

# Examination of some Legislations Referencing Acquisition of Rights for Oil Exploration, Prospection and Mining in Nigeria

Ogugua V.C. Ikpeze<sup>1</sup> Nnamdi G. Ikpeze<sup>2</sup>

1.Department of International Law/Jurisprudence, Faculty of Law, Nnamdi Azikwe University, Awka, Anambra State, Nigeria

2.Faculty of Law, Afe Babalola University, Ado Ekiti, Ekiti State, Nigeria

## Abstract

There are doubts as to the adequacy and content of the plethora of Legislations (Laws) with particular reference to the acquisition of oil rights for exploration, prospection and mining in Nigeria. In this article, some legislations relating to acquisition of oil rights in pre-Nigeria State and post-Nigeria State are examined - that is during colonial era and post colonial era. Analysis of practical implications on the interests of investors and the generality of Nigerians have been placed in focus. The role of the Petroleum Minister in granting or refusing to grant the required licenses and leases to the intending investors is also examined. In the end, it is found that there are adequate legislations. However, implementation, enforcement and reviews of such legislations were found to be very weak or non-existent. Recommendations aimed at better, more efficient and effective oil rights acquisition regimes portraying international best practices are suggested for developmental purposes.

**Keywords:** Nigerian Legislations, Acquisition, Oil, Exploration, Prospection, Mining, Rights.

## 1.1 Introduction

A legislation with reference to oil exploration rights in Nigeria was first promulgated in 1889 as the Petroleum Ordinance. It was followed with the 1907 Mineral Regulation Oil Ordinance. These legislations aimed at giving British companies, and companies permitted by the British, rights by way of license or leases to explore for petroleum in Nigeria (Etikerentse 1985).

The first company to explore oil in Nigeria was German Bitumen Company (also known as the Nigeria Bitumen Corporation). It commenced exploration in Nigeria near Okitipupa area in the present Ondo State, South West Nigeria, but the company was unsuccessful.

The second company established in 1937 was British – The Shell D’Arcy Petroleum Company. The company received oil exploration license (OEL) covering the whole of Nigeria. The Shell D’Arcy discovered oil in commercial quantity at Oloibiri in the present day Bayelsa State, South South Nigeria. The company commenced production at 5,100 barrels per day (bpd).

The third legislation was the enactment of the ordinance No. 17 of 1914 which was subsequently amended in 1950 and 1959 and created the opportunities to give concessions, rights and license to companies interested in oil exploration, prospecting and mining in Nigeria. Such right was granted to Shell D’Arcy in 1937. In 1962 the Shell license was reviewed so as to grant licences to other multinational companies.. However, Shell retained about 15,000 square miles.

Oil exploration in Nigeria commenced in commercial quantity in 1958 (Nelson 2015). The first concrete legislation regulating crude oil production post colonial era was the 1969 Petroleum Act. In effect it controlled and still controls activities of the Nigerian Petroleum Industry.

Legislation is the act of making or enacting laws usually targeting a particular purpose. It is a fact that Legislation is the bedrock of any civilized society. Legislations remain one of the most important instruments of good governance. They guide and direct both the government and citizens and whosoever that operates within the country. Of utmost importance is the protection of rights and interests of the citizens of Nigeria. Obedience to legislations accords with the doctrine of rule of law and determines amongst others things, the rights and responsibilities of individuals, corporations and institutional authorities. Legislations have little or no value if not obeyed or enforced accordingly. Such enforcement guarantees legislations (laws) as the instruments of social engineering smarting change and development (Ikpeze 2015). These laws in business become trade customs which are binding on the authorities, the multi-nationals and the people and can be enforced by the Law Courts.

## 1.2 Definition of terms

To buttress the point of discourse in this article, there is need to espouse some of the relevant terms as to also ease readers’ understanding.

**1.2.1** Oil has been defined to mean crude oil of any description, liquefied petroleum gas or liquefied natural gas. Section 15 of the Petroleum Act Federal Government of Nigeria (FGN 1960) defined crude oil as mineral oil in its natural state before it is refined or treated excluding water and other foreign substances. Often times, the word oil and crude oil are used interchangeably and this is not surprising considering the above definition and the fact that the word “oil” was not defined in the Petroleum Act as opposed to crude oil which was defined

therein as mineral oil in its natural state before refining to exclude water and other foreign substances (Federal Government of Nigeria 1969, 2004).

World energy statistics indicate that it presently accounts for about 53% of world energy supply. (Bafor 2001) In Nigeria, the oil sector has remained the mainstay of national economy, It currently accounts for about 90% of Nigeria's total export earnings and over 70% of the Federal Government revenue (Oge 2009).

### **1.2.2 Rights and Ownership Rights**

Rights means that which is proper under the law. It is something that is due to a person or legal personality by just claim. It also means privilege or immunity guaranteed by law. However such rights have correlative duties or obligations.

Ownership rights means the totality of or the bundle of the rights of a person over and above every other person on a particular thing. In Chief Joseph Abraham & Anor. V Ishau Amusa Olorunfunmi & Ors, (1999)1 Nigeria Weekly Law Report (pt 165) 53 ownership was held to connote the totality of the bundle of rights of the owner over and above every other person on a thing. It connotes a complete and total right over a property.

Ownership rights consist of an innumerable number of claims, liberties, powers and immunities as regards the thing owned. This includes the power to enjoyment, to determine the use to which the thing is to be put, to deal with, produce or to destroy it, *as the owner pleases*, the power of possession, the power to alienate, the power to bequeath, the power to charge as security and the power to grant to another person any or all of the rights for a stipulated time period. (Dias 1985)

Ownership of crude oil is vested in the Federal Government of Nigeria (FRN 1999) as provided in section 43 of her constitution. In South Atlantic Petroleum Ltd v Minister of Petroleum Resources (2006) Constitutional Law Report of Nigeria (CLR) 122 the Court held that petroleum resources in Nigeria are vested in the Federal Government. Interested persons are granted licenses or leases to explore, prospect or mine oil and gas. However, the exclusive right enjoyed by the Federal Government of Nigeria (FRN) has been a subject of controversy in the country. The argument is predicated on the belief that the owners of the land where these resources are located ought to be given the ownership and control while they pay a determinable percentage to the Federal Government as demonstrated by court action instituted against the FRN in AG Abia v A.G. Federation (2002) 4 S.C. (pt 1) where the Nigeria Supreme Court was invited to determine the seaward boundary of a littoral State for the purposes of calculating the revenue accruable to such State from the petroleum resources. This case also resulted in the abolition of the on-shore off-shore dichotomy in the allocation of revenue under the principle of derivation in Nigeria. Pertinent to the problem of ownership of natural resources by the indigenous people in a particular area or State to lay absolute claim to their God given land is the provisions in the Land Use Decree 1978 now Land Use Act Cap L5 LFN 2004 which vested land in every State on the Governor of the State (Ikpeze 2015).

This has not assisted the plight of the local or rural people who suffer degradation of their environment in the course of production of crude oil and its related products. "There is also water pollution which creates drinking water problem to the immediate community where oil and gas are being produced. This is the typical scenario in the Niger-Delta Region of Nigeria of Nigeria"(Oladeji 2015).

### **1.2.3 Acquisition of Rights**

Right is the protected interest anybody has over others on anything it pertains to legal claim on a thing. In this article, acquisition is the act of becoming the owners of certain property, or interests, the act by which one acquires or procures the property or interest in anything .... (Garner 1990). Acquired rights are usually in exchange for a consideration.

In Nigeria, the right to participate in oil exploration and exploitation activities can only be acquired and not owned.

Prior to the enactment of the Petroleum Act in 1969, Nigeria was caught in the web whereby the investment for the exploration and exploitation of its crude oil was more in the hands of multinational corporations who enjoyed oil concessions covering land, territorial waters and continental shelf areas for extended periods of time (Etikerentse 2001).

However, in the Petroleum Act 1969, provisions were made for participatory interest of Nigerian government. This opportunity to participate was enhanced when OPEC tilted the contractual scale in favour of its members (OPEC 1968); and also, with the establishment in 1971 of the Nigerian National Oil Corporation (NNOC) (FRN1971) which was later merged with the Ministry of Petroleum Resources to form the NNPC in 1977.

In Nigeria, acquired rights of participation were granted through licenses and leases (Atsegbuna 1993) such as Oil Exploration License (OEL), Oil Prospecting license (OPL), and an Oil Mining lease (OML).

## **2.3 Methodology**

Data for this article was obtained from established legislations, law reports, text books, journal articles, other

write ups, as well as internet resources. Information generated on the modalities for acquisition of all rights in the petroleum resources sector has been used to suggest changes such as amendment of existing legislations or creation of new ones so as to improve participation and development.

### **3.1 Study Area**

The whole of Nigeria is covered because the ownership of oil is vested in the FRN, though the specific zones of utmost importance are the oil producing areas often referred to as the Niger-Delta region. This region includes the following States of the Federation of Nigeria: Abia, Akwa-Ibom, Bayelsa, Cross-Rivers, Delta, Edo, Imo, Ondo, Rivers. Recently, oil prospecting and mining has commenced in Anambra State, now pronounced an oil producing State, though the revenue benefits are yet to be actualized.

### **4.1 Legislations Regulating Oil Rights Acquisition In Nigeria**

No doubt that there are many legislations regulating oil acquisition rights in Nigeria since 1889 through 1969 to date. However, only the notable ones will be referred to in this article. For ease of reference the writers intend to compartmentalize the legislations into the Colonial era; pre-1969 and the post 1969.

#### **5.1 The Legislations During Colonial Era**

The principal legislations which regulated the acquisition of oil rights during the colonial era were as follows:

1. The numerous Constitutions pre – Nigerian independence
2. The Petroleum Ordinance of 1889
3. The Mineral Regulation (Oil) Ordinance 1907
4. The Mineral Oils Ordinance of 1914
5. Government Notice No. 2675.

The 1914 Constitution forms the background for the acquisition of oil right in the colonial era having vested legislative powers for the whole country apart from the Colony of Lagos on the Governor General who in exercise of those powers enacted the Mineral Oils Ordinance of 1914 which was the principal legislation regulating the acquisition of oil rights in Nigeria at the time.

##### **5.1.1 The Petroleum Ordinance 1889 and the Mineral Regulation (Oil) 1907**

These two pieces of legislation laid down a basic framework for the development of oil and its natural resources in Nigeria. The 1907 Ordinance was enacted in line with general British oil policy, which determined in 1904 that oil exploration concessions in the British Empire should preferably only be granted to companies registered in Britain or its colonies. It made the search for oil in Nigeria a British monopoly by providing that only British subjects or companies controlled by British subjects would be eligible to explore for these natural resources in Nigeria. Section 15 of the Ordinance further specified that all members of the directorate of these companies must be British subjects.

Ironically, the first company ever to engage in oil exploration activities in Nigeria was the German Bitumen Company in 1908 around Okitipupa in present day Ondo State, South West Nigeria. Though, this exploration effort was unsuccessful and the company terminated its operations by the end of 1913, it was its liquidation rather than the outbreak of the First World War, as argued by several authors, that led to the termination of the activities in Nigeria.

It is pertinent to note that the aforesaid irony (asserted by most authors including Prof. Atsegbua) (Atsegbua 2012) is misconceived and based on the wrong premise that the German Bitumen Company (also known as the Nigerian Bitumen Company) was a German Company. The German Bitumen Company was in fact a British-registered company and its shares were traded on the West African Market of the Stock Exchange in London, hence it was granted the license to explore for oil in Nigeria.

##### **5.1.2 The Mineral Oils Ordinance of 1914**

This ordinance which has been credited as the first principal legislation on oil was enacted to regulate the right to search for, win, and work mineral oils. In order to start exploration, development or production activity in Nigeria, the International Oil Companies (IOCs) needed the authorization of the government of the Federation of Nigeria (Schatz 1969). To achieve this, Section 3 of the Mineral Oils Ordinance of 1914 provided as follows:

It shall not be lawful for any person to search or drill for or work Minerals within or under any lands in Nigeria except under a Licence or lease granted by the Minister under this Ordinance Provided that nothing in this Ordinance contained shall affect any Licence or lease granted under any Ordinance repealed by this Ordinance, which licence or lease shall for all purposes have effect as if this ordinance had not been made.

It is worthy of note that the major flaw against Nigeria as a nation state in the 1914 Ordinance is the fact that it retained the discriminatory policy against non British subjects and companies created by the 1907

Ordinance. The 1914 Ordinance and its 1925, 1950 and 1958 amendments, applied to all areas in the newly amalgamated Nigeria. These amendments, however, allowed for the inclusion of non-British director provided that the chairperson and the majority of other directors were British subjects. The various powers to grant the licenses or leases and negotiate the concessionary agreements with the companies interested in oil exploration on behalf of the government were vested in the Federal Minister of Mines and Power (Nigeria 1914).

## **5.2 Government Notice No. 2675 of 1959 (FRN 1959)**

The Notices were issued pursuant to the powers conferred on the Governor General under Section 9 of the Mineral Oils Ordinance 1914. Upon the issuance of this notice in 1959, oil rights acquisition by the IOCs became standardized (Atsegbua 2012), the notice introduced the division of acquired oil rights into exploration, prospecting and mining rights, while distinguishing them according to the stage of development in the acquired area.

Hence, the rights created under the notice are:

- i. Oil Exploration License (OEL)
- ii. Oil Prospecting License; and (OPL)
- iii. Oil Mining Lease (OML)

## **5.3 Oil Exploration License (OEL)**

An OEL entitled the Licensee to the right to carry out geological exploration for oil over the land and territorial waters of Nigeria excluding land approved for grant or already granted to oil operators, An OEL did not include the right to drill for oil in the acquired area.

An OEL could be granted for any area up to 10,000 square miles and to several companies within the same concession area. The government has no obligation under an OEL to convert expired exploration licences into prospecting or mining rights. An OEL was valid for one year with a possible extension for another year and could be converted into a prospecting licence in respect of any area found to be promising in oil deposits. The fee for each calendar year was fifty pounds.

## **5.4 Oil Prospecting Licence (OPL)**

An OPL could either be granted in respect of the mainland including a three mile coastal limit, and/or for the continental shelf area. The location of an OPL affected its duration. Hence, while licenses for mainland were valid for three years and could further be extended for another two years period, the licenses for continental shelf area were granted for four years and could further be extended for another three years period.

Unlike the OEL, an OPL granted exclusive right to the Licensee to carry out geological and geophysical investigation in the acquired area, drill, export and refine the crude oil found.

### **5.4.1 Some Obligations Under the OPL**

- The licensee is required to start geophysical investigation within six months of grant;
- Drill at least 12,000 feet of the wells on the mainland within 3 years and 4 years on the continental shelf;
- Train Nigerians in the art of drilling and production of oil.
- Financial Obligations including rents and royalties

Upon the expiration of an OPL, it must either be handed back to the government or converted into a mining lease.

## **5.5 Oil Mining Lease (OML)**

An OML for mainland were granted for thirty years and could further be renewed for another thirty years period total maximum of 60 yrs, while OMLs for continental shelf area were granted for forty years and could further be renewed for another forty years period or 80 yrs.

A lessee has the exclusive right to utilize any measure necessary to exploit oil in the area acquired. There was no limit to the area to be granted to a lessee under an OML, the area may be of any size approved by the government.

### **5.5.1 Some Obligations under the OML include:**

- Train Nigerians in the art of drilling and production of oil.
- The lessee was also required to operate with the aid of experts, up to date equipment, machinery and methods.
- Financial Obligations including rents and royalties

The above rights, that is, OELs, OPLs, and OMLs were the only oil rights available and granted under the Mineral Oils ordinance of 1914 to proposed participants in the oil industry during the pre-1969 epoch.

## **6.1 The Post Colonial Era Legislations**

Nigeria as a full independent Republican Nation with her own Legislative Houses at the National made many legislations including the Constitution.

The key legislations underpinning the acquisition of oil rights during this era include:

1. The Constitution
2. Petroleum Act 1969, and all amendments, subsidiary legislations, regulations and instruments enacted under it.
3. Oil Pipelines Act 1965
4. Petroleum Profits Tax Act 1958
5. Associated Gas Reinjection Act 1979.
6. The Environmental Impact Assessment Act 1992.
7. The Deep Offshore and Inland Basin Production Sharing Contract Act.
8. The Nigerian National Petroleum Corporation Act Cap. N123 L.F.N. 2004 (the NNPC Act)
9. Nigeria Oil & Gas Industry Content Development Act 2010 (the NCDA).
10. The Deep Water Allocation to Companies (Back In Rights) Regulations.
11. The Oil Prospecting Licences (Conversion to Oil Mining leases etc) Regulations.
12. Oil in Navigable Waters Act 1968.

Each law plays a different but significant role in the administration and regulation of the industry. In addition, they create regulatory agencies that implement government policy and ensure compliance with the respective enabling laws. However, for the purpose of this paper, we shall limit our discussion on those legislations directly regulating acquisition of oil rights during this era.

#### **6.1.1 The Constitution of the Federal Republic of Nigeria 1999**

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 as the grundnorm forms the foundation for all enactments of other laws aimed at regulating the affairs of the country. Its provisions are supreme and binding on all persons and authorities in Nigeria, including the government. Its provisions referencing acquisition of oil rights in Nigeria include the following:

**Section 44(3):** provides that the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria; or in, under or upon the territorial waters and the Exclusive Economic Zone (EEZ) is vested in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

**Section 17(1)** provides that the social order of the Nigerian State is founded on ideals of Freedom, Equality and Justice. While section 17(2) (a) provides that: In furtherance of the order – every citizen shall have equality of rights, obligations and opportunities before the law; and 17(2) (d) provides thus:

Exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented.

The power to legislate laws for the Federation of Nigeria is rested on the National Assembly consisting of the Senate and House of Representatives (Nigeria 1999).

Section 4 (2) of the CFRN provides further as follows that:

The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part 1 of the second schedule to this constitution.

Now **Item 39** of the Exclusive List contained in part I of the Second Schedule to the Constitution also confers on the National Assembly the exclusive powers to make laws relating to mines and minerals, including oil field, oil mining, geological surveys and natural gas.

A community reading of all the above explaining succinctly the rationale for referring to the constitution as the foundation legislation for acquisition of oil rights with the subsidiary legislation, regulations and Instruments enacted under it.

#### **6.2 Petroleum Act 1969**

It remains the main and foundational legislation post colonial era with regard to oil acquisition rights in Nigeria. It made provisions as to ownership of the natural resources in Nigeria which include oil and gas. Some of its provisions are set out hereunder:

**Section 1:** vests the entire ownership and control of all petroleum in, under or upon any lands to which this section applies in the State.

**Section 2(1):** empowers the Minister of Petroleum Resources to grant licenses for the exploration and prospecting of petroleum (oil) as well as issuing of leases for the mining of petroleum, only to companies incorporated in Nigeria.

**Section 3:** Apart from OELs and OMLs, the Minister of Petroleum Resources is also empowered to grant licenses for the construction or operation of any refinery in Nigeria.

**Section 4:** By this section, a person can only import, store, sell or distribute petroleum products in Nigeria after applying and obtaining a license from the Minister. Note however that such license is not required in the case of Kerosene not above 500 litres.

**Section 8:** Empowers the Minister of Petroleum Resources to conduct general supervision over all operations carried on under licenses and leases granted under the Act (Nigeria 1969) and to have access at all times to the areas covered by oil exploration licenses, oil prospecting licenses and oil mining leases, and to all refineries and installations for the purpose of inspecting the operations conducted therein and enforcing the provisions of the Act and any regulations made there under and the conditions of any licenses or leases granted under the Act or under any corresponding law in Nigeria.

**Section 10:** empowers the Minister of Petroleum Resources to make regulations generally providing for all such matters as are covered by the Act, or such other matters as in his opinion may be necessary or desirable in order to give proper effect to the Act.

### 6.3 The Schedules in the CFRN 1999.

The first schedule to the constitution of the Federal Republic of Nigeria made provisions to buttress the powers of the Minister of Petroleum in any acquisition of oil rights thus:

- Minerals Oils (Safety) Regulations;
- Petroleum (Drilling and Production) Regulations;
- Petroleum Refining Regulations;
- Crude Oil (Transportation and Shipment) Regulations;
- Deep Water Block Allocation to Companies (Back-in-Rights) Regulations 2003.

**6.3.1** Paragraph 14 of First Schedule: prohibits the assignment of an OPL or OML without the prior consent of the Minister of Petroleum Resources

**6.3.2** Paragraph 23(1) and Paragraph 24 of First Schedule: empowers the Minister of Petroleum Resources to revoke an OPL or OML upon the existence of the factors stated in those paragraphs.

#### Limitations of the Act:

- The penalties imposed for non-compliance with the provisions of the Act are not deterrent enough, hence, offenders will find it more economical, cheaper and cost effective to violate the provisions of the regulations and pay the requisite fine than to comply with the regulations.
- The Minister of Petroleum Resources has wide powers vested on him and without corresponding measures created to check the abuse of these powers.

### Petroleum Profits Tax Act (PPTA)1958

The Act is meant to regulate the financial activities of oil companies engaged in petroleum operations, that is those in crude oil production, petroleum marketing and the servicing companies such as seismic survey, drilling and data collection (Nigeria 1958)

- **Section 2:** defines “petroleum operations” as: the mining of, obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, extracting or other like operations or process, not including refining at a refinery in the course of a business carried on by the company engaged in such operations and all operations incidental thereto and any sale or any disposal of chargeable oil by or on behalf of the company.
- **Section 8:** imposes tax on all profits generated by companies engaged in such operations as follows: There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period a tax charged, assessed and payable in accordance with the provisions of the Act.

In a nutshell, the PPTA provides for the collection of tax imposed on the profits made from petroleum operations. The Act is meant to apply to the taxation of the assessed income profits of companies engaged in petroleum operations, be it crude oil or natural gas as held in *Shell Petroleum Development Company of Nigeria v Federal Board of Inland Revenue (FBIR)* [1996] 8 NWLR (pt 446)256 where the Nigerian Supreme Court (SC) held that by section 8 of the PPTA 1959 any company engaged in petroleum operations is liable to pay profits tax. It contains provisions relating to the definition of the operations of companies that are subject to the Act. It also defines factors to be considered in calculating tax payable by any affected company with provisions for effecting petroleum profits tax payment as held in *Gulf Oil Company (Nig) Ltd v FBIR* [1997] 7NWLR (pt 514) 535 Provisions have also been made by the Act for appeals against FBIR’s profit tax assessments by dissatisfied companies as held in *Texaco Overseas (Nig) Petroleum Company v FBIR*. [2004] 3 NWLR (pt 859) 46; in addition to the stipulation of offences and penalties for violation of the provisions of the Act by affected persons and companies.

### 7.1 Limitations of this Act

- The Act simply defined offences but failed to provide machinery for detection of offenders.
- The penalties prescribed for different categories of offences under Part X are so inadequate

in contemporary Nigeria that they tend to encourage rather than discourage the commission of these offences.

- The Act lays out an elaborate system of computing the profits and tax payable by a company but fails to establish the method of ascertaining whether the computations reflect the true status of any affected companies to show their financial positions.

The vital questions are:

How many companies has the FBIR actually accused and prosecuted to a logical conclusion for the offences stated under the Act? How does the Board determine who is guilty of what? How does the Board know whether or not there have been false statements of accounts? Obviously there are no clear modalities for proper assessment, indictment, prosecution and conviction.

- Sections 10, 11 and 12 of the Act are said to be controversial, in that oil companies and the FBIR are always at loggerheads over the correct interpretation of these sections particularly section 11. The provision that deductible expenditure must have been “wholly exclusively and necessarily incurred in petroleum operations” is contentious and a subject of disagreement between the authorities and oil companies. In the case of Gulf Oil Company (Nigeria.) Limited v Federal Board of Inland Revenue, the issue that came up for consideration was whether or not the charges and commissions paid by Gulf Oil to the Central Bank as a result of the Government directive to pay the company’s profit tax abroad were expenses “wholly, exclusively and necessarily incurred” for the purpose of the company’s petroleum operations within the meaning of section 10(1) of the PPTA. The Court relied on the decision in Shell and held in favour of Gulf Oil. Thus there is the urgent need to harmonize most of these legislations relating to acquisition of oil rights.

## 7.2 Oil Pipelines Act

This Act makes provision for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipelines. The act creates the Oil Pipeline Survey Permit; and the Oil Pipeline Licence.

### 7.3 Oil Pipeline Survey Permit

**Section 3:** empowers the Minister to grant an oil pipeline survey permit to the holder to survey routes for oil pipelines and licenses to construct, maintain and operate oil pipelines, provided that each license shall be issued in respect of one pipeline only. This permit is granted at the discretion of the Minister, hence where the Minister refuses to grant the permit, he shall do so in writing with reasons for such refusal.

**Section 6:** mandates a permit holder to issue a fourteen days notice to the owner or occupiers of a land before such a permit holder can enter any building or upon any enclosed court or garden attached to any building or enter upon any cultivated land. The essence of this permit is to enable the holder and his agents to enter into the designated land with any necessary equipment or vehicles; to enter upon, take possession of or use a strip of land of a width not exceeding two hundred feet or of such other width or widths as may be specified in the license and thereon construct, maintain and operate an oil pipeline and ancillary installations. While carrying out the survey, the holder of a survey permit is required to take all reasonable steps to avoid unnecessary damage to any land entered upon and in the event of any damage to any land entered upon, the holder shall compensate the owners or occupiers of the land for damages done.

### 7.4 Oil Pipeline Licence

**Section 7:** The holder of a survey permit may by this section, apply to the Minister for the grant of an oil pipeline license in respect of any oil pipeline the survey of which route he has completed. No person other than the holder of a license shall construct maintain or operate an oil pipeline. The Minister also has the right to refuse the grant of the license provided such refusal is on reasonable grounds and such grounds are communicated to the applicant in writing.

**Section 17:** A license may be granted for such period not exceeding twenty years as the Minister may direct without prejudice to license granted prior to the commencement of this Act. The holder of a license may at any time during the term of license determine the license in respect of all or any part of the land included therein by giving to the Minister not less than three months previous notice in writing to the effect.

**Section 27:** empowers the Minister to revoke a license upon breach of the terms or conditions of grant of the license, and upon failure to comply with the three months notice to remedy the said breach issued by the Minister.

Also, upon the expiration or determination of a license the holder shall within three months before the expiration or after determination give three weeks’ notice of intention to remove such pipeline and ancillary

installations and shall be at liberty to so remove them unless the Minister elects to purchase same or any part thereof at a price to be fixed by agreement or determined by arbitration. By section 28 of the Act, the licensee is also required to remedy any damage to the land caused by such removal.

### **8.1 The Environmental Impact Assessments Act (ELAA)**

This Act makes conducting an ELA study mandatory before an oil and gas project can be commenced. This is with a view to determining the nature of the project and to what extent the project will affect the environment. ELA studies apply not only to private projects, but also to projects being carried out by public institutions.

The Environmental Guideline and Standards for the Petroleum Industry (EGASPIN) which sets out the process for an EIA study in relation to oil and gas projects also makes ELA studies mandatory. However, there is a closed category of projects that do not require EIA studies:

- Projects that the President or the Federal Environmental Protection Council feels are likely to have minimal environmental effect.
- Projects carried out during national emergencies.
- Projects carried out in circumstances that, in the opinion of the National Environmental Standards & Regulations Enforcement Agency are in the interest of public health or safety.

The EGASPIN prescribes that the EIA study must be prepared by the project proponent or initiator (proponent), together with consultants certified by the Department of Petroleum Resources (DPR) (where necessary) and in conjunction with the DPR.

### **8.2 Discussion**

The crux legislations on the acquisition of oil rights in Nigeria are predicated on forms of concessions or licenses or leases granted to Multi-national Companies or International Oil Companies (IOCs) as Oil Exploration Licenses (OELs), Oil Prospecting Licences (OPLs) and Oil Mining Leases (OMLs) since the 1914 Ordinance wherein these three categories of oil acquisition rights were created. Some detailed discussions are hereunder made on each acquisition right.

#### **8.2.1 The Oil exploration License (OEL)**

The OEL is a licence granted by the Minister of Petroleum to the licensee to make preliminary search for petroleum resources in specific areas not exceeding 12, 950 km using surface geological and geophysical methodology including aerial surveys with right to drill below 91.4 metres. To obtain OEL an applicant company must submit the following to the Minister of Petroleum:

- a. A completed Form A with the prescribed fee of N20,000.
- b. Ten copies of the Map of the area delineated in red.
- c. A survey of the boundaries of the area applied for but where the survey is already available to the Department of Petroleum Resources (DPR) sufficient information for its identification will surface.
- d. Evidence of financial and technical competence of the applicant
- e. Details of work programme to be undertaken by the Applicant which must not be less than the minimum work programme prescribed by the DPR .
- f. Details of a specific scheme for the recruitment and training of Nigerians.

OEL lasts for one year and shall terminate on the 31<sup>st</sup> December of the year of grant and the license may be renewed for one year if the licensee fulfils the following:

1. Gives notice of intention to renew at least three months before the expiration of existing OEL.
2. The licensee has fulfilled all the obligations under the existing OEL.
3. Has satisfied the Minister with the quantity of work done.

It must be noted that OEL does not confer exclusive rights over the area specified on its holder and it cannot be operational in lands where OPL and OML have been approved. OEL can be terminated for reason of public interest. The discussion on OEL shows a ridiculously low application form payment. There is no legal provision cautioning on protection of the environment to avoid any form of pollution. The soft conditions may be to encourage investors. Whether it ought to be done at the detriment of the citizens must be answered in the negative. This is why people in the Niger-Delta areas and other Nigerians are suffering from great environmental degradation and pollution. This must change.

#### **8.2.2 On Oil Prospecting License (OPL)**

Any person or legal person seeking OPL must apply to the Minister of Petroleum who acts on behalf of the Federal Government of Nigeria. The applicant must qualify and must have all the under listed non-refundable chargeable fees under the Petroleum Act:

- a. Application Fee US \$10,000 = per block
- b. Bid processing fee US \$10,000 = per block
- c. Data prying fee – US \$25,000 = per block
- d. Data leasing Fees:



- Seismic – US \$50,000 +
- Wells and Reports – US \$50,000 =
- Other fees for assignment, sublet N500,000 =

Annual Rent of US \$10 per sq km or part thereof vary necessary is;

1. evidence of registration of applicant company
2. evidence of financial standing to the tune of US \$10,000,000 or N1,000,000.00 = (N1 billion)
3. evidence of company's technical capability
4. detailed environmental policies referencing Environmental Impact Assessment analyses.
5. Local Content
6. Evidence of payment of all necessary fees.
7. Feeding of all the above details into the data base and obtaining an evidential slip.

Where the Minister is satisfied, he or she permits the DPR to grant the licence.

Still, there is no obvious caution on pollution per se.

This is worrisome to say the least considering the quantum of pollution and/or as some environmental degradation that can occur affecting the citizens. Just as some acts in the process may amount to crime.

The holder of OPL has an exclusive right to explore and prospect for petroleum within the boundaries of his / her license and for a duration of five (5) years and can also carry or dispose of petroleum with the ambit of the Act. OPL for inland basins is for three (3) years and renewable for two (2) years.

For deep water blocks, the exploration period is for ten years, divided into five years initial period which automatically rolls over except for non-performance (Oyebode 1990).

The question is: Does anybody monitor for non- performance?

The answers appears to be more in the negative. It must be noted that it takes 2-3 months to conclude procurement of OPL and its area of coverage does not exceed 2,590 sq km (Atsgbua 2012) Any holder of OPL has enormous rights but must not enter sacred land except with written permission, and only after payment of fair and adequate compensation (Etikerentse 1984).

It must be noted that revocation of OPL ought to be done in accordance with the law as held in FGN v Zebra Energy (NWLR 2002) where SC of Nigeria stated that the provisions of paragraphs 23 – 27 of the first schedule to the petroleum Act is binding on the FGN and that the FGN must follow it in any revocation of an OPL.

### 8.2.3 Oil Mining Leases (OMLs)

Usually OPL converts easily to OML as OML can only be granted to the holder of OPL – who has:

- a. Satisfied all the conditions for OPL
- b. Discovered oil in commercial quantities.

The difficulty here is that often times once the applicant of an OML succeeds, the residue in the OPL reverts to the Federal Government of Nigeria. That is the OPL is overtly relinquished as decided in South Atlantic Petroleum Ltd v Minister of Petroleum Resources (FGN 2006).

This policy is good. To hold otherwise will amount to a company holding both OPL (the residue) and an OML which will not be equitable. However, the legislations must be made clear for all parties to the Oil business to understand.

See SPDC v FBIR (1996)8 NWLR pt. 466 256, where the Supreme Court affirmed that “petroleum operations” for the purpose of payment of petroleum profits tax, include not only winning or obtaining and transportation of petroleum oil by drilling, mining etc , but also all activated incidentals to such operations excluding refining at a refinery.

On some of the lesser regulations such as the Petroleum (Drilling and production) Regulations - this is a subsidiary legislation under the Petroleum Act - in NNPC v. Famfa Oil Ltd. (2012) 17 N.W.L.R. Pt 148 (2012) C.L.R. 5(a)(SC), where the Supreme Court (SC) of Nigeria determined the applicability and purport of the legislation as that “The clear intention of the legislature is that negotiations should take place between the Minister of petroleum and the applicant of the OML. The reasoning of the legislature is that the Minister while negotiating must take into account the huge sums of money spent by the applicant drilling for oil, and ensure that 50% stake of the Federal Government in the OML is well taken care of in terms acceptable to the Government and held further that the provisions of **paragraph 2** of the Deep Water Block Allocation to Companies (Back – in-Rights) Regulation 2003 which gives the Federal Government the arbitrary right to acquire five-sixth of an OPL or OML interest is invalid to the extent that it is inconsistent with paragraph 35 of First Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder or the holders of the OPL or OML.

In SPDC v FBIR (supra) the FBIR disallowed the deduction of certain expenses claimed by Shell Petroleum and these expenses included currency exchange losses, Central Bank Commissions and Educational Scholarship Expenses. The matter went through appeals from Appeal Commissioners through to the Supreme Court which held that where there is a statutory of contractual obligation to incur an expense, such expense is

deductible even where it is not directly related to the tax payer's "petroleum operations". It held therefore that, Shell was entitled to deduct all three categories of expenses since it has a statutory obligation to incur the said expenses.

### 9.1 Conclusion

The Legislations on the acquisitions of OELs, OPLs and OMLs rights in Nigeria (both in the Colonial era and Post Colonial era) seemed to be numerous adequate. However some inadequacies and lacunae are observed particularly in the areas of jurisprudence which stipulated monitoring, implementation and enforcement mechanisms for the plethora of legislations. More so the number of legislations seemed to encourage confusion and ignorance in the oil industry, thus encouraging gross breaches. Furthermore the paltry fine sums paid as punishment and the six months terms of imprisonment for offences in the oil industry encourage participants in the oil industry to breach legislations guiding participation in the oil industry in Nigeria rather than obey such legislations. This ought to be discontinued by system monitoring and conforming mechanisms.

### 9.2 Recommendations

It is hereby recommended as a matter of urgency as follows:

1. That there is need to compile and consolidate all the laws into one legislation just as was done in the case of laws regulating the operation of companies in Nigeria known as Company and Allied Matters Act (CAMA) 2004 for the reason that because part of the problem faced in implementation is the lack of awareness of the existence of some of these laws.
2. Need to update the legislations on acquisition of oil rights to meet international best practices that encourage development.
3. To protect the varied interests of Nigerians by enacting laws to replace obsolete laws which do not reflect current trends in the industry, especially introducing legislations which protect the health of Nigerian citizens.
4. There is need to address the provisions on penalties by any defaulting companies to make it stiff thereby deter rather than encourage defaulters.
5. There is the urgent need for the legislature to wake up and assume her responsibilities- by identifying and repealing all obsolete and inadequate legislations and replacing them with functional or living legislations.
6. Furthermore, it is recommended that a Monitoring Committee be set up with the Agency responsible for regulating oil acquisition rights in Nigeria for the reason that even where the laws are adequate, they are not implemented or adequately enforced due to lack of monitoring and compliance.
7. Eradication of all forms of corruption in the Petroleum industry using appropriate legislations. This will no doubt make Nigeria to take its pride of place as an oil producing State.
8. Passing the Petroleum Industry Bill into law; putting into consideration all positive measures to cover all interests and encourage sustainable development.

### REFERENCE:

- Atsegbua, L.A., (1985) Nigeria Petroleum law – The Acquisition of Oil Rights in Nigeria (Benin-City, Renstine Nig. Ltd.) p.5
- Atsegbua, L. (1998) "Tax Deduction Under the Petroleum Profits Tax Act: Gulf Oil Co. (Nig) Ltd v. FBIR" 3 M.I.L.B.Q. 122
- Ategbua, L. (2012) Oil and Gas Law in Nigeria: Theory and Practice, third edition (Benin: Fifers lane Publishers) at 42
- Ayua, I.A. & Guobadia D.A.(2001) : Political Reform and Economic Recovery in Nigeria (Lagos, NIALS,)
- Bafor, B.E. (2001) "Economic and Social Constraints to Harnessing the Potentials of the Upstream Sector of the Nigerian Petroleum Industry"
- Dias, R.W.M, (1985): Jurisprudence (London, Butterworth's)
- Etikerentse, G. (1978): The Impact of the Land Use Act on land Acquisition compensation (Oil and Gas Law and Taxation Review)
- Etikerentse, O. (2004), Nigerian Petroleum Law (2<sup>nd</sup> Ed. Nigeria, Dredew Publishers)
- Etikerentse, G. (2001) "Oil and Gas Exploration in Nigeria: Challenges for the 21<sup>st</sup> Century" (Lagos, NIALS,)
- FGN (1914) The Mineral Oils Ordinance of 1914
- FGN, (1960) Official Gazette No. 76 of the 17<sup>th</sup> of December, 1959 as amended by Notice 576 published in the Federation of Nigeria Official Gazette No. 16
- FGN (1968) CAMA Cap C20 LFN 2004
- FGN (1969), The Petroleum Act Cap P.10 LFN 2004
- FGN v Zebra Energy (2002) 18 NWLR (pt 798) 162

- FGN (1969) The Terminal Dues Act Cap T
- FGN (1990) Cap 338 LFN, now Oil Pipelines Act, Cap 07 LFN 2004.
- FGN, “History of the Nigerian Petroleum Industry”, available at [www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasinNigeria/IndustryHistory.aspx](http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasinNigeria/IndustryHistory.aspx)
- FGN, (1999), Constitution of the Federal Republic of Nigeria (CFRN) Cap. C23 LFN 2004, Section 44 (3) and Petroleum Act Cap. P10 LFN, section 1.
- Garner, B. A. (1990) Black’s Law Dictionary 6<sup>th</sup> ed. (St. Paul, Minnesota: West Publishing Co.)
- Ifaturoti, E.A (1994): “Stable Administration and Mineral Resources Development” A paper presented at the 3<sup>rd</sup> Nigerian Mining and Geophysics Series, (NMGS) Annual Lecture Series.
- Ikpeze, O.V.C. (2015) Legal Education in the 21<sup>st</sup> Century Nigeria: Need for Diversity in Content Paradigm, *Journal of Law, Policy and Globalization*, Vol. 39 p63-77.
- Ikpez , O.V.C. (2015) Improved Female Customary Land Inheritance Necessary for Accelerating Socio-Economic Development in South –East Nigeria. *Developing Country Studies (Online)*, Vol.2 No. 14 p26-29.
- McBeth, British Oil Policy 1919-1939, 1. Cited by Phia Steyn “Oil Exploration in Colonial Nigeria, C. 1903-1958” retrieved from: <https://dspace.stir.ac.uk/bitstream/1893/2735/1/Oil%20exploration%20in%colonial%Nigeria.pdf>
- Nelson, N.(2015) National Energy Policy and Gas Flaring in Nigeria. *Journal of Environment and Earth Science (online)* Vol.15. No.14 p58-64
- Oge, O., “Oil and Nigeria” at <http://www.nigeria-planet.com/Oil-And-Nigeria.html>. Retrieved 06-24-2009
- Oyebode, G. (1990) Government Regulations. Approval Processes in Nigeria (1990) *Energy and National Resources Laws*. Vol. 8. No.4
- Oladeji, J.J., (2015) Environmental and Health Implications of Processing, Harvesting, Distribution and Using both Renewable and Non-renewable Energy Sources. *Journal of Energy Technologies and Policy*, Vol.5. No.7
- UN, (1962) United Nations General Assembly Resolution 1803 (XVII) of 14<sup>th</sup> December
- UN, (1974) (Declaration of the Establishment of a New International Economic Order) The Charter of Economic Rights and the Duties of States, resolution 3281 (XXIX) of 12<sup>th</sup> December.
- Schatzl, L. H. (1969), *Petroleum in Nigeria* (Ibadan: Oxford University Press)

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:

<http://www.iiste.org>

### CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

**Prospective authors of journals can find the submission instruction on the following page:** <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

### MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Academic conference: <http://www.iiste.org/conference/upcoming-conferences-call-for-paper/>

### IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library , NewJour, Google Scholar

