traders. The traders delivered the products to PPMC in exchange for cash (called “open account” imports). PPMC sold the products mostly to fuel retailers and various types of

intermediary companies. The open account system ended in 2010-11;

b. Private marketers import products under permits issued by the Petroleum Product Pricing and Regulatory Authority (PPPRA) and sell them to a range of wholesale and retail buyers. NNPC is not involved with these imports;

c. NNPC imports and sells products through "swaps," deals in which crude oil is bartered for petroleum products, rather than sold for money.

The oil for the swaps comes out of NNPC's 445,000 barrel per day "Domestic Crude Allocation" (DCA). The DCA provides the entire volume of crude oil that is typically available for trade under the various contractual models used by NNPC over the years. These contractual models are examined below.

NNPC Contractual Models

The usual contractual models are the Refined Product Exchange Agreement (RPEA) and the Offshore Processing Agreement (OPA).

Refined Product Exchange Agreement (RPEA): Under an RPEA, crude is allocated to a trader, and the trader is then responsible for importation of specified products worth the same amount of money as the crude, minus certain agreed fees and expenses, the value of which the trader keeps. By early 2011, the government represented by NNPC subsidiaries (Duke Oil and PPMC) had signed four RPEAs with commodities traders.

Offshore Processing Agreement (OPA): Under this type of deal, the contract holder, either a refiner or trading company, is supposed to lift a certain amount of crude, refine it abroad, and deliver the resulting products back to NNPC. The contracts lay out the expected product yields (i.e., the respective amounts of diesel, kerosene, PMS, etc.) that the refinery will produce. The refining company also can pay cash to NNPC for any products that Nigeria does not need.

In 2008, as fuel shortages worsened, NNPC issued a tender for an OPA and signed one with BP affiliate Nigermed late in 2009. The following year, PPMC signed another OPA with the Ivorian state-owned refining company Société Ivoirienne de Raffinage (SIR). The contract holders for both types of deals did not change between 2010 and 2014, with the exception of Nigermed, whose OPA ended in

2010. In late 2014, given the controversy that surrounded the OPA, PPMC did not renew its RPEA with commodities trader Trafigura. Duke's contract was reduced to 30,000 barrels a day, and Duke farmed out this contract to Aiteo. The need to review the oil swap deals by 2015 became inevitable following the huge losses accounted for in the deals.

Marketing of Crude Oil and the Export Process

In Nigeria, major oil marketers comprise of mainly multinational oil firms that operate in the downstream sector as well as some indigenised oil enterprises, these include; Mobil Oil Nigeria PLC, Total Nigeria PLC, Oando PLC, MRS Oil Nigeria PLC, Forte Oil PLC, Conoil PLC, Afroil PLC, Eternal Oil and Gas PLC, Beco Petroleum Products PLC, and Zenon Oil Limited, among others. Many of these oil firms are listed under the petroleum marketing sector in the Nigerian Stock Exchange.

An oil marketing 88tiliziy seeking to market Nigerian crude must first obtain a crude oil licence (COL). The NNPC Guidelines for Lifting of Nigerian Crude 2003 (the Guidelines) lays down the procedure and requirements for obtaining the COL. The company is required under the Guidelines to submit an application (accompanied by its audited accounts for the last three years, date of establishment, facilities, major markets, volumes traded in the last three years, number of employees, company objectives, other relevant information) to the NNPC. The company must also meet the following requirements to be eligible to apply:

a. have a minimum annual turnover of US$100 million and a net worth of at least US$40 million;
b. own a refinery or sales outlet;
c. be an established and globally 88tilizing88 oil and gas marketer with evidence of operations and of volumes of crude handled in the last three years; and
d. provide a US$1 million performance bond, among other contractual arrangements.

Shortlisted applicants are considered on the basis of successful economic intelligence reports in respect of the outlined requirements, following which they may be granted the COL and awarded a crude oil allocation contract that entitles them to lift

crude, sell to refineries, refine for export or refine for sale of refined products into the Nigerian market.

The Crude Oil Marketing Division is created by the NNPC to manage the daily sales of Nigeria's oil. Its mission is to ensure that there is equity determination & disposal for revenue optimization and achieving greater transparency and cost reduction in federation oil business, the division is equally mandated to; sustain/ stabilize FGN/NNPC equity Oil & Gas production; arrest dwindling Oil & Gas revenue, improve Oil & Gas marketing efficiency; ensure maximum programming and lifting of available FGN equity; ensure that crude oil guarantees uninterrupted cash flow to FGN; respond appropriately to challenges of changing global Oil & Gas market dynamics; prompt collection of Oil & Gas proceeds; ensure Bulk Supply of Petroleum Products to the nation and Remit 100% of cost of Federation Crude Oil to Federation account through DSDP and other related functions as to: monitor industry production, compute and secure government's entitlement from JV operations Equity/CA/MCA; Production Sharing Contracts; Services Contracts; Independent/Marginal fields; Develop and Pursue strategies for effective disposal of Nigeria Equity Crude Oil; Sell and lift all Government & NNPC equity Crude oil, Condensate and NGLs volumes each month; ensure timely and full payment for Oil & Gas Sales.

With regards to exportation of crude oil, the Ministry of Commerce has primary responsibility for issuing export permits, including permits for the export of petroleum products. There are generally no restrictions on exports for oil. However, the National Domestic Gas Supply and Pricing Regulations 2008 introduced restrictions on gas exports as it requires every producer to allocate a specific volume of its gas production to domestic 89tilizing89n. This is known as the domestic gas supply obligations (DGSO). DGSO volumes are set by the Minister.

The crude oil produced at various plants is exported in order to gain relevant foreign exchange earnings for the country. Hence, there are terminals set up to enable the export process of crude oil from the country. In setting up these terminals, care was taken to locate them near the means of transportation, which is basically shipping. Nigeria, as a country, has six (6) major crude oil export terminals set up for the exportation of crude to foreign countries, namely Bonny Export Terminal, Forcados Export Terminal, Escravos Export

Terminal, Qua Iboe Export Terminal, Brass Export Terminal, Pennington Export Terminal.

Pricing of Crude Oil in Nigeria

The price at which crude oil is sold in Nigeria is unregulated. The NNPC is, however, responsible for setting the price for federal government crude. This price is known as the official selling price. The NNPC uses the Dated Brent-Forties-Oseburg-Ekofisk crude grade as a marker to determine the prices for the different grades of Nigerian crude, including a consideration of other factors such as the global demand for crude oil; the cost of transportation; and the chemical characteristics of the crude oil.

However, the fixing of prices for a number of petroleum and petro-chemical commodities is strictly the prerogative of the Petroleum Products Pricing Regulatory Agency (PPPRA). The agency is the one that is responsible for processing the certification of oil marketers that imports fuels and collect subsidy from the Federal Government under the Petroleum Support Fund (PSF) scheme. It is the responsibility of the PPPRA to delist non-performing oil marketers from the scheme so as to enhance transparency in the petroleum products prices regulation. (***How is the Pricing of Crude Oil in Nigeria regulated?***).

The government, pursuant to the National Domestic Gas Supply and Pricing Policy, developed a gas pricing strategy for gas sales to the:

- strategic domestic sector (ie, the power sector);
- strategic industrial sector (ie, gas-based industries 90tilizing gas as feedstock, such as fertilizer projects); and
- commercial sectors that use gas as fuel (eg, the cement and steel sectors).

The federal government revised the price of gas sold to the power sector to $2.5/million standard cubic feet with effect from 1 January 2015.

1.4 Summary

With oil being one of the mainstays of the Nigerian economy, it is important that the government facilitates transparency and accountability measures in the trade of crude oil and other petroleum products in Nigeria. This unit has facilitated your understanding of the intricacies of trade, marketing, distribution and pricing of crude oil in Nigeria.

1.5 References/Further Readings/Web Sources

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1.6 Possible Answers to Self-Assessment Exercise

1. First the company must obtain a crude oil licence (COL) The NNPC Guidelines for Lifting of Nigerian Crude 2003 (the Guidelines) lays down the procedure and requirements for obtaining the COL. The company is required under the Guidelines to submit an application (accompanied by its audited accounts for the last three years, date of establishment, facilities, major markets, volumes traded in the last three years, number of employees, company objectives, other relevant information) to the NNPC. The company must also meet the following requirements to be eligible to apply: