
REWRITING CONCESSIONS AGREEMENT: NIGERIAN VIEWPOINT

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ABSTRACT: *This article examined the relevant legal provisions that regulate concession Agreements in the exploitation of Petroleum in the Nigerian Oil Industry. It is important to point out right from the onset that concession agreements from the basis upon which joint venture and memorandum of understanding arrangements are entered into between the Federal Government and Concession holders. In its lucid preparation text books, case law, reported and unreported, internet materials were consulted. The position envisaged that concession agreements are common with countries involved in the upstream activities in the oil industry. Usually, the concession holders are involved in key activities such as exploration, prospecting, and production in commercial quantities of petroleum.*

KEYWORDS: *Exploration, prospecting, petroleum, oil industry, upstream activities, concessions agreement*

INTRODUCTION

Resources that constitute Petroleum [that is, crude oil and natural gas] may occur on shore (land) or offshore (beneath the sea bed)¹. Though the Dictionary definition of the term differ slightly in the sense that Petroleum is ‘ a mineral oil obtained from below the surface of the earth, and used to produce petrol, paraffin, and various chemical substance’² The legally acceptable definition is provided in section 15[1] of the Petroleum Act which defines Petroleum as; ‘mineral oil [or any related hydrocarbon] or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shales or either stratified deposits from which oil can be extracted by destructive distillation’³

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¹. Oche, P.N. (1998). Ownership of Petroleum in Nigeria. Vol. 2, No 2 JPPL 13pp.

² See Longman Dictionary of Contemporary English (London: Longman Publishers, 1978). 812pp

³. Cap. 350, Laws of the Federation of Nigeria, 1990.

In the same vein, since exploitation means ‘to use or develop a thing fully, so as to get profit’⁴ it becomes apparent that the term encompassed the exploration, prospecting and eventual mining of the mineral oil which forms the subject of our discussion-Petroleum.

EXPLOITATION OF PETROLEUM IN NIGERIA

According to the statistical review of the World Oil Industry, ‘over 90 of traded crude is exported from low income countries’⁵ The term ‘crude’ here means ‘crude oil’ which refers to ‘mineral oil in its natural state before it has been refined or treated [excluding water and other foreign substances]’⁶

The search for oil in Nigeria began in 1908 when a German Company, Nigerian Bitumen Corporation drilled fourteen [14] wells in what is today Lagos state before ceasing operations with the outbreak of World War I⁷ Interest in the possibility of discovering oil in Nigeria revived in 1937 with the establishment of Shell/D ‘Arcy Exploration Parties, a consortium owned equally by Royal Dutch Petroleum Development company of Nigeria Limited’.

In November 1938, this company received an oil exploration License [OEL] concerning all of Nigeria. By 1957, Shel-BP had reduced its acreage to 40,000 sq miles of Oil Prospecting Licenses [OPL’s). Of this acreage, Shell-BP converted nearly 15,000 sq miles into Oil Mining Leases [OML’s) in 1960 and 1962 and returned the residual to the Nigerian government⁸ Between 1938 AND 1941, Shell-BP undertook preliminary geological reconnaissance. After a five-year interruption caused by World War II, it intensified and followed up this activity with geophysical surveys in the 1946-51 period.

Having drilled its first wildcat well in 1951, it came up dry. During the next four years the company concentrated efforts in the Creaceous areas rimming the Niger Delta without discovering any oil production wells⁹ Nigera’s first commercial discovery by Shell-BP in 1956 was at Oloibiri, [now in ‘Bayelsa State’s even as exportation of crude Petroleum began in 1958

⁴. See Longman Dictionary of Contemporary English, Op. Cit. 3-84pp.

⁵ Statistical Review of the World Oil Industry (1968). London: The British Petroleum Company Ltd, 1969 21pp.

⁶ Cap 350; Loc Cit.

⁷ Dickie, R.K. (1966). Development of Crude Oil Production in Nigeria and the Federal Governments Control Measures. A Paper presented to the Institute of Petroleum, London: January, at 1pp.

⁸ Frank, E.J. *et al* (1967). The Nigeria Delta Oil Province-Recent Developments Onshore and Offshore. Paper presented to the 7th World PETROLEUM Congress, Mexico, City. April.

⁹ Frank, E.J. *et al* (1967). The Niger Delta Oil Province-Recent Developments Onshore and Offshore. Paper presented to the 7th World Petroleum Congress, Mexico, City. April.

and other oil companies joined up in the search. The government has since accepted bids for new concessions since 1970¹⁰

However, Gulf Oil Company- the name by which Cheron was known in its early days in Nigeria- discovered Nigeria's first successful offshore oil field in December, 1963, By April 1965, it exported Nigeria's first barrels of crude oil to the International market.

THEORETICAL AND LEGAL FOUNDATIONS OF CONCESSION AGREEMENTS

The Question of Ownership of Petroleum in Nigeria; This is a particularly cogent issue because most of the problems arising from the industry centres around issues of ownership, compensation and poor management. According to Patrick Oche,¹¹ petroleum resources are naturally endowed. However, they do not occur in vacuum. The resources that comprise petroleum [that is, crude oil and natural gas] may occur on shore [land] or off-shore [beneath the sea bed]. The land in which the resources occur is definitely the property of an individual or entity.

In the same vein, off-shore occurrence may obtain within the Territorial Waters of a given state, or in the Exclusive Economic Zone [EEZ] of a coastal state. Therefore, it can be said that, to the extent that crude oil and gas occur in properties that are owned, they are capable of being owned, ordinarily, by whoever owns the land, or water that they occur.¹²

However, against the back-drop, the above analysis, the right of ownership of Petroleum is enshrined in the constitution of Nigeria at section 40[3]¹³ The Petroleum I Act [as amended by Petroleum [Amendment [Decree]6 [the Act] at section [1] also makes a provision which is identical in effect and purpose as that of the constitution¹⁴ The above provision is made clear in the preamble and it states inter alia, that the Petroleum Act is;

*'An Act to provide for the exploration of petroleum from the Territorial waters and the continental shelf of Nigeria and to vest the ownership of and all on-shore and off-shore revenue from petroleum resources derivable therefore in the Federal Government and for all other matter incidental thereto'*¹⁵

From the foregoing, it becomes apparent that it is actually difficult to misconstrue the provisions of the Law, as the same point is been re-echoed at section 1[1] and [2] of the Act and it states

¹⁰ Pearson, S.R. (1970). *Petroleum and the Nigerian Economy* California: Stanford University Press, 1, 17-8pp.

¹¹ The Guardian Newspapers (1997). Vol. 14, No. 6, 916, 10 October, 12pp.

¹² See also Oche, P.N. Loc. Cit.

¹³ Constitution of the Federal Republic of Nigeria (1979).

¹⁴ Oche, P.N. op. cit.

¹⁵ Cap 350, loc cit.

that; ‘The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the state’. The section applies to all land [including land covered by water] which- [i] is in Nigeria; or [ii] is under the territorial waters of Nigeria; or [iii] forms part of the continental shelf¹⁶

However, shocking enough, an appreciable percentage of the populace is actually ignorant of these provisions of the law. For instance, as was reported in the Guardian Newspapers”.

“Communication in the vicinity of oil production have since become increasingly demanding of the oil companies; their perception of their rich neighbor, the oil company, which has intruded into their rural life has become negative. They are so rich, we are so poor”. They take the oil from our land and make huge profits, but what do we have to show for it they give oil money to government to use in developing other parts of the country, why cant they leave the money with us here where they get the oil from/; These are some of the questions which reflect the frustrations of many of the youths in the oil [producing] communities’.

CONCESSION AGREEMENT

Basically, there are three types of legal permissions that a petroleum company can receive from the Nigerian government to undertake activity in Nigeria. These form the Concession Agreements which would normally exist between the Nigerian government and the oil company¹⁷. These agreements are specified in the Petroleum Act at paragraphs 1 to 13 of the First Schedule ¹⁸ and they are as follows;

Oil Exploration Licenses [OEL’s] ; This is valid for one or two years [that is, if the one your extension was approved by the Minister of Petroleum Resources]; it confers non-exclusive rights to make geological and geophysical studies but not to drill for oil.

Oil Prospecting Licenses [OPUS]; This involves an obligation on the part of the company to meet certain minimum drilling requirements. Moreover, they grant exclusive right for a maximum period of five [5] years [including any periods of renewal].

Oil Mining Leases [OMUS]; Half of the OPUS Half ON expiration is converted in an OML with the Acreage reverted back to the government, and it is usually effective for a maximum duration of ten [10] years [at paragraph 12[1] of the first schedule of the Act¹⁹and is renewable for another term, it shall be noted according to Pearson, that:

‘Premium’s are attached to the granting of any or all of the above concession agreements, the exact amount being set by the government according to what the market will bear at the time²⁰

¹⁶ Ibid

¹⁷ The Guardian newspaper, Loc. Cit

¹⁸ Cap 350, loc. Cit. Also, Pearson, op. cit 1176-1177pp.

¹⁹ Ibid

²⁰ Pearson, op. cit

In the opinion of the research, what appears to be most painful to the oil companies is the fact that as much as half the acreage of the OPUS so acquired has to be done away with by reverting it back to the federal government of Nigeria. This was the exact episode that transpired between shell-BP [as it was known then] had to part with as much as 25,000 [twenty five thousand] square miles of the total 40,000 square miles of OPL granted, leaving only 15,000 [fifteen thousand] square miles of OPL which was inverted into an OML in 1960²¹ The situation, as opines by the researcher was a deliberate attempt by the then British Colonial government to ensure that Petroleum in Nigeria which was under her full powers of command was not carted away indiscriminately by prospecting companies.

Additionally, the question of premiums set by government seem to be an extra burden on the holders of such OML's since the aim of every business enterprise is to minimize cost and maximize profit. In a nut shell, these provisions of the law as it centres around OML's and premium are of serious advantage to our indigenous Nigerian government, irrespective of the fact that the provision was made by our predecessors, the colonial masters.

However, there is another dimension to Concession Agreements, This is referred to as 'traditional concession' in which two or more oil companies come to certain terms [of agreement] concerning their activities the Nigerian Agip Oil Company, NAOC [owned equally by Agip, an Italian corporation, and Philips, an American private corporation] on the one hands Federal government to purchase up to 30 of the company's share capital in installments to be paid over three [3] years and to pass on its shares to state governments or public corporations²² On future projections concerning concession agreements, Pearson states; 'It is 'significant that in the Petroleum Decree, 1969 [now Petroleum Act], the provisions of which apply only to future concessions, the possibility of participation by the Federal Military Government [the then General Yakubu Gowon's administration] on terms to be negotiated is specifically allowed for if it is deemed to be in the public interest'²³

Paragraph 17 and 23 of the First Schedule of the act provides the procedure to be adopted before terminating OML's and this is usually done by' giving to the Minister not less than three months notice in writing to that effect', or 'The Minister may revoke any OPL or OML'²⁴

THE ROLE OF THE 'MINISTER'

Though the provisions of section 40[3] of the constitution and section 1[1] of the Petroleum Act vests the ownership of Petroleum in its natural strata [or of mineral oil or natural gas] in the Federal government, section 2[1] of the act empowers the Petroleum Resources Minister 'the

²¹ The Shell-BP story, op. cit p. 14

²² Pearson, op. cit p. 14

²³ Ibid (emphasis mine)

²⁴ Caps 350. loc cit.

minister's to issue licenses and leases [traditional concessions] for Petroleum Operations, and by means of such concessions to re-vest the ownership of the petroleum in the specific land or sea area covered by each such concession on the license or lessee as the case may be. The minister can therefore issue an OEL, OPL and OML though it must be noted that unlike the other two, an OEL does not divest the Federal Government of its ownership of petroleum within the land area concerned²⁵

Once an OPL and OML are granted, the Federal Government by that concession loses her right of ownership of petroleum in such acreage to the person or entity to whom the license or lease is granted. The rights and powers person or entity to whom the license or lease is granted. The rights and powers of a concessionaire are therefore seen as a secondary effect of a concession.²⁶ The 'minister' in the opinion of this writer, seems to be an authority or an 'institution' in petroleum affairs. This perhaps, is the reason several ministers in the past ended up messing up the industry for one reason or the other.

The roles of the minister are spelt out in the Act. These are; [i] granting of concession on behalf of the Federal Government. In fact, section 2[1] [infra] states: 'Subject to this Act, the Minister may grant- a license, to be known as an exploration license, to explore for petroleum; a license, to be known as an oil prospecting license to prospect for petroleum and a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum'.

(ii) granting of approval to construct a refinery in Nigeria. This role is contained as well in 'the Act' at section 3[1] and it states inter alia; 'no refinery shall be constructed or operated in Nigeria without a license granted by the minister'²⁷ Granting of the right of importation, distribution, and so on of Petroleum products.

Again, section 4[1] of 'the Act' state inter alia:

'Subject to this section, no person shall import, store, sell or distribute any petroleum products in Nigeria without a license granted by the Minister 28'

It should however, be noted here that the above provision of the Law at Section 4[2][a] exempts, if published in the Federal Gazette by order of the Minister, the storage, sale or distribution of not more than 500 liters of Kerosene, and such other categories of petroleum products.

Delegation of Authority; Subject to the provision of section 4[5] of the Act, the Minister is empowered to delegate his authority to another person or entity, and it states thus:

"The Minister may by order published in the Federal Gazette delegate the power to grant licenses under this section to such persons or authorities in a state as he may deem fit".

This has been one controversial role of the minister. Subject to the provision of the same section of 'the Act. One begins to wonder who actually gratifies to enjoy such delegated

²⁵ Ibid. 14-15pp

²⁶ Ibid. 14-15pp.

²⁷ Ibid

powers. What criteria is to be used to pick such a person or authority/these questions remain unresolved²⁸.

As a result of incompetence, inefficiency and perhaps gross mismanagement, when the new military regime under General Abubakar constituted the new Federal Executive Council, the post of a Minister of Petroleum and Natural Resources was left vacant²⁹. The affairs of the ministry was left to be run by a Sole Administrator in the Ministry who reported directly to the Presidency. What could have accounted for this sudden disappearance of the Petroleum Ministry? Could it be as a result of the corrupt or shady deals of the past Ministers? This may be the blunt truth³⁰. Even under the current civilian dispensation, the petroleum portfolio is under the firm grip of the president.

COMPENSATION

There has been no law that states compensation must be paid to individuals on whose land oil was discovered. This has been the major issue in question that has threatened our peaceful existence time without number as a sovereign state. The government for a long time left the issue to be handled by the prospecting oil companies. From every indication, the law only makes provision for the payment of fees, rents and royalties by the Holder of an OPL or OML to the Federal Government. This is stated clearly at paragraph 30-32 of the first schedule to the Act and it states inter alia in respect of royalties. 'Royalties shall be paid at the prescribed rates or, where rates are specified in special terms and conditions attached to the relevant license or lease at the rates so specified'³¹

The question then is; 'Why the much clamour by individuals for compensation'/ The reason is simply because most oil companies have also adopted their own position in respect of compensation and this is often geared toward meeting the communal needs of the locality. According to Pearson, since discovery of petroleum in Nigeria in 1956. 'General knowledge of the existence of large reserves of petroleum has exacerbated divisive ethnic pressures'³². They later engendered frequent communal clashes over oil and oil-related claims. The government responses was to establish Oil Minerals Producing Areas Development Commission [OMPADEC] to address problems of environmental pollution occasioned by oil prospecting activities and the underserved neglect of oil producing areas and the consequent protests by the communities'

²⁸ Ibid

²⁹ The News Magazine, 7 Sept., 1998, 25p

³⁰ The Guardian Newspapers, 23 August 1998, p.1

³¹ Cap. 350, Loc. Cit.

³² Pearson, op. cit. p 139

OMPADEC was established under Decree 23 of 1999 to address the difficulties and sufferings of the people in oil producing areas. Its primary assignment was to ensure physician and human development in the communities by compensating, materially, the communities, local government areas and states which have suffered damage [ecological, environmental, etc.] or deprivation as a result of oil mineral prospecting in their areas; provision of infrastructural and physical development; tackling the problem of oil pollution and spillage and liaising with the various oil companies on matters of pollution control³³ and a host of other responsibilities or objectives. It is true however, that:

Since the discovery of oil in Nigeria in 1956, the oil producing areas have suffered some environmental damage, owing to the prevailing technology in sue in the oil industry worldwide at the time³⁴

The policy adopted by the oil companies is such that compensation is paid only when genuine cases of oil spills occur. For instance, between 1989 and 1995, 25% of oil spills were as a result of sabotage. Investigations in the Ogoni area revealed that 69% of oil spills between 1985 and early 1993 were caused deliberately by communities. This calculated measure was usually adopted to get compensation and also to make political gains³⁵ Chevron, a leading oil company in Nigeria in its public relations campaign has this to say;

“Instances of sabotage where equipment is vandalized and pollution is instigated and then communities turn around to ask for compensation lead to friction in relationship.... we take

The position that we will promptly pay equitable compensations only where the claims are genuine. On the other hand, we will firmly refuse to compensate sabotage and extortion and all manner of spurious claims. Pollution should not be a matter of emotion but of fact³⁶

Most of these claims for compensation as a result of pollution have been as a result of the fact that the enlightened city or community youths started coming back with new ideas of how to make the best of the relationships with oil prospectors within the vicinity of their community. Many of them, it must be remembered, had acquired information on environmental pollution. They, unlike most of their parents, had become aware of their right under the law, and they know that oil spills, one of the accidents experienced during oil production, can fetch a lot of compensation money. They had heard about how much was paid in Alaska, USA, when Exxon Valdez spilled thousands of barrels of crude there. They now see much more than ever before the

³³ Vanguard Newspapers Vol. 13 Vol. 13 No. 1030 dated 15 February 1998, p. 11.

³⁴ Nigeria “The Ogoni Crisis: The Truth of the Matter”. Lagos: Federal Ministry of Information, 2^od

³⁵ Ibid. 14pp

³⁶ The Guardian Newspaper, op. cit, 13pp.

activities of the oil industry a new opportunity to better their lot and get out of a life that now seems so bleak and promises little or nothing³⁷

However, despite the fact that OMPADEC was set up deliberately by the government to address the problems of these oil producing areas, the Commission within the few years it has existed did little or nothing to deserve commendation. The Commission was therefore re-constituted by the then Head of State, General A.A. Abubakar in 1998 and he:

“Expressed the hope that the new OMPADEC will meet the expectations of its ar get population and help in no small measure to pacify the oil producing communities and guarantee a more conducive atmosphere for the oil exploration and producing companies”³⁸

But even until now, OMPADEC has not lived u to this expectation. And incessant clashes here and there which has threatened our internal peace and security has not abated.

Factors Influencing the Operation of Petroleum Companies in Nigeria.

There are four methods by which a technically less advanced country can tap a potential extractive export reserve;

1. Invite foreign concessionaries to form local subsidiaries and thereby supply management and technology, capital, and markets.
2. Undertake joint ventures in which foreign investors supply management and technology, and markets as well as a portion of the capital-with the remaining capital furnished by the host country
3. Institute management contracts whereby experienced foreign firms offer management and technology only and the host supplies the capital and tires to find markets
4. Do without foreign participation altogether and furnish management and technology, and markets itself.

The British colonial government of Nigeria, as sole owner of all sub-soil minerals in Nigeria, chose and implemented the first of these alternatives. According to Gabriel, the situation was same in venezia as well, as the first option was chosen³⁹ The operation of each petroleum production company in Nigeria is thus constrained and heavily influenced by its dealings with three institutions- its head office, the remainder of the industry in Nigeria, and the Nigerian Government⁴⁰

³⁷ The guardian Newspaper, op. cit p.11-12. Also, Nigeria “The Ogoni Crisis: the Truth of the Matter”, loc. Cit. “see”.

³⁸ Vanguard Newspapers, Vol. 14. No. 4072 dated 2 October 1998, p.1.

³⁹ Gabriel, K.G. (1967). “The Gain to the Local Economy from the Foreign owned Primary Export Industry: The case of oilin Venezuela” Unpublished work; Doctor of Business Administrative Dissertation, Graduate School of Business Administration, Harvard University,

⁴⁰ Person, op, cit, 13pp

Moreover, the policy of inviting foreign petroleum companies to search for and produce oil in Nigeria was continued by independent Nigerian government that decided to limit this participation for the most part to large western corporations. This decision was as a result of Nigeria's limited technical expertise, the difficult technology and large capital requirements associated with oil production, the alternative productive opportunities available for Nigerian investment resources, and the restricted nature of the market for non-integrated crude.

All of the seven International majors [that is, the standard oil of California, the standard oil of New Jersey, the Gulf oil [now Chevron], Mobil oil, Texaco, British Petroleum [NW AP], the Royal Dutch Shell Had Nigerian concession as well as certain international minors including Italian and French government-owned concerns as well as private American corporations⁴¹ The exploration and production of crude Petroleum are many faceted operations-setting production levels. The operations according to Pearson, is controlled by intra-company decision making, and the by-play between and among oil companies which often causes complications in the petroleum scene⁴²

In moving Petroleum from the ground to the consumer, the oil industry performs four separate but vertically integrated functions- production, transportation, refining and marketing. In the main,. The industry concentrates its activity under each of the last three headings in the economically more advanced nations. Production, the activity of principal interest to those under developed countries fortunate enough to have Petroleum deposits, is conveniently subdivided into four chronological phases: pre-drilling activities, exploratory drilling, development drilling and equipping of wells, and Production itself⁴³

A wide variety of economic and political factors influence oil company operations I Nigeria. These are:

- i. The industry's financial arrangement with the Nigerian government.
- ii. Location and quality of Nigerian crude. Location entails both international shipping charges and security of supply routes. Western Europe is the most important market for Nigerian Petroleum exports. With the closing of the Suez and canal and the constant threat of imminent upheaval in the Middle East, Nigerian crude is indeed favourably located, though not quite so auspiciously as that of its North African competitors. Quality is usually in terms of a relatively low sulfur content (that is, "sweet crude", relatively high fuel yield and excellent blending properties. Its relative low kerosene yield makes it somewhat unattractive for the much smaller West African market.

⁴¹ Ibid, 114, 16-17 p, also "see" Bolaji Kineme, "Legality of US Threat to use force to deal with OPEC Price increase," "NJIIA Vol. 4, 11978, 7p, as cited by Dapip, S.D. "The Role of OPEC in International Relations. Seminar Paper presented at the University of Jos, Faculty of Law, 1997/98. academic Session. ""

⁴² Pearson, op. cit, 12pp.

⁴³ McDonald, S.L. (1963). Federal Tax Treatment of Income from Oil and Gas. Washington D.C.: The Brookings Institution, 32pp.

iii. The company's relationship with government of socials at several levels. Nigerian government officials show a justifiable feeling of nationalist caution regarding foreign exploitation of a wasting national asset. It is time that the Nigerian government has become unusually restrictive of foreign participation.

In each of the company covenants with the Nigerian government, there reportedly exists a provision usually termed the "Most favoured-nation clause". In this provision, the companies operating in Nigeria promise that they will negotiate within, and by implication, give terms to the Nigerian government equal to the most favorable terms accorded to any other government on the continent of Africa or in the Middle East⁴⁴

FOREIGN INVESTMENT IN A LESS DEVELOPED ECONOMY AND JOINT DEVELOPMENT SCHEMES

Private foreign investment will provide annual streams of direct contributions as well as various indirect contributions to national income in a less developed country. The direct contribution involves local payments to factors of production made by the recently established foreign owned industry. It is time that there is an opportunity for direct investment to be financed by private foreign resources and this investment does not require restrictions on imports.

Pearson explains that direct private foreign investment is defined as including foreign-financed projects in less developed economies in which the foreign investor retains control of management decisions, normally by having at least 51% equity. The idea of forming upstream joint venture in 3rd World countries is understood to have come from the USA⁴⁵ Provision for Joint Development Schemes is made in the Petroleum Act at 47 of the second schedule. Paragraph 47(2) of "The Act" provides:

*"The grantee shall, upon being so required by the Minister by a notice in writing specifying the other parties, co-operate with the other parties in the preparation of a scheme (referred to in this regulation as "the development scheme" for the working and development of the oil field as a unit by the grantee and the other parties in corporation and shall jointly with the other parties submit the development scheme for the approval of the Minister"*⁴⁶

Joint Venture has been in existence in the international oil industry for a long time. It is a non-incorporated partnership arrangement between the host country and the individual oil companies. On a global level the need for governments to participate in upstream activities is anchored on the following objectives, namely;

i. To integrate their personnel and organizations into future operation of these companies.

⁴⁴ Pearson, OP. 6. PP. 18-25

⁴⁵ Vanguard Newspapers, 2 October 1998, 16pp.

⁴⁶ Cap 350, Loc. Cit.

- ii. To enable such personnel and organizations acquire the technical skills for oil prospecting and exploration.
- iii. To monitor closely the activities of the concession holders
- iv. To ensure that the actual cost incurred are reported
- v. To secure access to the necessary technology and technical assistance required in exploration in a cost efficient manner
- vi. To enjoy first hand a percentage of any profit made from the operations

In Nigeria, joint ventures are governed by joint venture agreements (JOA) entered between the Federal Government of Nigeria and represented by the Nigerian National Petroleum Corporation (NNPC) and the various oil companies. Under this arrangement, a partner is appointed as the operator of the joint venture (usually the oil company). The financing of the venture operator according to equity participation usually in the form of 60.60

THE MEMORANDUM OF UNDERSTANDING

The memorandum of understanding became operative in Nigeria in the early 80s. it was necessitated by the drastic slump in world oil prices in the period and the trend of divestment of the oil companies operating in Nigeria. The need to provide incentive to the oil producing companies to increase its oil production made its introduction quite thoughtful. No doubt the government had in mind the end to promote greater commitment to cost control, exploration and recovery. The first memorandum of understanding was signed between the petroleum resources Ministry through NNPC with each joint venture operator in 1986. this can be subsequently on a number of occasions.

PRODUCTION SHARING CONTRACTS

Under the production sharing contracts the oil producing company (the contractor) assumes the full responsibility for the success or otherwise of the operation. It fully finances the cost of the oil exploration and production. Reimbursement only occurs on the discovery and production of oil commercial quantity. Thus there is no re-imburement if there is production. Fixed assets brought under the contract are deemed to be the property of the Federal Government. The oil produced under the contract is first applied by the contractor as cost oil. Any excess after the government has taken (in the form of royalty and tax oil) is shared by both parties the production sharing contracts also provides for the contractor to be taxed at 50% against the rural 85%.⁴⁷

⁴⁷ This is called purpose joint venture which Nigeria appears to be practicing But the more common types is the typical joint venture where the host government is carried through exploitation. Mauritania and Colombia practice the typical joint venture. There is also the Russian type where the Government is carried through rehabilitation and development up to the point where cash flow is generated from the operation

EFFECT OF JOINT VENTURES AGREEMENTS, MEMORANDUM OF UNDERSTANDING ON THE OIL INDUSTRY

These arrangement have no doubt shaped positively the Nigerian oil industry. The Federal Government has become a significant active player in the industry. The oil industry is no doubt capital intensive. The government has however not been able to meet its cash call obligation. This led to a significant reduction in the level of its instrument by the joint venture operators. For instance a number of active rig fell from since 1993. But the positive side of the memorandum of understanding must be mentioned. It played a major role in stabilizing the Nigerian oil industry in the difficult- 80s and encouraged investments in the oil sector.

One is left with the impression that the Act does not seem to contemplate that someday, the Federal Government should conduct Petroleum Operations on its own. This could be deducted in the context of the time when the act was enacted. As at then, it ws doubtful in Nigeria could have satisfied the huge financial commitment, the necessary technical ability and the skilled man-power which petroleum operations entail.

Besides, 1969 was not a period of economic nationalism coupled with the fact that she was not yet a member of the Organization of Petroleum Exporting Countries (OPEC) when the act was enacted. Nigeria was aware of OPEC's urging on developing oil producing states to acquire participatory interests in the ventures of foreign companies conducting petroleum operations in their territories. That awareness may account for the Federal Government's right of participation which is expressly provided for in paragraph 34 of the first schedule to the act; hence NNPC's participation in full swing in the Joint venture agreement⁴⁸

Legislation in developing countries (of which Nigeria is one), is geared towards investing ownership in the state which, as ownership in the state which, as owner may then contract out mineral resources exploitation to sovereign enterprises for a fixed term and under specific conditions which are normally concluded under concession agreements”.

The question then is, has the law been able to achieve its aims? This writer agrees with Oche's views that if ownership of Petroleum in developing countries is vested in private persons, such private persons cannot contract out mineral resources exploitation to foreign enterprises; and that since the presence of indigenous Nigerian Oil Companies is now common place in the Nigerian Oil Industry, one of the board objectives of the NNPC therefore is participating in the Petroleum Industry in indigenous capacity⁴⁹

The Federal Government should not insist on contracting solely (or at all) with foreign enterprise for the exploitation of its mineral resources. However,. Government control as enshrined in the

⁴⁸ The First RSC was signed with Ashland Oil in 1972. presently the Federal Government has signed such contracts with B-P stat oil, Esso, Sheel for dep off-shore Exploration.

⁴⁹ See Oche, P.N. Loc. Cit

constitution and the Act is therefore deemed by the researcher to preempt effective control and avoid wastage and to contribute to the consolidation of territorial sovereignty, economic power and the international standing of the state⁵⁰

The conflict potentials of private ownership for Petroleum is unimaginable due to this migratory character. For example, in the American case of *Barnard v Monongahela Natural Gas Co. Ltd*⁵¹ in which an injunction to prohibit drilling by a land owner on adjacent land was denied on the ground that the court was unable to determine the extent or nature of drainage from the plaintiff's land.

CONCLUDING REMARKS

Despite the numerous advantages associated with state ownership of mineral or in situ, there is usually the problem of citizens being deprived of their interest in land in cases of suspected or actual occurrence of the resources. Citizens are not known to always react favorably to being so deprived, as was the case with the Ogoni Crisis and several other inter-communal clashes and civil unrests centered around the exploitation of Petroleum the country⁵²

It is recommended here that since Nigeria is not even as oil rich as most of the Arab States, Libya, Egypt, Venezuela, among others, which are developing countries as well, government should study extensively the provisions of the Constitution in these countries and adopt same in Nigeria. This might minimize the problems that have been inherent in the Petroleum industry in Nigeria for years.

In fairness to the oil producing' areas something should be done about the question of environmental degradation in these areas, as well as the protests, ill-feeling, among others. In the past have been centered around this issue. Modalities should be set out by government on the mode of compensation for Land lords whose land is eventually confiscated by government for the projection of our national interest.

⁵⁰ Oche, Loc, cit. this was the view of Prof. Agomo, M.A. However, Oche, disagreed with the reasons advanced by Prof. Ajomo regarding the vesting of petroleum in the state

⁵¹ See Chafe S.K. *Petroleum Policy and the Future of the Petroleum Industry in Nigeria* (Lagos: Ministry of Petroleum Resources, 1995, 13 pp.)

⁵² See Oche, op. cit.