



## CRITICAL APPRAISAL OF THE LICENCING REGIMES AND ACREAGE MANAGEMENT IN THE NIGERIAN PETROLEUM INDUSTRY

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### **Abstract**

*Petroleum licensing is a potential regulatory instrument that establishes contractual relationships between the nations endowed with immensely economically viable petroleum resources and companies; that is, international oil companies (IOCs) and local or indigenous contractors as allowed under the law. One of the fundamental essences of petroleum licenses and leases is to grant permission authorizing exploratory activities which would be illegal otherwise. The paper examines the licensing regimes in Nigerian petroleum industry with emphasis on the post-colonial and current regime of petroleum licensing introduced by the Petroleum Industry Act, 2021, in other to proffer ideas that will enable the enhancement of the operation in the Nigerian petroleum industry and towards the attainment of a more robust petroleum activities. The paper appraises key issues on the efficacy, success and challenges of the previous regimes as well as commenting on the robust legislative innovations introduced by the Petroleum Industry Act, 2021, intended to address the weakness of the licensing regime and acreage management under the predecessor legislation; the Petroleum Act, 1969. The paper also made references to seminal provisions relevant to the subject matters under discuss in local and international legal framework as well as relevant institutional frameworks with the ultimate end of addressing observed weaknesses and lacuna in the legal frameworks and proffer solution so as to enable the attraction of foreign investors and robust participation of local investors in the petroleum industry and increasing government revenue for the overall interest of the Nigerian people. The paper adopts a doctrinal approach, describing, analyzing and considering the legal basis as well as the petroleum industry peculiarities. The paper also adopts doctrinal research methodology, that is, the use of statutes, international conventions and books, articles in journals, internet sources and case laws. The paper concludes that the Nigerian Petroleum industry can attain robust improvement that can satisfy its commercial objectives and the domestic supply obligations by fully adopting an enhanced – transparent contractual regime in the industry and strict compliance and enforcement of all legal and regulatory provisions to allow and promote confidence of the potential investors in the Nigerian Petroleum Industry.*

**Keywords:** *Licensing, Regimes, Acreage, Petroleum, Management, Nigeria.*

### **1.0 Introduction**

The focus of this paper is to examine the impact of the various licensing regimes and acreage management in the Nigerian petroleum industry. Nigeria is one of the counties in the world endowed with vast reserves of economic resources and mineral deposits. Petroleum which is a naturally occurring liquid found beneath the earth's surface that can be refined is one of the vast economic reserves and mineral deposits in Nigeria.



Petroleum is a fossil fuel, meaning that it has been created by the decomposition of organic matter over millions of years.<sup>1</sup> Petroleum is formed when large quantities of dead organism – primarily zooplankton and algae – underneath sedimentary rock are subject to intense heat and pressure.<sup>2</sup> Majority of the nations in the world rely on Petroleum for many goods and services, thus making Petroleum industries extremely powerful and the major influence on world politics and global economy.<sup>3</sup>

The petroleum licensing is a continuous venture, occurring particularly with nation states endowed with economically viable minerals mineral resources. The grant of a petroleum license is a genuine instrument of permission authorizing the license with regard to the exercise of the rights granted.<sup>4</sup> Nigeria is blessed with natural crude oil and gas reserves but its citizens are energy poor as they are not adequately supplied with petroleum products and its derivatives in a sustainable and cost-effective ways.<sup>5</sup> This sad situation leads to the current concern about energy security which has defiled various reforms embarked upon by past leaders in Nigeria since the discovery of petroleum in commercial quantity in 1958 at Oloibiri in Bayelsa State in Nigeria. Energy security is broadly referred to as a situation of availability, reliability, affordability and sustainability of energy sources.<sup>6</sup>

The term license is defined in the law of agreement as consent concurred by an equipped specialist, presenting the privileges to do some activities without which such approval would be unlawful, or would be a trespass or a tort, likewise the composed proof of such authorization.<sup>7</sup> In genuine property law, it is the power to complete specific activities on another's territory without owning any rights therein. It is likewise evidence such power so concurred.<sup>8</sup> A license is a consent that empowers activities, the performance of which some way or another would be unlawful.<sup>9</sup> A good number of license are best classified as officially conceded exceptions from authoritative restrictions.<sup>10</sup>

Licensing regimes and acreage management in Nigeria petroleum industry therefore deals with the totality of the statutory, regulatory control and participatory right in every contractual dealing with licensee or leasee via the licensing instrument over the petroleum insitu on a designated acre.

This paper therefore tends to critically investigate the objectives of the licensing regimes, its governance and administrative structure, the legal frameworks relevant to the industry so as to know the degree of impacts of the petroleum industry in the Nigerian economy and the life of the Nigeria people. The result of the said investigation will enable an impact assessment of the various licensing regimes as to

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<sup>1</sup> J. Chen, 'Future and Commodity Trading Energy Trading' <<https://www.investopedia.com/terms/p/petroleum.aspx>> accessed 22nd July, 2023

<sup>2</sup> (n1).

<sup>3</sup> *Ibid.*

<sup>4</sup> A.P. Lilly-Tariah and E.E. Woha, 'An Appraisal of the Petroleum Licensing Regimes of Nigeria and the United Kingdom' (2019) (6) (1) *Journal of Public Law*. 29

<sup>5</sup> S.C. Dike, *Energy Security: The Case of Nigeria and Lessons from Brazil, Norway and the UK* (Pearl Publishers, 2015).

<sup>6</sup> *Ibid.*

<sup>7</sup> What is a LICENSE? Definition of LICENSE (Black's Law Dictionary) <<https://thelawdictionary.org/license>> accessed 20th July, 2023.

<sup>8</sup> *Ibid.*

<sup>9</sup> G. Gordon and others, *Oil and Gas Law: Current Practice and Emerging Trends* (2nd edn, Dundee University Press, 2011).

<sup>10</sup> T. Dainth and others, *United Kingdom Oil and Gas Law* (Sweet & Maxwell, 2000) 112.

ascertain whether the rich natural mineral endowments have been effectively harnessed and managed for the overall interest of the Nigerian people. The outcome of the impact assessment will further provoke recommendations where necessary for future amendments of relevant legal frameworks and make relevant policies that will enable the attainment of a more viable and robust petroleum licensing regime and administration that will ultimately meet the needs of the Nigeria people.

## 2.0 Unveiling the Legal Concept of Ownership of Petroleum Resources in Nigeria

It is seminal to state that for a better understanding of the subject-matter of this paper, it is relevant to understand the concept of ownership of petroleum resources.

The concept of ownership of natural resources, particularly petroleum is as old as the existence of the natural resources.<sup>11</sup> For Holmes, the notion of ownership carries a connotation of dominance, ultimate control and ultimate title holder against the whole world.<sup>12</sup> Harris argued that ownership interest involves property limitation, expropriation and appropriation.<sup>13</sup> S.C. Dike argued that ownership entails absolute dominance with all the powers of control over a property or thing.<sup>14</sup>

In line with the recognition given to statehood, the preamble to the petroleum Act, 1969 provides that the objectives of the Act is to vest the ownership of petroleum in the Federal Government of Nigeria. However, Section 1 of the Act<sup>15</sup> vests the right of petroleum in the state. These two provisions create ownership rights which contribute to the ambiguity and energy security conflicts.

The case of *AG Federation v AG Abia State and 35 others*<sup>16</sup> presents a judicial view of the concept of ownership of petroleum resources in Nigeria. The case was filed by the Federal Government of Nigeria to determine the ownership of petroleum located on the sea bed of the continental shelf of Nigeria adjacent to some of the littoral oil producing states of Nigeria.

The Supreme Court of Nigeria in its judgment considered that coastal state under the 1982 Law of Sea (UNCLOS) meant a nation state and not internal states of the country like Nigeria. It further states that international law applies to countries that are members of the comity of nations and not state within a country.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) also vests in the Federal Government of Nigeria the ownership of natural resources in petroleum. The federal government has the constitutional power to make laws for the control and management of the natural resources in Nigeria. The National Assembly, on behalf of the government exercises this right and make laws on anything or items contained in the exclusive list. Mines, Minerals including petroleum are found in the exclusive legislative list and within the jurisdiction of the federal government Section 4 of the 1999 constitution of Nigeria (as amended) empowered the National Assembly to make laws controlling the

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<sup>11</sup> D. Yergin, *The Prize: The Epic Quest for Oil, Money and Power* (Simon Schuster, 2010) 3 and 79.

<sup>12</sup> O.W. Holmes Jr, *The Common Law* (First Published, Macmillan and Co 1882) 246

<sup>13</sup> J.W. Harris, *Property and Justice* (OUP 2003) 64.

<sup>14</sup> S.C. Dike, *Energy Security: The Case of Nigeria and Lesson from Brazil, Norway and the UK* (Pearly Publisher, 2015).

<sup>15</sup> PA 1969.

<sup>16</sup> (2002) 6 NWLR (pt. 746) 728-729



nation's natural resources on behalf of the federal government.<sup>17</sup> Section 6 (6) (c) of the constitution provides that no person or authority can question, in any court of law in Nigeria on the right of federal government on how it manages the nation's natural resources or concerning any of the fundamental objectives and directive principles of the state policy pursuant to chapter 2 of the constitution.

The local enactment draws validity and the approval of the international instruments. The UN Declaration of Permanent Sovereignty under Article 1 of the resolution recognizes the rights of the people and nations thus:

The right of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and wellbeing of the people of the state concerned.

Similarly, the General Assembly Resolution 328 (xxix) of 12 December, 1974 of the Charter of the economic rights and duties of a state<sup>18</sup> provides that every state has and shall freely exercise full permanent sovereignty including possession, use and disposal over all of its wealth, natural resources and economic activities.

Under the Petroleum Industry Act 2021, the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the government of the federation of Nigeria.<sup>19</sup>

### 3.0 Evolution of Licensing in Nigerian Petroleum Industry

In discussing the concept of licensing in Nigeria petroleum industry, it is relevant to begin with its traditional origin which is by means of concession arrangement. A concession is defined as the grant of exclusive rights to a concessionaire which may cover a large expanse of unidentified contract area under a long lease; usually not less than 20 years but sometimes 99 years.<sup>20</sup>

The main characteristics of this form of relationship is that while petroleum in situ belongs to the state, the oil company has extensive rights over the area of production with large acreages and long duration at its disposal.<sup>21</sup> Another feature of the concession is that the payment of royalty was based on volume of output rather than the value of the oil produced.

However, modern forms of concession have now replaced traditional method. Under the modern form of concession, the international oil companies (IOCs) have similar rights over petroleum but the duration of a modern concession is now limited. This limitation is imposed as a condition to a licensee

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<sup>17</sup> 1999 CFRN, 2nd Schedule, 255

<sup>18</sup> UN GA. Res. 1803 (xvii) of December, 1963, Art. 1 in S.C. Dike, *Energy Security: The case of Nigeria and lesson from Brazil, Norway and the UK* (Pearl Publishing. 2015).

<sup>19</sup> PIA, S. 1, 2021

<sup>20</sup> M.B. Umar, Legal Issues in the Management of Nigeria's Production Sharing Contracts from a study of Nigerian National Petroleum Corporations National Management Services Perspective (2005) 3(1) *OGEL* 1, 21.

<sup>21</sup> B. Taverne, *An Introduction to the Regulation of the Petroleum Industry: Law Contract and Conventions* (Graham and Trotman 1994) 35-41



or leasee to operate and the payment of royalties, taxes, economic rent to the host nation.<sup>22</sup> The Nigerian government, in furtherance of the efforts to consolidate on the gains and to open the country oil and gas industry to best international practices; critically re-examined and reviewed the licensing practice and laws as it relates to upstream investments as well as the allocation of oil blocks and relinquishment process of underdeveloped fields which hitherto are being held and counted in part as assets to the holding company. It is an established fact that the approach to acreage allocation and the process of relinquishment of previously held oil licenses that have remained largely underdeveloped run at variance with international best practices on acreage allocation and relinquishment.<sup>23</sup>

Following the major disadvantages of the old traditional form of concession which include the near lost of the sovereignty of the host-nation or communities over their petroleum resources wherein the IOCs acquired almost full ownership of the right over petroleum as a result of the grant of large expanse of unidentified acreages by the host-nation due to lack of capital and expertise to harness the petroleum resources, the need for the modern form of concession was contemplated and introduced. This is because the old concession was considered unfavourable to Nigerians.

For instance, under one of the earliest legislation in Nigeria as relevant to the old concession, the Mineral Oil Ordinance of 1914<sup>24</sup> vested in Shell Petroleum Development Company Nigeria Limited (SPDC), the right to prospect for petroleum over the entire area called Nigeria. This was because SPDC was the sole concessionaire under the colonial government arrangement. The concessionaire locked up the acreages as they deem fit, not minding that non-producing acreages will ultimately affect security of supply of petroleum product and creates marginal field problems.

Pursuant to the above disadvantages to which the oil producing host-countries were exposed, under the old concession period, by 1960, the organization of Petroleum Exporting Countries (OPEC) was formed. The major objective of OPEC includes the promotion of sovereignty of its members over their petroleum resources and their active participation in all departments of the industry. OPEC contributed to the General Assembly Resolution of 1803 (xvii) of 14 December, 1962 on permanent sovereignty over their natural resources. This resolution recognized that the right of nations over their natural resources must be exercised in the interest of their national development.

Following the development, Nigeria promulgated its home grown Petroleum Act, 1969. The Act vest petroleum in the Federal Government and gives the Minister of petroleum the right to grant licenses and leases.<sup>25</sup> However, the Act preserved pre-1969 grants save as to the limitation of the duration of the grant and the improved payment of royalties and taxes.<sup>26</sup> Under the Act, a holder of oil exploration license shall not assign his license or lease unless with the prior consent of the minister.<sup>27</sup> Furthermore,

<sup>22</sup> P.A 1969, First Schedule, Ss 1, 4 and 8.

<sup>23</sup> Oil Acreage Management and Relinquishment Process: Nigeria's Pragmatic Approach. *Vanguard Newspaper* (4 January, 2010) <<https://www.vanguardngr.com>> accessed 14 April, 2023.

<sup>24</sup> Mineral Oil Ordinance, S.6 (1).

<sup>25</sup> PA 1969, S2.

<sup>26</sup> PA 1969, Ss 1, 4 and 8 First Schedule.

<sup>27</sup> *Ibid* S. 14 first schedule.

the Act also empowers the holder of an OML to farm out, with the approval of the president any marginal field which lies within the leased areas.<sup>28</sup>

By the 1996 Petroleum (Amendment) Act, the power to farm out any marginal field which has been unattended for not less than 10 years, was given to the president. This is because the license-holders of these acreages refused to utilize this power and had rather chosen to leave them underdeveloped.

### 3.1 Licensing and Leasing under the Petroleum Act, 1969

The Petroleum Act<sup>29</sup> provides for the exploration of petroleum from territorial waters and the continental shelf of Nigeria and vest the ownership of all onshore and offshore revenue from petroleum resources derivable therefrom in the Federal Government and for all other purposes incidental hitherto. The Act further empowers the minister of petroleum to grant an oil exploratory license (OEL) on a non-exclusive basis, an oil prospecting license (OPL) to explore and prospect for petroleum on an exclusive basis. The minister is also given powers to grant an oil mining lease (OML) to a holder of an OPL who has discovered oil in a commercial quantity.<sup>30</sup> The Act also limits the duration of these grants<sup>31</sup>

By the provision of the first schedule to the Act<sup>32</sup>, a holder of an OEL or OML shall not assign his license or lease unless with the prior consent of the Minister. The power to control imports and sales of petroleum products is also vested on the minister of petroleum by granting licenses to any person wishing to import or sell petroleum products.<sup>33</sup> The criteria for selecting the importers are not clearly stated and the preference for importation has not been justified. This provision construct ab initio, the framework for a perpetual dependence on imported petroleum products.<sup>34</sup> The dependence has also caused a considerable loss of revenue in successive administrations by corrupt importers and government functionaries in the name of fuel subsidy.

### 3.2 License and Lease under the Petroleum Industry Act, 2021

The Petroleum Industry Act, 2021 was signed by the President Mohammed Buhari on the 16<sup>th</sup> day of September, 2021. Like the Petroleum Act, 1969 the PIA, 2021 S.2, also vests the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone in the government of the federation. The Act<sup>35</sup> seeks to provide legal governance, regulatory and fiscal framework for the Nigerian petroleum industry and development of Host Communities. The main objective of the Act<sup>36</sup> is ensuring good governance and accountability, creation of a commercially oriented national petroleum company, the NNPC Limited and fostering a conducive business environment for petroleum operations. Consequently, the Act created two principal regulatory bodies to enable the actualization of its objectives as it concerns Nigerian petroleum industries

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<sup>28</sup> *Ibid* S. 17 First Schedule.

<sup>29</sup> PA, 1969.

<sup>30</sup> PA, 1969, S2.

<sup>31</sup> *Ibid* Ss. 1, 4 and 8.

<sup>32</sup> PA, S. 14.

<sup>33</sup> *Ibid*, S. 4.

<sup>34</sup> S.C. Dike, *Energy Security: The case of Nigeria and Lessons from Brazil, Norway and the UK* (Pearl publishers, 2015) 112.

<sup>35</sup> PIA, 2021.

<sup>36</sup> *Ibid*.





operations. These are The Nigerian Upstream Regulatory Commission (the Commission) and The Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority)<sup>37</sup> The Commission is responsible for the technical and commercial regulation of the upstream petroleum operation, including implementing the environmental laws and policies for the upstream and the while the Authority is responsible for the technical and commercial regulation of the mid-stream and downstream operations in Nigeria as well as licensing of players in that sector<sup>38</sup>.

Apart from other functions accorded the Minister of petroleum under the PIA, 2021, the minister can also, upon the recommendation of the commission, grant petroleum processing mining leases through the processes established under the Act. The minister is also empowered upon the recommendations of the commission and pursuant to the provisions of the PIA and the regulations, revoke and assign interests in the petroleum licenses and the petroleum mining lease.<sup>39</sup>

The commission is further empowered to administer any acreage for upstream petroleum operations in Nigeria. After consultation with the Surveyor -General of the federation, adopt a national grid system for acreage management. It is the responsibility of the commission to establish a system for numbering of parcels which shall allow for subdivision and aggregation of the parcels. The basic unit of the grid system as provided under the Act shall be a parcel of one-square kilometer subject to adjustment of the zones and national boundary.<sup>40</sup>

The national grid system referred to above shall be used for the administration of the upstream petroleum operations including the definition of license and lease area, relinquishment, bid procedures, identification of wells locations, petroleum conservation measures and other regulatory and acreage management procedures. The Act created the following licenses and leases in the upstream petroleum operations; petroleum exploration license, which may be granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis, petroleum prospecting license, which may be granted to qualified applicants to drill operation, appraise wells and do corresponding test production on an exclusive basis etc. The holder of a petroleum exploration license shall have non-exclusive right to carry out petroleum explorations operations within the area provided for in the license and the license shall be for three years subject to the fulfilment of prescribed conditions. The petroleum prospecting license or petroleum mining lease shall only be granted based on fair transparent and competitive bidding process and the commission may periodically publish a licensing round plan.<sup>41</sup>

The grant of a petroleum prospecting license or a petroleum mining lease on a previously appraised area of a petroleum license or a surrendered, relinquished or revoked petroleum mining lease in under or upon the territory of Nigeria shall be an open, transparent, competitive and non-discriminatory bidding process conducted by the commission.<sup>42</sup>

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<sup>37</sup> PIA, 2021 S. 2 (a) (b).

<sup>38</sup> PIA, 2021 S. 2 (a) (b).

<sup>39</sup> *Ibid*, S. 3 (i) g-h.

<sup>40</sup> *Ibid*, S. 69 (3) (4) and (6).

<sup>41</sup> PIA, 2021 S. 74(1)

<sup>42</sup> *Ibid*

In the midstream and downstream, the authority is also empowered to grant, issue, modify, extend, renew, review, suspend, cancel, reissue, or terminate license, permits and authorization for midstream and downstream petroleum operations.<sup>43</sup> The Authority also monitors and enforce compliance with the terms and conditions of licenses, permits and authorizations issued.<sup>44</sup>

### **3.3 Analyzing the Concept of Marginal Field in the Nigerian Petroleum Industry vis-à-vis the Licensing Regimes and Acreage Management.**

The concept of marginal fields have been identified to be based on different criteria which includes economic considerations, technological requirement, oil and gas reserves and length of time over which it was left underdeveloped.<sup>45</sup> Thus, petroleum marginal fields refer to discoveries which have not been exploited for long due to very small size of reserve/pool to the extent of not being economically viable and technological constraints and so on. The eligibility to bid for marginal field is only open to a registered Nigerian company.

Omorogbe noted that economic consideration is a centre for considering a field as marginal. In the same light of conviction, she defined marginal field as non-producing field whose economics is not considered robust enough using conventional development methods under prevailing fiscal regime.<sup>46</sup> She further argued that the petroleum marginal field is one that is comparatively more expensive to produce from under the prevailing economic environment.<sup>47</sup>

Nwaozuzu observed that the term marginality of a field is subjective, but that whether is untapped, abandoned or with partial depleted reserves, the most important factor is always the degree of profitable production.<sup>48</sup>

Adepetun affirmed that marginal field connotes field having marginal oil reserves of which the marginality of the field is subjective and will vary depending on the perception of the individual, organization or country involved in its development.<sup>49</sup> Adepetun further defined marginal oil field as a field which due to geological, geographical, technological and economic constraints may not be considered to be cost effective for development by its owners, but the development of which may be profitable under a changed set of circumstances.

From the foregoing positions on the views on what marginal field entails, what is deducible and instructive to note is that marginal oil field is the untapped and unproducing section of the oil field which has been left fallow for a considerable length of time; occasioned by non-economic viability of

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<sup>43</sup> PIA, 2021, S. 32 (h) (i)

<sup>44</sup> *Ibid*, S, 32 (j)

<sup>45</sup> J. Okoro and P.C. Obutte, Corporate Restructuring Options for Marginal Field Operations in Nigeria <https://www.nlii.org> accessed 9th August, 2023

<sup>46</sup> Y. Omoregbe, *Oil and Gas Law in Nigeria* (Lagos Malthouse Press Ltd 2002) 170.

<sup>47</sup> Y. Omoregbe, Fundamental Issues relating to the Development of Marginal Fields in Nigeria (1999) 3(4) *Modern Practice Journal of Finance and Investment Law*. 737.

<sup>48</sup> C. Nwaozuzu, Marginal Fields: Status, Constraints and Progress. *Vanguard* (Nigeria, 10th December, 2013) 13.

<sup>49</sup> S. Adepetun, *Oil and Gas Life in Nigeria* (Ibadan: Y-Book 2006) 68.





the field, technological, geographical, geological, political instability and other consequential constraints.

### 3.4 Marginal Field Vis-à-vis Licensing and Acreage Management under the Petroleum Act, 1969

The Petroleum Act, 1969 provides for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and vests the ownership of all onshore and offshore revenue from petroleum resources derivable there from to the Federal government<sup>50</sup> and all other purposes incidental thereto.

Section 2 of the Act gave the Minister of Petroleum the right to grant an oil exploratory license (OEL) on a non-exclusive basis, an oil prospecting license (OPL) to explore and prospect for petroleum on an exclusive basis<sup>51</sup>. The Minister is also given power to grant an oil mining lease (OML) to holder of an OPL who has discovered oil in a commercial quantity. A holder of an OEL or OML is not expected under the Act to assign his license or lease unless with the prior consent of the minister<sup>52</sup>.

However, a holder of an OML is empowered to farm-out, with the approval of the president any marginal field which lies within the leased area<sup>53</sup>. This is because the license-holders of these acreages in view of their economic consideration and profit maximization have refused to utilize their power to farm-out these fields and had rather chosen to leave the area underdeveloped to the detriment of Nigerian People.

Consequently, the 1996 Petroleum (Amendment) Act, powered the president to farm out any marginal field, which has been unattended for not less than 10 years<sup>54</sup>. The power of the president in this regard were to be exercised in the public interest, thus showing that holding over acreages without developing them, which the Act<sup>55</sup> promoted, was against public interest.

### 4.0 Marginal Field Vis-à-vis the Petroleum (Amendment) Act, 1996

Under the Petroleum Act of 1996, the holder of an Oil Mining Lease (OML) is required to relinquish half of the area, ten years after the grant thereof, unless he applies for a renewal under the Act and fulfils all the conditions imposed therein. This means that the relinquishment clause applies only after ten years.<sup>56</sup> It logically follows that a licensee may choose not to develop the acreage or become indolent within the period without minding the consequence of the locking of the acreages on the Nigerian people.

Thus, in order to prevent fallow acreages, the government promulgated the Petroleum (Amended) Act.<sup>57</sup> The Act gave the president the right under section 17(2) to farm-out a marginal field if it has been

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<sup>50</sup> PA, 1969 5.1.

<sup>51</sup> PA, 1969.

<sup>52</sup> *Ibid*, s.14, First Schedule.

<sup>53</sup> PA, 1969, S.17, first schedule.

<sup>54</sup> Petroleum (Amendment) Act, 1996, S.17(2)

<sup>55</sup> PA, 1969.

<sup>56</sup> Petroleum (Amendment) Act, 1996, S. 13.

<sup>57</sup> Petroleum Amendment Act, No. 23 of 1996.



unattended for ten years. Farm-out is an agreement between the holder of an OML and a third party to explore petroleum within a leased area.<sup>58</sup>

#### 4.1 Marginal Fields vis-à-vis Petroleum Industry Act, 2021

With the commencement of the Petroleum Industry Act, 2021, the Act took a centre stage in the regulation of the Nigeria Oil and Gas Sector. The Act<sup>59</sup> now gives the current regulatory template for the industry. This also affects the marginal fields as field or discoveries which have been declared as such prior to 1<sup>st</sup> January, 2021 or which has been lying fallow without activity for seven (7) years after its discovery prior to the effective date. The Act provides that the producing marginal fields shall be allowed to operate under the original royalty rates and farm-out agreement but shall however convert to a petroleum mining lease with terms applicable under Sections 267 (b), 302 and other relevant provisions under the Act<sup>60</sup> within 18 months from the effective date with respect to non-producing marginal fields which were declared prior to 1<sup>st</sup> January, 2021. The PIA provides that such fields shall be converted to petroleum prospecting license (PPL) and shall benefit from the terms for new acreages under chapter 4 of the PIA. In the event where the discovery has been transferred to government, the Nigerian Upstream Petroleum Regulatory Commission will be at liberty to offer the PPL in a bid round<sup>61</sup>

#### 4.2 Marginal Field vis-à-vis the Department of Petroleum Resources (DPR) Guidelines

According to the guidelines for farm out and operations of marginal fields 2013, a marginal field is any field that has oil and gas reserves booked and reported annually to the Department of Petroleum Resources and has remained un-produced for a period of over ten (10) years.

Under the DPR guidelines, before an oil field could be declared a marginal field, it must have fallen within the characteristics of marginal field under the guideline. This means that it must be fields not considered by license holders for development because of assumed marginal economics under prevailing fiscal and market terms, fields with at least one exploration well drilled and have been reported as oil and gas discovery for more than ten (10) years with no follow up appraisal or development effort, fields with crude oil characteristics different from current streams (such as crude with very high viscosity and low API gravity) which cannot be produce through conventional methods or current technology, fields with high gas and low oil reserves, fields that have been abandoned by the lease holder for upwards of three (3) years for economic operational reason and fields that the present lease holder may consider for farm-out as part of portfolio realization programmes.

DPR was formerly established as part of the NNPC pursuant to the NNPC Act.<sup>62</sup> It is charged with the function of regulating and enforcing all legal frameworks concerning the oil and gas sector.<sup>63</sup> Other functions of the DPR include overseeing the activities of companies engaged in any petroleum activity

<sup>58</sup> PA, 1969 S. 17 (4), First Schedule.

<sup>59</sup> PIA, 2021.

<sup>60</sup> *Ibid*, 2021 Ss. 267 (b) and 302.

<sup>61</sup> *Ibid*, 2021, S. 74.

<sup>62</sup> NNPC Act, 1977, S.10.

<sup>63</sup> *Ibid*.



in Nigeria, ensuring that these companies carry out their operations in accordance with the domestic regulations, guidelines and best international oil industry's practices.<sup>64</sup> It follows, therefore, that the DPR guidelines validates revocation of licenses and leases by relevant authorities for want of compliance with the ultimate objective of discouraging fallow acreages to the disadvantage of Nigerians.

### 5.0 The Issue of Jurisdiction vis a vis Dispute Settlement in Petroleum Industry Operations.

There are many regulatory institutions and legal frameworks comprising of various laws directly governing oil and gas operations in Nigeria but this situation has not ruled out the constant emergence of dispute in the sector which is not surprising, having regard to the nature of hydro carbon exploration and exploitation, the complicated contractual relationships and the questionable strength of governing laws, especially on ownership and exploitation.<sup>65</sup>

A dispute is a disagreement or argument, conflict or controversy; a conflict of claims or rights, an assertion of a right claim, or demand on one side, met by contrary claims or allegations on the other side<sup>66</sup>. It can further be describe as subject of litigation; the matter for which a suit is brought and upon which issues are joined and a relation to which jurors are called and witness examined<sup>67</sup>. The case of Attorney General of the Federation v Attorney General of Abia State and 35 ORS, BELGORE J. described dispute under section 232(1) of the 1999 constitution as follow;

... dispute involves acts of argument, controversy, debate, claims as to rights whether in law or facts verifying opinion, whether passive or violent or any disagreement that can lead to public anxiety or disquiet...<sup>68</sup>

This definition was adopted by the Supreme Court in AG Rivers v AG Akwa Ibom<sup>69</sup>. Dispute in oil and gas industry may give rise to litigation for civil liability for tort. Litigation is described as the ultimate legal method of settling controversies or disputes between and among persons, organizations, and the state. In litigation process, a case (called suit or law suit) is brought before a court of law suitably empowered or having jurisdiction to hear the case by the parties involved (the litigants) for resolution (judgment).

The question as to which court has jurisdiction to preside over oil and gas matters has been resolved by section 251(1) of the 1999 constitution.<sup>70</sup> The section provides that the Federal High court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters, relating to mines and minerals (including oil fields, oil mining, geological surveys and natural gas). Section 7(1) Federal

<sup>64</sup> S.C. Dike, Energy Security: The Case of Nigeria and Lessons from Brazil, Norway and the UK

<sup>65</sup> Nwamara; Appraising Dispute Settlement Mechanisms in the Nigerian Oil and Gas Industry. *The Journal of Jurisprudence, International Law and Contemporary Issues*, Vol. 12, No 1, March.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> (2001) 11 NWLR (Pt 727)689.

<sup>69</sup> (2001) 12 NWLR (Pt 1248)31.

<sup>70</sup> Constitution of the Federal Republic of Nigeria, 1999 (As amended) CAP C23LFN 2004

High Court Act<sup>71</sup>, provides that the Federal High Court shall to the exclusion of any other court in civil causes and matters and minerals (including oil fields, oil mining, geological surveys and natural gas).

Apart from the statutory conferment of the jurisdiction of the Federal High Court to entertain civil causes and matters emanating from Section 251 (1) of the 1999 constitution of Nigeria (as amended), the locus classicus case of *Madukolu v Nkemdilim*<sup>72</sup>, the Supreme Court laid down certain conditions to be fulfilled before a court can assume jurisdiction.

- a) The court must be properly constituted as regards members and qualification of the bench.
- b) The subject matter must be within the court jurisdiction, no feature of the subject matter should prevent the court from exercising jurisdiction.
- c) The case must have been initiated through due process of the law and upon fulfillment of condition precedent to exercise of jurisdiction, else the proceeding will be a nullity, no matter how well conducted.

In the case of *SPDC v Maxon*<sup>73</sup> although it was concluded that oil spillage through a pipeline was a thing arising from mines and minerals giving the Federal High Court exclusive jurisdiction, Justice Ikongbeh insisted that the act of the company's failure to maintain pipelines was negligence under the jurisdiction of the state high court. It is of no dispute that oil spillage from an oil pipeline are matters connected with, arising from and relating to mining operations and are under the jurisdiction of the Federal High Court. This position was upheld by the Supreme Court in the case of *SPDC v Isaiah*<sup>74</sup>.

A licensee or leasee may suffer civil liability for tort in cause of their operations in the petroleum industry. This may be under the tort of negligence which connotes a bridge of duty of care which results in damage. In *Donoghue v Stephenson*<sup>75</sup>, a general principle was set out stating when a person will owe a duty to another. The plaintiff must show under common law that the defendant was careless in the exercise of a special duty of care. The elements of negligence includes;

- i. Duty of care is owed by the defendant to the plaintiff
- ii. A bridge of that duty by the defendant
- iii. The plaintiff is entitled to damage as a result of the breach.

## **6.0 An Evaluation of the Legal Basis for the Nigerian Licensing Regimes in the Petroleum Industry Visa Vis the Legal Basis for the United Kingdom Oil and Gas Licensing.**

The Federal Republic of Nigeria in accordance with the provision of the petroleum Act 1969, established the principle that conferred the ownership and control of all petroleum in, under or upon

<sup>71</sup> Federal High Court Act, CAP. F12, L.F.N, 2004.

<sup>72</sup> (1962)2 SCNLR 341.

<sup>73</sup> (2001) 9 NWLR(Pt. 719) 541

<sup>74</sup> (2001) 5 SC (Pt. 11) 1

<sup>75</sup> (1932) AC 562



any lands to which this section applies in the state. The section applies to all land including lands covered by water) which is in Nigeria or is under the territorial waters of Nigeria or forms part of the continental shelf's or forms part of the exclusive economic zones of Nigeria.<sup>76</sup>

Nigeria's lawful arrangements of responsibility for oil and gas assets is built up by the arrangements of 1999 constitution of the federal Republic of Nigeria, S.44 (3), Petroleum Act, and the exclusive economic zone Act S.2 (1) among different laws<sup>77</sup> which vest elective proprietorship of oil and gas assets in the Federal Government of Nigeria to the Impediment of states, local governments and the indigenous communities wherein the oil and gas assets are situated<sup>78</sup>.

However, by the petroleum industry, signed by President Muhammadu Buhari on the 16<sup>th</sup> day of September 2021, the petroleum industry Act, 2021 now becomes the operating and regulatory land in the industry. The main objectives of the a Act<sup>79</sup> is ensuring good governance and accountability, creation of a commercially oriented national petroleum company, the NNPC limited and fostering a conducive business environment for petroleum operations consequently, the Act created two principal regulatory vodies to enable the actualization of its objectives as it concerns Nigeria petroleum industries operations. These are the Nigerian upstream regulatory commission (the commission) which is now responsible for the technical and commercial regulation of the upstream petroleum operation, including implementry environmental laws and policies for the upstream sector. And the Nigerian Midstream and Downstream petroleum regulatory authority. (the authority) responsible for the technical and commercial regulation of the midstream and downstream operation in Nigeria as well as licensing players in the sector.

Also, by the provision of section 1 of the Act<sup>80</sup> property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zones is vested in the government of the Federation of Nigeria. The authority also performs the regulatory functions in the midstream and downstream sector. The Act created the petroleum prospecting license, (PPL) and the petroleum mining lease.

The Act further provides that the petroleum prospecting license and petroleum mining lease shall only be granted based on a fair, transparent and competitive bidding process and the commission may periodically publish a licensing noun plan<sup>81</sup>. The grant of a petroleum prospecting license or a petroleum mining lease on a previously appraised area of a petroleum prospecting license or a surrender, relinquished, or revoked petroleum mining lease in under or transparent, competitive and non-discriminating bidding process conducted by the commission.

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<sup>76</sup> A. P. Lilly-Tariah and E.E Woha, *An Appraisal of the Petroleum Licensing Regimes of Nigeria and The United Kingdom*, Rivers State University; Journal of Public law, Volume 6(1) 2019.

<sup>77</sup> *Ibid*

<sup>78</sup> E.O. Ekhatior, *Public Regulation of Oil and Gas Industry in Nigeria: An Evaluation* [2016] (21) (1) *Annual Survey of international and comparative law*; S.44(3) CFRN, 1999;S.2(1) EE2A, 1978

<sup>79</sup> PIA, 2021

<sup>80</sup> PIA, s2(a)(b).

<sup>81</sup> *Ibid* s.73(1)(a) and (2).

In the United Kingdom, on the other hand licenses to search, bore for and set oil and gas within the United Kingdom, its territorial sea and the United Kingdom Continental shelf (UKCS) ARE CONCEDED by the crown via powers conferred by s.3(1) of the 1998 petroleum Acts<sup>82</sup> by the provision of the UK petroleum Act 1988 inquisition for and production of oil and gas in the UK and on the UKCS can only be undertaken under the powers delegated to the Northern Ireland Assembly.<sup>83</sup>

As a member state of the European Union (EU), the UK is bound by the Hydrocarbon Licensing Directive; the aim of which is to prevent the minister from preventing competition by favoritism or discriminating against persons from other members of the EU.<sup>84</sup>

From April 2015, the Oil and Gas authority assumed control of the Department for energy and climate change (DECC) as the force in charge for oil and gas grants and for guidelines pertaining to the upstream oil and gas industry. Afterwards, from October,

2016, the OGA was formally set up as a completely free controller and a government-claimed organization, with the secretary of state for business, energy and industrial strategy (the secretary of State) as the sole investor.

This is consistent with the legal spirit behind the creation of the Nigerian upstream regulatory commission (the commission) and the Nigeria midstream and downstream petroleum regulatory authority (the authority) responsibility for the technical and commercial regulation, of their respective sector with the objective of achieving a fair, transparent operations in the petroleum industry.

## 7.0 Summary of Findings

In course of the appraisal of the licensing regimes and acreage management in Nigeria, it was found as follows:

- i. The nations of the earth are variously endowed with immense natural resources but the maximization of the benefit clearly depends on the political will of the state. The stability of the state and its laws attract investors into the petroleum industries for the purpose of exploiting the natural resources for the benefit of the people.
- ii. That the attainment of effective, robust and vibrant petroleum industry is dependent on effective legislation, guidelines and policies of the state and relevant parties agreements.
- iii. The approach to acreage allocation and the process of relinquishment of the previously held oil licenses that had remained largely underdeveloped run at variance with international best practices on acreage allocation and relinquishment.
- iv. It is the further findings of this work that the potential obstacle hitherto affecting the growth of the Nigerian petroleum industry is the lack of well-structured acreage management system,

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<sup>82</sup> UK PIA 1988 s.3(1).

<sup>83</sup> Philip Mace and other, oil and gas regulation in the UK: overview, <<https://uk.practicallaw.thomsonreuters.com/5-524-5349>> accessed 15th February, 2023.

<sup>84</sup> Philip Mace and other, oil and gas regulation in the UK: overview, <<https://uk.practicallaw.thomsonreuters.com/5-524-5349>> accessed 15th February, 2023.



- hence the allocation to prospective investors were made without due diligence and workable timeline and largely based on the ministers discretion in the previous legislation.
- v. The grant of petroleum license and lease under the Petroleum Industry Act, 2021 made radical deviation from the full discretionary power of the minister for petroleum to grant licenses and leases under the predecessor legislation, the Petroleum Act, 1969, to the era of open, transparent, competitive and non-discriminatory bidding process now conducted by the commission.
  - vi. This work also discloses the discomfort of the littoral states in Nigeria over the absolute conferment of the ownership rights of natural resources including petroleum on the federal government exclusively via judicial protest that led to the judicial pronouncement in favour of the federal government.
  - vii. The Petroleum Industry Act, 2021 created two novel bodies in petroleum industry which are the Nigerian upstream regulatory commission (the Commission), responsible for technical and commercial regulation of the upstream petroleum operations including implementing environment laws and policies for the upstream.
  - viii. The Nigeria midstream and downstream petroleum regulatory authority (the Authority) responsible for the technical and commercial regulation of the midstream and downstream operations in Nigeria as well as licensing operators in the sector.

## 8.0 Conclusion

Licensing and acreage management is a very important regulatory and administrative tool for the control and effective utilization of the nation's natural resources. A license is a consent that empowers an activity, the performance of which some way or another would be unlawful. The licensing regime of every nation is a determinant factor in identifying the effectiveness and robust petroleum industry as well as its economic standing. Every traces of underperformance in petroleum industry is a resultant effect of weak legal and statutory regime of the nation's licensing regime in the petroleum industry.

In Nigeria, in furtherance of the effort of government to consolidate on the gains and open up the country's oil and gas industry to best international practice, the federal government critically re-examined and reviewed the petroleum Act, 1969, the hitherto substantive law in Nigeria petroleum industry.

The exercise eventually gave birth to the Petroleum Industrial Act, 2021. This is because the approach to the acreage management and licensing as well as the process of relinquishment of the previously held oil licensing that had remained largely under developed due to the weakness and lacuna in previous law run at variance with international best practice on acreage allocation and relinquishment.

the grant of license under the Petroleum Industrial Act, 2021 mad radical deviation from the full discretionary power of the Minister to grant of license and lease under the Petroleum Act,1969 to an era of open, transparent, competitive and non-discriminatory bidding process now conducted by the commission under the new regime.

Furthermore, the Petroleum Industrial Act also established two novel bodies in the industry which are the Nigerian Upstream regulatory Commission (the Commission), responsible for the technical and commercial regulation of the Upstream Petroleum Operation, including the implementation of the environmental laws and policies for the upstream. The Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) responsible for the technical and commercial regulation of the midstream and downstream operators in the sector.

## 9.0 Recommendation

In line with the national grid system for acreage management, the operating laws, regulations and guidelines should clearly define the amount to be attached to parcel in order to ensure transparency in the compensation process to the land owners in accordance with the provision of the Land Use Act.

The operating laws be amended to recognize and provide for federal character consideration in granting of oil blocks, oil refining license and oil lifting license to manage the agitation of minority groups in Nigeria over marginalization in the oil industry before the general consideration for grant on ground of competence base on technical expertise and other relevant factors.

The law should be amended to provide for aggravated penalty for reckless case of pollution and negligence of the investors to ensure clean-up of impacted site and remediation of affected site within the time frame as provided under the law.

The law should further provide for a server penalty including relinquishment of the acreage in a serious pollution occasioned by the operation of the negligent investors in the upstream sector with the potential of bringing to disrepute, the regulatory competence of the commission and the nation at large in the international plane if the spill spreads to the High Sea.

All regulatory institution created by the national laws as relevant to Nigerian petroleum activities should be made to publish on regular intervals to be determined by the governing board, the report of compliance of license operator in the petroleum industry and measures taken to compel compliance for the awareness of Nigerian and for transparency's sake.

The Youth of the host communities to the investors should be massively employed to undertake the task of pipeline surveillance in their respective communities alongside the state security operatives. This will help in reducing the case of pipeline vandalism and economic sabotage as well as restoring the security confidence of local and foreign investors in the petroleum industry which may ultimately result to greater production and expand the revenue base of the nation.

The regulatory laws in the petroleum industry, especially the Petroleum Industry Act, 2021, should be amended to incorporate the latitude of contractors in the petroleum industry to provide for themselves and the relevant government institutions, an independent contract that shall build in stabilization clauses with the ultimate end of achieving economic balance in any case of political crisis in the host nation and sudden and unfavourable amendment of the regulating laws or making new law that may be inimical to the interests of the investors.



The basic unit of parcel for licensing is defined under the national grid system which allows for subdivision and aggregation of parcel which is a parcel of one square kilometer subject to adjustment of zones and national boundary. The regulatory laws, regulations or guidelines should allot monetary value to the unit of parcel in line with the national grid system to ensure transparency in payment of compensation in land acquisition during exploration activities pursuant to the relevant provision of the Land Use Act dealing on the land acquisition and compensation by government.