



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 412

COURSE TITLE: OIL AND GAS LAW II

COURSE CODE: LAW 412

COURSE TITLE: OIL AND GAS LAW II

COURSE DEVELOPER /WRITER Gerald Meniti Nwagbogu
Macdonna University
Okija

EDITOR: Mr. Kunle Aina
NOUN

COURSE COORDINATORS: K. Aina, (Sabbatical) C. Hia, O. Lawal,
T. Abisoye (Study Leave) NOUN

AG. DEAN: Dr. Godwin I. Oyakhiromen
School of Law
National Open University of Nigeria

LAW 412 OIL AND GAS LAW II



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 412

COURSE TITLE: OIL AND GAS LAW II

LAW 412 OIL AND GAS LAW II

2

COURSE GUIDE

LAW 412 OIL AND GAS LAW II

COURSE DEVELOPER/WRITER: GERALD MENKITI NWAGBOGU ESQ.
B.A.(HONS) LAW (LEEDS) LL.M(LOND) B.L; MNIM

RANK/POSITION: ASSOCIATE PROFESSOR

MADONNA UNIVERSITY, OKIJA, ANAMBRA STATE

Course Editor:

Programme Leader:

Course Coordinator:

OIL AND GAS LAW II LAW 412

MODULE 1

UNIT 1

Table of Contents

1. Introduction
2. Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment
7. Reference/Further Reading

NATURE, CAUSES, TYPES AND INCIDENTS OF POLLUTION

1. **INTRODUCTION**

Quite often, most communities where petroleum is drilled and produced, have had to bear a lot of environmental ravages. Nigeria is not an exception to this phenomenon. Indeed most of these communities are to be found in the Niger Delta Region of Nigeria, which altogether produces over 90% of the nation's petroleum. It is not uncommon to witness incidents of oil spillage, either due to equipment failure or faulty pipelines. An oil spill can over run farmlands, crops, economic trees, streams, lakes, creeks, fish ponds and even residential buildings. Sometimes it may not be crude oil, but mud or silt deposited on adjoining land or stream during initial exploration activities, as happened in the case of **ELF NIGERIA V SILLO (1994) 6 N.W.L.R. (Part 350) 258**. The result of such spillages and mudslides is that large portions of land, particularly farmlands, are left with either little or no economic value or permanently destroyed. In addition, fishing rights or access to same are equally destroyed, either partially or permanently as rivers are left polluted or rendered stagnant. For inhabitants of these areas, it has become one huge case of environmental nightmare.

The above incidents have led to strained relations between the host communities of the Niger Delta and the multi-national oil companies, as individuals and communities have had to resort to litigation to obtain compensation. What does the law say on such matters?

Unit I of this first module is devoted to the nature, causes, types and incidents of pollution in our environment. There will be a general discussion on the issue of

environmental pollution facing mankind today. However emphasis shall be placed on that type of pollution arising from oil operations or activities. This is the focus of this unit.

This course consists of 28 units of study which are designed to give easy understanding of the course to the students. There will be some useful self examination and tutor marked assignments in the course guide. It is expected that these questions will continuously engage the student concerned, and would be persuaded to seek answers and solutions to the posers given, by using the course guide and other references. It cannot be too strongly emphasized that these questions and assignments are important, and must therefore be given the seriousness they deserve. They will ensure proper understanding of the course.

What you will learn in this Course

The second segment of this course is also a continuation of the legal aspects of the oil and gas industry. It is a 400 level course for law students. The course is meant to further expose the student to the issues and matters concerning the oil and gas industry. These include pollution emanating from oil mining or prospecting activities, jurisdiction of the court on oil operations, role and functions of the national oil company, NNPC, role and functions of OPEC, vexed issues of indigenous participation, manpower development and transfer of technology. This course, Law 412 is the second part of the course on Oil and Gas Law designed for the second semester. It is a 4-credit unit course. A minimum time of 4 hours per week is required for the duration of each of the two semesters.

The student will need to get acquainted with the various pieces of legislations that are related to the oil and gas industry.

It is also essential to note that: All these statutes and other regulations will be consulted and referred to in the course of this study. There will be references to other pieces of legislations in some other parts of the world where there are similar practices and comparison will be made thereof. You should take note of the various terms and

usages in this course as certain terms of art will inevitably occur in the proper analysis and discussion of the topics. However, as

LAW 412 OIL AND GAS LAW II

much as possible we have tried to simplify the analysis to make you understand effectively. You need to relate any of the topics in this course to the occurrences in the society and through any examples that are given.

Importance of Statutes and Regulations

It is essential to note that this course for this semester finds its basis from statutes, regulations and policies. Some of the statutes include but are not limited to the Petroleum Act, the Oil Pipelines Act, Minerals Act, Associated Gas Re-injection Act, the Land-Use Act, Mineral Oil Act, NNPC Act, Petroleum Industry Bill, Local Content Act, Oil in Navigable Waters Act, Oil Terminal Dues Act, Harmful Waste (Special Criminal Provisions) Act, National Environmental Standards and Regulations Enforcement Agency Act. Its sources also include textbooks, journals and monographs on laws relating to oil and gas. You will be referred to some of these texts and you are expected to make adequate use of them along with this course guide. Relevant sections of statutes may be quoted or cited to give specific references during discussion of a topic. You are expected to get yourself familiar with these as much as they are relevant.

2. **COURSE OBJECTIVES**

At the completion of this study Unit, the student should be able:

- To understand and appreciate the nature, causes, types and incidents of environmental pollution in general, and in particular that type arising from oil prospecting operations or activities of multinational oil companies in the Niger Delta Region of Nigeria.

- To define the terms “pollution” and “environment”.

- To understand and appreciate the relationship between these terms.

- To identify the various types of pollution.

- To understand and appreciate the global view of pollution and the environment, and the imperatives of urgent action to prevent further deterioration of our environment, now seen in global warming and climate change.

- To understand and appreciate incidents of pollution emanating from oil mining, and their effects on the environment.

3. MAIN CONTENT

3.1 Definition of Terms

3.2 Types of Pollution

3.2.1 Land Pollution

3.2.2 Water Pollution

3.2.3 Air Pollution

3.2.4 Noise Pollution

3.3 Global Perspective on Environmental Pollution

3.4 Incidents of Oil Pollution

3.4.1 Pollution from oil spill

3.4.2 Victims of oil spill in the Niger delta area of Nigeria

3.4.3 Pollution from gas flaring

4.1 Definition of terms

Section 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 defines “**pollution**” thus:

“Pollution means man-made or man aided alteration of chemical, physical or biological quality of the environment beyond acceptable limits and pollutants shall be construed accordingly.”

The same Section defines the “**Environment**” in this manner:

“Environment includes water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.”

This is the current legislation governing environmental matters in Nigeria. It repealed the Federal Government Protection Agency Act of 1988 (See Section 36 of the Act)

From the above definitions, it is clear that any human intervention which affects the natural state of the environment to such an extent that the society finds it unacceptable, qualifies as pollution. I think that the law does recognise that in our modern industrial society, pollution of some kind or to some degree is inevitable. What is objectionable and intolerable however is that it does not exceed certain limits where it would pose hazardous and deleterious effect on man and his surroundings. And this is what the law aims to prevent or control. Here in Nigeria, there is a constitutional provision which guarantees the protection of the environment by the State. **Section 20 of the Constitution of the Federal Republic of Nigeria 1999 states:**

**“ The State shall protect and improve the environment
and safeguard the water, air and land and wildlife
of Nigeria.”**

4.2 Types of Pollution

Let us first of all look at the various types of pollution affecting man and his environment. Pollution does affect land, water and air. These are important components of our environment, and have easily and progressively become victims of this onslaught posed by pollution.

4.2.1 Land Pollution

When oil spill occurs, and spreads on land, it is likely to affect or impair its fertility. Evidence has shown that where oil spill overruns farmlands, they have been found degraded. This is as a result of the effect on the vegetation as well as agricultural yield. **See for example the case of S.P.D.C. NIG. LTD V TIEBO VII (infra).** Indeed low crop yield has become the bane of local farmers in the affected areas. It is also worthy of note to state that land pollution, aside from oil spill, can be caused by indiscriminate dumping of harmful and hazardous waste materials, like industrial chemicals or even obsolete or expired electronic and electrical equipments. But by far the most dangerous is nuclear toxic waste. It was the dumping of containers of this waste, and subsequent discovery in Koko, Delta State, that woke up the Nigerian nation from its slumber on environmental protection, leading to the promulgation of the Harmful Waste (Special Criminal Provisions) Act 1988 now cited as Cap H1 Laws of the Federation of Nigeria 2004.

4.2.2 Water Pollution

Water, an essential factor in environmental sustainance, can be polluted through various means. Oil operations contribute greatly to the pollution of water resources when produce water and other pollutants are discharged into the ocean, rivers, streams and lakes. When this happens, these waters are severely affected often leading to the

death of aquatic life. In other words, fish and other varieties and species of animals found in the marine environment are either killed or chased into deep waters. The major cause of this type of pollution is the toxic substances found in produce water. Water pollution can occur through the deposit or dumping of oil operations waste like mud, sand or silt. **See the case of ELF NIGERIA LTD V OPERE SILLO (infra).**

In the same vein, oil operations damage resulting in oil spill can cause pollution of the rivers and streams, by rendering them stagnant. Similarly various industrial wastes, both solid and liquid, have been identified as causes of water pollution. Oil pollution of rivers, lakes and streams in the Niger Delta have had damaging effects on fishermen plying their trade; the common complaint now is low catch yield.

4.2.3 Air Pollution

Air pollution is caused by the emission of a variety of harmful gases into the atmosphere thereby altering its natural state and posing danger to the environment. In the oil industry, the continued flaring of associated gas has contributed immensely to the pollution of our atmosphere. This is as a result of the emission of deadly substances like methane and benzene which pose various health hazards to the host communities. But beyond the oil and gas industry, can be found other sources of air pollution. Increased vehicular activities in our urban dwellings have contributed equally to air pollution through the emission of carbon dioxide and other gases. Indiscriminate burning in our various localities including markets, abattoirs and refuse dump sites have all been identified as sources of air pollution.

4.2.4 Noise Pollution

This type of pollution is now a common occurrence in urban areas where commercial and industrial activities are part of everyday life. A major contribution to this type of

pollution comes from vehicular activities when horns are blared indiscriminately by impatient drivers. Other causes of noise pollution include:

- (i) Excessive music from variety of sources advertising their wares or products, especially cassette and CD traders.
- (ii) Excessive noise and sound emanating from a variety of churches and prayer houses in the course of worshipping.
- (iii) Excessive domestic noise emanating from social and cultural activities like burials, concerts, bazaars, wedding ceremonies etc.

That the level of noise pollution in our urban cities has increased alarmingly is now recognised by Section 22 of N.E.S.R.E.A. Act 2007. This Section empowers the agency to make regulations on noise emission, control and abatement in order to preserve and maintain public health. There is no doubt that the effect of noise pollution on human health could be damaging. Excessive noise makes life utterly uncomfortable. It can also impair hearing capacity and at the same time lead to disturbance of sleep and emotional distress.

4.3 Global Perspective on Environmental Pollution

4.3.1. There is today a greater international awareness of the dangers posed by continued deterioration of the environment. The evidence is there for all to see. The major cause of this degradation is pollution which has reached alarming proportions. The phrases” **global warming**” and **climate change** are now common place in our lexicon, that no one can pretend that if urgent attention is not given to this monster, the consequences are bound to be dire and catastrophic. Just recently, an international aid organisation, **OXFAM**, in its report, warned of increase in global hunger in the coming years, as global warming and low investment in agriculture continue to take their toll on the environment. This frightening prospect is obviously traceable to

increased level of global pollution, which is a major contribution to global warming, climate change and drought.

4.3.2 Leading industrialized nations of the world like the United States, China, Japan and the European Union have come to recognise this danger, and to this extent have strengthened their municipal laws on combating pollution. The international community under the umbrella of the United Nations is equally active in the battle against environmental pollution. The Kyoto Protocol to the United Nations, an International Convention on climate change, which came into existence in 1997, stands as evidence of efforts by this world body in limiting and reducing greenhouse emissions by countries who signed up to it.

4.3.3 The Convention in effect calls for concerted global action by signatory nations to reduce industrial emissions which contribute adversely to environmental pollution. There are also provisions on the steps to be taken by individual nations to promote and enhance energy efficiency in their national economies, and at the same time introducing policies to reform sectors of the economies that cause pollution. Realising that more is needed to be done on this matter, the world body organized another summit, which was held in Mexico in 2009, to find solutions to the lingering problems of environmental pollution. However no agreement was reached on limits to be placed on industrial emissions.

4.4 Incidents of Oil Pollution

4.4.1 Pollution from Oil Spill

We now turn our attention to pollution emanating from the oil and gas sector, being the main focus of this course. There can be no doubt that one of the major causes of pollution in our society today is the oil prospecting activities of multinational oil companies. Environmentalists like Friends of the Earth, reckon that the increase in the level of oil mining in various parts of the world in the last 30 years has contributed

greatly to the pollution and degradation of the global environment. In the oil industry, pollution occurs mainly through oil spill, gas flaring and discharge of produce water. In the course of exploration, production storage and transportation of crude oil, events may happen which ultimately result in the spillage of this product. It could be due to equipment failure or mal-function, or well blow out. It could also be attributed to pipeline failure, storage tank failure or loading hose failure. In some cases, the cause has been traced to sabotage, now a common phenomenon in the environmentally ravaged Niger Delta region of Nigeria. What ever may be the cause of oil spill, one thing is clear, and that is the danger it poses to the environment. Even with extensive remediation, the effect on the vegetation and eco-system are often devastating. The oil spill caused by equipment failure in British Petroleum deep water production in the Gulf of Mexico in the United States in 2010, is still fresh in our memories. The effect was, to say the least, utterly destructive.

4.4.2 Incidents of this nature are common in the oil producing areas. This is true of the Niger Delta. Since the discovery of oil in commercial quantities, exploration and production of this precious liquid has progressively been on the increase and with it increase in the level of pollution. The victims are the local inhabitants whose farmlands, fish ponds, lakes, creeks and even residential accommodation are either severely degraded or outrightly destroyed, following spills. There are cases which will clearly depict the picture of oil spill incidents in the oil producing areas of Nigeria, where individuals and communities affected have gone to court in search of compensation. **See:**

- (i) NWADIARO V SHELL PETROLEUM DEVELOPMENT COMPANY, NIGERIA LTD (1990) 5 N.W.L.R. (Part 150) 322**

- (ii) SHELL PERTOLEUM DEVELOPMENT COMPANY, NIGERIA LTD V FARAH (1995) 3 N.W.L.R. (Part 382) 148**

- (iii) SHELL PETROLEUM DEVELOPMENT COMPANY, NIGERIA LTD V AMBAH (1991) 3 N.W.L.R. (Part 593) 1**
- (iv) SHELL PETROLEUM DEVELOPMENT COMPANY, NIGERIA LTD V ISAIAH (2001) 11 N.W.L.R. (Part 723) 168**
- (v) ELF NIGERIA LTD V OPERE SILLO (1994) 6 N.W.L.R. (Part 350) 258**
- (vi) SHELL PETROLEUM DEVVELOPMENT COMPANY, NIGERIA LTD V TIEBO VII & OTHERS (2005) 3-4 S.C.**

The above cases involved incidents of oil pollution in the form of oil spill which affected the land, swamps, creeks, fish ponds, fishing nets and other valuable properties of the host communities. We shall in subsequent units of this Module throw more light on them. But note that such incidents have led to numerous litigation in that part of the country.

4.4.3. Pollution from Gas Flaring

Gas flaring can also cause pollution in the oil and gas industry. This process essentially involves what is often described as the unscientific burning of associated but unwanted gas during oil exploration and production. When oil is pumped out of the ground, it is accompanied by natural gas and produce water. These accompanying products are separated from the crude oil and discharged as wastes. In the case of gas, it is burnt because of inadequate facilities for collecting and gathering them. The produce water, in most cases, is discharged into the rivers or streams along with their toxic substances. In both cases, it is the environment that is left degraded as dangerous

toxic substances pollute the air through gas flaring; at the same time rivers, streams and lakes are rendered lifeless through the discharge of produce water and other effluents.

5. **CONCLUSION**

All said and done, pollution of any type, whether emanating from oil activities or non-oil activities, is a serious matter and must be confronted frontally. It has been shown in this unit that the world is now much more aware of the dangers posed by pollution on our lives. Many nation states, including Nigeria, have gone ahead to erect effective legal regimes in the form of laws and regulations to control and reduce this environmental menace. To these laws we shall turn to in subsequent units.

6. SUMMARY

It has been the principal aim and objective of this introductory unit of Module 1 of the second arm of this course, to explain and analyse the nature, causes, types and incidents of pollution in our environment. The terms “Pollution” and “Environment” have been presented in their statutory garb. It has also been seen that the protection of the environment from pollution is such an important matter that the Constitution, the supreme law of the land, recognises and guarantees it.

The effects of such pollution on the environment have been shown to include:

- Degradation of land, water and air.
- Adverse effect on the vegetation and ecosystem
- Reduction in the soil fertility and subsequent effect on agricultural yield.
- Destruction of aquatic life in the marine environment which has severely affected local fishing.
- Noise pollution in the form of excessive sound or music could pose danger to human health.

7 **TUTOR MARKED ASSIGNMENT QUESTIONS**

1. In what ways is the environment exposed to pollution, and what are the effects of such incidents?

2. Of all the dangers facing mankind today, perhaps the one in urgent need of attention and action by States is environmental pollution.

Discuss

3. Oil prospecting activities have contributed greatly to the pollution of the environment, and Nigeria is not an exception.

Do you agree?

4. Explain the nature of oil pollution and how it affects the environment.

8. REFERENCE/ FURTHER READING

- (i) Environmental Law in Nigeria: Theory and Practice – by Lawrence Atsegbua, Vincent Akpotaire and Folorin Dimowo.
- (ii) Constitution of the Federal Republic of Nigeria 1999.
- (iii) National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.

OIL AND GAS LAW II LAW 412

MODULE 1

UNIT 2

Table of Contents

8. Title
9. Introduction
- 10.Objectives
- 11.Main Content
- 12.Conclusion
- 13.Summary
- 14.Tutor Marked Assignment
- 15.Reference/Further Reading

STATUTORY CONTROL OF OIL POLLUTION IN NIGERIA

INTRODUCTION

In Unit 1, we discussed the nature, causes, types and incidents of pollution, with special emphasis on oil pollution. We also drew your attention to the fact that of the different causes of pollution in our environment today, the one emanating from oil prospecting activities of multi-national companies constitutes the most danger to our environment. The question now is what is being done or has been done to combat this menace. In other words, what does the law say on the matter of prevention and control of pollution in our environment? How does society seek to use the instrument of law to check unacceptable levels of pollution?

The questions posed above will engage our attention in this Unit. We shall identify the various legislations in Nigeria aimed at preventing and controlling pollution. But as we did in Unit 1, emphasis shall once again be placed on the legal provisions pertaining to the oil and gas industry.

The following Statutes or legislations are relevant to our discussions in this unit:

- 1. Constitution of the Federal Republic of Nigeria 1999 as amended.**
- 2. Petroleum Act Cap P10 L.F.N 2004.**
- 3. Petroleum (Drilling and Production) Regulations**
- 4. Minerals and Mining Act Cap M12 LFN 2004**
- 5. Oil in Navigable Waters Act Cap 06 LFN 2004**
- 6. Oil Pipelines Act Cap 07 LFN 2004**
- 7. Oil Terminal Dues Act Cap 08 LFN 2004**
- 8. Associated Gas Re-injection Act Cap 08 LFN 2004**
- 9. Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004**

**10.National Environmental Standards and Regulations Enforcement Agency
(Establishment) Act 2007**

11.Environmental Impact Assessment Act Cap E 12 LFN 2004

It should be stated here that the matter of pollution and the environment is not contained either in the Exclusive legislative list or concurrent legislative list of the Second Schedule of the 1999 Constitution (as amended). To that extent therefore, it remains a residual matter upon which the State legislature can competently and exclusively enact a law to the exclusion of the Federal legislature.

See (i) FAWEHINMI V BABAGINDA (2003) 3 N.W.L.R. (Part 808) 604 – on tribunals of enquiry matter, and

(ii) A.G, LAGOS V A.G FEDERATION (2003) 12 N.W.L.R (Part 833) 1 – on the lack of power on the part of the National Assembly to enact a law for the States of the Federation on town and regional planning matter.

In these matters stated above, the National Assembly can only legislate exclusively for the Federal Capital Territory.

COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To identify the various legislations in Nigerian Law governing pollution.
- To identify the statutory provisions contained in these statutory provisions relating to the prevention and control of pollution generally in Nigeria.
- To understand and appreciate these statutory provisions relating to the prevention and control of pollution generally in Nigeria.

- To understand and appreciate the statutory provisions relating to the prevention and control of environmental pollution in the oil and gas sector in Nigeria.
- To understand and appreciate the objectives and functions of environmental protection agency, like N.E.S.R.E.A.

3.0 MAIN CONTENT

3.1 Prevention of Pollution generally

3.2 Environmental Enforcement Laws and Agencies

3.3 Objectives and Functions of N.E.S.R.E.A.

3.4 Pollution Control and Preventive Measures under the Act

(i) Land resources

(ii) Water resources

(iii) Air resources

(iv) Prevention of noise

(v) Discharge of hazardous substances

3.5 Prevention of Pollution in the oil and gas sector.

3.5.1 Petroleum Act

3.5.2 Petroleum (Drilling and Production Regulations)

3.5.3 Minerals and Mining Act

3.5.4 Oil in Navigable Waters Act

3.5.5 Oil Terminal Dues Act

3.5.6 Associated Gas Re-Injection Act

3.5.7 Oil Pipelines Act

3.5.8 N.O.S.D.R.A.

3.1 **Prevention of Pollution Generally**

3.1.1 **Environmental Enforcement Laws and Agencies**

The position of the law in Nigeria is that both the Federal and State Governments have powers under the Constitution to make or enact laws on the matter of prevention and control of environmental pollution. The current Federal law on this matter is **National Environmental Standards and Regulations Enforcement Agency Act 2007**. There are also Environmental Pollution Prevention Laws in the various States of the federation. In Anambra State for example, there is the **Anambra State**

Environmental Protection Agency Law, which among other things, seeks to promote, encourage and maintain clean and healthy environment. In Imo State, there is the **Pollution Prevention and Control (Miscellaneous Provisions Law) 1985**, which among other things seeks to promote a healthy environment by preventing the discharge of industrial wastes into water courses as to impair their quality. We shall however in this course, focus on the provisions of **N.E.S.R.E.A. Act 2007**. We shall also note the existence of the **Environmental Impact Assessment Act 1992**.

3.1.2 Objectives and Functions of N.E.S.R.E.A.

The aims and objectives of this body are set out in **Section 2 of the Act**. Essentially it provides that the Agency shall have the responsibility for the protection and sustainable development of the environment in general through enforcement of environmental standards, regulations, rules, laws, policies and guidelines. The functions of the Agency are set out in detail in **Section 7 of the Act**. Essentially, the Agency is saddled with the responsibility to enforce compliance with laws, regulations, guidelines policies and standards on environmental matters generally, including pollution abatement, **other than in the oil and gas sector**. The responsibility for environmental pollution prevention and control in that sector is now vested on the National Oil Spill Detection and Response Agency (N.O.S.D.R.A.) a body under the Federal Ministry of Environments.

3.1.3. Pollution Control and Preventive Measures under the Act

(i) Land Resources

By **Section 26(1) of N.E.S.R.E.A. Act**, the Agency may make regulations, guidelines and standards for the protection and enhancement of the quality of land resources including prevention of flood and erosion. To underscore the seriousness which the law attaches to land protection and preservation, the Act creates an offence in **subsections 3 and 4 of this Section**. Specifically a person who violates or is in breach

of the provisions of the regulations made pursuant to **subsection (1) above**, commits an offence and shall on conviction, be liable to pay a fine not exceeding ₦200, 000 or imprisonment for a term not exceeding one year or to both of them, and an additional fine if ₦10, 000 for every day the offence subsists (**see subsection (3)**). In the case of a body corporate it shall on conviction, be liable to a fine not exceeding ₦1, 000.000 and an additional fine of ₦50, 000 for every day the offence persists. **See subsection 4.**

(ii) **Water Resources**

In order to prevent the pollution of water resources, the Agency is empowered under **Section 23 (1) of the Act** to make regulations for the purpose of protecting public health or welfare and also to enhance the quality of water. This section also criminalizes any act which is in breach or violation of the regulations made pursuant to **subsection (1) above**. To this extent, **subsection 3** provides that a person who violates the provisions of the said regulations, commits an offence and shall on conviction, be liable to pay a fine not exceeding ₦50, 000 or to imprisonment for a term not exceeding one year or to both of them and an additional fine of ₦5, 000 for every day the offence subsists. In the case of a body corporate, it shall on conviction, be liable to a fine not exceeding ₦50, 000 and additional fine of ₦10, 000 for every day the offence subsists.

(iii) **Air Resources**

Section 20 (1) of N.E.S.R.E.A. Act 2007 provides that the Agency may make regulations for the protection and enhancement of the quality of Nigeria's air resources, so as to promote public health or welfare. These regulations should be geared towards the control of concentration of substances in the air which separately or in combination are likely to result in damage or deterioration of property or of human, animal, marine or plant health. In effect, the subsection empowers the Agency

to make regulations and standards that would prevent and combat various atmospheric pollutions.

In line with the similar provisions on land and water resources, **subsection 3 of this section** creates an offence for the violation of the regulations made pursuant to **subsection 1**. It provides that any person who violates the said regulations commits an offence and shall on conviction, be liable to a fine not exceeding ₦200, 000 or to imprisonment for a term not exceeding one year or to both of them, and an additional fine of ₦20, 000 for every day the offence subsists. Under **Subsection 4**, where the offender is a body corporate, it shall on conviction be liable to a fine not exceeding ₦2, 000, 000 and an additional fine of ₦50, 000 for every day the offence subsists.

(iv) **Prevention and Control of Noise**

N.E.S.R.E.A is empowered under **Section 22 (1) of the Establishment Act** to make regulations on noise emission, control and abatement so as to preserve and maintain public health and welfare. The Agency shall also enforce compliance with such regulations, and further, recommend programmes to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities. **(See subsection 2)**

In the enforcement of the regulations made pursuant to **subsection (1) above**, a person who violates the said regulations commits an offence, for which he is liable upon conviction to pay a fine not exceeding ₦50, 000 or to imprisonment for a term not exceeding one year or to both of them in addition to a fine of ₦5, 000 for every day the offence subsists. **(See subsection 3)**

In the case of an offender which is a body corporate, it shall on conviction be liable to pay a fine not exceeding ₦500, 000 in addition to a fine of ₦10, 000 for every day the offence subsists. **(See subsection 4)**

(v) **Discharging of Hazardous Substances**

Here **Section 27 (1) of the Act** creates an offence as follows:

“The discharge in such harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shorelines is prohibited, except where such discharge is permitted or authorized under any law in force in Nigeria.”

Before moving further on this offence, I should think that the offence set out above compliments the offence created in **Section 1 of the Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004**. Eventhough **Cap H1** talks about “harmful waste” and **Section 27 (1) above** deals with “**hazardous substance**” both terms in my opinion convey almost the same meaning. Any hazardous substance can qualify as harmful waste as long as it is a threat to human health, and vice versa. It is a matter of degree of emission. Otherwise why would one discharge or dispose of hazardous substance or material if it is not waste product? If the hazardous substance was still useful or valuable, it would be retained and put to use rather than being discharged, and to that extent is not a hazardous waste. Accordingly the meaning given to “harmful waste” in **Section 15 of cap H1**, covers or extends to “hazardous substance” in **Section 27 (1) of N.E.S.R.E.A. Act**.

In the said Section 15, “harmful waste” means

“.....any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance if the waste in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health”

Hazardous substance has however been defined in **Section 37 of N.E.S.R.E.A. Act**. It means:

“.....any chemical, physical or biological radioactive materials that pose a threat to human health and the environment.....”

In fact, **Section 27 (5) of N.E.S.R.E.A.** Act makes it clear that the provisions of **Cap H1** shall apply in respect of hazardous substance constituting harmful waste.

Under **Section 27 (2)**, a person who violates the provisions of subsection (1) above commits an offence and is liable on conviction to a fine not exceeding ₦1, 000.000 or to imprisonment for a term not exceeding 5 years. For a body corporate offender, that penalty for violation of the offence in subsection 1 above shall on conviction be a fine not exceeding ₦1, 000.000 and an additional fine of ₦50, 000 for every day the offence subsists (**see Section 27 (3)**)

SELF ASSESSMENT EXERCISE 1

1. What are objectives and functions of N.E.S.R.E.A?
2. To what extent does the N.E.S.R.E.A Act provide for the protection of land, water and air resources in our environment?
3. Discuss the pollution preventive and control measures concerning noise and the discharge of hazardous substances under the N.E.S.R.E.A. Act.

4.2 **Prevention of Pollution in the Oil And Gas Sector**

We shall now devote our attention to pollution control measures in the oil and gas sector.

4.2.1 **THE PETROLEUM ACT**

This legislation marked the beginning of true indigenous exercise of sovereignty over mineral and natural resources in Nigeria. It is a statutory enactment, which, among other things, makes provisions for the Minister in charge of Petroleum Resources to make regulations on various matters, including pollution. **Section 9 (1) of the Act sets the stage thus:**

“The Minister may make regulations.....

**(b) providing generally for matters relating to licences
and leases granted under this Act and operations carried
on thereunder, including**

(iii) the prevention of pollution of water courses and the atmosphere.

The above section has therefore empowered the Minister to make regulations on diverse matters, including the prevention of pollution of the environment. What are these regulations, and how far do they go in preventing pollution? These questions will form the basis of our discussion in the following paragraphs of this unit.

4.2.2 **PETROLEUM (DRILLING AND PRODUCTION) REGULATIONS**

These regulations are aimed at protecting parts of the environment that are most vulnerable to pollution arising from oil prospecting and mining activities. These include water resources, trees, land and air. Starting with water resources, **paragraph 25 of the Regulations provides thus:**

**“The licensee or lessee shall adopt all practicable precautions
including the provision of up-to-date equipment approved
by the Director of Petroleum Resources 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, banks or shore line or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.”

When rivers or inland waters like streams and lakes are polluted, fishing in those waters is either significantly reduced or entirely destroyed. The right to fishing has always been recognised by the law, and protected from any interference, in particular pollution. To this extent **paragraph 23 of Regulations provides that:**

“If the licensee or lessee exercises the rights conferred by his licence or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured by the exercise of those first mentioned rights.”

The right to fish in tidal waters has long been recognised in our law, and also, has been recently reaffirmed in the following cases:

- (i) ELF NIGERIA LIMITED V OPERA SILLO (1994) 6 N.W.L.R. (Part 350) 258**

- (ii) S.P.D.C. V ADAMKUE (2003) 11 N.W.L.R. (Part 832) 533**

In Elf’s case above, the Court awarded compensation to the Sillo family for loss of fishing right occasioned by oil pollution in the form of oil spill which poured silt into the tidal rivers where they carried out their occupation as fishermen.

On protection of productive trees, **paragraph 21** provides:

- (1) **“The licensee or lessee shall not cut or take any protected tree except with the consent of the state authority and on payment of the appropriate fees and royalties.”**
- (2) **“If the licensee or lessee cuts down or takes any other productive tree, he shall pay fair and adequate compensation to the owner thereof.....”**

Again, these regulations extend protection to objects of veneration. These may appear either in the form of trees or ancient dwelling. But in which ever form it appears, **paragraph 22** prohibits a licensee or lessee from injuring or destroying it except with the permission of the State authority. The question whether any thing is an object of veneration or not shall be decided by the State authority, of which the power lies with the Governor.

On protection of land, **paragraph 36 of Schedule 1 of the Protection Act** provides:

“ The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.”

See the case of **SHELL PETROLEUM DEVELOPMENT CO NIG LTD V FARAH (1995) 3 N.W.L.R. (Part 382) 48**, where the Court of Appeal considered this provision in the Petroleum Act, in awarding compensation to the Respondents who suffered injury and damage as a result of oil spill.

4.2.3 MINERALS AND MINING ACT

Section 99 of this post military legislation also contains ample provision on the protection of the environment from oil mining related pollution. The section provides that a holder of a mining title shall in the exercise of its rights under the license or lease have regard to the effect of the mining operations on the environment, and take such steps as may be necessary to prevent pollution of the environment resulting from the mining operations. **See also Section 65 on prohibition of pollution of waters by mining operations.**

4.2.4. OIL IN NAVIGABLE WATERS ACT

To prevent and control the pollution of our water resources by crude oil, this legislation sets out ample provisions in the following terms:

1. By **Section 1 of the Act**, an offence is committed when oil is discharged from a Nigerian ship into part of the sea which is a prohibited sea area or if any mixture containing not less than 100 parts of oil is discharged from such a ship into that part of the sea. Here the guilty party is either the master or the owner of the ship in question. The prohibited sea area in this section forms part of international waters.
2. Under **Section 3 of the Act**, an offence is also committed where the owner or master of a vessel, or the occupier of a place on land, or the operator in charge of an apparatus for the transfer of oil from a vessel, discharges oil into Nigerian territorial waters from his vessel, place on land or his apparatus respectively.

3. To enforce compliance with the above pollution prevention measures, an offence is also created under **Section 5 (5) of this Act** for failure to install oil pollution prevention and control equipments on ships in accordance with regulations made under this Act. Again the guilty party is either the owner or master.

The penalty on conviction of any of the offences stated above is imposition of fine **(See Section 6 of the Act)**

4.2.5. OIL TERMINAL DUES ACT

This legislation essentially deals with the discharge or unloading of oil at oil terminals. The objective here is to ensure that in the course of such operations, oil is not discharged or spilled into our territorial waters which would pollute them. To this extent Section 6 (2) of the Act creates an offence similar to those in Sections 1 and 3 of the Oil in Navigable Waters Act. This section 6 provides that where oil or mixture containing oil is discharged into any part of our territorial waters from a pipeline or any apparatus used for loading and unloading of oil from a vessel, or as a result of operation for evacuating oil, the owner of the pipeline or apparatus or the operator in charge of the evacuation, as the case may be, shall be guilty of an offence under Section 3 of **Cap 06 L.F.N. 2004, ie Oil in Navigable Waters Act**. That offence has already been set out above.

The same penalty as provided by Section 6 of **Cap 06** awaits the guilty party here under **Section 6 (3) of Oil Terminal Dues Act**. It can therefore, be seen that these pollution prevention provisions compliment each other.

4.2.6 ASSOCIATED GAS RE-INJECTION ACT

On protection of the air **Section 3 of this Act provides** that subject to subsection 2 of this section, no company engaged in the production of oil and gas in Nigeria shall after 1st January 1984 flare gas produced in association with oil without the permission in

writing of the Minister. There can be no doubt that this provision is aimed at the protection of our air resources.

4.2.7 OIL PIPELINE ACT

Section 14 of this Act provides that a licence for the establishment and maintenance of an Oil Pipeline shall not, unless expressly permitted, be exercised in such a manner to affect the flow of water required for domestic, industrial or irrigational use or make such deposit in a waterway that would cause flooding or erosion.

4.2.8 ESTABLISHMENT OF ANTI-POLLUTION AGENCY FOR THE OIL AND GAS SECTOR IN NIGERIA

Some time in early 2010, a National Oil Spill and Detection Response Agency (N.O.S.D.R.A.) was established under the Federal Ministry of Environment, and a National Oil Spill Contingency Plan (NOSCP) approved by the Executive Council of the Federal Government.

N.O.S.D.R.A. would manage the contingency plan on oil spill under the terms of the new programme on combating environmental pollution caused by oil operations. The approval of the contingency plan and the establishment of the Agency were in compliance with the International Convention on Oil Pollution Preparedness Response and Cooperation (OPPRC) of which Nigeria is a signatory. This convention enjoins signatory nations to intensify efforts towards the compliance, monitoring and enforcement of oil and gas regulations and standards.

SELF ASSESSMENT EXERCISE 2

1. Explain the provisions made by the Petroleum (Drilling and Production) Regulations for protection of the environment from oil mining pollution.

5. CONCLUSION

This unit has dealt with the control and preventive measures on environmental pollution in Nigerian Law. These measures are contained in various legislative or statutory enactment set out in the introductory part of this unit. It has also been seen that some of these legislations, especially N.E.S.R.E.A. Act 2007, deals generally with the prevention and control of pollution except in the oil and gas sector. At the same, we explained that there are specific legislations which deal exclusively with oil pollution. In the next unit, that is unit 3, we shall discuss the non-statutory control of oil pollution. By this we shall engage in that aspect of the common law where the courts have, through their pronouncements, provided a check on the manner of oil exploration which result in pollution and consequent damage and injury to proprietary rights. Here, rather than create an offence, a cause of action is recognised by the court.

6. **SUMMARY**

it has been the principal aim and objective of Unit 2 of Module 1, to identify, explain and discuss the various legislations governing the prevention and control of pollution generally, and specifically in Nigerian Law. N.E.S.R.E.A. Act 2007 was our focus on environmental protection and enforcement generally. In relation to the oil and gas sector, we discussed the relevant provisions of some Statutes. In doing so, we saw that there are sections in these statutes which create offences for certain acts done in violation of regulations seeking to protect the environment from pollution.

7. **TUTOR MARKED ASSIGNMENT QUESTION**

1. Apart from the Petroleum Act and Regulations made thereunder, there are ample provisions in other legislations for combating oil pollution in Nigeria.

Discuss

8. **REFERENCE/FURTHER READING**

1. Environmental Law in Nigeria: Theory and Practice – by Lawrence Atsegbua, Vincent Akpotaire and Folorin Dimowo.
2. Oil and Gas Law in Nigeria – by Yinka Omorogbe
3. Constitution of the Federal Republic of Nigeria 1999, as amended.
4. N.E.S.R.E.A. Act 2007.
5. Petroleum Act, cap P10 LFN 2004
6. Petroleum (Drilling and Production) Regulations.
7. Minerals and Mining Act, cap M 12 LFN 2004.
8. Quality of Life and Environment in Environmental Laws in Nigeria – by Mowoe K.M.(edited by Professor J.A. Omotola) Ibadan Caxton Press (WA) Ltd 1990.
- 9 /[http/ www. en. wikipedia. org. /wiki/Petroleum Industry in Nigeria.](http://www.en.wikipedia.org/wiki/Petroleum_Industry_in_Nigeria)

OIL AND GAS LAW II LAW 412

MODULE 1

UNIT 3

Table of Contents

1. Introduction
2. Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment
7. Reference/Further Reading

NON-STATUTORY CONTROL OF OIL POLLUTION IN NIGERIA

INTRODUCTION

In Unit 2 of this Module, we discussed the statutory provisions in Nigerian law aimed at preventing and controlling the pollution of the environment from oil mining operations. Aside from these statutes provisions, there are also established legal principles which are equally intended to keep oil operators on alert, and ensure that they carry out their activities with utmost regard for the environment, or face the consequences in law suits for compensation. The result, therefore, is that should these operators conduct their activities unreasonably or recklessly as to inflict injury or harm on proprietary interest like farmlands, water courses in the form of lakes and streams, those affected can take out an action in negligence, nuisance, the rule in *Rylands V Fletcher* or even trespass.

These are actions recognised at common law, and now form part of the law of tort. Essentially what the courts have done here is to extend the application of these established principles to cover incidents of oil pollution. To this extent, it can therefore be said that these body of legal principles compliment the statutory provisions discussed in unit 2, in preventing and controlling oil pollution. These common law rights and actions will form the focus of this Unit. What then are the objectives of this unit?

2. COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To identify the various non-statutory legal provisions pertaining to oil pollution, and their prevention and control.

- To understand and appreciate the common law rights and actions pertaining to incidents of oil pollution and their prevention and control.

- To understand and appreciate the application of the tort of negligence to incidents of oil pollution and claims for compensation.

- To understand and appreciate the application of the principles of the law on nuisance to incidents of oil pollution and claims for compensation.

- To understand and appreciate the application of the principles of the law in the Rule in Rylands V Fletcher to incidents of oil pollution and claims for compensation.

3.0 MAIN CONTENT

3.1 Negligence

3.1 Introduction

3.2 Definition

3.3 Case law in support

3.4 Doctrine of res ipsa loquitor

3.2 Nuisance

3.2.1 Definition

3.2.2 Case law in support

3.3 The Rule Rylands V Fletcher

3.3.1 Definition

3.3.2 Case law in support

3.1 **NEGLIGENCE**

3.1 **INTRODUCTION**

At common law, a person can initiate an action in negligence for the conduct or wrongdoing of another person, which results in injury or damage to that person. It is clear now in our law, that the tort of negligence extends to injuries arising from oil operations damage. An oil company cannot deny the fact that, where owing to the negligence of its workers or agents, there is an oil spillage which destroys farmlands, fish ponds, lakes, creeks, channels or even residential building. In most cases where it has denied liability, it is common to shift the blame for the event or mishap to saboteurs in order to evoke sympathy for itself and also to tarnish the image of the community. Sometimes it is blamed on miscreants who are looking for petroleum to steal.

In Nigeria, today, the law of negligence is well settled as an aspect of our law. If the law is to be restated, it is that a person owes other persons within his contemplation, a duty of care to exercise reasonable care in what he does, and not to do same in a manner that is likely to injure these other persons.

3.2.1 **DEFINITION**

Negligence has been further defined as lack of proper care and attention, careless behaviour or conduct. It is complete when three conditions are satisfied, namely;

1. The Defendant owes a duty of care to the Plaintiff;
2. The Defendant has acted or spoken in such a way as to breach that duty of care;
3. The Plaintiff suffered damages arising from the breach.

The above principle of liability in the tort of negligence was expounded in the well known English case of **DONOGHUE V STEVENSON (1932) A.C. 562**, and has since been followed and adopted in a litany of cases, both foreign and local. See:

AGBONMAGBE BANK LTD V C.F.A.O. (1966) 1 ALL N.L.R 140

OYIDIOBU V OKECHUKWU (1972) 5 S.C. 191

ORHUE V N.E.P.A. (1998) 7 N.W.L.R. (Part 557) 187

NGILARI V MOTHERCAT LIMITED (1999) 13 N.W.L.R. (Part 636) 626

ODINAKA & ANOR V MOGHALU (1992) 4 N.W.L.R. (Part 233) 1

INTERNATIONAL MESSENGERS NIG. LTD. V DAVID NWACHUKWU (2004) 6-7 S.C. 88

U.T.B. (NIG) V OZOEMENA (2007) 3 N.W.L.R. (Part 1022) 448

Apart from these cases, the above principle has further been codified into the Torts Law of various States of the Federation. In Anambra State, **Section 218 of the Torts Law provides as follows:**

“Subject to this law, every person shall have a duty
to take reasonable care to avoid any act or omission
which he is reasonably expected to foresee as likely
to injure persons who are so closely and directly affected
by his acts or omissions that he ought reasonably to have
them in contemplation as being so affected when he is
directing his mind to any such act or omission”.

See also section 217 of the said Torts Law, Cap 135, Laws of Anambra State 1991.

3.1.3 CASE LAW IN SUPPORT

Persons or communities in the oil producing areas of Nigeria, who have suffered one form of damage or another, now resort to an action in negligence for damages or compensation. It is a common law action but at the same time has statutory recognition. In the area of oil operations, cases have emerged where an individual or an entire community sued the Oil Company for negligence, arising from its activities.

However, evidential burden remains a major hurdle on the path of individuals or groups seeking redress under this law. Case law has shown that a plaintiff in a typical oil pollution case in the oil producing areas in the Niger Delta, may not adduce enough evidence to persuade the court to hold that the oil company polluter acted unreasonably in the circumstance that led to the cause of action. Indeed many of these individuals are not knowledgeable enough about the processes involved in oil operations, and therefore not in a position to determine the actual cause of the pollution or danger. In the case of **ANTHONY ATUBIE V SHELL B.P. DEVELOPMENT CO. OF NIGERIA LTD.** (Unreported) UCH/48/73 of 12th November 1974, a claim for damages arising from defendant's oil operations which led to the escape of crude oil, gas and other chemicals from their pipelines and consequently polluted the plaintiff's farmland and lakes and killing the fishes therein, failed for lack of evidence of negligence on the part of the defendant.

Similarly in **CHINDA V SHELL B.P. DEVELOPMENT CO OF NIGERIA LTD (Unreported) 1974**, a claim also for damages in negligence arising from the defendant's oil and drilling operations involving gas flaring, which led to damage to the plaintiff's land, houses and economic trees, failed for lack of evidence of negligence. But in **CHIEF SIMON ONAJOKO V SEISMOGRAPH SERVICE LTD**, the claim for damages for negligence succeeded after the court found that there was evidence of same on the part of the defendant in the course of blasting operations which resulted in damage to the Plaintiff's buildings.

Another case worthy of mention here is that of **SHELL PETROLEUM DEVELOPMENT CO NIGERIA LTD V AMBAH (1999) 3 N.W.L.R. (Part 593) 1**. Here the Plaintiffs/Respondents claimed the sum of ₦30, 000.00 as damages by way of compensation for the total or permanent destruction of their family's fish ponds, fish lakes, fish channels and creeks lying and situate at Asesaoba near Beniseide oil fields. The said destruction occurred when mud dredged from the land in the possession of the Defendant oil company covered the said fish ponds and lakes. According to the plaintiffs, this incident deprived the entire family of their means of livelihood. There was no doubt that the plaintiffs claim was based on negligence.

The Supreme Court held that the plaintiff's case, being one for total destruction of property, namely fish ponds, lakes and channels, as a result of the wrongful act of the Defendant/Appellant, and same having been accepted by the Defendant/Respondent, the Plaintiffs/Respondent's family was only entitled to the market value of the property destroyed and no more. The court further held that it was an error for the Courts below to have awarded the Plaintiffs/Respondents special damages for continuing loss of income from 1976 when the injury occurred (cause of action) until the date of judgment in 1987. This was because the Plaintiff/Respondent never pleaded same, nor was any evidence given in support. But the most important aspect of this case in this area of the law, is that the Supreme Court, the apex court never queried the basis or authority or quo warrant of the Plaintiff's claim, namely negligence.

The same apex court in the earlier case of **ELF NIGERIA LIMITED V OPERE SILLO (1994) 6 N.W.L.R. (Part 350) 258**, in which the Plaintiff/Respondent's family claimed compensation for loss of fishing rights as a result of the oil operations of the Appellant company, held that they were so entitled. This judgment and that in AMBAH'S CASE (Supra) are indisputable authorities, that apart from statutory provisions enumerated above, an action can be maintained by a person in negligence at common law for injuries arising from oil operations damage. See also **OTOKO V S.P.D.C. (1990) 6 N.W.L.R. (Part 159) 693**.

OGAILE V S.P.D.C. (1997) 1 N.W.L.R (Part 480) Page 148

In another related case, namely **SHELL PETROLEUM DEVELOPMENT CO.NIG.LTD. V TIEBO VII & ORS (2005) 3 – 4 S.C. (2005)**, Plaintiffs/Respondents claimed substantial damages for the negligence of the Defendant/Appellant oil company, which resulted in a major oil spillage leading to the pollution of the Plaintiff's farmlands, swamps, creeks, river, fish ponds, fishing nets, raffia palms and juju shrines. They claimed

specific amounts as damages for loss of fishing rights, loss of drinking water, medical expenses incurred, damage and hazards from the pollution of the environment and general inconveniences. The Supreme Court first of all held that the State High Court at Yenagoa, which tried the case had the jurisdiction at that time to do so. Indeed, the judgment of the trial High Court was delivered on the 27th February 1991. The jurisdiction to do so was only ousted on the 17th November 1993. According to OGUNTADE J.S.C., who delivered the leading judgment at page 148 of the Report:

“The result is that the Rivers State High Court had jurisdiction to entertain Plaintiffs’ suit and that jurisdiction was not in any way impaired between the commencement of the action on 6th June 1988, and the delivery of judgment on 27th February 1991”.

The above decision notwithstanding, jurisdiction over matters arising from oil mining or operations, including pollution cases, is now vested in the Federal High Court.

On the issue of quantum of damages, the apex court affirmed the five million naira (₦5, 000,000.00) general damages as compensation for the loss suffered, which was awarded by the trial court as being in order. But it set aside the additional awards of ₦400, 000.00 general damages for damage to raffia and ₦600, 000.00 general damages for loss of drinking water, for lack of evidence.

It is, therefore, clear from what has been stated above that victims of oil operations damage have a right to initiate proceedings under the common law of negligence for losses suffered as a result of oil operations. To succeed, however, they must establish that the discharge or escape of oil was as a result of the wrongful act of the oil company, viz failure to comply with good oil field practice, which resulted in a breach of duty of care and consequently led to injury of losses.

4.1.4. THE DOCTRINE RES IPSA LOQUITUR

Sometimes the evidence led may point to the conclusion that the act complained of could not have happened without the negligence of the defendant. Where this is the case, the principle of res ipsa loquitur will apply.

In the case of **SHELL PETROLEUM DEVELOPMENT CO.NIG LTD V AMARO & ORS (2000) 10 N.W.L.R. (Part 675) 248 at 279** the Court of Appeal, per AKINTAN J.C.A. (as he then was) said:

“The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused”.

The effect of the application of the principle of res ipsa loquitur is that the onus of proof of negligence normally placed or cast on the plaintiff by the rules of evidence merely shifts to the defendant. The defendant is, therefore, required to establish that there was in fact no negligence or want of care on his part. See:

BELLO V A.G OF OYO STATE (1986) 12 S.C. 93

In such circumstances, the plaintiff merely proves the resultant accident and injury and then asks the court to infer from the proven evidence, negligence on the part of the defendant. Reliance on the principle of res ipsa loquitur is indeed a confession by the plaintiff that he has no direct and affirmative evidence of negligence complained of against the defendant, but that the surrounding circumstances establish such negligence. It is, therefore, clear from the foregoing that where there is widespread oil spillage causing substantial damage, for which the victims could not explain the cause or origin, they can rely on this principle to establish negligence against the oil company involved.

3.2 NUISANCE

3.2.1 DEFINITION

In addition to the actions available to victims of oil operations damages in negligence and under the Rule in *Rylands V Fletcher*, such persons can also maintain an action in nuisance. Indeed it is common to file one suit in court based on negligence, rule in *Rylands and Fletcher* and nuisance at the same time. What then is nuisance?

Private nuisance consists in the unreasonable interference with a person’s use or enjoyment of land, or of any right or interest in the said land. It is a civil wrong like negligence or that recognized under the Rule in *Rylands V Fletcher*. Nuisance includes any wrongful act or omission which destroys or deteriorates individual property or interferes with the lawful use or enjoyment of same.

It should be borne in mind that an otherwise lawful act may result in nuisance where it interferes with another person’s quiet enjoyment of his property. This is where the court strikes a balance between the competing rights and interests of the parties. In other words, the court would ask itself this question; what is the extent of the right of an occupier of land to enjoy same on one hand, and the extent of the right of a neighbour to enjoy his own land, without each interfering with the right of the other.

As with negligence, the tort of nuisance has equally received statutory recognition in the laws of various States of the Federation. Here again in Anambra State, sections 251 and 254 of the Torts Law of Anambra State, Cap 135 enact the principle. **Section 251 provides as follows:**

“A person who does an act or makes an omission or otherwise creates a condition which unreasonably interferes with another persons use of land, or of a right over or interest in land shall subject to this part of this law, be liable to such person for a civil wrong known as nuisance”.

Section 254 (1) further provides:

“In order to constitute a nuisance, there must be:-

- (a) a wrongful act or omission;**
- (b) damage actual or presumed;**

Section 254 (2) also provides:

“Whether an act or omission constitutes a nuisance depends on the circumstances of the particular case including the time of the act complained of, the place and manner of its commission, and whether it is transitory, permanent, occasional, continuous”.

See also **U.T.B. (Nig.) V OZOEMENA (Supra)**

3.2.2 **CASE LAW IN SUPPORT**

In the oil and gas sector where oil spillage, gas flaring as well as other forms of oil operations damage or mishap are a common feature, victims have also embraced this form of action, together with negligence, to claim compensation. In such cases, the courts are saddled with the task of striking a balance between the rights of the oil companies to use of land granted to them as licensees or lessees for oil operations without interference, on one hand, and the rights of the host communities to live in a peaceful, quiet and pollution –free environment also without any interference from anybody. From all that has been said above, it is manifestly clear as it is in the case of negligence, that whether an act or omission amounts to nuisance is a question of fact in each case.

In **NWADIARO V SHELL PETROLEUM DEVELOPMENT CO. NIGERIA LTD.** (1990) 5 N.W.L.R. (Part 150) 322 the Court of Appeal upheld a claim which was founded on nuisance. The plaintiffs had alleged that the defendant’s oil operations led to a blockade of their creeks, ponds and lakes. In **TEBITE V NIGERIAN MARITIME TRADING CO. LTD.** (1974), a claim for damages arising from nuisance caused by loud and excessive noise as well as emission of noxious fumes from machines operated by the defendant company succeeded. So also in **AIROBUYI V NIGERIAN PIPELINE LIMITED** (1976) 6 E.C.S.L.R. 53, where a claim for damages for nuisance caused by the defendant’s sand blasting and pipecoating operations, which produced dust and smoke and which in turn damaged the plaintiff’s house in addition to causing him discomfort as well as posing danger to health, succeeded.

The Court has held in the case of **OLADEHIN V CONTINENTAL TEXTILE MILLS LTD** (1978) 2 S.C. 23 that the defendant’s industrial operations which produced poisonous and contaminated water, and which in turn caused serious damage to the Plaintiff’s building, rendered it liable for damages in nuisance.

There is also the case of **ADENIRAN & ANOR V INTER-LAND TRANSPORT LIMITED** (1991) 9 N.W.L.R.(Part 214) 155. The cause of action were noise, vibration and clustered obstruction of the roads all arising from the defendant’s building operations. The plaintiff’s claim for damages for nuisance succeeded. This was inspite of the defendant’s contention that the injury or damage complained of by the plaintiff was a specie of public nuisance, and as such no private individual can sue without the consent of the ATTORNEY GENERAL, or without joining him as a party. The Supreme Court affirmatively held that Section 6 (6) b of the 1999 Constitution allows victims of environmental public nuisance, including the oil and gas sector, to institute legal actions without the A.G’s consent.

3.3. **THE RULE IN RYLANDS V FLETCHER**

3.3.1. **DEFINITION**

Victims of oil operations damage can also maintain an action for compensation under the Rule in **RYLANDS V FLETCHER**. Under this rule, a person who, for his own purpose brings on his land and collects and keeps there anything likely to do mischief if it escapes, is prima facie answerable for all the damage which is the natural consequence of its escape. Things which if they escape are likely to cause mischief include not only inherently dangerous materials like petrol, gas, fire, or chemical but also relatively innocuous things like water, crude oil, sewage and mud.

This principles of law derived its name and identity from the old English case of **Rylands V Fletcher** (1805) where **BLACKBURN J.**, enunciated what has become known in judicial pronouncement as the rule of strict or absolute liability in tort. In that case, the

defendants were held strictly liable for the damage caused by water, which escaped from their land and flooded the plaintiff's mine. Eventhough they were not found liable in negligence or nuisance, they were held strictly liable for their conduct.

3.3.2 **Application and Case Law in Support**

It is now a well established principle that before the rule can apply, the underlisted conditions must exist. These are:

- (i) Defendant must be an owner or occupier of the land and therefore in control of the thing on the land, such as oil and gas.
- (ii) Defendant must bring on his land and collect and keep on the said land something which is dangerous in the sense of being likely to cause mischief if it escapes. For example, crude oil, refined petroleum, chemical, gas, mud etc. In the case of **UMUDGE V SHELL B.P. NIG LTD (1975) 11 S.C. 155**, the plaintiff succeeded in establishing a claim based on this rule, when crude oil and other chemicals damaged his fish pond.
- (iii) Defendant must engage in a non-natural use of land which causes the injury complained of. See: **CHIEF OTUKU V SHELL B.P. (1985)** – Where it was held that placing of manifold on land which results in oil overflow consequently polluting the vegetation and fish ponds was a non-natural use of land.

In **SAM IKPEDE V SHELL B.P. (NIG) LTD (Supra)** the plaintiff who suffered damages as a result of the escape of **crude oil and other chemicals** from pipelines belonging to the defendant's company, relied on the rule and claimed damages. It was held, per OVIE WHISKEY; that it is a non-natural use of land to lay pipes through forests and swamps for the carriage of crude oil.

(iv) Escape: there must be an escape of the accumulated substance from the land where it is kept to a place outside. In other words it must be an escape from a place where the defendant has occupation or control over land to a place which is outside his occupation or control. In the case of **UMUDGE V SHELL B.P. NIG. LTD (Supra)** the Supreme Court held that the defendant oil company was liable under the rule in Rylands V Fletcher because, as the trial court found, the crude oil which was collected and kept in a pit under the occupation and control of the defendant escaped onto the adjoining land of plaintiff where it damaged his fish pond and lake. See also S.P.D.C. V ISALIAH (Supra), S.P.D.C. V TIEBO VII (Supra)

4. CONCLUSION

It can be seen from our discussions above, that these principles in the law of torts have been used and applied by the courts for the protection of our environment. This is because when an individual or an entire community complains or complain that his or their farmlands, streams, lakes, fish ponds have been damaged or rendered valueless, it is part of our environment that is being destroyed or degraded. Inasmuch as the victims of these incidents are entitled to seek redress by way of compensation in court for such injury under these body of principles, they equally remain a watchdog upon the activities of multinational oil companies to conduct their operations reasonably and with such practicable precautions. And together with the provisions in the various statutes or legislations discussed in Unit 2 of this module, they operate to prevent and control pollution in the oil and gas sector.

5. **SUMMARY**

It has been the principal aim and objective of this unit to explain to the reader, the body of legal principles which the courts have often used for the protection of proprietary rights and interests from oil related pollution. These principles of law, which have their origins and foundations in judicial pronouncements (judicial precedents) compliment the statutory provisions that we discussed in Unit 2. Both are geared towards the protection of our environment from oil pollution.

6. **TUTOR MARKED ASSIGNMENT QUESTION**

1. Continental Oil Limited, a subsidiary of Continental Oil International, has for the past 40 years been extensively engaged in the exploration and protection of petroleum resources in the Republic of Mambila. In keeping with its policy of expansion, it has just acquired new oil rights leading to long term production of petroleum. In the course of its operations in the oil rich region of Bakassi, a major oil spill occurred which left a vast area of land belonging to the indigenes badly damaged, including residential houses and crops. These natives have now approached you for advice on how to proceed with their plight.

They are particularly anxious to avoid protracted litigation which may ultimately affect the value of any compensation coming their way.

Assume the position of their Solicitor and write a comprehensive legal opinion on the possible actions and remedies available to them at common law.

2. What do you understand by the Rule in Rylands V Fletcher, and does it operate in oil pollution cases?

3. Explain the principles of the law of Negligence in relation to pollution in the oil and gas sector.

7. **REFERENCE/FURTHER READING**

1. Oil and Gas Law in Nigeria – by Yinka Omorogbe. Malthouse Law Books

2. Environmental Law in Nigeria – Theory and Practice – by Lawrence Atsegbua, Vincent Akpotaire and Florin Dimowo.

OIL AND GAS LAW II LAW 412

MODULE 1

UNIT 4

Table of Contents

- 10. Introduction
- 2 Objectives
- 3 Main Content
- 4 Conclusion
- 5 Summary
- 6 Tutor Marked Assignment Questions
- 7 Reference/Further Reading

GAS FLARING: LEGISLATIVE AND JUDICIAL RESPONSE

1. INTRODUCTION

It will be recalled that in our discussion on the incidents of oil pollution in Unit 1 of this Module, we stated that the process of gas flaring provides another means of pollution of the environment in the oil and gas industry. We had earlier noted in the same unit that oil spill arising from a variety of causes contributes mainly to oil pollution.

In this unit, we shall go further to explain the nature of this process called gas flaring. We shall also explain the reasons underlying this process, and examine why, inspite of existing laws and regulations to control and ultimately abate this environmental menace, it has continued unabated with its harmful effects on the host communities and their environment. This will form our focus in this unit.

In doing so, we shall draw your attention to a very important decision of the Federal High Court on the constitutionality of continued flaring of gas in the Nigerian oil fields. With this landmark judgment, a new angle has been introduced into the subject of oil pollution arising from gas flaring. It shows clearly the seriousness with which the courts are prepared to protect the citizens of Nigeria and their environment from oil related pollution.

In the course of our discussion, we shall encounter the following legislations:

1. Associated Gas Re-injection Act 1979
2. Associated Gas Re-injection (Continued Flaring of Gas) Regulations 1984
3. Petroleum (Amendment) Act 1973

2. COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To identify the legislations and regulations governing the control of gas flaring in our oil fields.
- To understand and appreciate the nature and reasons for gas flaring.
- To understand and appreciate the efforts of Government to control gas flaring.
- To understand and appreciate the provisions in the legislation and regulations governing gas flaring.
- To understand and appreciate the effects of continued flaring of gas on the environment.
- To understand and appreciate the activist approach of our courts in protecting the citizens and the environment from oil pollution arising from gas flaring.

3.0 MAIN CONTENT

3.1 Nature of gas flaring.

3.2 Reasons for gas flaring.

3.3 Government's response to gas flaring.

3.4 Legislatures response to gas flaring.

3.5 Effects of gas flaring on the environment with its implications on human life, and the judicial response.

3.0 GAS FLARING AS AN ASPECT OF OIL OPERATIONS DAMAGE IN THE OIL PRODUCING AREAS OF NIGERIA

3.1. NATURE OF GAS FLARING

Another aspect of oil operations activities, particularly in the Niger Delta, is the process of Gas flaring. It contributes enormously to the degradation of the environment, and has become a catalyst to global warming. There is now an awareness that if global warming is not checked, the environment will suffer untold and irreversible consequences. Already some consequences are being felt in the depletion of the ozone layer and melting Antarctic ice.

Gas flaring involves the complex and unscientific burning and emitting of excess and unwanted gas gathered in an oil field production flow station sites into wastes. In the process of production of oil, the excess and unutilized quantities of gas are separated from the crude and rather than being stored for other useful purposes like generation of electricity, domestic use and even for the export market, are burnt away. It is estimated that Nigeria produces about 3 billion cubic feet of natural gas as co-product of raw crude oil. Out of this number about 2.2 billion cubic feet of the total gas produced jointly in the country by the M.N.O.C, namely S.P.D.C, N.A.O.C, TOTAL/EPNC, EXXON MOBIL PRODUCING UNLIMITED, TEXACO (OVERSEAS) NIGERIA PETROLEUM and CHEVRON NIGERIA LIMITED is flared daily mostly in the Niger Delta region of Nigeria.

3.2. REASONS FOR GAS FLARING

In the course of oil drilling and production, associated gas is encountered, leaving the oil companies with three options, namely:

1. To separate and utilize it,
2. To re-inject it into the reservoir,
3. To flare it.

It has been said that the cost of separating associated gas from oil, for purposes of utilization is very high and prohibitive for oil companies. The often complicated process of separation involves the use and installation of powerful compressors for transmission of the gas. These are expensive to procure.

In the same vein, re-injection of the associated gas into the reservoirs is also a costly venture which must be handled with utmost care and skill. The result is that oil companies are left with the option of flaring which has become comparatively cheaper.

With the above state of affairs, flaring of gas has assumed alarming proportions in the oil fields of the Niger Delta, leaving in its wake a degradation of the environment. What has the government done to abate this menace, and how effective have these measures been?

3.3. GOVERNMENT RESPONSE TO GAS FLARING

The Nigerian Government has over the years been conscious of the debilitating effect of gas flaring on the environment. Efforts therefore have been made to abate or at least control gas flaring. These can be summarized as follows:

- (i) Enactment of the Petroleum (Amendment) Act 1973 to enable the Government to collect associated gas free of charge at the flare sites.
- (ii) Enactment of the Associated Gas Re-injection Act 1979, the aim of which was to encourage re-injection of associated gas thereby minimizing flaring and hopefully end same by 1984.
- (iii) Imposition of penalty on gas flaring.
- (iv) Issuance of environmental guidelines to regulate the oil and gas operations.
- (v) The Associated Gas Framework Agreement which was initiated in 1991 introduced a set of financial incentives to the utilization of natural gas.

- (vi) Establishment of a liquefied natural gas plant in Bonny, River State, by the Federal government in the 1990s, which has seen Nigeria, in partnership with MNOC, exporting gas mainly to Europe. It also is worthy of note here that Shell has recently unveiled an integrated oil and gas project in Gbaram Ubie in Yenogoa Local Government Area of Bayelsa State. The aim of this facility is mainly to deliver gas to new and existing power stations as well as the NLNG for export. But at the same time, the project will reduce routine gas flaring in the oil fields.

3.4. LEGISLATIVE RESPONSE TO GAS FLARING IN NIGERIA

Initial legislative attempt to combat gas flaring in Nigeria came in the form of ASSOCIATED GAS RE-INJECTION ACT 1979. The aim of this piece of legislation was to compel all oil companies prospecting and producing oil and gas in Nigeria to submit preliminary programmes for gas reinjection and detailed plans for implementation of gas re-injection. These were to be submitted before the 1st April 1980.

See Section 1 (a) and (b) and Section 2 of the Act.

In addition to the above provisions, the Act specifically provides that all gas flaring in Nigeria should cease on or before the 1st January 1984. However, realising the operational difficulties some oil companies may face, coupled with the prohibitive cost of providing the facilities for re-injection of gas, the Act empowered the Minister under **Section 1 of the Associated Gas Re-injection (Continued Flaring of Gas) Regulations 1984**, to permit a company to flare gas in any particular field or fields at his discretion, if the company involved pays a sum as the Minister may from time to time prescribe. In effect, an Act that set out to ensure that gas flaring is brought to an end in our oil fields, succeeded in throwing up a scheme whereby oil companies would continue to flare gas on the payment of penalty. In practice, oil companies would prefer to pay the penalty, which in most cases are paltry, and flare gas, rather than embark on the costly utilization or re-injection process. The result then is that gas

flaring, which ought to have ceased as far back as 1984, continues unabated with its deleterious effect on the environment.

Since the passing of the 1979 Act, no other legislation has been made in this area. Indeed, not until recently did the Federal Legislature turn its attention on this aspect of oil operations. Currently there is a bill in the Senate titled **Gas Flaring (Prohibition and Punishment) Bill**, which is still being subjected to legislative debate, which hopefully if it becomes law will finally put to an end to gas flaring in Nigeria. But as we await its outcome, the Upper House has given oil companies operating in Nigeria a December 31st 2010 deadline to end gas flaring.

3.5 EFFECT OF GAS FLARING ON THE ENVIRONMENT WITH ITS IMPLICATIONS ON HUMAN LIFE, AND THE JUDICIAL RESPONSE

Gas flare emits a mixture of benzene and other toxic substances that are harmful to humans and the entire physical environment. Acid rain, another fallout of gas flare acidifies lakes, rivers and streams and damages vegetation. It also accelerates the decay of the roofing sheets and other building materials. It has been stated time and time again by Plaintiffs in suits involving gas flaring that it is a process that seriously pollutes the air, causes respiratory diseases and generally endangers and impairs their health. In particular the Plaintiff in the case of **GBEMRE V SHELL PETROLEUM DEVELOPMENT CO NIG. LTD & ORS (2005) A.H.R.L.R 151**, stated that the burning of gas by flaring in their community gives rise to the following:

- (a) Poisons and pollutes the environment as it leads to the emission of carbon dioxide and other cocktail of toxins that affect the health, lives and livelihood.
- (b) Exposes them to an increased risk of premature death, respiratory illness, asthma and cancer.

- (c) Contributes to adverse climate change as it emits carbon dioxide and methane which causes warming of the environment and pollutes their food and water.
- (d) Causes painful breathing, chronic bronchitis, decreased lung function and death.
- (e) Reduces crop production and adversely impacts on their food security.
- (f) Causes acid rain, their corrugated house roofs are corroded by the composition of the rain that falls as a result of gas flaring. Acidic rain consequently acidifies their lakes and streams and damages their vegetation.
- (g) That so many natives of the community have died and countless others are suffering various sicknesses occasioned by the effects of gas flaring.

Pursuant to the above averments, Plaintiffs claimed that the constitutional guarantee of right to life and dignity of human person enshrined in Sections 33 & 34 of the 1999 Constitution respectively, and available to them as citizens of Nigeria, includes the **right to clean, poison-free and pollution free air and healthy environment conducive for human beings to reside in for their development and full enjoyment of life**, which have been and are being wantonly violated and continuously threatened with persistent gas flaring activities of the respondents in their community in Delta State. The response of the court to these averments have both been positive and proactive, and it shows that the judiciary will not wait for the legislature to show the way forward.

The Federal High Court that heard the matter agreed with the Plaintiffs and granted their prayers and reliefs in the form of **Declarations** namely:

- (1) That the continuing flaring of gas in the course of exploration and production activities in the Applicants community constituted a violation of

their fundamental rights to life and dignity of human person guaranteed by Sections 33(1) and 34(1) of the 1999 Constitution and reinforced by articles 4, 16 and 24 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9 L.F.N. 2004.

- (2) **Declaration** that the provisions of **Section 3(2), and (b) of the** Associated Gas Re-injection Act 1979 now Cap A 25 Volume 1, Law of the Federation 2004 and **Section 1** of the Associated Gas Re-injection (Continued flaring of gas) Regulations 1984, under which the continued flaring of gas in Nigeria may be allowed are inconsistent with the Applicant's right to life and dignity of human person enshrined in **Sections 33(1) and 34(1)** of the Constitution, and articles 4, 16 and 24 of the African Charter on Human Peoples' Right (Ratification and Enforcement) Act Cap A9, L.F.N.2004, and are therefore unconstitutional, null and void by virtue of Section 1(3) of the same Constitution.

An order of perpetual injunction restraining the 1st and 2nd respondents by themselves or their agents, servants, contractors or workers or otherwise howsoever from further flaring of gas in the applicant's said community.

4. **CONCLUSION**

You can see from our discussions above that the flaring of gas during oil production in the oil fields, contributes to the pollution of the environment. The extent of this man-made alteration in the quality of the environment is not limited to the atmosphere, but also affects land resources, water resources, residential buildings etc. The process has also been identified as a major contributor to global warming.

You have also seen that the different arms of governments in Nigeria have not been indifferent to this oil operations damage. But far more active and vigorous is the judicial pronouncement in 2005 that the continued flaring of gas in our oil fields constitutes a violation of fundamental rights guaranteed by Sections 33 and 34 of our Constitution, as amended. To that extent, the provisions in the governing legislations and regulations, which allow gas flaring through Ministerial permit, being inconsistent with Sections 33 and 34 above, are unconstitutional, null and void. Notwithstanding this judicial pronouncement, gas flaring has continued in our fields.

5. **SUMMARY**

By way of summary, we can say that the discussions or lecture in this unit of module 1 has been designed to inform the reader about another source of pollution in the oil and gas industry. This is known as gas flaring. I believe that we have been able to explain the nature of this oil operation process, which has become a contributor to the pollution of our environment. It is also my belief that, together with our discussions in unit 1, 2 and 3, the reader will be in a better position to understand and appreciate, not only the relationship between pollution and the environment generally, but particularly in the oil and gas industry.

6. **TUTOR MARKED ASSIGNMENT QUESTIONS**

1. What do you understand by Gas Flaring in oil operations and how does it affect the environment?
2. How would you describe the response of our court to gas flaring in Nigerian Oil fields?
3. To what extent has our government gone in protecting the environment from oil pollution in the nature of gas flaring?

7. **REFERENCE/FURTHER READING**

1.Oil and Gas Law in Nigeria – by Yinka Omorogbe. Malthouse Law Books

OIL AND GAS LAW II LAW 412

MODULE 1

UNIT 5

Table of Contents

1. Introduction
2. Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

COURTS JURISDICTION ON OIL POLLUTION MATTERS

1. **INTRODUCTION**

The power or jurisdiction of a court to entertain a case, in any judicial proceedings is fundamental. A court that lacks the jurisdiction to try a case, no matter how well conducted the proceedings are, acts in futility. It therefore becomes imperative that parties or litigants in compensation claims arising from oil pollution should approach the proper court for redress. This is more so when the jurisdiction is initially conferred on one court, only to be later removed and vested on another court. This is the situation in oil pollution cases.

Under the 1979 Constitution, a High court of a State had the power or jurisdiction to try cases involving oil pollution. This jurisdiction was taken away in 1993 by virtue of Decree 107 of that year, and vested on the Federal High Court. This position was retained in the 1999 Constitution, as now amended. Therefore it is the Federal High court which exercises jurisdiction over oil mining matters, including oil pollution, to the exclusion of other courts. Our discussion on this concluding unit in Module 1 of this course shall focus on this issue. In the course of our discussions, we shall encounter the following legislations:

(1) Constitution of the federal Republic of Nigeria, 1999 as amended.

(2) Federal High Court (Amendment) Act.

2. COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To identify the relevant provisions both in the Constitution and the Federal High Court Act, as amended, on jurisdiction over oil pollution claims.
- To understand and appreciate the provisions on jurisdiction over oil pollution cases.
- To understand and appreciate the interpretation of these provisions through case law.

3.0 MAIN CONTENT

3.1 Introduction

3.2 Jurisdiction of the Court on pollution matters

3.3 Case Law in support

3.0 COURTS' JURISDICTION ON OIL POLLUTION MATTERS IN NIGERIA

3.1 INTRODUCTION

In every judicial system, there is a division of duties or functions amongst courts. It is usual to expect certain courts to be vested with powers and jurisdiction to hear and determine specific matters. In Nigerian jurisprudence, the supreme law, the Constitution, has set out in various provisions the functions of our courts. In this chapter of the constitution, it will be seen that while some courts are Federal, others are State.

4.2 Jurisdiction of the court on pollution matters

Today in our law, any cause of action pertaining to oil spillage or pollution or effects of gas flaring can only be instituted at the Federal High Court. Section 251 (1) n of the 1999 Constitution provides:

“..... the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

(n) mines and minerals, (including oil fields, oil mining,

geological surveys and natural gas)”

In addition to the above provision, **Section 2 of the Federal High Court (Amendment) Act** equally provides for the exclusive jurisdiction of the court over such matters. By the combined provisions of these aforesaid sections of the law, the Federal High Court is vested with exclusive jurisdiction over civil causes and matters connected with or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas.

3.3 Case Law in Support

The above legal position has been confirmed in a number of cases both at the Supreme Court and the Court of Appeal. In **SHELL PETROLEUM DEVELOPMENT CO. OF NIGERIA LTD V ISAIAH (2001) 11 N.W.L.R (Part 723) 168**, the apex court was emphatic that only the Federal High Court, and no other court, has jurisdiction under Section 251 (1) n of the 1999 Constitution, to entertain claims arising from oil spillage and pollution caused by broken pipeline, since it is an incident connected with or pertaining to mines and minerals including oil fields and oil mining.

Similar decisions have also been given by the Court of Appeal in the following cases:

- (i) **BARRY & ORS V OBI ERIC (1998) 8 N.W.L.R. (Part 562) 404 at 416.**
- (ii) **S.P.D.C. V MAXON (2001) 9 N.W.L.R. (Part 719) 541.**
- (iii) **C.G.S. (NIG) LTD V ASAAGBARA (2001) 1 N.W.L.R. (Part 693) 155.**

In a similar vein, the Court of Appeal held in the case of **S.P.D.C. NIG LTD V LALIBO (2009) 14 N.W.L.R. (Part 1162) 564**, that the High court that tried a claim arising from oil spillage caused by faulty flow station, had no jurisdiction to do so,

since only the Federal High Court can entertain such claim. The Court reasoned as follows:

- (i) Oil mining activities involve not only the use of rigs and other equipments but also pipelines, flow stations, storage and processing facilities used for transportation and storage of crude oil.
- (ii) These are all essential and integral parts of oil mining activities and operations.
- (iii) Accordingly any oil spillage from any of these equipments and facilities used in oil mining activities is directly connected with or arising from mines and minerals, oil fields, oil mining etc.
- (iv) When the above incident occurs, only the Federal High Court would have jurisdiction over any claim instituted against the companies engaged in the operation which caused the spillage.

4. CONCLUSION

Our discussions above have shown clearly that only the Federal High Court has the power or jurisdiction to hear and entertain cases or claims pertaining to oil mining matters, including the often emotive claims for compensation for injury caused by oil pollution. This is a very important issue that must continue to engage the attention of litigants and their Lawyers. Any defect in jurisdiction of a court to try a matter, such as oil pollution, is fatal. Indeed as the respondents found out in the case of **S.P.D.C. NIG LTD V ISAIAH (Supra)** the monetary award made in their favour by the High Court that tried the matter, and subsequently confirmed by the Court of Appeal was set aside by the Supreme Court for lack of jurisdiction on the part of the State High Court.

With this, we conclude our lecture on Module 1 of this course.

I hope you have enjoyed every bit of it.

5. SUMMARY

A summary of the discussions in this unit will reveal that the Federal High Court is the court with power or jurisdiction to try cases of oil mining matters, including oil pollution. This, according to the interpretation of the courts, is because cases or claims involving oil pollution are incidents connected with or pertaining to mines and minerals including oil fields and oil mining. Case Law leaves no one in doubt that this is the current position of the law here.

6. **TUTOR MARKED ASSIGNMENT QUESTION**

1. Explain with the aid of decided cases the jurisdiction of the court on oil pollution claims.

7. **REFERENCE/FURTHER READING**

1. Constitution of the Federal Republic of Nigeria 1999, as amended.
2. Federal High Court (Amendment) Act

MODULE 2

UNIT 1

Table of Contents

1. Introduction
2. Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

1. **INTRODUCTION**

The history and evolution of the oil and gas industry in developing or third world countries is not one to be proud of. From the days of the old traditional concession even up to today, when host countries, like Nigeria are supposed to exercise sovereignty over their natural resources, it has been the same old story of domination and control by the multinational oil companies. These European and U.S.A. based oil companies are still in de facto control of indigenous oil and gas industry. It, therefore, became clear that unless robust policies are adopted to encourage increased State or Government participation in this all important industry, we will continue to play a passive or dormant role of rent collection with its attendant result of low revenue and less opportunity for economic development and industrialization.

The Petroleum Act 1969 set the stage in providing the ground for the State to engage in some form of equity participation with M.N.O.Cs. This has been largely achieved through joint venture agreements between our national oil company, Nigerian National Petroleum Corporation, and the multinationals with Shell petroleum Development Company Nigeria Limited leading the way. The Nigerian Government, has through such ventures acquired interest in capital investments and operations of the M.N.O.Cs.

State participation in the petroleum industry is not a phenomenon peculiar to Nigeria. Other third world host countries, some of them now members of the oil cartel, OPEC, have also adopted policies for promoting government participation in their oil and gas industry. This is so because they, like the Nigerian nation, share a common history and experience in oil exploration matters. Participation generally has led to huge financial benefits, and at the same time exposing our nationals to the managerial skills in the industry.

What then are the reasons for State participation in the petroleum industry? What principles are there to guide the state in such ventures, and indeed what is the extent of the participation here in Nigeria? What are the advantages of such participation to the host country? These are the questions, which will engage our attention in this unit of Module 2.

2. COURSE OBJECTIVES

At the end of this study unit, I believe the student or reader will be able:

- To understand and appreciate the underlying factors that have necessitated the involvement of the State in the petroleum industry

- To understand and appreciate the reasons for increased State participation in the oil and gas industry.

- To understand and appreciate the principles guiding or underlying State participation in the oil and gas industry.

- To understand and appreciate the advantages of State participation in the petroleum industry.

3.0 MAIN CONTENT

3.1 Reasons for State participation.

3.2 Principles of State participation

3.1 Reasons for State Participation

3.1.1 Elimination of investor ownership and promotion of de facto control of the oil industry.

This is often cited as the main reason why Governments, Nigeria inclusive, seek to engage or participate as partners in the exploitation and exploration of their natural resources. One of the factors that gave birth to the landmark U.N Resolution 1803 on permanent sovereignty over natural resources in 1962, was the idea or concept of investor ownership, which enabled the M.N.O.Cs to control and dominate the industry. It was therefore thought, and rightly so, that direct and active participation by host nations would eliminate this idea, and ultimately transfer the control of the industry to the host States.

Even though most of host nations are yet to acquire de facto, and with it total control of their oil and gas industry, there can be no doubt that the investor ownership idea is now dead and buried. The picture of most oil industry activities is that of host States and international oil companies in partnership or joint venture agreements.

3.1.2 Increase in financial dividends

State participation in the petroleum industry, through the agency or instrumentality of national oil companies have brought huge financial dividends to host nations. Most States that embark on joint venture and other oil exploration contracts like production sharing contract and risk service contracts, are guaranteed financial benefits from such arrangements. Our country, Nigeria is a major beneficiary of the financial gains of State participation, particularly in times of major global crisis,

like wars, international conflicts and natural disaster. In such situations, production capacity of crude has been known to increase.

3.1.3. **Greater investment opportunities in the economy**

Investment opportunities have been said to increase in the host nation's petroleum industry when the State is involved. Government participation in any venture particularly in oil and gas is bound to involve huge capital. This alone serves as a catalyst for other varieties of service and business industries to come on board and invest in this area of the economy. With this, economic and industrial developments are given greater impetus.

3.1.4 **Enabling environment for total control of the oil and gas industry**

The argument has been advanced that greater State participation in the oil industry creates the opportunity that would enable the host State to assume full control of this industry. This, it is also argued, would put the host State in a position where it can dictate oil development and production programmes and at the same time inspect the books of the international oil companies. Indeed it is through State participation that an oil producing State, which is a member of OPEC, can expect to enforce production quotas or other regulations. However total control of the industry in a country like Nigeria, is still far away.

3.1.5 **Increased opportunity for local manpower development**

State participation creates the right opportunities for the training and nurturing of local manpower, and acquisition of managerial skills necessary for the sustainable development of the petroleum industry. Opportunities exist in the sense that nationals of the oil producing States are given employment in the industry, which in the course of time, exposes them to relevant technological know-how and skills in the industry.

Lately Nigeria has moved further by enacting a law, which encourages increased local content in the industry. The legislation is known as **NIGERIAN OIL**

AND GAS INDUSTRY CONTENT DEVELOPMNET ACT 2010. This legislation seeks to support Government participation in the industry, by providing the grounds for increased private sector participation. It is believed that the successful implementation of this law will boost manpower development and skill acquisition.

3.1.6 **Realization of self-determination and full independence**

State participation in the oil and gas industry, has come to be seen both politically and economically expedient. Politically it enables the host nation to exercise true sovereignty over her natural resources, not only as recognized in the U.N and OPEC resolutions, but also local or municipal laws. In the case of Nigeria, I would think that the provision of Section 44(3) of the 1999 Constitution vesting mineral oil resources, amongst other natural resources on the Federal Government of Nigeria, can only be meaningful as long as the central government is able to exercise sovereignty over our oil resources. This can be done through State participation by granting of oil licences and leases on the conditions set by the Government for partnership. In so doing, there is some sense of pride that the host country has at last taken charge and control of its God given wealth.

Economically, it enables the oil producing State to influence developments in her economy.

3.2 **Principles underlying State Participation in the Petroleum Industry**

It is true that State participation is a policy, which if successfully pursued brings dividends to the country concerned. To this extent, much will depend on the seriousness and attitude with which the policy on participation is implemented by the government. In doing so, there are political and economical factors or considerations to contend with. But politics and economics aside, the whole idea or concept of State participation has been anchored on clear and settled principles. Here in Nigeria, there are clearly established principles upon which State participation is based. These

principles provide the very foundation upon which participation rests. That foundation is to be found in the Petroleum Act 1969. To this we now turn to.

3.2.2 paragraph 34 of Schedule 1, Petroleum Act 1969 provides thus:

“If he considers it to be in the public interest, the Minister may impose on a licence or lease to which this Schedule applies special terms and conditions not inconsistent with this Act including (without prejudice to the generality of the foregoing) terms and conditions as to –

(a) participation by the Federal Government in the venture to which the licence or lease relates, on terms to be negotiated, between the Minister and the applicant for the licence or lease.....”

Nigeria is a member of the oil cartel known as Organization of Petroleum Exporting Countries (OPEC). This body was formed in response to the dominant role of the international oil companies in the 1950s. To fight the injustice in the oil industries of the host nations, this body enunciated the principle of participation in its resolution at the XVI conference in 1968. The resolution guides the activities of its members in the oil industry, Nigeria inclusive.

3.2.3 OPEC’s resolution on State participation reads

“Where provision for government participation in the ownership of the concession-holding company under any of the present petroleum contracts has not been made, the government may acquire a reasonable participation on the

grounds of the principle of changing circumstance. If such provisions have actually been made but avoided by the operators concerned, the rate provided for shall serve as minimum basis for the participation to be acquired”.

This resolution was again reaffirmed in 1971 calling on member states to embark on participation in oil ventures. It is believed by many that this OPEC resolution, as well as the U.N. resolution 1803 on PSNR 1962, to a large extent, influenced the above provision in Schedule 1 of the Petroleum Act 1969.

3.2.4 It can now be fairly stated from the above provisions that the concept or idea of State equity participation in the petroleum industry, is based on the broad principle of public or national interest. This interest involves political and economic expediency. That is to say that an oil producing State like Nigeria should, as a matter of political and economic development and sustainance, embark on the exploration and production of petroleum resources in partnership with MNOCs, who have the greater wherewithal (capital, skilled manpower and technology).

4. **CONCLUSION**

You can see from our discussion in this unit the reasons that have been advanced for State participation in the oil and gas industry. These reasons contain objectives, for example, increased financial dividends and investment opportunities. While some of them have been achieved through participation in oil ventures, others are yet to be realized. But those achieved or realized can be counted as advantages of State participation.

We also discussed the principle or principles upon which State participation rests. One can also say that the totality of the reasons stated in paragraph 4.1 above make up the broad principle, which we identified as public or national interest. By discussing the principle of State Participation, one is showing that this idea or concept now enjoys legislative approval. In the next unit, we shall discuss the nature and form of State participation in Nigeria.

5. **SUMMARY**

This unit has focused our attention on the concept of State participation in the petroleum industry, through equity holding. The discussion has shown why States endowed with oil resources, are compelled to engage in the exploration and production operations of such resources. The discussion has also shown that this practice has now been given sufficient recognition by legislation, as contained in paragraph 4.2.2 above. At the same time, our discussion has revealed that the principle of State participation originated from the resolutions of International bodies, namely OPEC and the United Nations

6. **TUTOR MARKED ASSIGNMENT QUESTION**

1. What are reasons for State participation in the oil and gas industry?
2. How far is it correct to state that the idea of State Participation in the petroleum industry is now rooted in legislation.

7. **REFERENCE/FURTHER READING**

1. Oil and Gas Law in Nigeria: Theory and Practice, – by Lawrence Atsegbua
2. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
3. Nigerian Petroleum Law – by G. Etikerentse.

MODULE 2

UNIT 2

1. Introduction
2. Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

1. **INTRODUCTION**

The second unit of this module focuses on the means or route through which the Nigerian Government realizes its objective in equity participation in the oil and gas industry. Essentially participation is implemented through joint venture agreements between the Nigerian Government agency, N.N.P.C., and the multinational oil companies. Shell Petroleum Development Company of Nigeria Limited, a subsidiary of the multinational Royal Dutch Shell, is a major player and partner in such venture. S.P.D.C, by virtue of its extensive petroleum operations in Nigeria has joint venture exploration and production agreements with Nigeria's N.N.P.C.

There are also joint ventures in our oil industry involving other oil companies like Nigeria Agip Oil Company (N.A.O.C) Elf Nigeria Ltd, Mobil Producing Nigeria Unlimited and Chevron Nigeria Limited

2. **COURSE OBJECTIVES**

At the end of this study unit, I believe the student or reader will be able:

- To identify the form of partnership arrangement between the Nigerian Government and multinational oil companies.
- To understand and appreciate the form of participation arrangement between the Nigerian Government and MNOCs.
- To understand and appreciate the nature and form of joint venture oil exploration and production agreements.
- To understand and appreciate the means through which State participation in the petroleum industry is realized.

3.0 MAIN CONTENT

3.1 Nigerian Government and Equity Participation.

3.2 Types of Agreements

3.2.1 Participation Agreement

3.2.2 Joint Operating Agreement

3.3 The Role of an Operator

3.4 The Role of an Operating Committee

3.1 NIGERIAN GOVERNMENT AND EQUITY PARTICIPATION

One of the fall outs of the landmark resolution on the principle of permanent sovereignty over natural resources, as well as (OPEC) resolution on the participation of member states in oil operations, was a move by the host countries to participate in their oil industry, not merely as regulators, but as partners in the exploitation of their natural resources. Nigeria took full advantage of this resolution while promulgating the 1969 Decree (now Act). Under paragraph 34 of schedule 1 of the 1969 Act, a Minister of Petroleum Resources, if he considers it to be in the public interest, may impose conditions on an OPL or OML. One of these conditions may stipulate that the Federal Government shall participate in the oil exploitation and production venture to which the OPL or OML relate to. But the participation shall be on terms to be negotiated between the Minister and the oil company concerned.

Nigeria has taken advantage of the above provisions, and has progressively entered into oil partnership or joint ventures through the agency of N.N.P.C. with subsidiaries of the International Oil Companies like Shell Petroleum Developing Company Nig Ltd, Agip, Elf Petroleum Nigeria Ltd. The process whereby a host country like Nigeria, engages in joint oil ventures or operation with I.O.Cs and their subsidiaries is commonly referred to as Equity Participation. It simply means that a State, either directly, but mainly indirectly through the State oil company, acquires an equity or ownership interest in an OPL or OML. By so doing it becomes a partner in the venture and is liable to contribute financially to the operation of the venture, as

well as reap part of the profits. A notable example of a joint venture operation in Nigeria today is the NNPC/Shell Joint Ventures, in which NNPC 60%, SPDC 30%, NAOC 5% and ELF 5%, are all partners. See also NNPC/M.P.N./NNPC/ELF.

As indicated above, this process is achieved through the enabling provisions of the 1969 Act. It, therefore, provides for a host country, the platform upon which to acquire oil rights and interest in an OPL or OML granted to the subsidiaries of the I.O.Cs; who are expected to provide the technology, as well as capital and skilled manpower. For an Equity Participation to materialize, there are usually agreements between the parties setting out the terms and conditions of participation; as well as the respective rights and obligations of those parties.

3.2 TYPES OF AGREEMENTS

Two types of agreements are involved here, namely

- (i) The Participation Agreement
- (ii) The Joint Operating Agreement

Today in Nigeria, equity participation by the Government through various Joint Ventures with subsidiaries of I.O.Cs provide the main method of exploration and production of petroleum resources in our country.

3.2.1 THE PARTICIPATION AGREEMENT

A participation agreement is one entered into between prospective parties to a joint venture oil operation. It involves parties to a joint venture in oil operation entering into separate agreements with each other on the modalities of their participation. For example N.N.P.C. which is the organ through which the Federal Government engages in joint venture with oil companies, would be required to sign participation agreements separately with Shell Petroleum Development Company, Elf Petroleum Nigeria Ltd, M.P.N, Agip. This participation agreement will spell out N.N.P.C. participation interest in the intended venture, i.e in the OML, the working

capital of the parties, fixed and movable assets of the parties etc. Thereafter the parties concerned will sign a common agreement known as **Joint Operating Agreement**.

3.2.2 JOINT OPERATING AGREEMENT

A joint operating agreement is essentially a contract between two or more parties in an oil joint venture, setting out the terms and conditions of such a venture. In other words, it is a contract which involves two or more parties (subsidiaries of international oil companies like SPDC, EPNL, MPN, as well as a national oil company like NNPC) which provides the basis for exploration and production of petroleum. It is in the nature of a partnership agreement between two or more parties engaged in a commercial enterprise, in this case, oil exploration and production.

A joint operating agreement defines the rights and obligations of the joint venture partners. For instance, a joint operating agreement will set out the participating or percentage interests of the parties as clearly seen in the NNPC/Shell Joint Ventures Agreement of 1991. In that agreement the participating interests of the parties are set out thus, NNPC 60%, NAOC 5%, SPDC 30%, Elf Petroleum Nigeria Ltd 5%. The Agreement will also state which party will be the operator of the joint venture. In the 1991 Agreement referred to above, Shell has been the operator of that joint enterprise.

A joint operating agreement will equally specify the sharing formula by the parties of profits accruing to the ventures, which is usually in proportion to the parties' percentage interest.

A Joint Operating Agreement is based on an OPL or OML granted by the host country.

3.3 THE ROLE OF AN OPERATOR UNDER A JOINT OPERATING AGREEMENT

It is now a common feature in a Joint Operating Agreement for one of the parties to be appointed an operator. An operator could be likened to a managing director or chief executive of a going concern. An operator is responsible for the day to day running of operations under the joint venture. He is the managing partner. In appointing an operator, the parties to the joint venture will usually consider the financial strength as well as the technical competence of the would be operator. When appointed, an operator is expected under the J.O.A. to perform the following functions:

- (i) The preparation of programmes, budgets and authorization for expenditure.
- (ii) The implementation of such programmes and budgets as approved by the operating committee.
- (iii) Conducting the operations of the venture in a proper and workmanlike manner in accordance with methods and practices customarily recognised in petroleum production.
- (iv) Provision of reports and other vital information on the progress of the joint venture to each of the parties.
- (v) The direction and control of statistical and accounting services, and
- (vi) The provision of all technical and advisory services required for the joint operation.

- (vii) To comply with all the provisions of the law.

It could be seen from the role of the operator, as shown in the functions stated above, that it stands in the position of a trustee, the beneficiaries being the other joint venture partners. This is because an operator in carrying out his said functions deals with the property of the joint venture partners, who in addition to contributing capital, also provide fixed and movable assets like high-tech machineries on exploration, development and production of petroleum, transport, storage and delivery facilities, export operations and other assets like offices, houses etc. as such, an operator owes each partner a fiduciary duty, and must not allow its interest to conflict with its duty to the said partners. On the whole, an operator is expected not to misuse property entrusted to it under the venture or misuse information derived in confidence from other partners and must account for the monies or other interests earned.

It is also important to state that an operator could be changed or removed in accordance with the terms of the J.O.A. For example where the operator ceases to carry on business or becomes bankrupt or insolvent or where it defaults in any of its duties or obligations to the joint venture business and fails to rectify same within a specified period of time.

3.4 **THE ROLE OF AN OPERATING COMMITTEE**

Another common feature of a Joint Operating Agreement is a provision or clause therein establishing an Operating Committee. This Committee is made up of representatives of all the parties to the joint venture. It could be likened to the Board of Directors of a company or the cabinet of a government. It plays a central role in the operation of the joint venture in that it exercises overall supervision and control of all matters pertaining to the joint venture. It is this committee that gives the go ahead for any action by the Operator. Its functions include:

- (i) The determination of general policies and methods of operation.

- (ii) The approval of programmes, budgets and expenditure for the Operator.
- (iii) The approval of any public announcement or statement regarding the joint venture.
- (iv) The overall supervision and control of joint venture operations.

4. CONCLUSION

Our discussions in this unit have focused on the means through which our government participates in oil exploration and production. We have explained the form and nature of joint venture oil agreements between our N.N.P.C. and the multinational oil companies. We have also explained how the partnership operates in carrying out its objectives. It is now left for us to assess or evaluate the position of our Government's participation, and to see whether the policy objectives have been achieved. That will engage our attention in Unit 3.

5. SUMMARY

A summary of what has been discussed in this unit will reveal that the Nigerian nation is now engaged in oil exploration and production activities. This is achieved through joint or partnership ventures with international oil companies. The nature and form of such ventures have shown that the parties have set down terms and conditions, which are to govern their relationship.

6. TUTOR MARKED ASSIGNMENT QUESTIONS

- 1 (a) What is a Joint Operating Agreement in partnership oil ventures?
(b) How does it differ from a Participation Agreement?

2. Explain the functions of these organs in joint venture oil operations:
 - (a) Operating Committee
 - (b) Operator

7. REFERENCE/FURTHER READING

8. Oil and Gas Law in Nigeria: Theory and Practice, – by Lawrence Atsegbua

9. Oil and Gas Law in Nigeria – by Yinka Omorogbe.

10. Nigerian Petroleum Law – by G. Etikerentse.

MODULE 2

UNIT 3

Table of Contents

1. Introduction
2. Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

1. **INTRODUCTION**

This concluding unit in Module 2 of our lectures or discussions will focus on the position or extent of State Participation in the oil and gas industry. This will take the form of an evaluation or assessment of the implementation of this policy in Nigeria. In doing so, we will ask the question whether the policy objectives or goals have been met, and if not, what are the constraints or challenges along the way.

The main content has been divided into 2 (two) headings namely, the participation policy objectives and the extent of realization of these objectives.

2. **COURSE OBJECTIVES**

At the end of this study unit, the student should be able:

- To understand and appreciate the policy objectives of State equity participation in the petroleum industry in Nigeria.
- To appreciate and understand the extent of the implementation or realization of these participation objectives in the Nigeria's petroleum industry.

3 **MAIN CONTENT**

3.4 Participation policy objectives.

3.5 Extent of realization of participation objectives

4.0 AN EVALUATION OF NIGERIAN GOVERNMENT'S PARTICIPATION IN THE PETROLEUM INDUSTRY

4.1 PARTICIPATION POLICY OBJECTIVES

The idea of equity participation by Nigeria in her oil and gas sector was one of the innovations introduced by the landmark legislation of 1969. The Petroleum Act of that year, apart from pruning down the tenure of the oil leases granted to international oil companies from 40 and 30 years to a 20 year standard, wherever the venue of the operation may be located, whether onshore- or offshore, made it possible for Nigeria, through a national oil company, to participate actively in oil exploration and production. As earlier noted under paragraph 34 of schedule 1 of the 1969 Act, a Minister of Petroleum Resources could insist that Nigeria's participation in proposed oil venture by an I.O.C shall be the minimum condition for the grant of an OML to it. Otherwise the oil right shall not be granted. The result is that our nation has progressively embarked on joint venture partnership with international oil companies. In terms of compliance with the provisions of the Petroleum Act 1969, as it concerns equity participation, foreign oil companies operating in Nigeria through their subsidiaries, which are incorporated here as limited liability companies have co-operated. In so doing they confirm the position that Nigeria, like other major oil producing countries, exercises sovereignty over her natural and mineral resources, and that oil rights in this country can now only be acquired through a framework erected by the Nigerian Government. This position is tantamount to de jure control or legal control.

Now having said the above, the question has often been asked whether the objectives of equity participation, as set out in the Act, have been achieved. These objectives include:

- (i) increase in government's revenue from the petroleum industry.

- (ii) acquisition of the necessary technological and managerial skills for petroleum development, and
- (iii) de facto control of the oil industry.

4.2 EXTENT OF REALIZATION OF PARTICIPATION OBJECTIVES

On the question of revenue generation, it cannot be doubted that Nigeria has gained immensely in the area of revenue from equity participation in the oil industry. As the price of oil has skyrocketed in the world oil market since independence, owing to various causes, like wars (Israel-Arab conflict, Iran/Iraq war of the 1980s, Gulf War of the 1990's and 2003/2004) natural disasters, e.g hurricane, tornado etc, OPEC quota restrictions on production, political instability (The Niger Delta crisis) to mention a few, the nation has garnered huge revenue since the 1970s, some of which have been channeled towards industrial development. But can the same cheering news or information on revenue generation be said of acquisition of technological and managerial skills on petroleum development by Nigerians, which would ultimately guarantee de facto control of the oil industry by the country? De facto control means non other than factual control. In other words, inspite of the legal framework provided by the Petroleum Act for the acquisition of rights to explore and produce oil in Nigeria, (de jure control) can it really be said that the Nigerian Government, through the Minister of Petroleum Resources or NNPC, is in control of the activities, including policies and decisions in the oil industry? It does not appear from the facts on the ground that the Nigerian Government has achieved de facto and with it, total control of her oil sector. And any conclusion to the contrary must be based on sheer illusion.

De facto control of a major industry like petroleum, it has been said, involves decision-making in such vital areas as budget, operational and managerial matters, expansion and development programmes, appointment of management, for example Chief Executive and Directors, pricing, marketing and reorganization. It is true that with the advent of equity participation, Nigerian Government acquired majority equity shares in most oil companies, which are really subsidiaries of their parent companies

in Europe and America. This guaranteed the host country majority representation on the boards of these oil companies, (which as noted earlier are subsidiaries of the foreign oil companies). It must be noted here that unless an international oil company incorporates a subsidiary company under C.A.M.A (Section 54 (1)) it cannot be granted an oil licence or lease in Nigeria. But having majority representation on the board alone has not furthered Nigeria's interest or control, because the foreign oil companies or I.O.Cs still exercise effective control of the management of their subsidiaries operating in Nigeria. By so doing, they still retain the awesome de facto control of the oil sector which they so ruthlessly exercised prior to the changes brought about by the 1969 legislation. Why has it been so?

It is a known fact in the oil industry that subsidiaries of the I.O.Cs have continued to refer to their parent companies overseas on major decisions involving managerial, financial and technical matters affecting their operations in Nigeria. This is inspite of the fact that the subsidiaries are independent, and are also dominated by Nigerians, although the Chief Executives or Managing Directors are usually expatriates. The reality on the ground remains that we are yet to attain that level of technological and managerial advancement which would deliver the control of day-to-day running of the oil industry in our hands. This reality has to some extent prodded the Nigeria Government to tread carefully in this all important area of the economy, or risk disinvestments. Indeed, the Government position is not to embark on reckless insistence of total control of the oil industry, when the capacity to do so, namely management and technology are not there, or if there are, are not fully developed. The principle of permanent sovereignty over natural resources may have initiated and strengthened de jure control of the oil sector, but indications are that the Nigerian Government will not carry it beyond the level where it would hurt the country economically.

Experts in this area have stated that for the country Nigeria to fully realise the objectives of State participation in the oil and gas industry, it should now focus more on increased local content and indigenous participation. There can be no doubt that if

this policy is carried out successfully, it will bring this all important industry into the hands of Nigerians, and with it total control. One can only say that the road to achieving this aim is strewn with many challenges and obstacles. These are in the form of lack of capital, inadequate manpower and absence of technology. The government has set the stage by enacting a law titled Nigerian Oil and Gas Industry Content Development Act 2010. The aim of this piece of legislation is very clear, and it is to put Nigerians or Nigerian corporate bodies operating in the petroleum industry in a position of priority in respect of exploration and production of oil. The Act specifically states that Nigerian indigenous operators shall be given first consideration in the award of oil blocks, oil fields licences, oil lifting licences, and all other projects associated with petroleum operations on such conditions as the Minister may specify. See Section 3(1) of the Act.

5. **CONCLUSION**

The conclusion we can draw from the discussion in this unit, is that participation objectives have only partially been achieved. This is in the area of revenue generation. But as far as acquisition of technology, training of manpower and ultimate de facto control of the industry, they are still to be realized. There is the general belief that with increased local content or indigenous participation in the industry, these latter objectives can soon be met. And this is what the Nigerian Oil and Gas Industry Content Development Act 2010 seeks to boost.

With this we come to the end of Module 2 in this course.

6. SUMMARY

This unit has devoted attention to an assessment of the position or extent of Nigeria's participation in her oil and gas industry. It has shown clearly that but for the goal on increase in revenue from oil exploration and production, the other objectives are yet to be achieved.

7. TUTOR MARKED ASSIGNMENT QUESTIONS

1. To what extent can it be said that Nigeria has achieved its objectives in equity participation in her oil and gas industry?
2. How would you assess the position of the Nigerian Government's participation in her petroleum industry?

8. **REFERENCE/FURTHER READING**

8. Oil and Gas Law in Nigeria: Theory and Practice, – by Lawrence Atsegbua

9. Oil and Gas Law in Nigeria – by Yinka Omorogbe.

10. Nigerian Petroleum Law – by G. Etikerentse.

MODULE 3

UNIT 1

Table of Contents

11. Title

12. Introduction

13. Course Objectives

14. Main Content

15. Conclusion

16.Summary

17.Tutor Marked Assignment Questions

18.Reference/Further Reading

1.

TITLE

TRANSPORTATION OF OIL AND OIL PIPELINES

1. **INTRODUCTION**

Crude oil is captured in the stages of exploration, development and production. The combination of these stages is usually referred to as the upstream sector in the oil industry. Oil, by virtue of its nature, appears in liquid form. Following the production of crude oil, there is need to evacuate the produce to various destinations for different purposes. If it is for export, the crude is transported to a terminal either by ship, vessel or pipeline. Crude oil marked for refining, that would produce derivatives like petrol, kerosine and gasoline, are also transported to the refineries, which are located in different parts of the country.

The refining stage marks the commencement of the second phase of the journey, which eventually terminates when, oil products, like those mentioned above, enter the market. It is usual in the industry to refer to the combined stages of refining, marketing and distribution as the downstream sector. The much awaited reform in the Nigerian petroleum industry, now contained in the much publicized Petroleum Industry Bill currently before the National Assembly, has advocated three tiers or sectors, namely upstream, midstream and downstream. But until the Bill becomes law, we can only talk about the two sectors of upstream and downstream, in relation to our discussions here.

It is, therefore imperative to appreciate that, whether for export or for the local refineries, crude oil must be transported through vessels, ships, tankers or pipelines. In countries with good and reliable rail transportation, crude oil has been known to follow that route either to the refineries or to export market. Currently Nigeria does not have a modern rail network system, and crude is not transported through it. Rather we have come to rely mainly on pipelines and oil tankers.

Just as crude oil must be moved from the production site to the refineries, so also must the refined products be transported to various distribution centres for marketing. Petrol, kerosine, gasoline and other refined petroleum products are expected to get to the consumers. That can only be achieved through effective means of transportation. What then does the law say on this? Where are these vessels or pipelines located, and who controls their operations? How does the law regulate the construction of pipelines for oil transportation, in order to maintain certain standards? These and other related questions will engage our attention in this unit of Module 3. In the course of our discussions, we shall encounter the following legislations:

- 1. Oil Pipelines Act, Cap 07 LFN 2004**
- 2. Oil and Gas Pipelines Regulations**

2. **COURSE OBJECTIVES**

At the end of this study unit, the student should be able:

- To identify the laws and regulations governing the establishment, operation and maintenance of oil pipelines in Nigeria.
- To understand and appreciate the laws and regulations governing the construction, operation and maintenance of oil pipelines in the Nigerian petroleum industry.

3. **MAIN CONTENT**

3.1 Procurement of Oil Pipeline Licence.

3.1.1 Application for a Survey Permit

3.1.2 Grant of a Survey Permit

3.1.3 Restriction on the Survey Permit

3.1.4 Grant of Oil Pipeline Licence

3. **Application for and Procurement of Oil Pipeline Licence**

3.1.1 **Application for a Survey Permit**

The preliminary stage in the procurement of an oil pipeline licence begins with an application for a permit to survey the proposed route for an oil pipeline for the transportation of mineral oil and other related oil and gas products. This application is made to the Minister of Petroleum Resources pursuant to section 4(1) of the Oil Pipelines Act. The Minister may or may not grant the permit. However, if the application is successful, the applicant will receive a permit upon payment of prescribed fees. **See Section 4(2) (3) (a) & (b) of Cap 07.**

3.1.2 Grant of a Survey Permit

Upon the grant of a survey permit, the holder is entitled to gain entry by himself or with his officers, agents and workmen and with such necessary equipments or vehicles, into any land within the specified route as contained in the permit, or any other land reasonably close to the route, for the purposes of –

(a) to survey and take levels of sand,

(b) to dig and bore into soil and subsoil

(c) to cut and remove such trees and other vegetation as may impede the purposes specified herein, and

(d) to do all other acts necessary to ascertain the suitability of the land for the establishment of oil pipeline or ancillary institutions.

See Section 5(1) of Cap 07.

It is also pertinent to add that a specified route is subject to variation by the Minister, on the application of the holder of the permit. This may become necessary in the course of the survey, either because of one factor or another. An adverse environmental impact assessment report is one factor, which will necessitate a change of route, and therefore call for variation. Whatever it is, the Minister has the power to vary the route specified in the permit. **See Section 5 (2) of the Oil Pipeline Act.**

3.1.3 Restrictions on the Survey Permit

(i) A survey permit granted under **Section 4 of the Oil Pipelines Act** is not a general licence for the holder to enter upon any building or enclosed court or garden attached to the building. Accordingly the holder is required under **Section 6 of the Act** to give the owner or occupier of such building at least (14) fourteen days notice of his intention to enter upon such premises. The same provision affects cultivated land.

(ii) In the same vein, a holder of a survey permit shall not enter upon any land or take possession or use of same, if it is a place of veneration. Venerated land is one, which the owners or occupiers hold with deep affection from generation to generation. Our laws recognize this, and to this extent have often given protection to such places against economic and industrial activities of man. Here **Section 15 of the Act** provides that unless prior consent of the owners or occupiers has been given, no holder of a permit, and also an oil pipeline licence, can enter any land occupied by any burial ground or cemetery, and any land containing grave, grotto, tree or anything considered sacred.

3.1.4 **Grant of Oil Pipeline Licence**

Upon the completion of the survey of the specified route, the holder of the said permit may go further to apply for the grant of an oil pipeline licence in respect of that route for which the survey had been done. This he can do under **Section 7 (1) of the Act**. The Minister, again, may or may not grant the application. But if the application is successful, the Minister will issue a licence, upon payment of the prescribed fees. **See also Section 7 (2) (a) and (b) of the Act**. The law is clear here that only a holder of a licence shall engage in the construction, maintenance and operation of an oil pipeline. **See Section 7 (4) of the Act**. To do otherwise constitutes an offence under the same Act. **See Section 7 (5) of the Act**.

The manner and procedure for filing an application for an oil pipeline licence are set out in **Section 8 of the Act**. **Subsection 2 of that section** is quite instructive. Under this provision, the applicant is required, either before or at the time of making the application to issue or cause to be issued a notice of the said application, by way of publication in the Gazette of each State affected by the proposed route of the pipeline. Further publication is also required to be made in a newspaper circulating in the areas where the proposed route passes. Another requirement here is that the notice must also be posted or delivered to any persons entitled to be carrying operations in that area, and which would be affected by the grant of the oil pipeline licence.

An oil pipeline licence, when granted entitles the holder to certain rights as well as obligations under **Section 11 (1) – (4) of the Act**. It is important however to note that this same section in **subsection 2** defines a pipeline thus:

“For the purpose of this Act, an oil pipeline means a pipeline for the conveyance mineral oils, natural gas and any of their derivatives or components, and also any substance (including stream and water) used or intended to be used in the production or refining or conveying of the mineral oils, natural gas and any of their derivatives or components.”

So it is clear from the above provision, that whenever pipelines for the evacuation or transportation of oil and related products are intended to be established or constructed, such can only be done under the laws and regulations set out above.

4. CONCLUSION

It has been the aim of this unit to inform the student or reader about the nature of oil transportation. Crude oil is meant to serve certain purposes. As such there is always a compelling need to move the product from production well to the export terminals or refineries as the case may be. The most convenient means of transportation is through pipelines. The legislation we discussed, namely the **Oil Pipelines Act**, makes provisions for the establishment and maintenance of these pipelines, through the grant of licence. Our next discussion shall focus on the first phase of the down stream stage in the oil and gas industry. This is the refining of crude oil. That will engage our attention in the next unit.

5. **SUMMARY**

This unit has identified the laws and regulations governing the establishment, operation and maintenance of oil pipelines in Nigeria. It has also explained the process through which oil pipelines can be constructed and operated in Nigeria. The position therefore, is that no one can establish, construct, operate or maintain an oil pipeline in Nigeria without Ministerial licence.

6. **TUTOR MARKED ASSIGNMENT QUESTION**

1. Explain the process and procedure for obtaining an oil pipeline licence in Nigeria.

7. **REFERENCE/FURTHER READING**

19. Oil and Gas Law in Nigeria – by Yinka Omorogbe.

20. Nigerian Petroleum Law – by G. Etikerentse.

21. Oil Pipelines Act Cap 07 LFN 2004.

MODULE 3

UNIT 2

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

1. **INTRODUCTION**

Refining of petroleum or crude oil is very important, if we are to derive any value from it. Refining essentially involves subjecting the crude oil to a scientific process, which in the end produces products that can be marketed and distributed for our energy needs. These products include petrol or PMS, kerosene, diesel, to mention a few. Refining also marks the first stage in the downstream sector or operation in the oil and gas industry. It is then followed by marketing and distribution. Refineries are therefore established or constructed for refining of crude oil.

Now, the question is, how does one establish a refinery? Are there legal provisions regulating the establishment of refineries in Nigeria? This is the question that will engage our attention in this unit of Module 3. We shall also discuss the importance of refineries in the economic growth of a country.

In discussing these questions, we shall make reference to the following legislations:

- (i) **Hydrocarbon Oil Refineries Act Cap H5 LFN 2004**
- (ii) **Petroleum Act Cap P10 LFN 2004**
- (iii) **Petroleum Refining Regulations**

2. COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To identify the laws and regulations governing the establishment, construction, operation and maintenance of oil refineries in Nigeria.
- To understand and appreciate the provisions in the laws and regulations governing the establishment and operation of Hydrocarbon Oil Refineries in Nigeria.
- To understand and appreciate how a person or corporate entity can go about establishing an oil refinery in Nigeria.
- To understand and appreciate the offences created by the enabling Act, pertaining to prohibited acts and activities.
- To understand and appreciate the role and importance of oil refineries in our economic life.

3.0 MAIN CONTENT

3.2 Refining of Petroleum Oil

3.2.1 Establishing an oil refinery

3.2.2 Application for a refiner's licence

3.2.3 Operating and maintaining an oil refinery

3.2.4 Expiration and revocation of refiner's licence

3.2.5 Offences under the Act

3.2.6 The Importance of refineries in the economy

3.0 Refining of Petroleum Oil

3.1 Establishing an Oil Refinery

Under Nigerian law, no one can refine hydrocarbon oils except in a refinery established and operated by virtue of a licence. This licence is described as a refiner's licence. **See Section 1 of the Hydrocarbon Oil Refineries Act Cap H5 LFN 2004.** The process and procedure involved for obtaining such a licence are clearly stated in this enabling law and the supporting regulations.

4.1.1 Application for refiner's licence

Section 2 of cap H5, cited above provides:

“An application for a refiner's licence may be made by any person in the prescribed form and manner to the Customs, Immigration and Prison Services Board (hereinafter referred to as the Board) in respect of the premises mentioned in that behalf in the application”

An application for this licence must be accompanied by a detailed study and report of the proposed project. In view of the provisions of the Environmental Impact Assessment Act Cap E12 LFN 2004, the application must also be supported by environmental impact assessment report. An applicant for such licence is equally expected to pay a certain non-refundable fee. These fees are stipulated in the Petroleum Refining (Amendment) Regulations, made from time to time by the Minister of Finance pursuant to **Section 28 of Hydrocarbon Oils Refineries Act.**

After due enquiry, the Board shall issue a refiner's licence to the applicant, on payment of a fee, if it is satisfied that the premises mention in the application, and intended to be used as a refinery are up to the required standard in terms of suitability and provision of equipments. **See Section 3 of Cap H5 LFN 2004.** But if the Board is not satisfied after due enquiry, in respect of the premises

intended to be used, it may refuse to grant the application, and on doing so shall notify that applicant in writing.

The notification shall contain details and particulars of the deficiencies in the application, and what the Board considers necessary to be done in that premises before any refiner's licence can be granted. **See Section 4 of Cap H5.**

4.1.2 Operating and maintaining an oil refinery

Upon the grant of a refiner's licence, the licensee or owner is expected to commence the construction of the refinery in accordance with the provisions of the enabling law, namely **Cap H5**, and the **Regulations and Guidelines**. These Regulations and Guidelines contain detailed provisions on matters affecting the plants and machineries, tanks, vessels and pipes to be used in the process. These must conform to the standard expected from the licence holder. **See section 3 (2) of the Hydrocarbons Oil Refineries Regulation 1965.**

A licence holder must also display a signboard, in a conspicuous position outside his refinery, to show his name or business name. **See Section 5 of the Regulation 1965.**

4.1.3 Expiration and Revocation of refiner's licence

A refiner's licence issued under this legislation shall remain in force, unless revoked, and shall continue to be used until 31st December next following the date of issue when it shall expire. However the holder is free to apply for a renewal. When he does so, the provisions of **Sections 3 and 4** mentioned earlier in this unit will apply. In other words, the application may be granted or refused upon consideration of its merits based on the study and report, as well as other relevant factors. **See Section 6 of the Act.**

The grant of a refiner's licence does not confer on the holder a perpetual interest. Rather his interest is subject to revocation by the Board. Here Section 5(1) of the Act provides that if the issuing authority, the Board, is satisfied that –

- “(a) proper control for excise purposes can no longer be exercised over the premises; or
- (b) that the person to whom the licence was granted has ceased to refine hydrocarbon oils on such premises, the Board may revoke the licence”.

Where the Board decides to revoke a refiner's licence, it shall notify the licence holder in writing of the said revocation.

4.1.5 Offences under the Act

A number of offences are created under the Act. Firstly, it is an offence for any person to refine hydrocarbon oils, other than in accordance with the provision of Section 1 of the Act. You will recall that we have stated it in this unit that no person under Nigerian law, can refine hydrocarbon oils save in a refinery and with a refiner's licence issued under the Act. Therefore for one to do so, would be to commit an offence under **Section 7(1) of the Act**. The penalty for summary conviction is a fine or a term of imprisonment of two years, or both. However upon conviction on indictment, the penalty is a fine of an unlimited amount or imprisonment for a term not exceeding five years or both. **See Section 7(1) (a) and (b) of the Act**.

Secondly there is an offence created under **Section 11 of the Act**. This is with regard to entries. Here an offence is committed if a holder of a refiner's licence uses any premises or article for the purpose of his trade, which under the Act would have been disclosed and entered, but without such entry. The penalty on conviction shall be a fine, in addition of forfeiture of any goods found on the premises.

Thirdly, under **Section 24 of the Act**, a person who conceals any refined hydrocarbon oils on premises on which they are refined, or without the consent of the proper officer removes any refined hydrocarbon oils from such premises, or knowingly possesses, buys or receives any such hydrocarbon oils removed from such premises before duty has been charged, commits an offence. The penalty on conviction is a fine estimated along the value of the goods, or to imprisonment for two years or both.

4.1.6 **The Importance of Refineries in the economy**

Refineries play a vital role in the growth and sustenance of our modern economy. We told you in the introductory part of this unit that crude oil, black gold though, is utterly valueless, until it is refined and broken down into products that can be marketed and distributed to the citizens for their energy needs.

Think of a situation where there are no refineries to bring out products like petrol, kerosene and diesel. These are products commonly used in our daily activities. Vehicles are driven by petrol and diesel. Other forms of transportation also rely on hydrocarbon oils products to function. Cooking in most homes is carried out by the use of kerosene. When these products are in short supply, economic activities suffer. If that is the case, what will the situation be like if they are not available at all. That can only spell doom not only for the economy, but life in general.

It must be pointed out that the shortage or scarcity of hydrocarbon oils products in the local market (petrol stations and other outlets) is often attributed to the low capacity output of refineries in Nigeria. Of the four refineries in the country, none appears to be working to full capacity. That is why Nigeria, today inspite of being a major producer of oil and gas, imports more refined products of petrol, kerosene, diesel and others. This would not have been the position if the four government owned refineries are in operating in full capacity. Lately, the government has granted refiner's licence to private entrepreneurs and investors to establish refineries in the country. That tells us how the government sees the role and strategic importance of

refineries in our economic life. This strategic importance of refineries is not limited to Nigeria, but is true of other countries.

Nigerians will never forget the acute shortage of refined products in 1993, following a politically motivated strike by oil workers, which also affected the operations of the refineries.

5. CONCLUSION

It can be seen from our discussions in this unit that refineries play a central and crucial role in the transformation of a valueless crude to products or derivatives of immense value and importance. Man's energy demands, sourced from crude oil according to the latest statistics from OPEC, increased in 2010. With this, it becomes obvious that more refined products entered the market world wide last year. Without refineries, such could not have been possible. Little wonder why national oil companies are charged with the responsibility of refining crude oil.

We also saw that the process of refining cannot be undertaken without government licence. To do so, and indeed to engage in certain acts prohibited by the Act, renders one guilty of an offence. It is to ensure that standards are maintained that one needs a refiner's licence to establish and operate an oil refinery.

6. **SUMMARY**

This concluding unit of Module 3 has been devoted to the topic of refining of hydrocarbon oils and the establishment, operation and maintenance of a refinery under Nigerian law.

7. **TUTOR MARKED ASSIGNMENT QUESTIONS**

2. How does one go about establishing a refinery in Nigeria?
3. Explain the importance of refineries in our modern world.
4. What are the prohibited acts which if performed, would amount to an offence under the Hydrocarbon Oils Refineries Act?

8. **REFERENCE/FURTHER READING**

8. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
9. Nigerian Petroleum Law – by G. Etikerentse.
10. Quarterly Magazine of NNPC – Volume 6 No 2 2009.
11. Hydrocarbon Oils Refineries Act Cap H5 LFN 2004.

MODULE 4

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

1. **INTRODUCTION**

The existence of national oil companies is now a common feature in most countries, whether developed or developing, oil exporting or oil importing. The realities of our times are such that with the dominant role of oil in our economic lives, no nation can afford to be sloppy on issues of petroleum and energy. The consequences for any failure or operational breakdown in the oil and gas sector of any nation could spell economic doom and disaster, as Nigeria found out in the 1990s.

In the developing world, where Nigeria belongs, the establishment of a national oil company has equally been taken seriously, particularly with the oil exporting countries amongst them joining OPEC. Under the OPEC resolutions, any nation desiring to join its fold, must first of all incorporate a State oil company. In Nigeria NNPC is currently the State oil company. It was established in 1977 by Decree No 33 of that year. That Decree is now known and referred to as Nigerian National Petroleum Corporation Act Cap 320 Laws of the Federation of Nigeria 1990, now cited as Cap N123 LFN 2004. In establishing the NNPC, the Decree merged the then national oil company, NNOC, with the Ministry of Petroleum Resources. In other countries, particularly OPEC member nations, there are state oil companies. In Algeria, the State oil company is known as SONATRACH, while in Indonesia its national oil company is PERTAMINA. These nations are all members of OPEC. Even in non OPEC countries or others not endowed with petroleum resources, the need for the establishment of a national oil company has not only been felt, but also put into practice.

3. **COURSE OBJECTIVES**

At the end of this study unit, the student or reader should be able:

- To understand and appreciate the reasons why many countries today establish national oil companies.

- To understand and appreciate the role of national oil companies in State participation in oil exploration and production.

4.0 MAIN CONTENT

4.1 Reasons for the establishment of National Oil Companies.

4.1 THE REASONS FOR THE ESTABLISHMENT OF NATIONAL OIL COMPANIES

The reasons for having national oil company in today's world cannot be far fetched. Even for countries not endowed with petroleum resources, it is now almost an accepted reality.

- (i) First of all, a national oil company ensures the steady supply of petroleum products to its people. Using Nigeria as an example, inspite of the fact that the country is a notable exporter of crude oil, it is now almost dependent on importation for its refined products, in the form of PMS, gasoline, kerosene etc. This is largely due to the decaying infrastructures of the State refineries. The presence of NNPC therefore, is to ensure steady and uninterrupted supplies of petroleum products to the local market. Supplies have also been undertaken by private investors who are licensed by the NNPC, since the latter cannot on its own guarantee adequate supplies to the Nigerian market.

- (ii) Secondly, a national oil company is the agent through which the state regulates its oil industry. State policies like equity participation and non-equity participation in the oil industry as well as increased exploration and production and other forms of investment cannot be achieved without a body being charged with such responsibilities. In the case of Nigeria, the transition from being a dormant regulator in the industry, to that of an active participant in the early 70s has been achieved through the agency or instrumentality of the NNPC. The various joint venture agreements between NNPC and the subsidiaries of the I.O.Cs, viz SPDC, TOTAL, AGIP, ELF PETROLEUM NIG LTD., MPN and CHEVRON attest to the vital role of a national oil company in the realization of State policies in the oil industry.

This is also true of various contractual joint ventures entered into between NNPC and the subsidiaries of the I.O.Cs, namely SNEPCO, MPN, EEPNL, EPNL. Indeed NNPC participates in all stages of upstream and downstream oil sector in Nigeria.

- (iii) Thirdly, the desire of the host countries to increase their share of revenue from the oil industry, following years of marginalization, coupled with payment of paltry dividends by foreign investors in the industry, has equally been achieved through the agency of the NNPC. The result of increased State participation in oil exploration and production has boosted the share of revenue accruing to Government.
- (iv) The establishment of a State owned oil company has brought a sense of achievement as well as enhanced the national pride of developing nations, for whom the national control, albeit de jure, of natural resources in their domain is regarded as an affirmation of nationalism and self determination. This is especially true of a country like Algeria, following a protracted struggle for independence from the erstwhile colonial master, France. Therefore, for independence to be meaningful politically and economically, the new emerging nations, particularly those endowed with petroleum resources, must be seen to be in control of their God given wealth. A national oil company fulfils this ambition.
- (v) Another reason for the establishment of a State-owned oil company was to enable the oil-producing developing countries, like Nigeria, to fight the injustice represented by the old traditional concessions, which relegated these developing countries to mere regulators in the oil industry. A State-owned oil company could put an oil-producing developing country in a position to participate fully in the exploitation of petroleum resources.

Indeed, realizing this fact, OPEC made it a condition for admission into the fold. State participation in the oil industry has been a policy of OPEC since 1968.

5. CONCLUSION

The establishment of a national oil company is now a sine qua non for State participation in oil exploration and production. It will be recalled that in Unit 1 of Module 2 of this course, we discussed extensively why oil producing States have gone into exploration and production (upstream sector) instead of being content with the rents and royalties accruing from such ventures. We also stated that government participation in this upstream sector of the oil and gas industry, is facilitated through the agency of a national oil company. NNPC is our national oil company, and has performed this role since its inception in 1977.

However the role of a national oil company, like NNPC is not limited to the implementation of State or Government policies and participation in the upstream sector of the industry. A national oil company performs certain regulatory functions in the industry, while at the same engaging in the downstream sector of the industry, which encompasses refining, marketing and distribution. The functions and powers of NNPC will be the subject of our discussion in unit 2 of this module.

6. **SUMMARY**

A summary of our discussion in this opening unit of Module 4, will reveal the reasons or factors responsible for the presence of national oil companies (NOCs) in most countries today. No nation, whether oil producing or not, can afford to ignore the dominant role of this body in the economies of nations. Nigeria's oil company is the NNPC. It was established in 1977, following the merger of the then national oil company, NNOC, and the Ministry of Petroleum Resources.

7. TUTOR MARKED ASSIGNMENT QUESTIONS

1. Why are national oil companies established all over the world?
2. In a world where oil still remains the leading source of energy, no nation can afford to ignore the role of a national oil company in its economy.
Evaluate this statement.

8. REFERENCE/FURTHER READING

1. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
2. Nigerian Petroleum Law – by G. Etikerentse.

MODULE 4

UNIT 2

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

1.

TITLE

FUNCTIONS, POWERS AND ORGANISATION OF NIGERIAN NATIONAL PETROLEUM CORPORATION

2. **INTRODUCTION**

The reasons for the establishment of national oil companies have been discussed in unit 1 of this module. In establishing such companies, it is important that their functions be properly and well defined. Not only that, the corporations must also be vested with powers to effectively carry out their statutory functions. This is the focus of this second unit of Module 4.

NNPC is our national oil company. It is a creature of statute. Its functions are well defined in the NNPC Act 1977. There are powers vested on the corporation to enable it carry out its functions. These shall be discussed in this unit. We shall also discuss the organizational structure of the corporation.

The relevant statute here is **Nigerian National Petroleum Corporation, Cap N123 LFN 2004**

3. COURSE OBJECTIVES

At the end of this study unit, the student or reader should be able:

- To understand and appreciate the functions of the NNPC under the 1977 Act.
- To understand and appreciate the powers of the NNPC under the 1977 Act.
- To understand and appreciate the structure and organisation of NNPC

4.0 MAIN CONTENT

4.1 Functions, powers and organizational structure of NNPC

4.1.1 Statutory functions of the NNPC

4.1.2 Statutory powers of the NNPC

4.1.3 Organisation of the NNPC

4.1 Functions, powers and organizational structure of NNPC

4.1.1 Statutory functions of NNPC

Section 5 (1) of NNPC Act 1977 sets out the functions or duties of the NNPC as follows:

- (a) exploring and prospecting for, working, winning or otherwise acquiring, possessing and disposing of petroleum;
- (b) refining, treating, processing and generally engaging in the handling of petroleum products and its derivatives;
- (c) purchasing and marketing petroleum, its products and by-products;
- (d) providing and operating pipelines, tanker-ships or other facilities for the carriage or conveyance of crude oil, natural gas or their products and derivatives, water and any other liquids or other commodities related to the corporation's operations;
- (e) constructing, equipping and maintaining tank farms and other facilities for the handling and treatment of petroleum and its products and derivatives;
- (f) carrying out research in connection with petroleum or anything derived from it and promoting activities for the purpose of turning to account the results of such research;
- (g) doing anything required for the purpose of giving effect to agreements entered into by the Federal Government with a view to securing participation by the Government or the corporation in activities connected with petroleum;

- (h) generally engaging in activities that would enhance the petroleum industry in the overall interest of Nigeria; and
- (i) undertaking such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

4.1.2 **Statutory powers of the N.N.P.C.**

The powers of the Corporation are stipulated in Section 6 of the N.N.P.C. Act 1977. Section 6 (1) of the Act provides as follows:

The Corporation shall have powers to do anything, which in its opinion is calculated to facilitate the carrying out of its duties under this Act including without limiting the generality of the following powers:

- (a) to sue and be sued in its corporate name;
- (b) to hold, manage and alienate movable and immovable property;
- (c) to purchase or otherwise acquire or take over all or any of the assets, businesses, properties, privileges, contracts, rights, obligations and liabilities of any other company, firm or person in furtherance of any business engaged in by the corporation;
- (d) to enter into contracts or partnerships with any company, firm or person which in the opinion of the Corporation will facilitate the discharge of the said duties under this Act;
- (e) to establish and maintain subsidiaries for the discharge of such functions as the Corporation may determine; and

(f) to train managerial, technical and such other staff for the purpose of the running of its operations and for the petroleum industry in general.

4.1.3 **Organisation of N.N.P.C.**

Between 1977 and 1988, there were two broad divisions in the N.N.P.C. structure, namely the Commercial Division and the Petroleum Inspectorate Division. The Commercial section carried out the commercial and operational activities of the Corporation while the Petroleum Inspectorate Unit performed the regulatory, supervisory and enforcement duties of the body. The **Commercial Division** was further made up of the following divisions:

- (1) Exploration and Exploitation Division.
- (2) Commercial Division.
- (3) Project and Engineering Division.
- (4) Pipeline and Products Marketing Division.
- (5) Marine Transportation Division.
- (6) Petrochemicals Division.

For its parts, the **Petroleum Inspectorate Unit** had the following divisions, namely:

- (i) Conservation Division.
- (ii) Field Operation Division.

In addition to the two broad divisions stated above were two sectors that dealt with matters pertaining to the running of the corporation. These were the **Services Sector**, comprising of three divisions, namely:

- (i) Personnel and services Division.
- (ii) Finance and Accounts Division.
- (iii) Legal Division

and the **General Management Sector**, which also comprised of three divisions, namely:

- (i) Internal Audit Division

- (ii) Public affair and External Relations Division

- (iii) Economic and Budget Control Division

The above picture represents the structure of the N.N.P.C. until 1988, when a reorganization was made altering that structure. Following the said re-organization, a structure comprising a **Corporate Head Office** with three main divisions under it was enthroned. These divisions are as follows:

- (i) **Corporate Services Sector** – dealing with finance, legal and insurance, administration and personnel, technology as well as corporate planning and development;

- (ii) **The Operations Sector** – responsible for exploration, production, gas manufacturing, petrochemicals and International trading divisions, and

(iii) **The National Petroleum Investment Management Services (NAPIMS)** which oversees Government's investments in exploration and production of petroleum, as well as Supervising Joint Venture Activities.

The position today is that NNPC comprises of six Directorates and eleven subsidiaries. The subsidiaries are limited liability companies. The six Directorates are as follows:

- (i) Corporate Services
- (ii) Exploration and Production
- (iii) Refining and Petrochemicals
- (iv) Engineering and Technical
- (v) Commercial and Investments
- (vi) Finance and Accounts

The eleven subsidiaries are as follows:

- (1) Nigerian Petroleum Development Co. Ltd (N.P.D.C.)
- (2) Integrated Data Services Limited (I.D.S.L.)
- (3) Nigerian Gas Company Limited (N.G.C.)
- (4) Eleme Petrochemicals Company Ltd. (E.P.C.L.)
- (5) Kaduna Refinery and Petrochemicals Company Ltd (K.R.P.C.)
- (6) Warri Refinery and Petrochemicals Company Ltd (W.R.P.C.)
- (7) Port-Harcourt Refinery Company Limited (P.H.R.C.)
- (8) Pipelines and Products Marketing Company (P.P.M.C.)
- (9) Nigerian Liquefied Natural Gas Company Ltd (N.L.N.G.)
- (10) National Engineering and Technical company Ltd (N.E.T.C.O.)
- (11) Hyson (Nig) Limited in Affiliation with Calson Bermuda Limited.

5. CONCLUSION

The functions of our national oil company, NNPC, are clearly stated in the 1977 Act. A perusal of Section 5 of the said Act, will reveal these functions. They cover both the upstream and downstream sectors of the petroleum industry. The law is equally flexible here in that it allows the Corporation to engage in activities that would enhance the nation's petroleum industry in the overall interest of Nigeria. These provisions, without doubt, have made the NNPC a major player in the nation's economy.

To be able to carry out its statutory functions under Section 5, the Corporation has also been vested with certain powers. These are contained in Section 6 of the Act. The Corporation maintains an organisational structure for effective administration and management.

6. **SUMMARY**

This unit has discussed the functions, powers and organisation of NNPC. The next unit will focus on the shortcomings of this Corporation, which have fueled demands for an urgent and far reaching reforms.

7. **TUTOR MARKED ASSIGNMENT QUESTIONS**

8. What are the functions of NNPC?
9. Explain the statutory powers of the NNPC.
10. Describe the organisational structure of the NNPC.

8. **REFERENCE/FURTHER READING**

11.Oil and Gas Law in Nigeria – by Yinka Omorogbe.

12.Nigerian Petroleum Law – by G. Etikerentse.

13.Nigerian National Petroleum Corporation Act Cap N123 LFN 2004.

MODULE 4

UNIT 3

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

TITLE

REFORMING AND REPOSITIONING THE N.N.P.C FOR PRESENT AND FUTURE CHALLENGES

1. INTRODUCTION

The first and second units of this Module have been devoted to the factors which have necessitated the establishment of national oil companies, as well as the functions and powers of our national oil company, NNPC respectively. It has also been shown that the law, which created this NNPC, namely the 1977 Act, has remained in the Statute books and has not been repealed or even amended. But circumstances have changed, and to this extent, have warranted some structural and organisational changes within the corporation, eventhough without much success in terms of financial returns.

Under the law, NNPC was established, not only to act as a policy guide of the government in petroleum matters but also to engage in some form of commercial venture. Such would provide additional revenue thereby making it less dependent on Government grants and allocations. However it lacked the vision and background to sustain any meaningful commercial enterprise, apart from its role in joint venture exploration and production. It has been said that the main factor responsible for its commercial failure is the civil service culture pervading in the corporation, and that it ranks bottom with its peer N.O.Cs. Indeed NNPC has, over the years, become a conduit pipe for siphoning of our revenue from oil contracts. Corruption cannot be discussed in Nigeria without NNPC leading the agenda.

Today, NNPC's performance has been dogged by limited financial or revenue resources to low performance in management and high administrative costs. It is therefore against this background that the need for the reform of this important ally of government in economic policies on oil and gas has become overwhelming and imperative. If this corporation is to be repositioned for better and effective management, for engagement in profitable commercial ventures, there must be

changes. The changes and reforms envisaged have now been incorporated in the Petroleum Industry Bill, currently before the National Assembly.

2. COURSE OBJECTIVES

At the end of this study unit, the student or reader should be able:

- To understand and appreciate the challenges facing NNPC as a national oil company.
- To understand and appreciate the reasons for an urgent reform of NNPC.
- To understand and appreciate the proposals contained in the Petroleum Industry Bill for the reform of NNPC, which if all goes well will become law in the near future.

3. MAIN CONTENT

4.1 Reform and Repositioning of the NNPC.

4.1.1 What are the reasons for the proposed reform?

4.1.2 Proposals for reform of the NNPC in the Petroleum Industry Bill (P.I.B)

- (i) Limited Liability enterprise
- (ii) Regulation and control of its activities
- (iii) Transfer of licences and leases
- (iv) Elimination of dependence on annual budget allocations by N.O.C
- (v) Ownership of assets

4.1 Reform and Repositioning of the NNPC

4.1.1 What are the reasons for the proposed reform?

The reasons for the proposed reform of our national oil company, NNPC can be summarized as follows:

- (i) Limited financial or revenue resources for effective performance of its statutory duties as well as effective management of the corporation.
- .
- (ii) Presence of civil service culture that impedes entrepreneurial vision and disposition. Private enterprise has come to be seen as a taboo in the NNPC, as long as Federal allocations are readily available for disbursement.
- (iii) Absence of entrepreneurial culture to boost profitable commercial engagements. This would provide the much needed revenue for better running of its affairs.
- (iv) Low performance in the management of affairs of the corporation.
- (v) High and disproportionate administrative costs, which in turn compounds the present financial position of the corporation.
- (vi) Low empowerment and moral among the workforce.
- (vii) Despite the fact that NNPC has powers to operate on a commercial basis like profit oriented private companies, it still operates like a commercial public corporation. The result is that the corporation has progressively stagnated in terms of profitable commercial ventures and relies heavily on Government funding. Privatization will reduce Government role and at the same time induce greater competition.

(viii) There is also the need to bring the NNPC Act 1977, in line with the structural changes that have taken place since then.

4.1.2 **Proposals for reform of the NNPC in the P.I.B**

The Petroleum Industry Bill, currently under intense legislative debate in the National Assembly contains a number of proposals for the reform and repositioning of the NNPC. These are stated hereunder:

1. **Limited liability enterprise**

This proposal is for the incorporation of our National Oil Company as a limited liability company (NNPC Ltd) which shall be the successor company to the assets and liabilities of the current NNPC.

2. **Regulation and control of its activities**

Upon assumption of private enterprise status, the new NNPC Ltd will be subject to the regulatory powers of the upstream, midstream and downstream regulatory authorities like the Department of Petroleum Resources (DPR) and the Petroleum Products Pricing Regulatory Agency (PPPRA).

3. **Transfer of Licences and Leases**

The Bill proposes a transfer of all licences and leases or interests in such licences and leases held by the Corporation to NNPC Ltd.

4. **Transfer of assets and liabilities of Joint Ventures**

It is proposed that the present joint ventures on exploration and production between the Corporation and its joint venture partners, the I.O.Cs like Shell Petroleum Development Company Limited, be incorporated into joint ventures with assets and

liabilities held jointly and severally by NNPC Limited and the respective joint venture partners.

5. Elimination of dependence on annual budget allocations by National Oil Company

The major reason why the Corporation is today in dire financial difficulties is because its budgetary allocation from the Government is hardly enough for it to meet its obligations. We have already pointed out in this unit, the fact that the Corporation has failed to engage in profitable commercial ventures, which would have boosted its revenue and financial resources. A new limited liability NNPC, is expected to engage in self funding through equity or debenture holdings as is the case with Nigerian Liquefied Natural Gas (NLNG). The message here is that it is time for our National Oil Company, NNPC, to be privatized, and for it to engage in business, not as government parastatal, but like the International Oil Companies that have no government backing.

6. Ownership of assets

Ownership of NNPC Limited shall be vested solely in the Federal Government of Nigeria, but its subsidiary companies like Nigerian Petroleum Development Co. Ltd (NPDC), Nigerian Liquefied Natural Gas Co. Ltd (NLNG), Pipelines and Products Marketing Company (PPMC) to mention a few, can be partially owned by other parties.

4. CONCLUSION

The three units in this Module 4 of this course have been devoted entirely to the position of our National OIL Company, NNPC. Unit 1 dealt with the reasons for the establishment of an N.O.C in the first case, while Unit 2 focused on the statutory duties or functions of the corporation, as well as its powers under the law, and organizational structure. Unit 3 concluded our discussions by drawing attention to the challenges facing the Corporation, as it seeks for relevance in a much more competitive economic environment. In particular, it was shown that only by reform of the Corporation could it reposition itself for better and effective management of its affairs that would lead to the performance of its statutory duties. With the above, we come to the end of this module.

It is my hope that you have enjoyed the lectures in this module.

5. **SUMMARAY**

The summary of our discussions in this concluding unit have been on the challenges facing the nations oil company, NNPC and the need to reform it. This will put it in a position where it can effectively carry out its duties and functions under the law. The proposals for the reform are contained in a Bill currently before the National Assembly. It is hoped that the enactment of this Bill into Law, will make NNPC more competitive and relevant in the present economic climate.

6. **TUTOR MARKED ASSIGNMENT QUESTIONS**

8. Explain the reasons that have made the reform of the NNPC imperative today.
9. What are the proposals in the Petroleum Industry Bill for the reform of the NNPC?
10. The reform of the NNPC has become not only necessary but also urgent, if it is to be repositioned for a better and effective performance in the economy.
Discuss

7. **REFERENCE/FURTHER READING**

11. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
12. Nigerian Petroleum Law – by G. Etikerentse.
13. NNPC Magazine –Quarterly Magazine of NNPC, Volume 6 No 2, Third Quarter, 2009.
14. Petroleum Development Contracts with Multinational oil firms – by Dr Maxwell M. Gidado, Ed Linform Services 1999.

MODULE 5

UNIT 1

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

TITLE

THE FORMATION, AIMS AND OBJECTIVES AND MEMBERSHIP OF THE ORGANISATION OF PETROLEUM EXPORTING COUNTRIES (OPEC)

1. INTRODUCTION

History has always recorded that events occur as a result of causes, either brought about by man or propelled by natural forces. So it is in the establishment of institutions world wide. At the end of the second world war, the economies of many nations were in tatters. There was a need for a robust and radical action to save the world from economic collapse. This fact was to provide the main reason for the eventual establishment of the International Monetary Fund (IMF). So it is with the Organisation of Petroleum Exporting Countries (OPEC).

At the turn of the 20th century, oil had become a major source of energy in the world. A few International Oil Companies then dominated the industry. They controlled both the upstream and downstream sectors of the industry. In other words, from exploration and production to marketing and distribution. This gave them enormous advantage, leaving the host nations, majority of whom were still in one form of colonialism or another, with paltry dividends from rents and royalties. These were the days of traditional concessions, by which these multinationals could explore and produce oil without expending much of their profits in dividends to their host countries.

It was, therefore, only a matter of time for these host nations to react to what they conceived as marginalization and injustice. Nigeria and indeed the countries that today make up OPEC, share a common experience from the dominant activities of the I.O.Cs in the petroleum industry. These countries would later summon a meeting of petroleum exporters in 1960 to discuss the instability in oil price, and to find ways to improve their fortunes in the world oil market. The deliberations at this meeting marked the birth of OPEC.

It is the aim of this introductory unit of Module 5 to discuss the factors that led to the establishment of this world body. This unit will also devote attention to the aims and objectives of OPEC. Finally its membership and structure will be outlined. The information in the main content of this module will provide you with what you need to understand and appreciate the course objectives.

2. COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To understand and appreciate the reasons or factors that led to the birth of OPEC as a world body.
- To understand and appreciate the aims and objectives of OPEC.
- To understand and appreciate the position of OPEC in the international petroleum industry.
- To understand and appreciate the structure, organization and membership of OPEC.

3.0 MAIN CONTENT

3.1 Factors that led to the establishment of OPEC.

3.2 Aims and objectives of OPEC

3.3 Membership of OPEC

3.4 Structure and Organization of OPEC

3.1 **Factors that led to the rise of OPEC**

There is no doubt today that oil is the top ranking commodity in our modern world. The increasing role of oil in the international economy is such that the world's production and infrastructure are dependent on affordable supplies of oil. Oil has become the focal means of economic development. With the above facts and reality in mind, it has been argued, and with some justification, that countries endowed with such resources should have a strong say and bargaining power with which to influence their political and economic status in the world economy. The argument goes further to state that oil producing countries should always be in position to not only control the exploitation and production of this God given gift, but also be able to influence the price of oil in the international oil market.

Before the formation of OPEC in 1960, it was the I.O.C's and their subsidiaries that called the shots in the international oil arena. They were so powerful that they dictated the level of production of petroleum in the host countries, as well as the price at which it was sold. At this time, most of the host countries were under one form of colonial rule or the other. The result was that they were not in a position to influence events in their oil industries as they were relegated to the role of dormant regulators. And to make matters worse, they did not have the financial muscle to challenge the I.O.C's, as income from oil exploitation and production only trickled in the form of paltry rents and royalties.

Following the events of 1959, when the I.O.C unilaterally cut production and price of oil in Venezuela and parts of the Middle East, a meeting of oil producing countries was hastily arranged in the Iraqi capital of Baghdad in September 1960. This meeting, which was scorned by I.O.Cs, was attended by representatives from the Governments of Saudi Arabia, Iran, Kuwait, Venezuela, and of course the host country Iraq. Together these countries resolved to form a cartel known as Organisation of the Petroleum Exporting Countries. These were the founding fathers of OPEC. With its formation, the dominance of the world oil industry by the so called majors (I.O.Cs) starting from 1930 came under challenge.

There can be little argument that the birth of OPEC marked the beginning of a radical departure from the dominant and overbearing position of the major I.O.Cs in the world oil industry.

3.2 What then are the aims and objectives of OPEC?

Article 2 of OPEC Statute sets out the principal aims and objectives of the organization. They are as follows:

“The principal aim of the Organisation shall be the co-ordination and unification of the petroleum policies of Member Countries and the determination of the best means for safeguarding their interests, individually and collectively.

The organisation shall devise ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations.

Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries; and efficient economic and regular supply of petroleum to consuming nations and a fair return on their capital to those investing in the petroleum industry”.

AIMS AND OBJECTIVES OF OPEC

From the foregoing, OPEC’s stated aims and objectives can be summarized as follows:

1. Co-ordination and harmonization of petroleum policies of member nations to bring them in line with the standard set by OPEC.
2. Stabilization of price of oil in the world oil market in order to eliminate fluctuations.
3. Stabilization of oil income of its member nations.
4. To negotiate for the participation of member nations in oil exploitation and exploration.
5. To fix and allocate production quotas to member nations.
6. To ensure steady supply of oil to consuming nations.
7. To examine and ensure that participation of I.O.Cs in all oil exploitation does not jeopardize the interests of member nations.

3.3 MEMBERSHIP OF OPEC

Since its creation in 1960, the membership of OPEC has grown beyond the five founding countries of Iraq, Iran, Saudi Arabia, Kuwait and Venezuela. Between then and 1975, the following countries have joined this oil cartel. They are:

1. Qatar (1961)
2. Indonesia (1962)
3. Libya (1962)
4. United Arab Emirate (1967)
5. Algeria (1969)
6. Nigeria (1971)
7. Ecuador (1973) Suspended its membership
8. Gabon (1975)

4.4. STRUCTURE AND ORGANISATION OF OPEC

OPEC operates through three principal organs, namely the Conference, the Board of Governors and a Secretariat.

(a) **The Conference**

This is the supreme authority of the organization. It consists of the Heads of delegation of member nations, who are usually the Ministers in charge of Petroleum Resources. This body meets twice a year to discuss matters affecting their common interests, which mainly centre around stabilization of price of oil and steady income from oil exports. Decisions are taken on the unanimous agreement of all member countries. It follows, from its pivotal position that the Conference is charged with the function of formulating the general policies of the Organisation as well as determining the best means of implementing them. It is also the Conference that decides on the admission of new members. Other functions of the conference include the confirmation of appointment of the Board of Governors, the appointment of the Secretary-General and other high ranking officers, amendment of the Statutes, approval of budgets and consideration of statement of accounts and auditor's report.

(b) The Board of Governors

This body is made up of the Governors nominated from member countries but confirmed by the Conference. The Board also meets twice a year, to deliberate on matters affecting the Organisation. Essentially, this Board has the duty of managing the affairs of the organisation, and implementing the decisions of the Conference.

(c) The Secretariat

This body is charged with the duty of carrying out the executive functions of the organisation, under the direction of the Board of Governors. The Secretariat is headed by the **Secretary – General**, often described as the Chief Officer. He is appointed by the unanimous decision of the Conference, and must be a national of one of the member countries, and at the same time meet certain minimum conditions namely:

- (a) 35 years and above.
- (b) A graduate of a recognised University in the disciplines of Economics, Law, Science and Engineering or Business Administration.
- (c) 15 years experience of which at least 10 years should have been spent on employment or positions directly related to the oil industry.

The Secretariat is made up of Divisions and Departments. There is a **Division of Research, Department of Personnel and Administration** and a **Department of Public Information**.

5. **CONCLUSION**

History will reveal that OPEC is a child of circumstance. Professor Omorogbe has described it as “an organisation born of protest”. Since its establishment, it has been variously described as an oil cartel, oil monopoly and so on. Whether it qualifies as such depends on which side of the fence one finds himself. But whatever description is given to this body, it can be seen clearly from our discussion in this unit that OPEC is essentially an association of oil producing and exporting nations determined to get a fair share from their investments in this very important industry.

OPEC’s aims and objectives have been stated in this unit, together with its structure, organisation and membership.

6. **SUMMARY**

The summary of our discussion in this unit is that OPEC is a world body, consisting of nations, who not only produce petroleum, but equally are major exporters. In order to ensure greater stability in the price of their commodity, uninfluenced by political or other forces or considerations, they have agreed and adopted a body of Statute, containing specific aims and objectives, which must be attained at all times

To achieve its goals, OPEC has created and designed an organizational structure, which enables it to function effectively.

7. TUTOR MARKED ASSIGNMENT QUESTIONS

8. What are the aims and objectives of OPEC?
9. There is no doubt that OPEC is an organisation founded on exigency.
Do you agree?
10. Which countries make up OPEC, and how does this body function administratively?

8. REFERENCE/FURTHER READING

11. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
12. Nigerian Petroleum Law – by G. Etikerentse.
13. Petroleum Development Contracts with Multinational Oil Firms – by Dr Maxwell M. Gidado, Ed Linform Services 1999.
14. OPEC Bulletin – 2009
15. Quarterly Magazine of the NNPC, Volume 6 No 4, Fourth Quarter, 2009.
16. <http://www.opec.org>

MODULE 5

UNIT 2

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

OPEC'S CONTRIBUTIONS AND ACHIEVEMENTS IN THE INTERNATIONAL PETROLEUM INDUSTRY

1. INTRODUCTION

Since the emergence of OPEC in 1960, it has gone a long way in achieving its set aims and objectives. The antagonism it faces today is because those, particularly the rich developed and economically powerful nations, who thought it would soon wither away, have seen OPEC grow from strength to strength. In 2010, it rolled out the drums in celebrating its 50th year anniversary. It is therefore, with some measure of hostility that these countries, led by the United States of America, often view the operations of OPEC.

What then has OPEC done or achieved since its inception over 50 years ago? How does one evaluate OPEC's actions or activities all these years? These questions will engage our attention in this second unit of Module 5. You will see from the information in the main content that OPEC has, to a large extent, contributed immensely to the growth and sustenance of the international petroleum industry. Our Country Nigeria has also benefited immensely from her membership of OPEC.

2. COURSE OBJECTIVES

At the end of this study unit, the student should be able:

- To understand and appreciate the contributions of this world body, OPEC, to the growth and sustenance of the international petroleum industry.
- To understand and appreciate the achievements of OPEC since its establishment in 1960.
- To understand and appreciate Nigeria's healthy relationship with this world body, OPEC.

3.0 MAIN CONTENT

4.1 Contributions and achievements of OPEC in the international oil market.

4.2 Nigeria's relationship with OPEC

3.1. Contributions and achievements of OPEC in the international oil market

It has been said that OPEC has contributed massively to the development of petroleum industries in the member nations in the following ways:

1. It has played a very key role in the establishment of national oil companies in its member nations. In the case of Nigeria, the formation of the first national oil company, then known as Nigerian National Oil Corporation, (NNOC) in 1971 by Decree No 18 of that year, was a direct response to OPEC resolutions and policy statements which required the existence of a State oil corporation before State participation in the oil industry as well as membership of OPEC. Nigeria joined OPEC in 1971. This pioneer national oil company, NNOC, was later merged with the then Ministry of Petroleum to form the Nigerian National Petroleum Corporation by Decree No 33 1977. NNPC has since then grown in size, stature, and experience in petroleum activities. It has over the years made some structural re-organisation in order to meet the challenges of its role in oil exploitation and production. This role encompasses not only supervisory and regulatory control of the activities of the I.O.Cs operating in Nigeria, but also direct participation in oil exploitation and production, on behalf of the Federal Government.
2. Since the formation of OPEC, it has succeeded in raising the price of oil. Between 1971 and 1974, this cartel succeeded in raising the price of crude oil from a paltry one dollar 50 cents to 11 dollars 65 cent. Since then, member nations have come to reap increased revenue from sale of crude oil, which to some extent has brought them economic growth. Nigeria has been a great beneficiary from the activities of OPEC, since its membership in 1971.
3. OPEC has succeeded in ensuring the participation of its member nations in oil exploitation and production. The various Joint Venture Agreements entered into between N.N.P.C, as an

agent of the Federal Government and the I.O.Cs, like Shell, Agip and Elf, attest to this fact of state participation.

4. OPEC has greatly assisted its member nations to start negotiations on new royalties, which are more favourable to them.
5. The organisation has to some extent achieved success in regulating and limiting the activities of I.O.Cs operating in member nations.
6. On the political front, OPEC and its member nations are formidable forces to reckon with in international politics, which lately is greatly influenced by events in the global oil market. Member nations now speak with one voice on matters of petroleum policies.
7. OPEC has established a common fund, which has often aided its needy member nations financially.
8. OPEC has greatly facilitated the realization of the resolution on permanent sovereignty over natural resources as far as host countries exporting oil are concerned. This realization has been felt by the shift away from investor ownership of natural resources towards ownership and control by owners of petroleum resources, namely host countries. Without the role of OPEC, it is doubtful if this trend would have been sustained in member nations. OPEC's Resolution 90 of 1968 on petroleum policy went a long way in urging member nations to engage in State participation. All these can also be seen as achievements on the part of OPEC. Indeed OPEC is today a major player in world affairs. An organisation that now controls more than 70% of the world's reserves of oil, in addition to having in its rank nine out of the ten world's biggest oil producers cannot be ignored or overlooked.
9. Today OPEC Secretariat boasts various departments which enables it, not only to confront modern challenges in the petroleum industry, but also to find solutions to them, OPEC has the following Departments
 - (i) Legal Department
 - (ii) PR and Information Department
 - (iii) Data Services Department

- (iv) Energy Studies Department
- (v) Refinery and Products Department

With these Departments in place, and with the best available skill in the industry, OPEC has been well positioned to make authoritative statements on the state of the international petroleum industry. At the same time, the research and advice of these Departments enable this world oil cartel to formulate policies towards the achievements of its objectives. Information and statistics on the trend of world energy demand would influence OPEC either to increase or cut supply of oil in the member States.

3.2 Nigeria's relationship with OPEC

Between October 13 and 16 2009, Nigeria played host to the Secretariat of OPEC, when its top-ranking officials led by the Secretary General, His Excellency Dr Abdallah S. El-Badri visited the country. It was a historic moment, and one which our country, particularly the oil and gas industry, represented by the Minister of Petroleum Resources, and Nigerian National Petroleum Corporation, NNPC, will always remember with relish.

The visit, a weeklong affair, featured various events including presentation of papers from both OPEC delegates, and Nigerian officials. One of such papers from OPEC officials titled "Introduction to the Organisation of the Petroleum Exporting Countries (OPEC) was quite instructive. In it, the author while tracing the history of OPEC, recalled the events that led to the emergence of this body. Please remember that we touched on this in unit 1 of this module. If I may remind you, this was the unequal relationship that existed between the powerful I.O.Cs and their host countries. Other papers include "**Recent Oil Market Development**" and "**International Legal Issues of Significance to OPEC and Member Countries**".

The visit clearly expressed the view of most Nigerians that our country still has a good and healthy relationship with OPEC, and that we are not planning of leaving the oil cartel, in spite of rumours of pressure to do so from U.S.A. Our officials also

took the opportunity to explain steps that have so far been taken in reforming our petroleum industry.

On the part of OPEC, its Secretary-General Dr Abdallah El-Badiri reaffirmed the position commonly held by many that Nigeria is a leading member of the organisation, and that the Secretariat still maintains a good and healthy relationship with the country.

It is also worthy of note that Nigeria expressed satisfaction with the OPEC decision at the last Ministerial meeting in May 2011 in Vienna, Australia, not to increase supply quota in the member States. It had been the expectation of energy analysts that OPEC would increase supply to bring down the price of oil. This is evidence of confidence in OPEC activities.

4. **CONCLUSION**

OPEC has contributed quite a lot to the growth and sustenance of the global oil industry. The facts shown in the main content of this module, all attest to this. Right from its Declaratory Statement of Policy in 1968, when it enjoined member nations to engage in State participation in their oil and gas industry, OPEC has made giant strides in ensuring stability in this most volatile industry.

Today, when OPEC speaks or observes, the world sits up. OPEC's statistics or information on the state of the world oil market are taken seriously, and also used as a barometer for measuring economic growth in various nations of the world. For instance, at the just concluded 8th Ministerial level meeting of this body in Vienna, Australia, the group stated that world demand for oil increased in the year before, and that oil is expected to remain the leading source of energy world wide. This trend, according to OPEC, is evidence that the economies of the world are now coming out of recession experienced in 2008 and 2009. No country can ignore this statement.

5. **SUMMARY**

This unit has focused on the contributions and achievements of OPEC in the international oil market. It has shown clearly that OPEC has made giant strides in the world oil and gas industry.

The unit has also discussed the relationship between OPEC, and one of its leading members, namely, Nigeria. Our conclusion is that our country, Nigeria, has a healthy relationship with this body. This fact is evidenced by the visit of the body's Secretariat to Nigeria in 2009.

The next unit namely unit 3, will be devoted to the relevance of OPEC in the global oil market.

6. **TUTOR MARKED ASSIGNMENT QUESTIONS**

1. What have been the contributions of OPEC to the growth of the international petroleum industry?
2. How would you assess Nigeria's relationship with OPEC today?

7. **REFERENCE/FURTHER READING**

1. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
2. Nigerian Petroleum Law – by G. Etikerentse.
3. Petroleum Development Contracts with Multinational Oil Firms – The Nigerian Experience – by Dr Maxwell M. Gidado, Ed Linform Services 1999.
4. Quarterly Magazine of the NNPC, Volume 6 No 4, Fourth Quarter, 2009.
5. OPEC Bulletin – 2009

MODULE 5

UNIT 3

Table of Contents

1. Introduction
2. Course Objectives
3. Main Content
4. Conclusion
5. Summary
6. Tutor Marked Assignment Questions
7. Reference/Further Reading

OPEC, GLOBAL OIL AND GAS INDUSTRY AND EMERGING CHALLENGES

1. INTRODUCTION

OPEC has been in existence now for over 50 years, having been established in September 1960. Its birth has been attributed to exigency, brought about by the unequal relationship that existed between the powerful multinational oil companies and the government of the oil producing countries. The organisation's primary concern then was how to ensure that the price of this commodity, oil, was stabilized in the world market. This would in turn bring in the much needed revenue for the economic growth and expansion of oil exporting member States.

When OPEC embarked on its primary objective of co-ordination and unification of petroleum policies in the member countries, there was no illusion that it was going to be a difficult task. Some analysts then described the entry of OPEC into the world petroleum industry, where it would come head to head with the international oil companies, as a confrontation between David and Goliath. Accordingly the organisation was not given much of a chance to succeed. It would only bark for a time, and then disappear.

OPEC has proved many analysts and writers wrong. For it has not only weathered initial difficulties of building a consensus amongst the member countries, with different ideologies, economic policies and regional affiliations, but has gone further in strengthening their individual positions in the oil industry. Quotas are given on oil supply, the aim of which is to affect the price of oil in the international market in one way or the other. By so doing the interests of the member countries are protected.

We have noted the various contributions made by OPEC in the global oil and gas industry in unit 2 of this module. Those contributions also rank as achievements on the part of this body. Having done so, the question has now often been asked whether OPEC is still relevant today. In other words, how does OPEC fit into a world that has changed radically both politically and economically in the past 50 years of its

existence? Is OPEC now over protective of its member countries, to justify the accusation that it promotes anti-competitive practices? What are the challenges facing OPEC in today's global oil and gas industry? An evaluation of these issues will engage our attention in this unit of module 5.

2. COURSE OBJECTIVES

At the end of this study unit, the student or reader should be able:

- To understand and appreciate the position of OPEC in today's global oil and gas industry.

- To understand and appreciate the challenges facing OPEC in the global oil and gas industry.

- To understand and appreciate the fact and position that inspite of emerging challenges facing OPEC, it is still relevant in the operations and activities in the global oil and gas industry today.

3.0 MAIN CONTENT

3.1 OPEC, Global Oil and Gas Industry and Emerging Challenges in the international oil market.

3.1.1 OPEC's position in the global oil industry.

New and emerging producers and exporters of petroleum.

Judicial and Legislative challenges in the United States of America.

3.1 OPEC, Global oil and gas industry and emerging challenges

3.1.1. OPEC's position in the Global oil industry today

We noted in the introductory part of this unit that OPEC has now been in existence for over 50 years. We also noted that it has since then come of age, having weathered the storm of confrontation with the international oil companies. This enabled it to take charge of affairs in the oil and gas industry, particularly on production quotas and pricing in the 1970's. It maintained its strangle hold on these aspects of the industry even in the 1980s and 1990's. But things have changed, with the result that today, OPEC is facing challenges from various fronts. These can be summarized as follows:

- (i) New and emerging oil-producing and exporting countries.
- (ii) Judicial and legislative challenges in the United States of America.

We shall now discuss these issues in a little more detail.

3.1.2 New and emerging producers and exporters of oil.

There are today many producers of crude oil. Most of these oil-producing countries also export the commodity. And what more, most of them are not members of OPEC. Russia is today a leading oil producing and exporting country. Information has it that the European Union countries rely on Russia for about 40% of their energy needs sourced from oil and gas. Other oil producing and exporting countries include

Angola, Sudan and Chad in Africa, while Brazil and Ecuador feature in South America. The United Kingdom, which produces oil from its North Sea territory, is also an oil exporter.

All these countries operate outside OPEC. Their presence has increased the volume of oil in the global market and triggered greater competition. The result is that OPEC, though still influential in the global oil and gas industry because of the combined huge oil resources of its member countries, can no longer be said to be in a position of dominance as it did 30 or 40 years ago. The message is that OPEC, though still a powerhouse in this important industry, is no longer in control of the price of oil in the global market. This, as reliable information has it, is the trend in the global oil market.

Having noted this trend, it is important however, to state that OPEC is still relevant for the member countries. That the new and emerging oil producing and exporting countries have decided to operate outside OPEC, does not mean that this body has outlived its usefulness. The contrary is the case. Indeed, there are countries today that will not be admitted into OPEC in spite of their huge oil reserves or resources, given their historical and political antecedents. You must not forget that OPEC member countries are drawn from those with history of colonialism and imperialism. These are countries that rallied together to find a way of redressing the unequal relationship between them and the international oil companies of the rich developed world.

Indications are that OPEC is still relevant, and a factor to reckon with in the global oil and gas industry. At its recent Ministerial level meeting in Vienna, Australia, it also held an energy dialogue with the European Union. This is a practice, which both parties initiated in 2005, aimed at exchanging ideas, information and data on the state of the global oil industry, in order to maintain stability in oil market. There is also the aim to create greater awareness of the interdependence of all stakeholders in the energy sector.

A body that can engage in such dialogue with an international association of developed countries of Europe, must rank as relevant in today's globalized economy. Those who have argued that OPEC is now a spent force, living on its past glory of the 1970's may have to look at recent world events before continuing with their argument. OPEC still controls a sizeable portion of the global oil export market, and this is a verifiable fact, despite the entry of other non OPEC producers and exporters.

3.1.3 **Judicial and legislative challenges in the United States of America**

United States of America is the world's leading nation in free enterprise. As such, it views with hostility organisations that it deems as cartels engaged in anti-competitive practices. This is the way it sees OPEC. It is, therefore not surprising to find law suits in various courts of the United States challenging OPEC's right to formulate and implement specific policies aimed at achieving its set Objectives. At the same time, there have been Bills in the United States Congress targeting OPEC as the major factor for the high oil price in that country. These are part of the emerging challenges OPEC is facing in the global oil market. Let us first of all look at the litigation in some American courts.

(a) **Judicial Challenges**

Giving us an insight into some of the court actions in the U.S courts, in his paper titled “**International Legal Issues of Significance to OPEC and Member Countries**” which was delivered during the OPEC delegation visit to Nigeria in 2009, OPEC's Senior Legal Counsel, Dr Ibibia Lucky Worika identified four law suits against OPEC and Member Countries in the U.S. Courts. These are

- (i) **International/Association of Machinists and Aerospace Workers (IAM) V OPEC and others (1979)**
- (ii) **Prewitt Enterprises Inc. V OPEC (2001)**

(iii) **In re: Refined Petroleum Products Anti-trust Litigation (2008)** and

(iv) **Freedom of Watch V OPEC (2008)**

Now these court actions have been aimed at getting OPEC and the Member Countries to abandon policies, which, in the view and estimation of the claimants, are responsible for the high price of petroleum products in the United States. OPEC has had no choice but to defend itself relying on several defences including Sovereign Immunity, Political Question Doctrine and Act of State Doctrine. It remains to be said that if any of these suits becomes successful, it will make it illegal for OPEC to implement its oil policies for the benefit of its members.

(b) **Legislative Challenges**

In the same paper presented by Dr Worika, the OPEC Senior Legal Counsel, he also informed their Nigerian hosts about 2 (two) Bills which have since 2000 been before the U.S congress, but yet to be enacted into law. Specifically these are the **No Oil Producing and Exporting Cartels (NOPEC)** and **OPEC Accountability (OPA)**. The aim of NOPEC is to eliminate the powers of OPEC member countries to act collectively in setting production quotas and distribution or price levels for crude oil and petroleum products. OPA on the other hand seeks to declare OPEC an oil cartel engaged in anti-competitive practices of manipulation of price of crude oil and maintenance of high artificial price, and to provide for sanctions. These are far reaching legislative proposals. If they become law, they are capable of rendering OPEC completely redundant and effectively irrelevant. Indications are that the U.S Congress is reluctant in pursuing the passage of the Bills because of their possible repercussions on trade and economic relations with OPEC member countries and other sympathizer nations.

4. **CONCLUSION**

It can be seen from our discussion in this unit that OPEC, though once a dominant figure in the world or global oil industry, is now facing challenges from different directions. These are in the form of new and emerging producers and exporters, who are not members of OPEC. As such they can sell their products for any price, as the market forces would dictate.

There is also the equally powerful challenge emanating from both the judicial and legislative arms of governance in the United States. These challenges would indicate that times are changing, and that OPEC is no longer in total and complete control of oil prices. Be that as it may, OPEC is still relevant in the world oil industry and its politics. We have stated some facts in the main content of this unit to buttress this assertion. With this, we come to the end of this module.

5. **SUMMARY**

We have discussed the role and position of OPEC in the modern global oil and gas industry, including the oil market in this unit. We have also evaluated this role and position, and arrived at the conclusion that OPEC, though facing challenges of competition from other petroleum producing and exporting countries, and sustained hostility from both pressure groups and the American Congress, remains an influential body in this industry. OPEC may not be as powerful and dominating as it was in the 1970's and 1980, but it is still relevant in today's global oil and gas industry.

6. **TUTOR MARKED ASSIGNMENT QUESTIONS**

8. How would you describe OPEC's position in the global oil and gas industry today compared to 30 and 40 years ago?
9. Identify and explain the challenges facing OPEC today in the global oil and gas industry.
10. OPEC is to a large extent, irrelevant in today's oil and gas industry?

Do you agree with the above statement?

7. **REFERENCE/FURTHER READING**

1. Oil and Gas Law in Nigeria – by Yinka Omorogbe.
2. Nigerian Petroleum Law – by G. Etikerentse.
3. Oil and Gas Law in Nigeria – Theory and Practice – by Professor Lawrence Atsegbua
4. Petroleum Development Contracts with Multinational Oil Firms – The Nigerian Experience – by Dr Maxwell M. Gidado, Ed-Linform Services 1999.
5. OPEC Bulletin 2009
6. Quarterly Magazine of the NNPC, Volume 6 No 4, Fourth Quarter, 2009.
7. <http://www.opec.org>