

Nigeria

Latifat Folashade Yusuff

Lawyer

1. Introduction

The oil industry in Nigeria dates back to the 1950s when oil was discovered in Oloibiri¹ after 50 years of oil exploration.² At the time, Shell-BP was the country's sole concessionaire, successfully producing from Nigeria's first oilfield in 1958.³ Exploration rights were extended to other foreign companies after Nigeria's independence in 1960.

In 1971, Nigeria joined the Organization of Petroleum Exporting Countries (OPEC). A new national oil company, the Nigerian National Petroleum Corporation (NNPC), state owned and controlled, was established by law in 1977 to replace the previous state-owned company, Nigerian National Oil Company (NNOC).

The Federal Government of Nigeria over the course of the 1970s acquired major equity interests in the existing concessions through participation agreements that eventually became joint venture arrangements. The production sharing contracts came into being at a substantially later date in the 1990s, although Ashland Oil (Nigeria) Unlimited had entered into such a contract with the then NNOC in 1973.

Today, NNPC participates in all sectors of Nigeria's oil and gas industry and is a major player in petroleum arrangements in the country. Other major players in the industry are internationally known oil companies such as Shell, Total, Chevron, Agip and Mobil, which dominate the upstream sector. The midstream and downstream sectors are filled with both foreign and local participants.

Nigeria's oilfields are concentrated in the Niger Delta area, although oil is being prospected in other parts of the country. There are about 500 fields in the Niger Delta area, with an almost equal split between onshore and shallow waters.⁴ Deepwater exploration and production commenced in the 1990s and has proven to be a major factor in the increase of Nigeria's oil reserves. They are being operated under a production sharing contract arrangement and are governed by the Deep Offshore and Inland Basin Production Sharing Contract Act.⁵ Two of Nigeria's largest deepwater discoveries are the Bonga⁶ and Agbami⁷ fields.

1 A community in the Ogbia Local Government Area in present-day Bayelsa State (Niger Delta area) of Nigeria.

2 See www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasinNigeria/IndustryHistory.aspx (last accessed October 7 2014).

3 5,100 barrels per day.

4 See www.napims.com/crudeoil.html (last accessed October 22 2014).

5 Cap D3, Laws of the Federation of Nigeria, 2004.

2. Legislative hydrocarbon regime

Nigeria's oil and gas industry is administered through dedicated government agencies and governed by a series of laws and policies.

2.1 Regulatory bodies

(a) Ministry of Petroleum Resources

The Ministry of Petroleum Resources has a mandate to initiate policies governing the industry and supervise their implementation. Its technical department is known as the Department of Petroleum Resources and is primarily responsible for the regulation of the oil and gas industry.

(b) The Department of Petroleum Resources (DPR)

This is the technical arm of the Ministry of Petroleum Resources and is responsible for regulating and supervising all operations for which licences and leases have been issued in the oil and gas industry. It also holds the National Data Repository, a data bank set up to store and preserve oil exploration and production data and information under a common platform while allowing for easy accessibility.⁸

(c) The Nigerian National Petroleum Corporation

This is the state-owned national oil company, undertaking commercial ventures in the oil and gas industry on behalf of the federal government.

(d) National Petroleum Investment Management Services

The National Petroleum Investment Management Services (NAPIMS) is a corporate services unit of the NNPC. Its mandate is to enhance the benefits deriving from the federal government's investments in the upstream petroleum sector through effective cost control and supervision of the joint venture and production sharing contract operations. It is also expected to open up new frontiers of oil exploration and production.⁹

(e) The Nigerian Content Development and Monitoring Board

This agency ensures the implementation of Nigerian content in all activities in the oil and gas industry.

(f) The Petroleum Products Pricing and Regulatory Agency

This is the government agency that determines the pricing policy of petroleum products. It also regulates the supply and distribution of the products.

6 Operated by Shell Nigeria Exploration and Production Company Limited (SNEPCo). See www.exxonmobil.com/crudeoil/about_crudes_bonga.aspx (last accessed October 22 2014)

7 Operated by a subsidiary of Chevron. See www.chevron.com/countries/nigeria/ (last accessed October 22 2014)

8 National Data Repository Regulations, 2007.

9 See <http://nnpcgroup.com/NNPCBusiness/Subsidiaries/NAPIMS.aspx> (last accessed October 7 2014).

(g) ***The National Environmental Standards and Regulations Enforcement Agency (NESREA)***

This agency, a parastatal of the Federal Ministry of the Environment, was set up to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria. It also has a duty to ensure compliance with all international agreements, protocols, treaties and conventions on the environment to which Nigeria is a signatory.¹⁰

2.2 Legislative framework and key provisions

(a) ***The Constitution***

Section 44(3) of the Nigerian Constitution¹¹ provides that:

the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

This has continued to be the basis of state ownership of natural resources in Nigeria.

Section 20 of the Constitution provides: “The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.” Deriving from this obligation, various laws exist to serve as effective tools for the protection of the environment, planning, control and prevention of pollution.

(b) ***Environmental laws***

Key laws on the protection of the environment include the following.

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act:¹² This act set up NESREA with the primary function of enforcing compliance with all laws, guidelines, policies and standards required on environmental matters. It focuses on sustainable development as protection of the nation’s environment and its natural resources.¹³

Environmental Impact Assessment Act:¹⁴ This act seeks to ensure that the environmental effects of the activities of any individual, government or corporate body are first taken into consideration before the activities are carried out. It requires an assessment of both private and public projects that may have substantial impact on the environment.¹⁵

10 See www.nesrea.gov.ng (last accessed October 7 2014).

11 Cap C23, Laws of the Federation of Nigeria, 2004.

12 By the NESREA Act of 2007, the Federal Government repealed the previously existing Federal Environmental Protection Agency Act, Cap F10, Laws of the Federation of Nigeria, 2004.

13 See NESREA Act 2007, ss 7 and 8.

14 Cap E12, Laws of the Federation of Nigeria, 2004.

15 See Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004, s 2.

Hydrocarbon Oil Refineries Act:¹⁶ This act makes provision for the licensing and control of the refining of hydrocarbon oils.¹⁷ It prohibits the refining of hydrocarbon oils in any place other than a licensed refinery.¹⁸

Associated Gas Re-Injection Act:¹⁹ This act seeks to prevent the unlawful flaring of gas²⁰ and provides for the establishment of schemes to enable the viable use of associated gas or its re-injection.²¹

Harmful Waste (Special Criminal Provisions, etc.) Act:²² This act prohibits the carrying, depositing and dumping of harmful waste on any land or territorial waters.²³

Oil Pipelines Act:²⁴ This act makes “provision for licences to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining, and for purposes ancillary to such pipelines.”²⁵ It provides for the payment of compensation to persons who suffer as a result of pipeline breakage or leakage²⁶ and gives credence to other regulations concerning public safety and prevention of pollution.²⁷ Section 14 of this act provides for restrictions in the construction of any works that may interfere with existing public facilities.

Oil in Navigable Waters Act:²⁸ This act implements the terms of the International Convention for the Prevention of Pollution of the Sea by Oil 1954–1962 and to make provisions for such prevention in Nigeria’s navigable waters.²⁹

Niger-Delta Development Commission (NDDC) Act:³⁰ This act set up the Niger-Delta Development Commission with a mandate to tackle ecological problems arising from the exploration of oil minerals in the Niger Delta area.³¹ The commission also has a duty to formulate policies and guidelines for the development of the Niger Delta area³² and implement programmes to achieve it.

16 Cap H5, Laws of the Federation of Nigeria, 2004.
17 Preamble to the Hydrocarbon Oil Refineries Act, Cap H5, Laws of the Federation of Nigeria, 2004.
18 Hydrocarbon Oil Refineries Act, s 1.
19 Cap A25, Laws of the Federation of Nigeria, 2004.
20 Section 3 requires that no associated gas shall be flared without the written permission of the minister of petroleum resources.
21 Associated Gas Re-Injection Act, Cap A25, Laws of the Federation of Nigeria, 2004, s 1.
22 Cap H1, Laws of the Federation of Nigeria, 2004.
23 Preamble to the Harmful Waste (Special Criminal Provisions etc.) Act, Cap H1, Laws of the Federation of Nigeria, 2004.
24 Cap O7, Laws of the Federation of Nigeria, 2004.
25 Preamble to the Oil Pipelines Act, Cap O7, Laws of the Federation of Nigeria, 2004.
26 Oil Pipelines Act, s 11.
27 *Ibid*, s 17.
28 Cap O6, Laws of the Federation of Nigeria, 2004.
29 *Ibid*, Preamble.
30 Cap N86, Laws of the Federation of Nigeria, 2004.
31 *Ibid*, Preamble.
32 *Ibid*, s 7.

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria:

These guidelines and standards were issued by the DPR with the following objectives:

- (a) *Establish Guidelines and Standards for the Environmental Quality Control of the Petroleum Industry taking into account existing local conditions and planned monitoring programmes.*
- (b) *Provide, in one volume, for the operator and other interested persons a comprehensive integrated document on pollution abatement technology, guidelines and standards for the Nigerian Petroleum Industry.*
- (c) *Standardise the environmental pollution abatement and monitoring procedures, including the analytical methods for various parameters.*³³

In summary, they consist of a set of regulations that seek to ensure that oil and gas industry operators in the course of their operations do not degrade the environment.

(c) The Petroleum Act

The Petroleum Act³⁴ is the principal legislation governing the oil and gas industry. It provides for the exploration of petroleum from Nigeria's territorial waters, continental shelf and exclusive economic zones. It also vests the ownership of all onshore and offshore revenue from petroleum resources in the Federal Government of Nigeria.³⁵

It provides for the running of refineries and the control of petroleum products. The act also makes provision for regulations for the safe working of petroleum operations, the conservation of petroleum resources and pollution prevention.³⁶

Most of the powers under the act are exercisable by the minister of petroleum resources, with a few powers exclusive to the president of Nigeria. Under the act, the minister may grant the following licences for upstream petroleum operations:³⁷

- a licence, to be known as an oil exploration licence, to explore for petroleum;
- a licence, to be known as an oil prospecting licence, 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.

A licence or lease may only be granted to a company incorporated in Nigeria under the Companies and Allied Matters Act.³⁸

In practice, an oil exploration licence is no longer being issued and an oil mining lease is usually issued to a holder of an oil prospecting licence that has successfully applied for its conversion to an oil mining lease.

The duration of an oil prospecting licence granted for onshore and areas of

33 Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, Part 1.

34 Cap P10, Laws of the Federation of Nigeria, 2004.

35 *Ibid*, Preamble.

36 *Ibid*, s 9.

37 *Ibid*, s 2.

38 Cap C20, Laws of the Federation of Nigeria, 2004.

39 Petroleum Act, para 6 of the First Schedule (Oil Exploration Licences, Oil Prospecting Licences and Oil Mining Leases).

shallow water must not exceed five years, including any periods of renewal.³⁹ The duration of an oil prospecting licence granted for deep offshore and inland basins must be for a minimum period of five years and an aggregate period of ten years.⁴⁰ The term of an oil mining lease must not exceed 20 years⁴¹ and it may be renewed.

(d) Nigerian Oil and Gas Industry Content Development Act

The Nigerian Oil and Gas Industry Content Development Act of 2010 is fundamental to the government's efforts in the oil and gas industry.

The act makes provision for the development of Nigerian content in the Nigerian oil and gas industry, a Nigerian content plan and the supervision, coordination, monitoring and implementation of Nigerian content.⁴² The act is designed to increase to an appreciable level the participation of Nigerians and Nigerian companies in Nigeria's oil and gas industry and establishes the Nigerian Content Development and Monitoring Board (NCDMB), the primary obligation of which is to coordinate, monitor and ensure the implementation of the provisions of the act.

Highlights of the act include the following:

- Where bids are within 1% of each other at the commercial stage, the bid with the highest Nigerian content should be selected.⁴³
- The sum of 1% of every contract awarded to an operator, contractor, subcontractor, alliance partner or any other entity in the upstream sector is to be deducted at source and paid into the Nigerian Content Development Fund, set up by the act for the purpose of funding the implementation of Nigerian content development in the industry.⁴⁴
- Nigerian independent operators are to be given first consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects in the industry.⁴⁵
- All projects exceeding a total budget of US\$100 million require the use of a minimum percentage of Nigerian labour as prescribed by the NCDMB.
- Services such as insurance,⁴⁶ financial⁴⁷ and legal are to be localised.⁴⁸
- Consideration is to be given to appropriate fiscal frameworks and tax incentives for companies establishing factories, production units or other operations in Nigeria for the production, manufacturing or provision of goods and services otherwise imported into Nigeria.⁴⁹

40 Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, Laws of the Federation of Nigeria, 2004, s 2.

41 Petroleum Act, para 10 of the First Schedule.

42 Preamble to the Nigerian Oil and Gas Industry Content Development Act 2010.

43 Provided that the Nigerian content in the selected bid is at least 5% higher than its closest competitor – Nigerian Oil and Gas Industry Content Development Act 2010, s 14.

44 *Ibid*, s 104.

45 *Ibid*, s 3.

46 Section 50 of the Oil and Gas Industry Content Development Act provides: "No insurance risk in the Nigerian oil and gas industry shall be placed offshore without the written approval of the National Insurance Commission which shall ensure that Nigerian local capacity has been fully exhausted."

47 Except where, to the satisfaction of the NCDMB, it is impracticable

48 Nigerian Oil and Gas Industry Content Development Act 2010, ss 49–52.

49 *Ibid*, s 48.

(e) *International treaties*

Nigeria is signatory to many treaties relevant to the oil and gas industry.⁵⁰

Maritime boundaries: Nigeria shares maritime boundaries with Equatorial Guinea, the Republic of Benin, São Tomé and Príncipe, Ghana and Cameroon. Negotiations have been concluded with Equatorial Guinea, São Tomé and Príncipe and the Benin Republic, while progress is being made on the demarcation with Cameroon with the supervision of the United Nations Mixed Commission. The following are the existing treaties and agreements in this regard:

- The Treaty between the Federal Republic of Nigeria and the Republic of Equatorial Guinea concerning their Maritime Boundary⁵¹ was signed on September 23 2000 for the delimitation of a part of the maritime boundary between the two countries. The treaty did not delineate the entire maritime boundary between the two countries as it was signed during a maritime dispute between Nigeria and Cameroon, the outcome of which would have affected other maritime boundaries in the Gulf of Guinea.
- The Treaty between the Federal Republic of Nigeria and the Democratic Republic of São Tomé and Príncipe on the Joint Development of Petroleum and other Resources, in respect of Areas of the Exclusive Economic Zone of the Two States,⁵² was signed on February 21 2001 for the joint exploration of oil and gas resources in the exclusive economic zones between the two territories.
- Nigeria and the Republic of Benin finalised maritime boundary negotiations with the signing of a Memorandum of Understanding on August 4 2006.
- The maritime boundary between Cameroon and Nigeria was the subject of a judgment of the International Court of Justice in 2002⁵³ following questions regarding the validity of the 1975 maritime boundary agreement⁵⁴ between Nigeria and Cameroon. The Cameroon–Nigeria Mixed Commission was thereafter set up to facilitate the implementation of the judgment on the delimitation of borders between the two countries.⁵⁵
- The maritime boundary between Nigeria and Ghana is under discussion between the two countries as they both share a boundary of about eight nautical miles in the high seas.⁵⁶

50 Section 12 of the Nigerian Constitution states: “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.” Although Nigeria is signatory to many treaties, some of them have not been ratified and can therefore not be judicially enforced. The dispute settlement mechanisms provided by the treaties can still be used, however.

51 Available at www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NGAGNQ2000MB.pdf (last accessed October 7 2014).

52 Available at www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/STP-NGA2001.pdf (last accessed October 7 2014).

53 www.sovereigngeographic.com/maritime_pdf/2002-cam-nigeria-english.pdf (last accessed October 26 2014)

54 The Maroua Declaration available at www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CMR-NGA1975MD.pdf (last accessed October 7 2014).

55 See also the Agreement between the Republic of Cameroon and the Federal Republic of Nigeria concerning the Modalities of Withdrawal and Transfer of Authority in the Bakassi Peninsula (Greentree Agreement). Available at www.ucdp.uu.se/gpdatabase/peace/Cam-Nig%2020060612.pdf (last accessed October 7 2014).

56 www.punchng.com/opinion/hydrography-and-nigerian-maritime-security (last accessed November 9 2014).

Bilateral investment treaties: The federal government has continued to enter bilateral investment promotion and protection agreements with countries that frequently do business in Nigeria. These seek to protect the investment of contracting parties against expropriation, nationalisation and in the event of war or revolution. It also ensures the investor's ability to transfer dividends, interests, profits and other incomes. Compensation for loss or dispossession is also provided therein. Countries with which Nigeria has concluded such agreements include:⁵⁷ South Africa, France, Netherlands, Spain, Romania, the United Kingdom and Switzerland.

Investment dispute resolution: Nigeria's bilateral investment treaties provide a right to international arbitration in the event of disputes. This is usually through the International Centre for Settlement of Investment Disputes (ICSID) or via *ad hoc* arbitration in accordance with rules agreeable to both parties.

The ICSID Convention is implemented in Nigeria through the provisions of the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act.⁵⁸ An application for the enforcement of an ICSID award is made directly to the Supreme Court of Nigeria in its first instance.⁵⁹ Locally, the Nigerian Investments Promotion Commission Act⁶⁰ also allows for the settlement of foreign investor disputes with the federal government via the ICSID rules.

The use of the Rules of the United Nations Commission on International Trade Law (UNCITRAL) is also popular and is the basis for Nigeria's Arbitration and Conciliation Act.⁶¹ It must be noted that Section 42 of the First Schedule (Oil Exploration Licences, Oil Prospecting Licences and Oil Mining Leases) to the Petroleum Act provides:

If any question or dispute arises in connection with any licence or lease to which this Schedule applies between the Minister and the licensee or lessee (including a question or dispute as to the payment of any fee, rent or royalty), the question or dispute shall be settled by arbitration unless it relates to a matter expressly excluded from arbitration or expressed to be at the discretion of the Minister.

Nigeria is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and Section 54 of Nigeria's Arbitration and Conciliation Act⁶² expressly admits its applicability thus:

where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards (hereinafter referred to as "the Convention") set out in the Second Schedule to this Act shall apply to any award made in Nigeria or in any contracting state

(a) Provided that such contracting state has reciprocal legislation recognising the

57 See www.nipc.gov.ng/investment.html (last accessed October 7 2014).

58 Cap I20, Laws of the Federation of Nigeria, 2004.

59 *Ibid*, s 1.

60 Cap N117, Laws of the Federation of Nigeria, 2004.

61 Cap A18, Laws of the Federation of Nigeria, 2004.

62 Cap A18, Laws of the Federation of Nigeria, 2004.

enforcement of arbitral awards made in Nigeria in accordance with the provisions of the Convention;

(b) that the Convention shall apply only to differences arising out of legal relationship which is contractual

Double-taxation treaties: Nigeria has double-taxation treaties with several countries in respect of income and capital gains taxes.⁶³ Canada, Pakistan, Belgium, France, Romania, the Netherlands, the United Kingdom, China and South Africa all have comprehensive double-taxation agreements with Nigeria. Italy has an agreement with Nigeria relating only to air and shipping.⁶⁴

The treaties give an allowance of up to 2.5% on the withholding tax rate and offer income tax relief on a sliding scale on loans given to Nigerian companies by foreigners.

Anti-corruption conventions: Nigeria is signatory to the following anti-corruption conventions:

- United Nations Convention against Corruption.⁶⁵ This convention was the first global and legally binding instrument against corruption.⁶⁶ It contains provisions prescribing best practices aimed at deterring corruption and strengthening systems for its prevention.
- African Union Convention on Prevention and Combating Corruption.⁶⁷ The code criminalises and sanctions different categories of corruption possible in the public and private sector. It further delves into issues of transparency and accountability in public sector management and lays a framework for cooperation between countries to fight corruption.
- Economic Community of West African States Protocol on the Fight against Corruption.⁶⁸ This sub-regional protocol was adopted to strengthen the battle against corruption in West Africa through the cooperation of the party states.

This is an extract from the chapter 'Nigeria' by Latifat Folashade Yusuff in African Upstream Oil and Gas: A Practical Guide to the Law and Regulation, published by Globe Law and Business.

63 See <http://resourcedat.com/wp-content/uploads/2011/11/Double-Taxation-Agreements-between-Nigeria-and-other-countries.pdf> (last accessed October 7 2014).

64 See www.firs.gov.ng/Tax-Management/Pages/Tax-Treaties.aspx (last accessed October 7 2014).

65 Available at www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (last accessed October 7 2014).

66 See www.unodc.org/unodc/en/corruption/index.html (last accessed October 7 2014).

67 www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf (last accessed November 9 2014)

68 Available at www.afrimap.org/english/images/treaty/ECOWAS_Protocol_on_Corruption.pdf (last accessed October 7 2014).