UNDERSTANDING LEGAL RELATIONSHIPS IN THE NIGERIAN OIL INDUSTRY*

INTRODUCTION

Nigeria is one of the World major producers and exporters of petroleum a resource on which she has remained almost completely dependent for the past twenty-three years. All aspects of the petroleum industry are therefore of critical importance to the economy. This paper is primarily concerned with identifying and describing the legal regimes governing the exploration, production, and development of petroleum in Nigeria. This involves a discourse on existing legislation, production contracts, other agreements/arrangements and government policy guidelines which directly affect the production of petroleum. While the title of the paper refers to petroleum - which is commonly defined under Nigerian legislation to consist of both crude oil and gas - the main focus will in fact be on crude oil. This is simply because the oil industry is far more developed and accounts for the bulk of Nigeria's export earnings. Furthermore, agreements which are supposedly for petroleum, are in practice framed and designed solely for crude oil, and therefore, they are treated as such in this paper.

Ascertaining exactly what the Nigerian legal regime is can be quite confusing, principally because what is contained in the main legislative enactment represents only a partial picture of what the current situation is. For better understanding, it is probably best to first consider the history of the oil industry and its attendant laws in Nigeria. Accordingly the remaining parts of this paper is divided into three sections. Section I considers the Nigerian Oil industry from historical perspective. In section II, Legal relationships in the Nigerian oil industry are discussed while section III contains brief evaluation of the various agreements and some concluding remarks.

SECTION I

THE NIGERIAN OIL INDUSTRY FROM A HISTORICAL PERSPECTIVE

Nigerian legislation on petroleum existed about a decade before any exploration was undertaken.

The first piece of legislation was the petroleum ordinances of 1889, which was followed by the Mineral Regulation (oil) Ordinance of 1907, both of which laid down a basic framework for the development of petroleum and its natural resources.[2] By the law of 1907, it was stipulated, inter alia, that only British subjects or companies controlled by British subjects would be eligible to explore for oil resources. This provision is a paradox, as the first company ever to undertake exploration in Nigeria was the German Bitumen company, in 1908 around what is presently known as Ondo state. This exploration efforts was unsuccessful, and the company terminated its operations following the outbreak of the First World War. The next concession, was given to Shell D'Harcy licence covering the entire mainland of Nigeria. In the absence of competition, shell was able to explore and select choice acreages at its pace until 1962, by which time it retained

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[1]Expressed views are those of the authors and does not necessarily reflect the official view of the Central Bank of Nigeria

[2] A. Schatzi, Petroleum in Nigeria (Nigerian Institute of Social and Economic Research (NISER) Ibadan, 1969) P. 4

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only 15,000 Square miles of the original concession area of 357,000 square miles. In 1959, the sole concessionary rights were reviewed, and various rights were extended to other companies of various nationalities, such as Mobil, Gulf (now Chevron), Agip, Safrap (now Elf) Teneco and Amoseas (Texaco/Chevron). In 1969, the then existing petroleum legislation was repealed by the Petroleum Act 1969 and its attendant Petroleum (Drilling and Production) Regulations, both of which laid down what continues to be the foundation of the legal framework for the regulation of the oil industry in Nigeria.

Another significant year for the Nigerian Oil industry was 1971. In April of that year, the Nigerian National Oil Corporation (NNOC) was formed, while in July, Nigeria joined OPEC. Although the NNOC was formed before OPEC membership it appears that its formation was a response to the OPEC resolutions and policy statements which showed that the existence of a state Oil Corporation was an essential prerequisite for state participation in the oil industry.[3] Negotiation for participation led to the first participation agreement signed with Elf in 1971. Under this agreement the government acquired a 35 per cent participation interest in the Elf concession. In 1973, thirty-five per cent participation were acquired in the Shell - Bp, Mobil and Gulf (now Chevron) concessions. Over the years this percentage has increased to the current level of sixty per cent in all the concessions.

In early 1972, the Government announced the assignment to NNPC of all areas in the country not covered by existing licences or leases, and also of any concession area presently being held by the oil companies, which might be surrendered from time to time. No more concessions would be granted to any companies , organisations, and/or individuals, and no further concession applications would be entertained, however, NNOC was free to select others as contractors or partners in working its concessions. This policy statement made by the government never translated into any legislation. Notwithstanding this, these two measures has a profound effect on the current legal framework, and fundamentally changed it in some respects.

NIGERIA LEGISLATION GOVERNING THE OIL INDUSTRY

Various laws directly regulate the Nigerian Oil Industry, e.g. the Oil pipelines Act 1956, Petroleum profit tax 1959, the various associated gas reinjection acts, and the earlier mentioned petroleum Act 1969 and its attendant regulations. Others such as the Federal Environment protection Decree greatly affect Oil and Gas production. In the main, this segment focus on the petroleum Act 1969 and the Petroleum (Drilling and Production) Regulations 1969.

The Petroleum Act 1969

Under the Petroleum Act of 1969, the entire ownership and control of all petroleum in, under or upon any land is vested in the States. Furthermore, the Act states that only Nigerian Citizens or companies incorporated in Nigeria may be granted the following rights:

i) a licence, to be known as an oil exploration licence, to explore for petroleum. This licence must not exceed twelve thousand, nine hundred and fifty kilometres in area.

ii) a licence, to be known as a prospecting licence, to prospect for petroleum. This licence must not exceed two thousand five hundred and ninety square kilometres in area.

iii) a lease to be known as an oil-mining lease, to search for, win, work, carry away and dispose of petroleum. The oil mining lease can only be in respect of a maximum area of two hun-

[3] Y. Omorogbe " The Legal Frawework for the production of petroleum in Nigeria (Journal of Energy and Natural Resources Law Vol. 5, No.4, PP.275-277).

dred and ninety five square kilometres

(a) OIL EXPLORATION LICENCES

These licence expire on 31st December of the year in which the grant was made and therefore may not be longer than one calendar year. The right granted is non-exclusive and several persons may be issued with licences in respect of the same area. The activities which the licence has rights to conduct consist of a preliminary search by surface geological and geophysical methods, including aerial surveys but excluding drilling below 91.44 metres.

(b) OIL PROSPECTING LICENCES

This licence confers exclusive rights to explore and prospect for petroleum and is for a maximum initial term of five years. Like the Oil exploration licence, the area applied for is expected to have boundaries of straight lines running in north to south and east to west directions.

(c) OIL MINING LEASE

An oil mining lease grants exclusive rights over the lease area, and also confers interests over petroleum discovered within the area covered by the lease.

"An oil mining lease may be granted only to the holder of an oil prospecting licence who has

(a) Satisfies all the conditions imposed on him by this Act, and

(b) discovered oil in commercial quantities.[4]

A discovery in commercial quantities is defined to be production that is at least 10,000 barrels per days of crude oil. The duration of an oil mining lease must not exceed twenty years, but may be reviewed.

RIGHTS AND POWERS OF HOLDERS OF OIL PROSPECTING LICENCES AND OIL MINING LEASES OVER THE LICENCE OR LEASED AREA

Rights and Powers in respect of area covered by the particular grants are dealt with in part three of the petroleum (Drilling and Production) Regulations. These rights are subject to the applicable laws and to the approval of the Director of the Department of Petroleum Resources. They may be exercised directly by the licensee or leasee, or though agents.

The licensee or leasee may:

(a) Cut down and clear timber and undergrowth;

(b) Make roads;

(c) appropriate and use water found, provided that this does not interfere with the water rights enjoyed by the communities within the relevant area;

(d) construct, bring, maintain, alter, operate, dismantle, remove:-

(i) Industrial building and installations, including drilling platform; engines, power plants, flowlines, storage tanks, loading terminals, harbours, jetties, piers, moles, landing places and derricks.

(ii) means of communication, including telephone lines and wireless stations.

(iii) facilities for shipping and aircraft.

(iv) living accomodation and amenities for the employees and workmen of the licensee or leasee, and

(v) other building, installations, works chattles and effects.

(e) dredge;

(f) search for, dig and get free of charge gravel, sand, clay and stone not subject to any license or lease within unoccupied state land.

This is on condition that it shall not be sold, and that upon termination or completion of work,. all excavations shall be filled or leveled out, and restored as far as is practicable, to the original position.[5]

The Act and regulations make mention only of these licences or leases, and therefore, it is only logical to presume that these are the only oil and gas rights in existence and available, even now. This is certainly not so. Participation has greatly affected

[4] G. Etikerentse, Nigerian Petroleum Law (Macmilian, London, 1985) PP. 25-31

[5] Paragraph 10, Subsection 1 Petroleum Act, 1969.

the concessionary system, and led to the creation of joint ventures. Furthermore, other contractual forms which are not mentioned at all, co-exist with these joint ventures.

PETROLEUM (DRILLING AND PRODUCTION) REGULATIONS 1969

These regulations were made in pursuance of powers conferred upon the Minister by Article 8 of Petroleum Act, and deal with diverse matters. The form and method of application for prospective licenses and leases, and also rights and powers of license and lease holders are amongst the matter dealt with here. These have been discussed earlier. In addition, the petroleum (Drilling and Production) Regulations provide for the recruitment and training of Nigerians in pursuance of which leases are required to submit a detailed programmes. There is also an obligation not to pollute or to"prevent the pollution of inland waters, rivers water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water or which might cause harm or destruction to fish or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.[6]

Most of the regulations deal with technical matters, and with the licensees or leases' conduct of operations. It provides that fields should be developed in "strict accordance" with a field development programme to be submitted to the Director of the Department of Petroleum Resources. Wells should be spaced. If technical considerations so dictate, an oil field should be developed as a unit. Records and reports should be maintained and from time to time forwarded to the Director. Fees, rents and royalties were also specified.

SECTION II
LEGAL RELATIONSHIPS IN NIGERIAN OIL INDUSTRY

Currently, four types of legal arrangements for crude oil production exist in Nigeria. These are:

1. The concession;
2. The Joint Venture,
3 The Production sharing Contract; and
4. The service Contract

1. The Concession

The concession is the oil mining lease as stated under the petroleum Act. Prior to participation all the companies operated under this type of arrangement. Here the company fully bears all risks and costs of exploration, development and production, has interests over the production, has interests over the produced crude oil and is liable for all royalty and petroleum profits tax payments. Only one concession exists in Nigeria at present. The lease is an indigenous Oil company, Dubril oil, and it is in respect of the Gili-Gili field.

2. The Joint Venture

When the government acquired participation interests in the concessions held by the oil companies, the new relationship that emerged is the joint venture. Under the joint venture arrangements in Nigeria, the relationship is defined by three other agreements.

These are:
a) the participation Agreement
b) the Operating Agreement
c) the Heads of Agreement

Recently the joint venture has also been regulated by a fourth agreement . the Memorandum of understanding.

a) The participation Agreement
This agreement sets out the respective rights of partners to the joint venture. These agreements vary in detail, because they were individually negotiated, but they remain the same in substance.

[6] Petroleum Act (1969) Paragraph 3 sub-section 25

The interest paid for and acquired by the Government through NNPC is referred to as participating interest in;
i) the oil mining leases;
ii) the fixed and movable assets of the company in Nigeria, including without limitation, the company's exploration, development, production, transportation, storage, delivery and export operations and associated assets such as offices, housing and welfare facilities (the Asset);
iii) the working capital applicable to the operation of the oil mining leases including those in assets, debts of staff, debtors, repayment. (The Working Capital)[7]

b) **Heads of Agreement**
The agreement lays down guidelines for the sharing of productions, the procedure for nomination, lifting and disposal of crude oil. The agreement provides inter alia, that "there shall be undivided interests in the rights granted with respect to petroleum under the area, and that each interest owner may lift only as much as its participating share. I f a party nominates and lifts less than its full equity share of crude oil, a make-up right shall accrue to the interest owner to nominate the balance of its' equity share in the future" [8]

c) The Operating Agreement spells out legal relationships between the owners of the leases or concessions and lays down the rules and procedure for the joint development of the area concerned, and property jointly owned by the two parties. Under these agreements joint property includes expenditure for practically all the activities and services of the oil company. In all the agreements the private company is designated operator, and is responsible for the conduct of all joint venture operations. The operator may be changed in any one of the following circumstances.

a) if the operator assigns or purports to assign its general powers and responsibilities and management as operator of joint operations;

b) if the operator ceases or threatens to cease to carry on its business or becomes bankrupt or insolvent or commits or suffers any act of bankruptcy or insolvency or makes any assignment for the benefit of creditors;

c) if the operator defaults in its duties or obligations or any of them and fails to commence to rectify the default within thirty days after written notice from other co-ventures specifying the default;

d) in some cases, if the operator ceases to own, hold or represent a specified minimum percentage interest (usually 105) in joint venture" [9]

The Memorandum of Understanding (MOU)

In the early 1980's the world-wide economic slump, a decline in the world oil market situation, and a steady increase in technical costs, led to a situation whereby the companies suffered a serious erosion of their profit margin. As a result the oil companies slowed down on their lifting and exploration and development activities, this led to a reduction in revenue for the government. Consequently, there were negotiations between NNPC and the companies, aimed at reviewing the existing fiscal measures. The result was the Memorandum of Understanding (MOU) which came into effect on 1st January 1986. The MOU was designed to guarantee steady profit margins to the companies and high production and lifting volumes. It is also aimed at stimulating exploration and production activities. The MOU guarantees a profit margin of US $2 barrel for the companies, in return for which the companies commit themselves to specified minimum exploration, production, and development work programmes. In addition, they undertake to lift certain volumes of NNPC'S equity share of crude oil when she is unable to

[7] M.M. Olisa, Nigerian Petroleum Law and Practice (Fountain Books Ltd. Ibadan, 1987) PP. 76-78
[8] Presently however, under the memorandum of understanding companies are to lift specified volumes which NNPC is unable to lift. For such volumes, companies pay the operating cost, and half of the margin to NNPC, in addition to the usual royalties and taxes.
[9] M.M. Olisa, Nigerian Petroleum Law and Practice (Fountain Books Ltd., Ibadan, 1987) P.86

lift. There are penalties for non-performance. For every uplifted barrel, a specified amount is payable to NNPC . If the company does not comply with the work obligations, it shall revert to the fiscal conditions existing before the advent of the MOU.

The MOU has undergone some amendments since its inception. From the beginning the pricing formula designed to produce a steady profit margin has contained a K-factor. This was originally defined as factor 1.0227. The first amendment which took effect from 1st October 1986 introduced a self adjusting mechanism for its determination, thereby bringing in an element of flexibility. Amongst other things, the amendment established a mechanism for establishing an equitable margin for realizable prices below US $23/barrel applies. For prices less than $12.50, the guaranteed profit margin is in accordance with a specified formula.

A second amendment came into effect on the 1st of July 1997, and primarily dealt with the establishment of the realizable price (RP), so as to reflect prices that are closely related to market realization. The result is an adjusted RP which is an average of the RP and the spot price less $0.25. The MOU is still in force, although sustained higher prices will have the effect of abolishing its reason for existence.

The term production sharing contract (PSC) refers to various arrangements wherein the output from the contract area is shared by the partners in predetermined proportions. In a standard PSC, the company bears all the risks of exploration, and is often in charge of the operation and management of the contract area. When oil is discovered in commercial quantities, the company is entitled to recoup its investments form crude oil produced from the contract area. This portion of the oil is often referred to as cost recovery oil. Percentages of production set aside for cost recovery vary between the NOC and the company. The sharing is called the production split, and a great disparity exists worldwide between the ratio of production splits. These vary from 81 to 90 per cent to the NOC with a corresponding 19 to 10 per cent accruing to the company in Egypt and Libya, to a 15 - 85 NOC/company split in Chile. It is said to have originated in Indonesia where it was first used for agricultural contracts, used for crude oil contracts in Iran and has proved very popular in many countries world wide. Like the service contract, the PSC was utilized by the Nigerian Government as a response to the 1972 government announcement which favoured contracts status of the oil company, by making NNPC the concession holder and by specifically excluding the company from claiming any title over the produced crude oil.

In Nigeria, only one PSC appears to be in operation. It was signed on 12th June 1973 for a term of twenty years, and is between NNPC and Ashland oil corporation. The PSC is in respect of OPL's 48 and 98. Ashland carries the risk of operating costs in return for an economic interest in a proportion of the crude oil deposits in the contract area.

This contract generated a lot of adverse criticism principally because of the way in which its fiscal terms were worded. According to these terms when a commercial discovery had been made, the costs were recoverable out of a maximum of 50 per cent (slightly more than half) was allocated to Ashland as Tax oil and price received applied downwards payment of petroleum profits Tax. Outstanding amounts payable as tax were borne by the two parties in proportion to their participating interest shares. The remaining crude oil, which is less than 25 per cent of total production was divided between the two parties when production was less than 50,000 barrels a day the production exceeded this amount. <u>On the face of it these clauses appeared lopsided in favour of the contractor. This was the opinion of the Tribunal</u>

of Enquiry set up to investigate an alleged loss of N2.8 billion from the accounts of NNPC, who felt that the PSC certainly has no benefits whatsoever to the NNPC.[10] "Other drawbacks from the country's perpective, were that it could encouraged wastefulness, and slow exploration of the contract area, and the contractor could end up earning windfall profits.

Therefore the contract has undergone various renegotiations. On 13th November 1986, an amending agreement between the parties was formally executed. This agreement excludes fifty per cent of the original contract area in accordance with the terms of the contract.

Average Barrel of Crude Oil	Profits share Percentages	
	Ashland	NNPC
First 30,000	45	55
Next 20,000	41	59
Next 50,000	39	61
Over 100,000	33	67

More recently, it appears that there has been a further (apparently informal) revision under which provision is made for the recovery of all production costs within the quarter, and all capital costs over a period of five years in 20 quarterly instalments.

The Amendment Agreement also provides for the provision and installation of a petroleum laboratory of a kind and cost acceptable to the parties in the petroleum Training Institute, Warri. These costs are n ot to be chargeable as Operating costs.

The Service Contract

The service contracts were designed as improvements to the production sharing contract. The basic distinctive feature of such contracts is that no little or right over the production ever passes to the contractor. The contractor is paid for its service either in cash or kind, although provisions invariably exist which give a first option to buy crude oil produced. These contracts may be contracts of work, with the government bearing all risks. Then they are referred to as pure service contracts. When all risks and investment in placed on the contract - as is the case in Nigeria - they are more correctly termed risk service contracts. Risk service contracts have been extensively used in Brazil, Argentina and Columbia.

The government through NNPC, currently has assigned service contracts with Elf, Agip, and Nigus petroleum Companies. The duration of the contract is initially, expressed only in term of an exploration period of 3 years plus one or two further renewal periods of two years.

It automatically terminates after this period if no discovery has been made. However, in the event of a commercial discovery, a contract term may be decided on by the parties. Thus the contract term September 24, 1979 between NNPC and Agip Energy and Natural Resources has (by the provisions of an Amendment Agreement of 10th December 1984) a contract term of twenty years from the effective date.[11] The contract is in respect of one oil prospecting license, unlike that of the PSC.

Funds expended by the Contractor are fully recoverable in the event of a commercial discovery on field-by-field basis. Exploration cost, are payable without interest. In 20 equal instalments. Development cost are also paid in 20 equal instalment, b ut with an agreed interest rate, such as the London interbank Offered Rate (LIBOR). Remuneration is computed in accordance with a formula expressed with the contract as follows: with slight variations for individual contracts.

[10] Quoted in F. Sasegbon "Current Development in Oil and Gas Law; Nigeria with comparative Analysis with other African Oil Producing Countries. " Energy Law Vol. 81d; Proceedings of a seminar organised by the committee on Energy and Natural Resources, section on Business Law, International Bar Association, P. 361

[11] which mean the contracts expires in September, 1999.

$Rm = B1 (Q1\ Pm - Pq) + B2Q_2 + B3Q3$

B1, B2 and B3 are factors between 0.000 and 1.00 where $B1 < B2 < B3$.

Pm is the Market Price of crude oil as defined in the contract. Pq is the total quarterly payment due, comprising the quarterly reimbursement instalment plus production costs due in that quarter plus royalty and petroleum profits tax payable by NNPC. Q1 is a volume of quarterly production between 500,000 cubic meters

Q2 is a volume of quarterly production over 500,000 and 1,000,000 cubic meters.

Q3 is a volume of quarterly production over 1,000,000 cubic meters.

Within one contract it is also provided that:-

CONTRACTOR shall have the right to take crude oil won and saved in the contract Area amounting to the greater of (a) 50% of the total volume of such crude oil (or an amount equivalent in value of crude oil available to NNPC from other producing areas in Nigeria) or (b) the equivalent in the value to the total payments due CONTRACTOR from NNPC, Crude oil taken by CONTRACTOR shall be considered to be in lieu of cash payments provided for in this Article. The value or sales price as the case may be, for such crude oil shall be the market price as defined in the Article.

Where an approved exploration programmes does not lead to commercial discovery, fifty percent of all exploration costs shall be reimbursed out of the proceeds of sales of production from the contract area. Also, if a commercial discovery is made in the contract area during the last five years of the contract term, NNPC and contractor will meet and agree on terms which will enable contractor to recover its cost and to earn adequate remuneration even beyond the contract term.

The contract pays normal company income tax on its remuneration, while NNPC pays all petroleum profits tax and royalties. Within the contract, provision is also made for NNPC to take over and conduct all operations, although this provision does not yet appear to have been utilized.

SECTION III

COMPARISON / EVALUATION OF THE VARIOUS AGREEMENTS

In the preceding section, we focused on the distinguishing features of each contract form. In other respects these agreements do not differ much from each other. A tabulation of other terms commonly found in most oil contracts clearly highlights this fact (see Appendix I attached). The main difference therefore lies in their fiscal provisions. However, the service contract comes out as the most detailed, and therefore, as an improvement on the other earlier forms.

CONCLUDING REMARKS

The Nigerian State is about to enter a new phase vis-a-vis the oil industry. Not too long ago, bids were invited from interested applicant in respects of lots consisting of one OPL each. The bidding system has been successfully used in some countries (e.g U.K., Norway, China). For Nigeria it is a new experience which is likely to greatly expand and diversify the existing legal regime. This is more so because under this system, prospective companies have contract options. They are free to select the type of agreement that they would wish to work under, and to negotiate the terms within that particular contractual framework. Therefore any suggestions which might improve or enhance contract terms are particularly relevant at present. Obviously, many possible clauses could be suggested. We restrict ourselves to just two, both of which are geared towards greater stability and flexibility.

The oil market is inheretly unstable and is prone to wide swings in oil prices. In other coun-

[12] Quoted in S.K. B. Asante "Stability of Contractual Relations in the Transnational Investment Process", International Contract Law Quarterly Vol. 28, 1979 P. 401

tries these wide swings have reflected in the agreements made to a very great extent. This has not been the case in Nigeria. However, even here, the fiscal terms which are the most important features have reflected the necessity to keep an agreement financially viable and fair to the parties concerned at all time. This has been mainly through the use of ad-hoc or formal negotiations to amend the original contract terms. All this has taken place in the absence of any clear contractual stipulation on renegotiation.

Renegotiation clauses appear to be the best means of ensuring a continuation of acceptable terms to both parties for the duration of the contract and is advocated here. So far they are infrequently found in petroleum agreements. Reasons for this seeming reluctance are unclear. Far from undermining the stability of contracts, they provide a bulwark against any hostile reactions by host governments. This issue was specifically addressed in a report by the group of the eminent person appointed by the secretary general of the United nations.

"While a clear understanding on various issues at the time of entry is vital, it is to be recognized that conditions change, and what may seem to have been adequate and fair at the time of entry may prove unsatisfactory to either party over time. A large number of agreements made in the past lack comprehensiveness and contain no provision for renegotiation.

Developing countries have, of course, the power through legislation, to modify terms of agreements. A willingness on both sides to renegotiate agreements which have been in force for more than, say, ten years, could help to avoid recourse to extreme measures. The group recommends that in the initial **agreement with multinational corporations, host countries should consider making provision for the review at the behest of either side after suitable intervals, of various clauses of the agreement.** [12] Ideally, these clauses should precisely define the events that will trigger renegotiation. Such events should include all terms that parties feel would amount to a material change of fundamental circumstances. This would most likely include significant word market price changes. For those worries about the effect of such a clause on stability, renegotiation could be limited to certain key provisions which affect profitability, and to be possible only after stated periodic intervals. Some sort of flexible fiscal arrangements which will provide for a balanced distribution of proceed at all times. These are the most critical clauses in any production contract and if they do not function efficiently, the contract may be seen as unacceptable or onerous by either of the parties. So far most revisions in Nigeria have centered around the fiscal requirements, and that seems to indicate a need for some work in this direction. Economist and those in related disciplines should address their minds to resolving these issues. [13]

It must also be said that an overhaul of the petroleum Act is long overdue. It should reflect precisely what legal regime is, how to function as master detectives in an effort to uncover what exactly the legal position on production and development is. This should not be the case. The law should - ideally - be ascertainable at any given time. It is not too much to expect the main petroleum legislation to reflect the current realities of the petroleum industry.

[13] See e.g. Alexander Kemp Petroleum Rent Collection around the world (Institute for Research on Public Policy, Canada, 1987).

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COMPARSON OF SOME TERMS

	PA 1969, OML	JV	PSC	SC
DURATION	20 Years	20 Years	20 Years	5 Yr Exploration Period. Once Commercial Discovery has been made, Contract term is 20 years
Relinquishment	After 10 years	Not expressly included in the 1969 grants	After 5 years	
Determination of Commercial Discovery	10,000 b/d	Same as Act Provision	Same as Act Provision	In accordance with laid down procedure.
Signature Bonus	Not dealt with	None	N2 million non-recoverable.	$2 million non-Negotiable.
Production Bonuses	Not dealt with	None	N2m at more than 50,000 b/d. N2. at more than 75,000 b/d. Recoverable as operating costs.	None
Royalties	Provided for under the law.	Payable by each JV partner in proportion to its participating interest share.	Paid by contractor from production set aside for that purpose, to NNPC	Paid by NNPC
Taxes	Dealt with under PPT Act.	PPT payable by each JV partner in proportion to its participating interest share.	Paid by contractor from production set aside for that purpose to NNPC	PPT paid by NNPC company tax paid by contractor.
Employment/Training Obligation	Obligation to employ at least 75% Nigerians in senior positions, with at least 60% in any grade. General obligation for training and scholar-ships. Regs. 26-29 P(D+P) Reg. Para. 37 Sch. I PA.	As contained in the OMLs Vaguely worded with no real legal duty imposed.	Contractor to prepare and carry out programme for training/education of Nigerians in all job classifications. Also National Interest Project.	Undertaking to make maximum use of Nigerians. Obligation to train Nigerians in conduct of petroleum operations.
Natural Gas	Petroleum defined to include NG Dealt with in Act 34(b) Sch. 1.	Applies to NG and Crude Oil.	NG not covered by contract. Contractor gets first consideration if exploitation of gas discovered is to be considered.	NG excluded. Any gas discovered belongs to NNPC. Any develop-ment shall be the subject of another agreement.
Force Majeure	Not dealt with	Defined	Defined	Defined
Arbitration	In accordance with the law relating to arbitration	Arbitration Rules to be determined by majority of the arbitrators. 3rd Arbitrator chosen by President of ICJ in event of dispute.	In accordance with PA 3rd Arbitrator chosen by CJN in event of dispute.	3rd arbitrator in event of dispute appointed by High Court in accordance with the law Arbitration duties procedure award determined by arbitrators. "The Nigerian Arbitration Act shall apply".
Termination	With three months notices. Revocation by government possible for laid down reasons. Arts. 17, 23, 24, Sch. I.	At end of term, at instance of government under certain conditions.	By either party with written notice.	At expiration of Exploration period of no commercial discovery at instance of contractor with written notice; at NNPC's instance for specified actions by contractor.

Note: PA = Petroleum Act
OML = Oil Mining Leases
JV = Joint Venture
PSC = Production Sharing Contract
SC = Service Contract.