A Guide to Oil Marginal Field Law

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A Comparative Review Between Nigeria, the UK, USA and Canada

By

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This book is dedicated with thanks to Almighty God and to the memory of late Chief Christian Aniede who would have been so happy to see the outcome of this research. Much gratitude to Maryam and Melissa for their patience and understanding. We also dedicate this book to everyone interested in innovation, advanced improvement, renewable development and best future discovery for all mankind. Finally, we dedicate this book to the United Nations (UN) and the Organization of Petroleum Exporting Countries (OPEC) who without their resolutions, policy statements and efforts the sovereign rights of natural resources enjoyed by many developing countries would have been impossible to achieve.

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BOOK DESCRIPTION

A Guide to Oil Marginal Field Law: A Comparative Review Between Nigeria, the UK, USA and Canada, is a review of the Nigerian Petroleum Act with the Petroleum laws of UK, USA and Canada, to clarify the legal position of Nigeria oil marginal field farm-out exercise that raised international concern for improvement to enable international best practice. This book traced the authority behind natural resources development and foreign direct investment, through the resolutions and policy statements of the United Nations and the Organisation of Petroleum Exporting Countries. It also discussed petroleum business arrangements and Nigeria oil marginal field regulations in existence for proper understanding, with a review of Nigeria marginal field development prospects and technologies, policy rationale, barriers, and effects. It resolved that the legality of the government farm-out exercise was drawn from the combined provisions of the United Nations resolutions on the rights of developing countries to enjoy permanent sovereignty of their natural resources and the declaratory statements of the Organization of Petroleum Exporting Countries, on the necessity of member countries to make policy development to take charge of their natural resources. This authority was incorporated under the Nigerian law by the combined provisions of Section 44(3) of the Constitution of the Federal Republic of Nigeria and Section 17(1)-(4) of the First Schedule (Amendment Decree No.23 of 1996) of the Nigeria Petroleum Act 1969/1990. In essence, this book introduces a unique contribution to knowledge, as it demonstrated that the Nigeria government farm-out exercise that raised international concern was fair, justified, and legal but requires a cautionary application to avoid driving away investors. It also demonstrated that it is a sensible practice to develop oil marginal fields alongside renewable energy as a backup support, to aid the development and gradual switch to renewable energy.

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TABLE OF ABBREVIATIONS

Abbreviation	Definition
ACT	A product of a Legislative body, a Statute
ACTS	Products of a Legislative body, Statutes
API	American Petroleum Institute
Co2	Carbon dioxide
CBN	Central Bank of Nigeria
CIT	Company Income Tax
DPR	Department of Petroleum Resources
ECOSOC	Economic and Social Council
EMU	Environmental Matters Unit
FGN	Federal Government of Nigeria
FRN	Federal Republic of Nigeria
FHRD	Finance and Human Resources Department
FPSO	Floating Production Solutions
GATT	General Agreement on Tariffs and Trade
IT	Information Technology
JOV	Joint Operating Venture
JV	Joint Venture
KPMG	Klynveld Peat Marwick Goerdeler
NDR	National Data Repository
NNPC	Nigeria National Petroleum Corporation
OML	Oil Mining Lease
OPEC	Organization of Petroleum Exporting Countries
OPL	Oil Prospecting License
PCIJ	Permanent court of International Justice

PIA	Petroleum Industry Act
PIB	Petroleum Industry Bill
PIGB	Petroleum Industry Governance Bill
PPT	Petroleum Profit Tax
PRID	Public Relations and Information Department
PSC	Production Sharing Contract
PSD	Petroleum Studies Department
SC	Service Contract
SGO	Secretary General's Office
SSD	Support Services Division
TLP	Tension-Leg Platform
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
USSR	Union of Soviet Socialist Republics
WBG	World Bank Group
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization

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CHAPTER I

INTRODUCTION & BACKGROUND

1.0 The Aim of this Book

The aim of this book is to compare Nigeria Petroleum Act 1969/1990 (Including the relevant updates from the Nigerian Petroleum Industry Act 2021) with the Petroleum Laws of UK, USA and Canada; particularly on license rights, limitation of rights and available remedies with a view of clarifying the legal position of marginal oil fields in Nigeria. This is in order to highlight the deficiencies in Nigerian oil Marginal Field law by studying these stable and advanced oil Countries, and possibly take guidance from their laws to effect the required changes in the Nigerian system for international best practice. The essence of comparing these three different jurisdictions (UK, USA & Canada) instead of just one jurisdiction is to have a variety of transparent approaches and insight on the standard regulation and legal position of oil marginal field law that takes into consideration the interests of the nation, indigenous oil companies and international oil companies. These jurisdictions are preferred for this comparative research because their interests are being affected in that, most international oil companies in Nigeria are from these jurisdictions. Also, they are fully developed, and advanced oil countries being looked up to by developing oil countries like Nigeria. The findings of this research will enable Nigeria and other developing countries to emulate the good petroleum practices in these jurisdictions, to structure better modern petroleum regulation for international best practice.

This review is necessary, as comments and agitation in this area seem to have raised issues on whether the offering of fields under existing oil lease agreements with most international oil companies to mainly indigenous oil companies, do not amount to a breach of the agreement and rights of these international companies. The deficiencies in the Nigeria Petroleum Act with respect to marginal field law are under review to improve Nigerian marginal fields, promote investment and encourage investors.

1.1 Research Approach

The research approach used in this book are doctrinal and comparative research approach. Doctrinal research approach according to Paul Chynoweth 'is used for formulation of legal doctrine by analysing legal rules.'[1] It is a research approach used for reviewing definition of laws, statutes, and legal discussions when there is need for an evaluation (also referred to informally as 'black-letter law').[2] Comparative research approach on the other hand, is a research method used to compare different variables, laws, jurisdictions, rules or principles.[3] Collins Hugh[4] in his paper captured comparative research approach as a method used for identifying aspects of unclear domestic law; recurrent disputes among citizens, examining legal doctrines, evaluating different foreign legal system and analysing a domestic legal system with obstacle.[5] These are in order to identify and review the legal definition of study terms with the doctrinal research approach, while the comparative research approach will be used to compare and analyse the disparities in the rules and principles applicable in the identified areas for proper guidance. This review was purely Desk-based as most of the laws and materials for review were available online.

1.2 Introduction & Background

A historical context of when Nigeria began farming out marginal oil fields. What was the rationale behind it?

In Nigeria, agriculture use to be the main source of revenue prior to 1960 when it attained independence.[6] However, the petroleum history of Nigeria can be traced to the oil discovery of 1908, by the then, Nigerian bitumen company (an affiliate of German Exploration Company), in the part of

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[1]Paul Chynoweth, Legal Research: Advanced research methods in the built environment (1st edn, Blackwell Publishing Ltd 2008) 29
[2]Terry Hutchinson & Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin L Rev 83
[3]Paul Chynoweth, Legal Research: Advanced research methods in the built environment (1st edn, Blackwell Publishing Ltd 2008) 29
[4]Collins Hugh,' Methods and Aims of Comparative Law' [1991] 11 Oxford Journal of Legal Studies 399
[5]Ibid
[6]K. T. Lawal, 'Taxation of Petroleum Profit under the Nigeria's Petroleum Profit Tax Act' (2013) 4 Int'l J Advanced Legal Stud & Governance 1

Nigeria, now known as Ondo State.[7] After the Nigerian Civil War (the Nigerian-Biafran War),[8] around 1971, the popularity of oil grew making it the source of international development opportunities, foreign exchange and financial strength for most developing countries therefore, the main economic interest and revenue of Nigeria.[9] Before this period, the big operating oil companies in Nigeria were owned by foreigners/foreign international companies who controlled the oil sector.[10] International interest in oil and the sensitization of the United Nations in conjunction with the Organization of Petroleum Exporting Countries, moved Nigerian government to get directly involved in its petroleum operations by establishing the Nigerian National Petroleum Corporation (NNPC) around 1971 to acquire participatory interest. Nigerian citizens were also encouraged to acquire shares in the operating companies.[11]

The development and management of Nigeria's natural resources has been a transitional challenge from the period of oil discovery, more so with intermittent change of regime which came with its unique purpose and ideology.[12] This perplexed situation was compounded by ineffective regulations, corruption, mismanagement, local oil community demand, unfavourable environmental and economic conditions for petroleum extraction.[13] The federal government of Nigeria appears to be in constant search for solutions to resolve the problems of the petroleum sector, which includes lack of local skills and industry experts silent on abandonment of oil fields by international oil companies/investors when confronted by exploration or economic challenges.[14] These historic problems made it difficult for the government to develop and improve petroleum exploration

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[7]Ibid

[8]Ngozika Anthonia Obi-Ani, Okwuchukwu Justice Nzubechi & Paul Obi-Ani, 'Indigenous Peoples of Biafra (IPOB) and the Renewed Quest for Biafra' (2020) 12 Cogito: Multidisciplinary Res J 97

[9]K. T. Lawal, 'Taxation of Petroleum Profit under the Nigeria's Petroleum Profit Tax Act' (2013) 4 Int'l J Advanced Legal Stud & Governance 1

[10]Sabinus Akujobi Megwa, 'Foreign Direct Investment Climate in Nigeria: The Changing Law and Development Policies' (1983) 21 Colum J Transnat'l L 487

[11]K. T. Lawal, 'Taxation of Petroleum Profit under the Nigeria's Petroleum Profit Tax Act' (2013) 4 Int'l J Advanced Legal Stud & Governance 1

[12]Lawrence Atsegbua, 'Issues in the Development of Marginal Oilfields in Nigeria' (2005) 23 J Energy & Nat Resources L 323

[13]Chilenye Nwapi, 'A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria' (2010) 54 J Afr L 184

[14]Ibid

in the country more so as it was losing revenue in the process.[15] The persistence and curiosity of the federal government on these issues pushed the ministry of petroleum resources to investigate the possibility of finding practical solutions, of which it was initially discovered that about 1.3 billion barrels worth of petroleum reserves in 116 petroleum fields under lease were abandoned and not being explored.[16] Presently, there is about 2.3 billion barrels worth of petroleum reserve in 251 abandoned petroleum fields.[17] These abandonments were due to various challenges making it unfavourable for the leaseholders to explore the petroleum fields successfully and profitably, leading to abandonments, frustrated economy, and revenue loss to the country.[18]

Nigerian oil marginal field farm-out exercise was introduced by the Federal Government of Nigeria in the 1990s, through the amendment of the provision of Nigerian Petroleum Act 1969/1990 by Decree No. 23 of 1996, because of abandonment of most oil fields under existing lease by leaseholders for more than 10 years due to various reasons.[19] This includes oil fields the leaseholders are willing to give up for farm-out under portfolio rationalisation as the President of Nigeria may wish to identify and approve.[20] While most marginal oilfields were abandoned due to expensive overhead/development cost by multinational companies, considering that the fields are incapable of being explored in commercial quantity.[21] Such fields are ideal for indigenous companies with smaller overhead/development costs as smaller companies can manage and operate with little profit in

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[15]Chijioke E. Emole, 'The Petroleum (Amendment) Decree, 1996, of Nigeria' (1997) 41 J Afr L 239

[16]Mobolaji Ezekiel & Okoro Benson Okwuchukwu, 'A Critique of the Legal Framework for the Development of Marginal Oil Fields in Nigeria' (2020) 11 Nnamdi Azikiwe U J Int'l L & Juris 135

[17]Ibid

[18]Chijioke E. Emole, 'The Petroleum (Amendment) Decree, 1996, of Nigeria' (1997) 41 J Afr L 239

[19]Ibid

[20]Nigerian Upstream Petroleum Regulatory Commission, 'Tracking Marginal Fields' Bid Round Conclusion – 28th February 2022' (NUPRC Website, 6 June 2022) <https://www.nuprc.gov.ng/tracking-marginal-fields-bid-round-conclusion-28th-february-2022>accessed 6 June 2022

[21]Martin M. Van Brauman & Clifford A Mangano, 'Resource Rent Taxation as a Basis for Petroleum Tax Policy by Foreign Governments and Its Relationship to US Foreign Tax Credit Policy and Tax Law' (2000) 18 J Energy & Nat Resources L 19

return.[22] These include fields operating companies have not developed and fields without a development plan after a period of 10 years, which are classed as marginal fields.[23] The initiative was part of the Federal Government plan to revive and develop abandoned oil producing regions in Nigeria, increase federal revenue, encourage indigenous participation and improve the relationship between international companies/investors and local communities.[24] The rationale of the farm-out programme was to give indigenous Nigerian companies opportunity to own, operate and participate in the petroleum sector.[25] This programme enables indigenous oil companies to take up sublease of abandoned oil marginal fields under existing leases held by leaseholders, within the government's guideline and approval.[26] The Nigerian Petroleum Act 1969/1990 under the First Schedule paragraph 17(1) to (3) (Amendment Decree No.23 1996)[27] gave authorization to oil marginal field leaseholders to farm-out such leased marginal areas with the consent of the President of Nigeria, upon the terms and conditions to be approved by the President. The President is also empowered by this provision to authorize a farm-out if the leased oil field has been left unattended up to 10 years by the leaseholder.[28] However, the President can only authorise a farm-out if it is in the public interest to do so and by ensuring that the parties to the farm-out are all acceptable to the Federal Government of Nigeria.[29]

The Nigerian oil marginal field programme was designed to expand the petroleum sector of Nigeria by encouraging diversification and investment, indigenous participation, portfolio rationalization, reserve increase, participation of qualified local technicians, utilization of local assets and

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[22]Lawrence Atsegbua, 'Issues in the Development of Marginal Oilfields in Nigeria' (2005) 23 J Energy & Nat Resources L 323

[23]Ibid

[24]Chilenye Nwapi, 'A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria' (2010) 54 J Afr L 184

[25]Nigerian Upstream Petroleum Regulatory Commission, 'Tracking Marginal Fields' Bid Round Conclusion – 28th February 2022' (NUPRC Website, 6 June 2022) <https://www.nuprc.gov.ng/tracking-marginal-fields-bid-round-conclusion-28th-february-2022> accessed 6 June 2022

[26]Ibid

[27]Petroleum Act of the Federal Republic of Nigeria 1969/1990 (Amendment Decree No.23 of 1996) 1st sch. para.17(1)-(3)

[28]Ibid

[29]Petroleum Act of the Federal Republic of Nigeria 1969/1990 (Amendment Decree No.23 of 1996) 1st sch. para.17(1)-(3)

facilities.[30] The programme was conceived to stop the loss of petroleum revenue by the Federal Government of Nigeria, as abandoned oil fields were not generating petroleum revenue for the government not to mention maintaining indigenous local participation and posterity of the petroleum business which is the main source of the Federal Government revenue.[31]

The inspiration and title of this book was drawn from the Petroleum (Amendment) Decree No.23 of 1996 under Paragraph 17(2) of the First Schedule of Nigerian Petroleum Act 1969/1990. The provision of the said Decree empowers the President of the Federal Republic of Nigeria to order farm-out of oil fields (oil marginal fields) under subsisting lease agreements that have been left unattended/unexplored up to 10 years from date of discovery, by international oil companies to indigenous oil companies to farm-out with respect to government regulation.[32] Farm-out in this context is simply a form of sublease arrangement guided by government regulation between a third party and the leaseholder, whereby the third party acquires the right to conduct any activity the leaseholder would have been entitled to under the lease within the validity of the lease.[33] Chijioke Emole pointed out that the definition of farm-out in the Act which authorized the President of Nigeria to order a farm-out of oil fields left unattended up to 10 years seems a bit like compulsory acquisition.[34] Especially when some of the lease holders say they left some fields as a result of the restrictions of the Organisation of Petroleum Exporting Countries (OPEC) on production quota allocated to its member countries, which includes Nigeria not because those fields are marginal fields.[35] Lawrence Atsegbua also criticised the farm-out definition provided by the Act as being vague and open ended to encompass all petroleum business arrangements and types of farm-out, which he believes also gave the lease holder options to farm-out the leased

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[30]Nigeria Ministry of Petroleum Resources, 'Guidelines for Farm-out and Operation of Marginal Fields' (2013) DPR<http://africaoilgasreport.com/wp-content/uploads/2013/12/GUIDANCE-NOTES-FOR-NIGERIAN-2013-MARGINAL-FIELDS-BID-ROUND.pdf>accessed 15 January 2020

[31]Oruwari Humphrey Otombosoba, 'Examining the Legal and Regulatory Framework on Marginal Oil Field Development in Nigeria' (2018) SPE International-193488-MS, p3

[32]Petroleum Act of the Federal Republic of Nigeria 1969/1990 (Amendment Decree No.23 of 1996) 1st sch. para.17(1)-(3)

[33]M. A. Ayoade, 'Nigerian Petroleum Profits Tax and Financial Incentives: 50-Year Requiem' (2008-2010) 24 U Ghana LJ 171

[34]Chijioke E. Emole, 'The Petroleum (Amendment) Decree, 1996, of Nigeria' (1997) 41 J Afr L 239

[35]Ibid

area as provided in the Act instead of leaving those fields unattended.[36] The Farm-out regulation is made by the government with an agreement between the 'Farmor' (The International Oil Company) and the 'Farmee' (The Indigenous Oil Company).[37] An oil marginal field in the context of this discussion is an oil field that is not in current exploration owing to one or more issues or challenges, such as marginal economics, marginal reserve, geological constraints, difficult geographical location, insurgency, portfolio rationalisation, unfavourable fiscal regime/regulation[38] which makes it inconvenient for the lease holder to explore the field at that point in time, hence, leading to its abandonment.[39] These issues are current as there are over 2.3 billion barrels worth of oil reserve abandoned in various leased oil fields in Nigeria as marginal fields, which requires the consent of the President of Nigeria to farm-out either initiated by the lease holder or ordered by the President.[40]

This regulation and practice have raised investors' eyebrows in the international community as to the fairness and validity of ordering a farm-out of oil fields under subsisting lease agreements.[41] Khrushchev Ekwueme stated that although Nigeria Bilateral Investment Treaties supports giving incentives to local investors to boost local industries, that there have been controversies between the Federal Government of Nigeria and international oil companies regarding marginal fields relinquishment to indigenous companies.[42] Bode Agoro noted that the farm-out regulation needs to be reviewed to achieve its purpose of increasing production and foreign direct investment.[43] The government is of the view that this practice and regulation

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[36]Lawrence Atsegbua, 'Issues in the Development of Marginal Oilfields in Nigeria' (2005) 23 J Energy & Nat Resources L 323

[37]Ibid

[38]Ross D. Eckert, 'Exploration of Deep Ocean Minerals: Regulatory Mechanisms and United States Policy' (1974) 17 JL & Econ 143

[39]Lawrence Atsegbua, 'Issues in the Development of Marginal Oilfields in Nigeria' (2005) 23 J Energy & Nat Resources L 323

[40]Mobolaji Ezekiel & Okoro Benson Okwuchukwu, 'A Critique of the Legal Framework for the Development of Marginal Oil Fields in Nigeria' (2020) 11 Nnamdi Azikiwe U J Int'l L & Juris 135

[41]Chijioke E. Emole, 'The Petroleum (Amendment) Decree, 1996, of Nigeria' (1997) 41 J Afr L 239

[42]Khrushchev Ekwueme, 'A Nigerian Perspective on a Forward-Looking Multilateral Agreement on Investment' (2006) 7 J World Investment & Trade 165

[43]Shuaheeb Bode Agoro, 'How feasible is Nigeria's policy of increasing petroleum production?' (2013) CAR 4, 1 <How feasible is Nigeria's Policy of Increasing Petroleum Production? - Journal | OGEL Journal> accessed 19 September 2018

are made to encourage indigenous oil companies to participate in oil exploration activities in the country.[44] While the international oil companies on the other hand are of the view that it is unfair practice and a breach of their existing lease agreements.[45] The essence of this review is to look at the Nigerian Petroleum Act 1969/1990 particularly on license rights, limitation of interests and available remedies (including relevant updates from the Nigerian Petroleum Industry Act 2021) in comparison with that of the United Kingdom, United States and Canada; for Nigeria to emulate and structure a better regulation based on international best practice.

1.3 Context of Review

The context of this review is drawn from the upheaval in Nigerian oil marginal field law, as comments and agitation in this area seem to have raised issues on whether the offering of fields under existing oil lease agreements with most international oil companies to mainly indigenous oil companies, do not amount to a breach of the agreement and rights of these international companies which is also within the context of international law principle of Pacta Sunt Servanda (parties are bound by their treaty and under obligation to execute it in good faith).[46] Khrushchev Ekwueme commented that foreign investors' are concerned that Nigerian marginal field law favours local investors against foreign investors. This is because the marginal fields exercise is structured to declare un-exploring oil fields held under existing lease by international oil companies/investors as marginal fields and farmout such oil fields to local oil companies/investors. It is typical of developing countries to rely on laws and administrative instruments to make foreign investments grow their economy and local industry.[47] While developed countries are against such an approach; in their view it amounts to over regulation, which causes barriers to investment and trading.[48] The deficiencies in the Nigerian Petroleum Acts with respect to marginal field laws are under review (The Nigerian Petroleum Act 1969/1990 and Relevant updates in the Nigerian Petroleum Industry Act

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[44]Bode Agoro, 'Impediments to Expansion: Why is the Upstream Sector of Nigeria's Petroleum Industry Not Growing' (2001) 19 J Energy & Nat Resources L 16
[45]Khrushchev Ekwueme, 'A Nigerian Perspective on a Forward-Looking Multilateral Agreement on Investment' (2006) 7 J World Investment & Trade 165
[46]Chijioke E. Emole, 'The Petroleum (Amendment) Decree, 1996, of Nigeria' (1997) 41 J Afr L 239
[47]Khrushchev Ekwueme, 'A Nigerian Perspective on a Forward-Looking Multilateral Agreement on Investment' (2006) 7 J World Investment & Trade 165
[48]Ibid

2021) to improve Nigeria marginal fields, enhance local industrial expertise, promote investment and encourage investors. As the Nigerian Petroleum Act 1969/1990 under the First Schedule; Paragraph 17 (Amendment Decree No. 23 1996) made provision for farm-out of oil marginal fields abandoned for up to 10 years with the consent of the President of Nigeria, either initiated by the lease holder or ordered by the President of Nigeria.[49] Whilst the Nigerian Petroleum Industry Act 2021 under section 94 upheld the existing marginal field farm-out arrangement as established under the Nigerian Petroleum Act 1969/1990 to continue in operation, but forbids the declaration of any new marginal field under its section 94(9).[50]

The authors found N.A. Abd Mariaf, A. Mas'ud, N. Saad & Z. Ishak's[51] literature interesting as it discussed the effects of attractive fiscal regime, mild oil tax and incentives on investment in oil marginal field, using Malaysia as a case study. It is believed that this is good for this review as unfavourable fiscal arrangement in general and taxation to be specific may discourage investors, as modern investors prefer countries and regions with attractive tax regime and incentives (for example profit-based tax instead of umbrella tax) to guarantee their investment.[52] This will be ideal in discussing Nigerian petroleum tax and incentive on investment, in that Nigeria comprehensive petroleum law 'Nigerian Petroleum Industry Act 2021' deliberated upon for many years at the National Assembly of Nigeria with speculations that it was abandoned then was eventually passed into law,[53] which mainly focused on petroleum regulatory commissions, licenses and leases; fiscal regime and host community issues.[54] The Nigerian

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[49]Nigeria Petroleum Act 1969/1990, First Schedule s.17(1)-(4), [Petroleum Amendment Decree No.23 1996]

[50]Nigerian Petroleum Industry Act 2021, s.94 <Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf (petroleumindustrybill.com)> accessed 22 October 2021

[51]Nor Aziah Abd Manaf, Abdulsalam Mas'ud, Natrah Saad & Zuaini Ishak, 'Effect of Taxation and Fiscal Arrangement on Marginal Oil Field Investment Climate: A Theoretical Framework' (2014)10(15) CCSE89<(PDF) Effect of Taxation and Fiscal Arrangement on Marginal Oil Field Investment Climate: A Theoretical Framework (researchgate.net)>accessed 1 October 2018

[52]K. T. Lawal, 'Taxation of Petroleum Profit under the Nigeria's Petroleum Profit Tax Act' (2013) 4 Int'l J Advanced Legal Stud & Governance 1

[53]KPMG, 'The Petroleum Industry Governance Bill 2017' (2017) <The Petroleum Industry Governance Bill - KPMG Nigeria (home.kpmg)>accessed 27 September 2018

[54]Julia Payne & Camillus Eboh, 'Nigeria Passes Major Oil Reform Bill After 17 Year Struggle' (2018) Reuters <Nigeria passes major oil reform bill after 17 year struggle | Reuters>accessed 20 November2018

Petroleum Industry Act 2021 is the current Nigerian Petroleum Law with modern changes and update on the Nigerian Petroleum Industry.[55] The authors also looked at the definition of oil marginal field by reviewing the definitions of various jurisdictions. However, its limitation is that it merely used one country in Asia (Malaysia as case study), which may apparently make it unsuitable for application in other jurisdictions. This is based on the grounds that there is no justification that attractive fiscal regime, mild oil tax and incentives on investment that worked in oil marginal field in Malaysia, will also work in other jurisdictions more so as Malaysia is a developing country. But it indicates that such considerations are relevant when considering oil marginal field.

The literature of S. Bode[56] on the other hand discussed Nigerian government policy, role and barriers to developing oil marginal fields. It also looked at the legal framework for transfer of oil marginal field acquisition, its benefits to the government and other participants in the oil sector. This is necessary for discussion on increasing oil production and indigenous participation in the oil industry which is perfect for this review. The limitation of this literature is that it is focused on Nigerian oil marginal field experience and its attendant laws without much effort to look at the marginal field laws and practice in other countries or jurisdictions, which makes the findings restricted and lacking in substance for wider applicability.

Another literature of interest is N. Bonnefoy & D. Poyntz,[57] which discussed the legal framework of Nigerian marginal fields and factors to be considered before investing in Nigerian oil marginal fields. This is obviously a good literature for the present review because of its clear and simple explanations of Nigeria oil marginal field regulations and its surrounding factors, such as marginal field definition, its legal framework, and key features of the farm-out agreement. Nevertheless, it is not sophisticated on the subject matter in that it lacks in depth analysis or discussion of the legality of Nigerian marginal field farm-out programme. This is the conflicting area of this topic (particularly the authority/legal basis of the farm-out exercise or its

[55]Nigerian Petroleum Industry Act 2021 <Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf (petroleumindustrybill.com)> accessed 23 November 2021

[56]Shuaheeb Bode Agoro, 'How feasible is Nigeria's policy of increasing petroleum production?' (2013) CAR4,1 <How feasible is Nigeria's Policy of Increasing Petroleum Production? - Journal | OGEL Journal>accessed 19 September 2018

[57]Nicolas Bonnefoy & Denva Poyntz, 'Nigeria Oil and Gas: Marginal Fields' (2014) Ashurt London 1<1370155_1.pdf (acc.com)> accessed 16 September 2018

justification), which seems more like an invitation to consult for further discussion on the subject matter and apparently a gap.

W. Cherwayko[58] in his paper highlighted the growth and prospects of oil marginal field in Niger Delta Nigeria, which is interesting and unique. In that, it discussed the technical and intricate areas of interest to investors typically overlooked by most writers on oil marginal field (like; soil topography, drilling strategy and pattern). It also discussed briefly how an oil company can manage and maintain a good relationship with the local oil community in the embattled region of the Niger Delta in Nigeria.[59] This is important in this review, as the gap in the relationship between the local oil communities and investors/international oil companies affects the petroleum operations in communities due to community youth's interference and sabotage, in order to get the attention of the government to resolve their local community needs and demands.[60] This was part of the Nigerian Petroleum Industry Governance Bill on host communities addressed by the National Assembly (The Nigerian Petroleum Industry Act 2021 has made provision for Host Communities Development under Chapter 3 of the Act).[61] This paper focused on the Niger Delta region in Nigeria; no doubt it is the major oil region in Nigeria, which is part of the South-South Geo-political Zone of Nigeria (The oil zone in Nigeria).[62] However, can it be said that it is a general assessment on oil marginal field in Nigeria, and if yes, will it be credible for holistic application more so as the literature did not draw much experience from other jurisdictions. As the Nigeria regional restriction of this literature appears to limit its scope for a wider reflection of international best practice. Khrushchev Ekwueme commented that Nigerian petroleum marginal field regulation have drawn the concern of international investors as being more friendly to local investors, which needs addressing to ensure Nigeria is suitable for both local and foreign

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[58]Wade Cherwayko, 'MART RESOURCES: "A Nigeria Marginal Field Case Study"' (2013) Oil Council: Asia O&G Assembly <MART RESOURCES: A Nigeria Marginal Field Case Study Mr. Wade Cherwayko (Chairman & CEO) Asia O&G Assembly, Hong Kong, 25 April PDF Free Download (financedocbox.com)>accessed 1 October 2018

[59]KPMG, 'Nigeria's Oil and Gas Industry Brief' (2014) Nigeria Oil and Gas Sector Brief <Insights - KPMG Nigeria (home.kpmg)> accessed 16 September 2018

[60]Ibid

[61]Nigerian Petroleum Industry Act 2021 <Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf (petroleumindustrybill.com)> accessed 23 November 2021

[62]KPMG, 'Nigeria's Oil and Gas Industry Brief' (2014) Nigeria Oil and Gas Sector Brief <Insights - KPMG Nigeria (home.kpmg)> accessed 16 September 2018

investors for international best practice.[63] Chijioke Emole also shares this concern, as he believes Nigerian oil marginal field regulation is likely to scare away international investors willing to partner or invest in Nigeria if not properly structured.[64]

L. Fatora's[65] paper will be useful literature for this review, as it discussed how the Ogbelle marginal oil field in Nigeria became fully developed as a productive and efficient oil field.[66] This shows that a marginal oil field could appreciate if properly managed and maintained, which is important in this review to discuss how to revive and manage oil marginal fields in Nigeria. It also discussed the phases of policies and operational development, with highlights of its future prospect as a huge asset to the nation. However, it is more like an appraisal of the operations, policies, and management of the Ogbelle oil field, focused on the Niger Delta region of Nigeria. Hence, its methods and conclusions may be unsuitable for other jurisdictions, more so as the author did not compare it with that of developed and experienced oil countries. It is important to compare experiences from developed oil countries, to draw insights on the best approach to enable well-structured regulation for international best practice and wider applicability.[67]

Frost & Sullivan's[68] literature while focused on crude prices and project financing schemes that boosts investment; explained oil marginal field, its investment prospects, and what drives investment in a unique form. This was interesting since Nigeria needs to review its policies in order to attract more investors. Also, the authors gave oil marginal field overview of few countries and jurisdictions (namely; Nigeria, India, New Zealand, Southeast Asia and Europe), which is quite an impressive guide because it indicated that each jurisdiction and country appears to interpret and define marginal oil fields differently.[69] Nevertheless, most part of its discussion is in oil

[63]Khrushchev Ekwueme, 'A Nigerian Perspective on a Forward-Looking Multilateral Agreement on Investment' (2006) 7 J World Investment & Trade 165
[64]Chijioke E. Emole, 'The Petroleum (Amendment) Decree, 1996, of Nigeria' (1997) 41 J Afr L 239
[65]Layi Fatona, 'From a Marginal Oil Field to Nigeria's 1st and Only Fully Integrated Oil & Gas Developed Asset' [2015] Lagos Oil Club Q + A Session Presentation
[66]Ibid
[67]Khrushchev Ekwueme, 'A Nigerian Perspective on a Forward-Looking Multilateral Agreement on Investment' (2006) 7 J World Investment & Trade 165
[68]Frost & Sullivan, 'Investment Opportunities in the Marginal Oil and Gas Fields in Southeast Asia' (2014)<Investment Opportunities in the Marginal Oil & Gas Fields in Southeast Asia (frost.com)> accessed 1 October 2018
[69]Ibid

professional terms and is concise as it is an executive summary; which lacks in depth discussion of the elementary and essential part of the topic, such as legality of marginal field programme of which will be unsuitable for non-experts in this area. Khrushchev Ekwueme observed that marginal field issue needs going beyond the definitions and regulation to simplified solutions to problems. This means narrowing down the issues into key areas such as legal framework and legality to evaluate the concerns of investors for general application.[70] Hence, it is apparently a limitation more so as the authors did not discuss the legal justification of the marginal field programme nor evaluated and summarized the discussions.[71]

K.I. Idigbe & K. O. Bello's[72] literature interestingly discussed the sustainability, opportunities, challenges and proposed best practice in Nigerian oil marginal fields. The narrative style adopted in this literature by the authors is impressive (in that it discussed marginal fields fact, opportunities, challenges, best practice and sustainable operation), reader entertaining and chronological. However, there is no revalidation/actual research of most information provided in areas covered by this literature, as it's more of narrative analysis of experience acquired in the field. This limitation is not a mere observation, as the authors also admitted in the limitation of study that it is 'based mainly on our experiences and available data on the 24 awarded marginal fields.'[73] This appears to be the limitation of this literature and obviously a significant gap as this discussion on marginal field experience, require research and comparative study of other jurisdictions (advanced petroleum countries) for international best practice experience.

KPMG's[74] literature gave an overview of Nigerian oil and gas industry, including sale of oil marginal field by the Federal Government which will be very useful for the present review in discussing the license and lease agreements on oil marginal fields particularly on definition and explanation

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[70]Khrushchev Ekwueme, 'A Nigerian Perspective on a Forward-Looking Multilateral Agreement on Investment' (2006) 7 J World Investment & Trade 165
[71]Ibid
[72]Koso I. Idigbe & Kelani O. Bello, 'Sustainable Operation of Marginal Fields in Nigeria: Opportunities, Challenges and Best Practices' (2013) 4(4) JETEAS <Sustainable operation of marginal fields in Nigeria : opportunities, challenges and best practices | Journal of Emerging Trends in Engineering and Applied Sciences (journals.co.za)>accessed 1 October 2018
[73]Ibid
[74]KPMG, 'Nigeria's Oil and Gas Industry Brief' (2014) Nigeria Oil and Gas Sector Brief <Insights - KPMG Nigeria (home.kpmg)> accessed 16 September 2018

of certain terms. Nevertheless, despite the impressive scope and sophistication of this literature in the oil and gas sector, it is more of a general discussion in the sector without much discussion on the present subject area of oil marginal field. It merely discussed the Federal Government's sale of oil marginal fields in three short paragraphs at the end of page 20. This comprises an explanation of the aim of the licensing round and brief detail of the bidding process for acquiring oil marginal field. This is obviously a limitation, as it lacks in depth discussion of the controversial area of Nigeria oil marginal field law (the legal authority and justification of the farm out programme).

R. Kulasingam, D. Beggs and J. Cohen's[75] literature also discussed the meaning of oil marginal field with its development and delay of bidding processes in Nigeria, which is no doubt interesting although, it is concise and seem more like an invitation for further discussion in the area (as the authors included their contact details at the last page). Its main areas of discussion are Nigeria oil marginal field bidding eligibility for companies; financial standing or bankability of bidding companies, the bidding process, Department of Petroleum Resources (DPR) insistence that successful bidders are to develop the field within a year or lose it, its development prospects, and challenges.[76] The area discussed in this literature makes it useful for the present review, as it discussed marginal field bid process, eligibility and challenges more so coming from the views of foreigners which is a different insight. However, its scope of discussion is limited to oil marginal field bidding processes, delays, and challenges only; without looking at the laws and legal framework of oil marginal field which is the main area of agitation. Hence, it is the limitation of this literature.

V. Malesevic & F. Iyayi's[77] literature further discussed the Nigeria oil marginal field licensing round guidelines; financing/bankability and challenges to potential investors in a wider form which will be of interest in the present review. Its scope includes marginal field licensing round; Nigerian oil investment prospects, marginal field guidelines, royalty rates

[75]R. Kulasingam, D. Beggs & J. Cohen, 'Marginal fields Nigeria: recent developments' (2014) Dentons <https://www.dentons.com/en/insights/alerts/2014/may/20/~/media/76b6e11043014083a7eac3a5049e1580.ashx> accessed 1 October 2018

[76]Ibid

[77]V. Malesevic & F. Iyayi, 'Nigeria – a marginal or lucrative opportunity?' (2014) King & Wood Mallesons <http://www.kwm.com/en/uk/knowledge/insights/nigeria-a-marginal-or-lucrative-opportunity-20140723>accessed 16 September 2018