Existing

LAWS & POLICIES

in The Nigerian Extractive Industries
Existing Laws and Policies in the Nigerian Extractive Industries
Since the 1970s, when Nigeria became a prominent figure in oil and gas exploration and exportation, issues relating to oil and gas have always occupied a prime place in our national discuss. The Nigerian oil and gas sector, as it is today, is highly dominated by joint venture operations between the Nigerian government and major international oil companies, notably Shell, Mobil, Chevron, Agip, and Texaco among others.

With an estimated 159 trillion cubic feet of proven reserves, Nigeria is the largest oil producer in Africa and among the top ten globally. Nigeria has an effective pumping capacity of about 900 million barrels a year. The sector, which accounts for over 40% of our GDP and 95% of export receipts, contributes over 80% of government revenue. Yet, various audits have identified several weaknesses in relation to the management of oil revenues and more specifically, to oil and gas sector governance.

The key objective of the Nigerian Extractive Industry Transparency Initiative (NEITI) is to “ensure that the benefits due to the Nigerian government, agencies and above all, the people of Nigeria from the industry duly accrue to them, in accordance with the principles of transparency, accountability and sustainable development” (NEITI Act 2007). NEITI is therefore expected to facilitate the remediation process while working in concert with all stakeholders.

The importance of laws that govern businesses in the extractive industry in Nigeria cannot be overstated. Rule of law is critically important for promoting economic activities and for safeguarding national interests and human rights.

As a nation, Nigeria has enacted so many Laws and Acts, some of which dated back to the colonial period. Laws relating to exploration and exploitation of Nigeria’s rich mineral deposits abound but these laws are mostly held in breach and stipulated penalties for contravention are never enforced by the relevant agencies. For instance, the Act relating to extractive products, made no provisions for the restoration and reversibility of mining land.

Thus, ecological problems occasioned by frequent oil spillage, environmental pollution, gas flaring etc, have been a major concern to oil producing communities and industry watchers. Furthermore, the lukewarm attitude displayed by the various agencies set-up to perform oversight functions and enforce compliance with these laws is also a major problem in this sector.

This documentation gives us a simple and refreshing look at these Laws and Acts and it should guide the current efforts at redefining the landscape of oil and gas business in Nigeria.
It is a reading that all stakeholders in the industry must keep as a constant reminder. Aspects of laws and policies which cannot cater for current developments in the sector must be urgently reviewed. There is no better time to welcome this report than now.

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Introduction

The Nigerian extractive industry, especially its oil and gas sector, has over the years remained the country’s economic mainstay, generating about 80% of consolidated government revenue and 37% of Gross Domestic Products (Nigeria Extractive Industry Transparency Initiative Secretariat, 2004). However, the solid mineral sector, despite being one of the oldest traditional economic activities in the country, and a sector with great economic potentials, appears neglected and not fully developed until recently when efforts were doubled towards stimulating its development and growth as a high revenue earner for the country through institutional, legal and policy framework. The relative importance of the industry to the country necessitates the need to know and understand its nature and character in terms of activities, processes, issues and conditions. Fundamental to the industry’s nature and character are the laws and policies regulating it. To this effect, the existing laws and policies in both the oil and gas sector and the solid mineral sector are identified in this report with a brief summary of their intent and objective. This report further examines the strengths and weaknesses of the laws and their application in terms of transparency and accountability.

This document looks at fourteen laws and policies on oil and gas, and four on solid minerals namely: The Nigerian Minerals and Mining Act, 2007; The National Minerals and Energy Policy; and The National Minerals and Metals Policy.
OIL AND GAS (EXTRACTIVE) LAWS

Although there are several laws enforce governing the upstream\(^1\) (and downstream\(^2\) activities of the oil and gas sector, about fourteen of these laws in broad categorization are directly connected and relevant to extractive operations i.e., upstream activities. The laws are identified and discussed below:

I. Petroleum Act 1969 (as amended)

Primary intent and objective
The Petroleum Act is an Act to provide for the exploration of petroleum from the territorial waters and continental shelf of Nigeria and to vest the ownership of/ and all onshore and offshore revenue from petroleum resources derivable there from/in the Federal Government.

Strengths
a. The Act provides for regulations to be made for safe working of petroleum operations; prevention of pollution of water courses and the conservation of petroleum resources, among others.

Weaknesses
a. The Act grants the complete right to decide to the Minister;
b. It does not create a transparent process for the grant of oil licenses, leases and permits;
c. The penalty stipulated for contravention of the provisions of the Act are grossly inadequate;
d. Provisions for accountability are non-existent in the Act.

Application of the law
a. It has been applied in the case of Attorney General of the Federation (AGF) vs. Attorney General of Abia State (No. 2) (2002) 6 N.W.L.R\(^3\). Part 764, page 542 on the legal implication of Federal Government ownership of petroleum resources in Nigeria. The court confirmed the vesting of ownership of petroleum resources in the Federal Government. It further held that the Federal Government alone and not the littoral states can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial

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\(^1\) **Upstream**: Means the prospecting and production activities related to crude oil and gas.

\(^2\) **Downstream**: Term used to refer to all petroleum activities from the processing of crude oil into petroleum products to the distribution, marketing, and shipping of the products.

\(^3\) **N.W.L.R** – Nigerian Weekly Law Report
waters as well as sovereign rights over the exclusive economic zones subject to universally recognized rights.

b. Reference to paragraph 35: First schedule of the Petroleum Act was also made in the case of *Famfa Oil Ltd. vs. A.G.F. & NNPC* (unreported suit No. C. CA/A/173/06), here, the court held that provisions of paragraph 2 of *Deep Water Block Allocation to companies (backing rights)* regulations 2003 (a subsidiary legislation under the Petroleum Act) which gives the Federal Government the arbitrary right to acquire five-sixth of an OPL⁴ or OML⁵ interest is invalid to the extent that it is inconsistent with paragraph 35. First Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder of the OPL or OML.

c. It empowers government agencies to grant operating licenses and permits to operators in the sector;

d. It forms the basis and derivative source of power for the enactment of subsidiary regulations.


**Primary intent and objective**
The Petroleum (Drilling and Productions) Regulation sets out the requirements and documents to accompany an application for oil prospecting license or oil mining lease. The regulation also states the rights and powers of licensee and lessee and limitation to their rights, such as entry into land held sacred. The regulation also imposes obligation on the licensee and lessee to take necessary precautions to prevent pollution, control and end it when it occurs.

The various amendments to the regulation basically set out new fees, rates for payment of rents and royalties to reflect current economic realities.

**Strengths**
The regulation provides for the protection of lands held to be sacred; protection of the environment and water courses from pollution; procedure for abandonment and decommissioning of wells and mandatory provision for licensee and lessee to keep accurate records of quantity of crude won, saved and removed (Regulations 17, 25, 36 and 53).

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⁴ OPL – Oil Prospecting Lease
⁵ OML – Oil Mining Lease
Weaknesses
The regulation is honoured more in the breach\textsuperscript{6} and lacks proper enforcement mechanisms. Whereas the regulation is periodically amended to reflect current economic realities in terms of fees, rents and royalties, there are no clearly defined provisions on penalties for offences resulting from breach of the regulations.

Another weakness of the regulation is that information supplied by the licensees or lessees are to be treated as confidential (Regulation 58), hence the regulation lacks transparency.

Application of the law
It is relied on by the Department of Petroleum Resources (DPR) as the basis of granting licenses and performing their inspectoral responsibilities. The law has been applied in the following cases:

a. **South Atlantic Petroleum Company vs. Minister of Petroleum Resources** (unreported suit No. FHC/L/CS/361/2006) on the legal requirement for conversion of Oil Prospecting Licence to Oil Mining Lease. The court outlined the provisions of Paragraph 12 of the First schedule to the Petroleum Act which provides that ten years after the grant of an Oil Mining Lease, one-half of the area of the lease shall be relinquished and held that it would thus be unlawful if before the expiration of a period of ten years after the grant of an OML, the Government should claim that one-half of the area of the OML has been relinquished to it. The court however notes that this was not the issue in this case and rather that the Government is claiming to have relinquished is the residue of an Oil Prospecting Licence upon the grant of an Oil Mining Lease.

b. **Federal Government of Nigeria vs. Zebra Energy** (2002) 18 N.W.L.R. Part 798 page 162 on the legal mode and procedure for revocation of an Oil Prospecting Licence. The supreme court held that the provisions of paragraphs 23-27 of the first schedule to the Petroleum Acts regulates the procedure for the revocation of an oil prospecting licence and therefore the contractual relationship created by the Federal Government of Nigeria and the Oil Prospecting Licensee are statutory and the government is bound to comply with the statutory provision which governs the revocation.

III. **Minerals Oil (Safety) Regulation 1963**

Primary intent and objective
This regulation is intended to ensure safe handling of mineral oil. Regulation 7 provides that where no specific provision is made by this regulation in respect of drilling and production operations, all drilling, production, and other operations necessary for the production and subsequent handling of crude oil and natural gas shall conform with

\textsuperscript{6}In the Breach: When disobeyed, violated or contravened.
good oil practice which shall be considered to be adequately covered by the current Institute of Petroleum Safety Codes, the American Institute Code or the American Society of Mechanical Engineers Codes.

**Strengths**
The provision for conformity to good oil field practice in the absence of a clearly defined or specific regulation is a key strength of this law.

**Weaknesses**
There is no doubting the fact that conforming to international best practices is advisable. However, total reliance on the American standards without adaptation to local environmental concern is a weakness which leaves much to be desired in the regulatory activities of the Department of Petroleum Resources of the Ministry of Petroleum and the Ministry of Environment.

**Application of the law**
Provisions of the regulation are relied on by government agencies in regulating petroleum operations.


**Primary intent and objective**
The PPTA imposes a tax regime upon profits from the mining of petroleum in Nigeria and provides for the assessment and collection of such profit.

**Strengths**
The taxing regime under the PPTA is a specialized one which is levied upon the profits of each accounting period of any company engaged in petroleum operations.

**Weaknesses**

a. Section 5 of the Act provides that any person performing any administrative act for the purpose of the Act shall act and deal with all documents and information as secret and confidential. It would appear that this provision negates the concept of transparency;

b. The provisions of the PPTA have also been weakened by the Memorandum of Understanding entered into by the government and the oil companies granting incentives to the latter to invest in exploration and development activities;

c. Inadequate penalty for offences committed under the Act.
Application of the law
It forms the basis for taxing petroleum operations in the country and has been applied in the following cases:

a. **Shell Petroleum Development Company of Nigeria vs. Federal Board of Inland Revenue (1996) 8 N.W.L.R. Part 466 page 256** on the computation of adjusted profits for purpose of payment of petroleum profit tax and on the legal authority of F.B.I.R. to sue for and recover petroleum profits on behalf of the Federal Government of Nigeria. The Supreme Court held that by section 8 of the Petroleum Profits Tax Act, 1959, any company engaged in Petroleum Operations is liable to pay profits tax. On the meaning of Petroleum Operations for the purpose of payment of petroleum profits tax, the court held that “Petroleum Operations” include not only winning or obtaining and transportation of petroleum oil by drilling, mining, etc, but also all activities incidental to such operations excluding refining at a refinery.

b. **Gulf Oil Company (Nig.) Ltd vs. F.B.I.R. (1997) 7 N.W.L.R. Part 514 page 535**, considered extensively the provisions of the Petroleum Profits Tax Act including section 10(1) (h). The issue before the court was whether or not the following items were deductible for the purpose of computing chargeable tax under the Act: (i) Exchange losses on payment of Petroleum Profits Tax; (ii) Central Bank Charges/commission for payment of Petroleum Profits Tax; and (iii) scholarship expenses. The court held that payment of Central Bank charges imposed by the Federal Government is an expense incurred in the course of the appellant’s business which is petroleum operations and therefore qualify for deduction under section 10(1) of the Petroleum Profits Tax Act.

c. **In Shell International Petroleum BV vs. F.B.I.R. (2004) 3 N.W.L.R. Part 859 page 46** where the meaning of “fixed base” in relation to assessing tax liability under the Company Income Tax Act (CITA) came up for determination. The court held that it would be mistaken to equate “fixed base” to “residence” or “ordinary residence”. Accordingly, the court concluded that “fixed base” for the purpose of assessing tax liability, connotes a place where business has been carried on by a company over a long period of time irrespective of ownership of the place. Petroleum profit tax and petroleum operations; “fixed base”, “cost sharing” and “cost recovery” as basis of tax liability and assessment in Nigeria.

d. **Texaco Oversea Nigeria Petroleum Company vs. F.B.I.R. (1997) 4 N.W.L.R. Part 501 page 566** on how notice of appeal is given against the decision of the Federal Board of

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7 F.B.I.R – Federal Board of Inland Revenue

1 **Cost recovery**: Under a production sharing agreement, the contractor is allowed to recover costs (investments and operating expenses) out of the gross production stream.
Inland Revenue. The court held that once a notice is filed with a copy made available for service on the Board that amounts to giving notice in writing to the board.

V. Oil Pipeline Act 1956 as amended in 1965

Primary intent and objective
The Act is intended to provide for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining, and for purposes auxiliary to such pipelines.

Strengths
a. The Act requires the holder of oil pipeline license to seek previous consent of the owner or occupier before entering the land;
b. The holder must take reasonable steps to avoid unnecessary damage to the land, buildings, crops or profitable trees;
c. Where such damage occurs, the holder must pay compensation (Section 6);
d. The Act allows any person whose land or interest in the land may be injuriously affected by the grant of a license to lodge verbal or written notice of objection (Section 9);
e. The Act also lists those to be paid compensation (section 11(5)).

Weaknesses
The proscription of quantum of damage as a material ground for lodging a notice of objection (Section 9 and 10) is a weakness of the Act.

Application of the law
The Act has been applied in the following cases:

a. Nigerian AGIP Oil Company vs. Kemmer (2001) 8 N.W.L.R. Part 716 page 506 where the meaning of oil pipeline was considered. The court held that: A n oil pipeline means a pipeline for the conveyance of oil minerals, natural gas and any of their derivatives or components, and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas, and any of their derivatives or components.

b. Shell Petroleum Development Company vs. Burutu Local Government Council (1998) 9 N.W.L.R. Part 565 page 318 where the issue on whether oil pipelines and other installations belonging to NNPC can be regarded as hereditaments or tenements for rating and
valuation purposes was considered. The court held that oil pipelines and other installations belonging to the NNPC cannot be regarded as hereditaments or tenements to be valued for rating purposes.

c. **Seleba vs. Mobil Producing (Nigeria) Unlimited** (2002) 12 N.W.L.R. Part 995 page 643 where the interpretation of section 11(2) of the Oil Pipelines Act and the question of whether oil pipelines or oil terminals qualify as a ship or vessel for purposes of determining cause of action in oil spillage matters was considered: The court held “Oil Terminal” to mean an oil loading terminal, pumping or booster station, or other installation (or structure associated with a terminal, including its storage facilities) other than a terminal situated within a port or any approaches within the meaning of this Port Act.

d. **Shell Petroleum Development Company vs. H.B.F.M C.S Ltd.** (2002) 1 W.R.N. page 37 where the court confirmed the exclusive jurisdiction of the Federal High Court to entertain claims pertaining to upstream oil operation and in particular, oil spillage.

e. **Shell Petroleum Development Company of Nigeria Ltd. vs. Abel Isaiah and Ors.** (2001) 1 N.W.L.R. Part 723 page 169. In this case the court held that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks is part of petroleum mining operations. Therefore, if an accident happens during the transmission of petroleum to storage tanks, it can be explained as having arisen from or connected with or pertaining to mines, and minerals including oil fields, and oil mining. The court therefore confirmed the exclusive jurisdiction of the Federal High Court to entertain claims pertaining to upstream oil operation and in particular, oil spillage.

VI. **Associated Gas Re-injection Act 1979 (as amended in 1985)**

**Primary intent and objective**
The purpose of this Act is to phase out gas flaring in the country.

**Strengths**

a. The Act provides for oil producing companies in Nigeria to submit to the Minister a preliminary programme or schemes for the viable utilization of all associated gas produced not later than 1st April, 1980;

b. Detailed programmes and plans for either the implementation of programmes relating to the re-injection of all produced associated gas or schemes for the viable utilization of all produced associated gas are also to be submitted to the Minister not later than 1st October, 1980 (Section 1 & 2).
Weaknesses
a. The Act grants discretion to the Minister to permit the continued flaring of gas to companies engaged in production of oil and gas by issuing a certificate to that effect based on terms and conditions to his/her satisfaction;
b. The phase-out date has been shifted severally, showing lack of political will for effective implementation and enforcement;
c. The monetary penalty for continued flaring of gas by oil companies under the Act is grossly inadequate and is preferred by the oil companies as opposed to complying with the phase-out of gas flaring.

Application of the law
The law has been applied in the case of Jonah Gbemre & Ors. vs. SPDC & Ors. (unreported suit No. FHC/B/CS/53/05). In that case, gas flaring was held to be illegal and a violation of communities' human rights. The case is however on appeal.

VII. Deep Offshore and Inland Basin Production Sharing Contract Act 1999

Primary intent and objective
The Deep Offshore and Inland Basin Production Sharing Contract (PSC) Act gives effect to certain fiscal incentives granted to oil and gas companies operating in the deep offshore and inland basin areas under production sharing contracts with the Nigerian National Petroleum Corporation. The Act applies to any agreement or arrangements made between the Nigeria National Petroleum Cooperation (NNPC) and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins.

Strengths
a. The Act serves as an investment incentive into the deep offshore.
b. The Act makes the submission of receipt in respect of each party’s tax allocation mandatory for payment of petroleum tax under the provision of the production sharing contract. This appears to be a move towards transparency.

Weaknesses
As an investment incentive into the deep offshore, the concession granted in terms of tax credit at a flat rate for the duration of a production sharing contract, without which there may be no investment in the deep and ultra deep offshore, and at the moment may not be considered a weakness per se.
Application of the law
It forms the basis of determining the investment incentives granted on such fields as the Bonga and Agbami Fields.

VIII. Deep Water Block Allocation to Companies (Backing Rights) Regulations 2003

Primary intent and objective
This regulation applies to oil prospecting and oil mining leases issued for deep water blocks except the one issued to NNPC. The regulation also provides that where an allocation includes a reservation by the Federal Government of the right to participating interest in an oil mining lease derived from an oil prospecting licence, the Federal Government shall exercise its right by acquiring five-sixth of the allottees’ interest in the relevant oil prospecting license and oil mining lease rounded up to the nearest whole percentage point of total interest in the deep water block, upon such terms as to be determined from time to time.

Strengths
The regulation grants the Federal Government the unilateral right to acquire and participating interest in relevant oil prospecting license (OPL) and oil mining lease (OML) which may be beneficial to the country.

Weaknesses
By granting the Federal Government unilateral right to acquire participating interest in OPL and OML, it does not create a stable regime, assurance and guarantee for investors in the sector.

Application of the law
The regulation was applied in Famfa Oil Ltd vs. A.G.F. & NNPC (unreported suit No. CCA/ A/ 173/ 06) on whether or not The Federal Government of Nigeria, can unilaterally acquire participating interest in an OPL or OML without negotiating with the holder of the OPL and OML. The court held that the provisions of paragraph 2 Deep Water Block Allocation to companies (Backing rights) Regulations 2003 (a subsidiary legislation under the Petroleum Act) which gives the Federal Government the arbitrary right to acquire five-sixth of an OPL or OML interest is invalid to the extent that it is inconsistent with paragraph 35, First Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder of the OPL or OML.
IX. Nigeria National Petroleum Corporation (NNPC) Act 1977

Primary intent and objective
The NNPC Act empowers the Corporation to engage in all activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its Petroleum Inspectorate Department.

Strengths
It provides opportunity for NNPC to be meaningfully engaged and involved in petroleum activities without limitations.

Weaknesses
a. It makes NNPC both an operator and a regulator at the same time without a clear distinction of these roles. This makes the Corporation ineffective in both responsibilities;

b. It inhibits legitimate action against NNPC by stipulating that before an action can be instituted or commenced against the Corporation, a one month prior notice of intention to sue is required to be served on it by the intending plaintiff or his/ her agent.

c. It also provides that no suit against a member of the board or an employee of the Corporation for an Act done or in respect of an alleged neglect shall be instituted in any court unless it is commenced within 12 months after the act or the neglect complained of (Section 12), thereby imposing a strict statutory limitation of action and unduly insulating the board or an employee from legal action that may be brought against them.

Application of the law
The Act has been applied in the following cases:

a. Nigerian National Petroleum Corporation vs. Fawehinmi (1998) N.W.L.R. Part 559 page 598 on the constitutionality and legality of the pre-action notice provision contained in section 12(2) of NNPC Act. The court held that a statute that prescribes the procedures for invoking the exercise of Judicial Powers cannot ex ipso facto be said to be in conflict with section 12(2) of the NNPC Act. The NNPC Act in this case therefore cannot be said to contain anything inconsistent with section 6 of the constitution as section 12(2) of the Act neither removes the adjudicatory powers of the court in respect of matters concerning the corporation (NNPC) nor does it deny access to the courts to an individual, it merely regulates, without interposing the discretion of any other person between the will of the individual and the commencement of proceedings, the manner of invocation of the jurisdiction of the courts.
b. **Idoniboye-Obu vs. NNPC** (2006) N.W.L.R. Part 660 considered the legal status of NNPC. The court held that NNPC is a creation of statute enacted by the National Assembly. It is therefore a Federal Government Corporation which is known to perform a central role in the Oil and Gas industry.

c. **Opuo vs. NNPC** (2002) F.W.L.R. Part 84 page 11 on the nature of relationship between NNPC and the Nigerian Gas Company. The court in this case held that by the provisions of sections 5 and 6 of the NNPC Act, the Nigerian Gas Company is not only a subsidiary of NNPC but an agent of the corporation.

d. **Nigerian Gas Company Ltd. vs. Dudusola** (2005) 18 N.W.L.R. Part 957 page 292 where the court held that section 4(4) of the NNPC Act empowers the corporation to appoint such persons as members of staff of the corporation as it considers necessary and may approve conditions of service including provision for the payment of pensions.

e. **NNPC vs. Tijani** (2006) 17 N.W.L.R. Part 1007 page 29 where the court held that “no suit against NNPC shall be instituted in any court unless it is commenced within 12 months following the ceasing of the act complained of”.

X. **Oil Prospecting Licenses (Conversion to Oil Mining Leases etc.) Regulations 2004**

**Primary intent and objective**
This regulation is to the effect that an oil prospecting license issued under the Petroleum Act may be converted to an oil mining lease after satisfying the conditions specified in the Petroleum (Drilling and Production) Regulations (Regulation 1).

**Strengths**

a. The conditions to be satisfied are stated for interested applicants to know what is expected of them;

b. If considered from the overall goal of benefit to the country, the conditions regarding terms and conditions not less favourable to the government and NNPC’s right of participation can be described as a strong point of the regulation.

**Weaknesses**

a. Existing operator of Oil Prospecting License (OPL)\(^{11}\) seeking conversion to Oil Mining Lease (OML)\(^{12}\) may consider the requirement of granting participating rights to NNPC as unfavourable and unfair.

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\(^{11}\) **OPL**: A legal right to explore for hydrocarbons over a particular area for a specified time period.

\(^{12}\) **OML**: An OML is granted by the Minister of Petroleum Resources by virtue of his power derived under section 2(1) of the Petroleum Act. The OML does not only have a contractual character, it also contains regulatory terms and standard provisions which relate to the lease granted under the Petroleum Act.
Application of the law
The regulation now forms the basis of conversion of OPL to OML.


Primary intent and objective
This Act was enacted to ensure due process and transparency in the payments made by companies operating in the Nigerian Extractive Industry to the Federal government. The Act is intended to ensure accountability in the revenue receipts of the Federation from companies in the extractive industry and to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federation (Section 2).

Strengths
a. The Act develops a framework for due process and transparency in the reporting and disclosure by companies in the extractive sector;
b. By virtue of the Act, any company in the extractive industry may be requested to disclose the amount of money paid and received by it as revenue on behalf of the Federal Government;
c. It seeks to ensure conformity with the principles of Extractive Industries Transparency Initiative and to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies.
d. The establishment of a National Stakeholders Working Group and its all inclusive composition as the governing body of NEITI (section 6(2)).
e. The Act empowers NEITI to audit the account of total revenue accruing to the Federal Government from all extractive industry companies by an independent auditor appointed on terms and conditions as the National Stakeholders Working Group may approve and cause same to be published for the information of the public (section 14(1)).

Weaknesses
The monetary penalty of #30 million for failure to disclose is inadequate having regards to the high profit margin and return on investment from the extractive industry.

Application of the law
The law can be applied to compel a “publish what you earn” by companies operating in the extractive industry.
XII. Oil in Navigable Waters Act 1968

Primary intent and objective
The Oil in Navigable Waters Act provides for the implementation of the International Convention for the Prevention of the Pollution of the sea by oil and also makes provision for such prevention in the navigable waters of Nigeria.

Strengths
a. The Act makes the discharge of oil into a prohibited sea area an offence and the owner or master of the ship responsible for such discharge is guilty of an offence;
b. The owner or master of a vessel, or place on land or apparatus from which oil or any mixture containing oil is discharged into the sea within the territorial waters of Nigeria is guilty of an offence (section 1 and 3).

Weaknesses
The monetary penalties for the offences under the Act are inadequate (sections 6 and 7).

Application of the law
The law can be applied to enforce safety and protection of the marine ecosystem and environment. It can also be used to demand for cleanup of oil spill in the country’s territorial waters and to a large extent relied on for compensation for destruction and damage to marine ecosystem.

XIII. Environmental Impact Assessment Act 1992

Primary intent and objective
The Environmental Impact Assessment (EIA) Act sets out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain categories of public or private projects. Under the Act, the goals and objectives of the EIA are to ascertain how a project would significantly affect the environment or the environmental effect of the projects or activities (Section 1 (a)).

Strengths
a. The Act prohibits both the public and private sector of the economy from embarking on or authorizing projects without consideration of their environmental impact at an early stage.
b. The Act provides that before a decision is reached whether in favour or otherwise, opportunity must be given to government agencies, members of the public and experts to make comments on the environmental impact assessment of a proposed activity or project (sections 6 to 11).
Weaknesses
The monetary penalty for failure to comply of #50,000 and not more than #1 million in the case of a firm or corporation (section 60) is inadequate.

Application of the law
The law can be applied to ensure that oil and gas and solid mineral projects to be embarked on will not adversely affect the environment. It can also be relied on by stakeholders to comment on the suitability or otherwise of projects in the extractive industry.

XIV. National Oil Spills Detection and Response Agency (NOSDRA) Act 2006

Primary intent and objective
The National Oil Spills Detection and Response Agency Act is charged with the responsibility for preparedness, detection and response to all oil spills in Nigeria. By section 5 of the Act, the Agency is mandated among other things to ensure a safe, timely, effective and appropriate response to oil pollution and to identify high risk and priority areas for cleanup.

Strengths
a. The Act provides for the establishment of a National Control and Response Centre charged with the responsibility of acting as a coordinating centre for all oil spills incident.

b. The Centre is to serve as a command and control centre for compliance and monitoring of all existing legislation on environmental control, surveillances for oil spill detection, monitoring and coordination of responses and to receive reports of all spills from zonal offices and control units.

Weaknesses
a. The provisions of section 24 that a member of the Board, an employee or officer of the Agency shall treat as confidential any information which has come to his/ her knowledge, and not disclose any information except where required by a court of law negates the tenets of transparency and is an inadequacy in the overall conception of the Act.

b. The subjection to a court order before an information can be divulged in a justice system such as that of Nigeria may make impossible the access to vital information.
Application of the law
The Act can be applied to demand immediate response and remediation of oil spills in oil production environments.

1. National Energy Policy as applicable to Oil and Gas 2003
The overall thrust of the National Energy Policy (the Presidency, Energy Commission of Nigeria 2003) of which oil and gas is a subset is the optimal utilization of the nation’s energy resources for sustainable development.

Specific policies regarding crude oil are to the effect that:
 i. The nation should engage intensively in crude oil exploration and development with a view to increasing the reserve base to the highest level possible;
 ii. Emphasis should be placed on the internal self sufficiency in and export of petroleum products;
 iii. The nation should encourage indigenous and foreign companies to fully participate in both upstream and downstream activities of the oil industry;
 iv. The nation should encourage the adoption of environmentally friendly oil exploration and exploitation methods;
 v. The nation should progressively deregulate and privatise the oil industry.

Specific policies regarding natural gas are to the effect that:
 i. The nation’s gas resources should be harnessed and optimally integrated into the national economy, energy mix and industrial processes;
 ii. The nation should engage intensively in gas exploration and development with a view to increasing the reserve base to the highest level possible;
 iii. The nation should put in place necessary infrastructure and incentives to encourage indigenous and foreign companies to invest in the industry;
 iv. The nation should put in place necessary infrastructures and incentives to ensure adequate geographical coverage of gas transmission and distribution network.

2. Solid Minerals Law
The Nigerian Minerals and Mining Act 2007

Primary intent and objective
The Act is enacted for the purposes of regulating all aspects of the exploration and exploitation of solid minerals in Nigeria and for related purposes. It is therefore the principal legal and regulatory framework governing the development of the solid minerals
sector of the extractive industry.

**Strengths**

a. The Act provides for a regime of the basic principles of priority (i.e. first come, first served); objectivity (i.e. based on legally defined sets of regulations and procedures); non-discretionary (i.e. same rules for all) and transparency (i.e. openness to the public) in the application and grant of licences, permits and leases;

b. The Act grants certain rights to host communities and mandates that a Community Development Agreement be concluded between operators i.e. licensees/ lessees and host communities for social and economic benefits to the community prior to the commencement of any development within the lease area;

c. The Act provides for environmental protection and rehabilitation;

d. It grants incentive for investment in the solid mineral sector.

**Weaknesses**

a. The Act does not adequately provide for restoration and reversibility of mines land;

b. The Act does not adequately provide for health and safety of miners and employees in mining fields;

c. Provisions of the Act regarding ownership and control deprive host communities of participation and involvement in the solid mineral sector.

**Application of the law**

Since the law essentially regulates all aspects of exploration and exploitation of the solid minerals sector, it can therefore be relied on for sundry matters with regards to the sector.

3. **National Minerals and Metals Policy 2008**

The National Minerals and Metals Policy (2008, Ministry of Mines and Steel Development MMSD) was formulated against the background of developing a policy framework that will ensure an efficient and effective management of the nation’s mineral resources and the government’s desire to attract private sector participation through investment incentives. To this end, the major policy thrust of the solid mineral sector is to separate the distinctive role of the Federal Government as regulator/ administrator from that of private sector as operator/ manager and to ensure that access to mineral rights is transparent, flexible and free from undue interference of government, in addition to addressing issues relating to the socio-economic wellbeing of the people with both direct and indirect contact with the mining industry.
Conclusion

The existing oil and gas laws are weak in terms of provisions for transparency and accountability and most of the laws, including the policy, are outdated and not in tune with contemporary realities. Rather they operate to deprive host communities of the right to fully participate and be involved in the sector.

It should however be noted that there is a proposed National Policy on Oil and Gas 2004 prepared by the Oil and Gas Implementation Committee under the National Council on Privatisation which seeks to anchor issues relating to the sector on the principle of transparency and equal access to opportunity in order to bring about structural, operational and regulatory changes to the sector.

The current laws and policies on solid minerals though with some grey areas such as reversibility of mine lands and safety of miners, appears to have transparency and accountability as its fundamental objective. It is however hoped that these will not be honoured more in the breach.
References

Statutes
Deep Water Block Allocation to Companies (Backing Rights) Regulations 2003.
Minerals Oil (Safety) Regulation 1963.
Oil in Navigable Waters Act 1968.
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Oil Prospecting Licenses (Conversion to Oil Mining Leases etc) Regulations 2004.

Policies

Cases
Famfa Oil Ltd vs. A.G.F. & NNPC (unreported suit No. CCA/ A/ 173/ 06).


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