

OIL AND GAS: MARGINAL FIELDS, ARE THEY NECESSARY? BY ILOBA-ANINYE O and SOLOMON MUSA**

1.1 Introduction

Marginal Oil Field development is an offshoot of Federal Government policy to fast-track indigenous participation in the upstream sector of the petroleum industry. The government sought to achieve this objective by ensuring the farm-out of marginal fields within the concessions of the major multinational oil operators to indigenous operators¹. As the Minister of Petroleum Resources Deziani Alison Madueke said; "The expectation is that successful indigenous companies will further increase participation in the industry, thus improving their technical and financial capabilities²."

The nations current reserve has been speculated to be exhausted within the next 34 to 37 years at the present production level of above two million barrels per day (bpd)³ and for a country where the petroleum industry accounts for ninety per-cent of total government revenue and twenty per cent of Gross Domestic Product, the government's anxiety to considerably increase its reserve base and daily production capacity is understandable⁴. It is of crucial importance that its oil producing capabilities are explored fully and in the most effective and economic manner so as to realise the policy of increasing daily production capacity to four million barrels per day and have a proven reserve base of 40 million barrels⁵.

Therefore, government policy objective to increase production, fast-track and increase indigenous participation in the upstream sector, create more jobs (white and blue collar) acquire necessary technical skills and technology, place our economy in our hands and reduce neo-colonialism necessitated the concept of marginal oil fields⁶. In the oil producing region of

* Lecturer, Commercial Law, Faculty of Law, ABU Zaria.

** Lecturer, Department of Commercial Law, Faculty of Law, ABU Zaria.

¹ Onyeukwu, H. "Securitisation of Foreign Investment in Marginal Oilfields". Culled from www.thenigeriabusiness.com/energy280.html Accessed July 19 2011

² "Nigerian Marginal Fields: Navigating through the Financing storms". Culled from www.themixoilandwater.com/2011/05/.htm1. Accessed July 17, 2011.

³ Nigeria shipped 2.464 million barrels a day last year. Nigeria's oil export rose forty-six per cent to 9.15 trillion naira (\$59 billion) last year according to the national Bureau of Statistics in April. Muhammed, H. "OPEC: Nigeria Exported Oil above Iran", Daily Trust, page 4, Monday, July 25 2011.

⁴ Agoro, S.B. "How Feasible is Nigeria's Policy of Increasing Petroleum Production?" Culled from). accessed June 4

⁵ Proven reserve stood at 37 billion barrels. Culled from <http://en.wikipedia.org/wiki/oil-reserves>. accessed July 4 2011

⁶ The Nigerian Oil and Gas Industry Content Development Act 2010, aptly captures this in its preamble thus: "an

Nigeria⁷, within the oil blocs which have been leased out to major oil companies, are located small oil fields, so to speak, which companies regard as non-viable or lucrative economic ventures. However, these fields could be handled by smaller firms and turned into lucrative concerns.⁸

The key issues raised after several years of the first marginal field awards since the enabling laws were enacted in 1996⁹ are: What informed these awards? Who owns the oil in the already existing fields which have been leased? What is the legal framework for these leases? What devices enable marginal field awards and production? Have there been benefits? Are they really necessary?

This discourse attempts to provide answers to these questions and provoke or proffer criticisms or otherwise as to whether Marginal Fields in the exploration of oil and gas in Nigeria is necessary. However, before delving into the issues head-long, it is very pertinent to understand what 'Marginal Fields' are.

1.2 Meaning of Marginal Fields

Oil is a substance that consists of complex hydrogen and carbon compounds, called hydrocarbon. Oil is found underground and forms over million of years from fossil remains of prehistoric forests and seafloor life. The plants and animals were buried in layers of silt and sand before they had time to decompose, and a combination of bacteria and pressure from the overlying sediment converted the plant and animals into crude oil. Oil is found in oil-laden tar sands and shale, sedimentary rock deposits and the seafloor.¹⁰ One barrel of oil holds 160 litres and one tonne of oil is between seven and nine barrels oil, depending on the type of oil.¹¹

Act for the development of Nigerian content in the Nigerian Oil and Gas industry, Nigeria content plan, supervision, coordination, monitoring and implementation of Nigerian content". This is further reinforced in sections 3 and 41 of the Said Act.

⁷ This includes the entire South-South states of Cross River, Akwa Ibom, Bayelsa, Rivers, Delta, Edo and others not in the South-South are Abia, Imo and Ondo states which are oil producing states with the entire coastline down to the Exclusive Economic Zone as offshore territories.

⁸ Britannia-U's Ajapa field, Energra's Obodeti/Obudugwa field, Midwestern's Umusadege field, Pillar Oil's Umusati/Igboku field, Platform's Asuokpu/Umutu field, Walter Smith's Ibigwe field are all on stream and very lucrative. Recently Platform bought over its technical overseas partner. Culled from "Nigerian Marginal Fields: Status Update" www.themixoilandwater.com/2011/05.html Accessed July 17 2011.

⁹ The Petroleum (Amendment) Decree no 23 (paragraph 16A) now cap p10 L. F. N. 2004, Paragraph 17 of the first schedule.

¹⁰ "Oil fields: How is oil formed?" Culled from www.safewaer.org/PDFS/resourceknowthefacts/oilfields.pdf Accessed July 4, 2011. Under the Petroleum Act, "crude oil in its natural state before it has been refined or treated (excluding water and other foreign substances). This definition is vague and merely descriptive.

¹¹ "Oil Design and Location of Major Sedimentary Basins." www.ags.gov.ab.ca/activities/co2/program_components.shtml. Accessed July 17, 2011.

Oil is found in oil fields which is a region with an abundance of oil wells extracting petroleum (crude oil) from below ground. Because the oil reservoirs typically extend over a large area, possibly several hundred kilometres across, full exploitation entails multiple wells scattered across the area. In addition, there may be exploratory wells probing the edges, pipelines to transport the oil elsewhere and support facilities.¹²

Defining every concept is a tricky and difficult matter. This is no less true in respect of marginal fields. Marginal field is an oil field and has all the characteristics above. However, it may not produce enough net income to make it worth developing at a given time. However; should technical or economic conditions change such a field may become commercial oil field. It is usually associated with small pockets of hydrocarbons that have plateau of a few years. Marginal fields have several parameters that affect them. This includes environmental concerns, political stability, access, remoteness and, of course, the price and price stability of the produced gas or liquids.¹³

According to the Petroleum Act,¹⁴ "Marginal Field" means such field as the President may, from time to time, identify as a marginal field". This definition is seriously wanting as it places what marginal fields are in the realm of the subjective, that is, in the Presidents' opinion or executive mind of the President who may, perhaps know little or nothing about the concept. "May from time to time, identify" suggests that such fields may increase as more are identified and brought to the notice of the President. It also could mean that existing marginal fields which are unproductive and non-viable could be declared no longer marginal fields. Be that as it may, the definition tells us less about marginal fields than it wants to or envisaged to. We, therefore, turn to other sources for more elaboration, clarification and working definition.

According to the Minister of Petroleum Resources in an address to the Nigerian Association of Petroleum Explorationists (NAPE) at a workshop on marginal fields in May 1996, recoverable reserves of at least 800 barrels are available in oil discoveries which have been classified as marginal.¹⁵ At the end of the workshop, the definition by consensus as stated in NAPE communique is that, "... a marginal field is a non-producing field which economics is not considered robust enough using conventional development

¹² "Oil Field", culled from <http://en.wikipedia.org/wiki/oil-field>. Accessed July 4, 2011.

¹³ Culled from www.energy-pedia.com/article.aspx?article=w9718. The current oil price of between (\$90 to \$110) maybe considered favourable coupled with the recent amnesty to militants in the Niger Delta.

¹⁴ Cap P. 10, Vol. 13, L.F.N 2004 paragraph 17(4)

¹⁵ Nigerian Petroleum News, June 1996, p.6

methods under the prevailing fiscal regime".¹⁶ This definition is an improvement over that of the Petroleum Act.¹⁷ However, the reference that 'a marginal field is a non-producing field' is contradictory rather than explanatory of the concept. If it is non-producing, why are they called oil fields and awarded to smaller oil companies to work, win and carry? The best phraseology should be it is a 'small oil producing field'. Another problem with the definition is whose consideration is it that such fields economically are not 'robust enough'? Is it the Multi-national Oil Companies (MNOC) or the Nigerian National Petroleum Corporation (NNPC) as representing the government or state? These questions fault this definition because the MNOCs in Nigeria maintain that they have no marginal fields within their leased areas but admit having fields that are not currently being developed. The state, on the other hand, considers these fields marginal only in comparison to huge oil producing blocs that are highly viable. Thus, it is the proportion of oil produced or capable of being produced that determines whether a field is marginal or main. It follows, therefore, that since such fields are capable of being produced and made profitable but, only described currently uneconomic by their respective operators and thereby left undeveloped because of more productive fields and the government does not describe it as uneconomic or non-producing and needs to be better harnessed to increase national output, there is no reason why such fields should not be awarded to local companies to work despite MNOCs protestations and denials.¹⁸

From the above two things are explicitly manifest. First, where the revenue generated from a field is in the producer's opinion insufficient to justify continued or further investment, whether in its right or in comparison to other fields wherein the producer has a wider production interest, he could declare a field marginal. Second, where the field no longer fits into the producer's strategic goals even if it is economically viable, it could be declared marginal.¹⁹

It is humbly submitted that such a situation should not be allowed to continue especially as the oil sector is strategic and a life-line for the country. However, to understand why the marginal field sector is in such a precarious situation, an examination of the history of the concept becomes relevant and critical.

¹⁶ Ibid p.2

¹⁷ CapP.10.Vol. 13,LFN2004

¹⁸ Omorogbe Y. "Fundamental issues Relating to the Development of Marginal Field in Nigeria", in *Modern Practice Journal of Finance and Investment Law*, Vol. 3 No. 4 1999, p. 738 and 739

¹⁹ Robert, P. "Legal Considerations in Successful Marginal Oil and Gas Field Divestment and Acquisition", II O.G.C.T.R. 1998, page 391.

1.3 History of Marginal Fields In Nigeria

The history of marginal fields started in the late 1980's in Nigeria. It was Government Policy of encouraging Nigerian indigenous participation in the upstream sector of the petroleum industry. Unlike the contractual arrangements of joint ventures; production sharing contracts; risk service contracts; and other concessions where government was a joint venturer with the grantee of the concessions, under this policy which began in 1989 during the regime of the Military President, General Ibrahim Badamosi Babangida, certain concessions which were relatively easy to exploit were granted to local companies without government participation.²⁰

Before this period, indigenous producers have usually not been given preferential treatment vis-a-vis the types of concessions which they have been awarded. They have been faced with the full costs and problems connected with exploration and development in the same way as the multinational companies.²¹ For these and other potential indigenous producers, marginal fields which are located in existing concessions held by producing companies and upon which some preliminary work has been done, was a welcome acquisition.

Marginal fields, then were based on government compelled contractual agreement between multi-national oil companies and the indigenous company except where the company willingly agreed to contract which is very rare. For example, as the marginal field farm-out transaction negotiations between NNPC/Chevron and the Niger Delta Petroleum Resources Ltd (an indigenous company) respecting the Ogbelle Field in OML 54 had commenced and reached certain level, government was compelled to act by promulgating a decree due to delay and to give the marginal field transactions and farm-out a legal basis.²²

This legal backbone hastened the process of marginal field awards and operation.²³ Thus, on February 24 2003, the Presidential Adviser on Petroleum and Energy Matters, Dr. Rilwan Lukman, announced the 31 indigenous petroleum companies that were the winners of the award of the 24 marginal fields which are spread all over the petroleum bearing areas of the Niger Delta for

20 Etikerentse G. "Nigerian Petroleum Law", Dredew Publishers, London, 2004, pp. 95, 96

21 Omorogbe, Y. *Supra*, Note 9 page 737. Perhaps as a result, only a handful of indigenous companies made discoveries. For example, Consolidated Oil, Summit Oil, etc.

22 The Petroleum (Amendment) Act, 1996 No 23, First Schedule Petroleum Act Cap P10 L.F.N 2004

23 The award initially lacked transparency and was halted by President Olusegun Obasanjo in 1999 but was restarted in 2003.

exploitation and development. This constituted the largest one-time award made in furtherance of the country's policy of maximising the local content²⁴ in Nigeria's petroleum upstream sector. The 24 marginal fields²⁵ which were available for bidding were in the concessions held by the NNPC joint venture with Chevron, Texaco, Elf Petroleum, Nigerian AGIP Oil Co. Ltd and Shell Petroleum Development Company of Nigeria Ltd, that is to say, the NNPC joint venture with Elf, AGIP and Shell that is operated by Shell. The fact that there were 31 winners²⁶ for the 24 fields meant that some bidders were jointly awarded some fields. All the winners were indigenous companies, including some owned by the Governments of Akwa Ibom, Bayelsa, Delta and Rivers States. Where there were joint awards, the Ministry's letter clearly stipulated the percentage interest of each grantee and it designated the awardee to operate the joint grant. The process leading to these awards had been in complete conformity with the 2001 Guidelines.²⁷

Presently, of the 24 marginal fields awarded, only six companies are producing. They include Britannia-U's Ajapa Field, Energia's Obodeti/Obudugwa Field, Midwestern's Umusadege Field, Platform's Asuokpu/Umutu Field, Walter Smith's Ibigwe Field, which are all on stream. The remaining 25 operators of the remaining 18 fields are not producing.²⁸

Despite this laudable policy, the success of indigenous players' incursion into the field development and production can be said to be very 'marginal', prompting the inquiry are these marginal fields necessary?

24 The new Nigerian Oil and Gas Industry Content Development act 2010 in its preamble and under sections 3 and 41 provides the needed impetus for marginal fields awards.

25 The are: Assaramatoru; Asuokpu/Umutu; Atala; Eremor; Ibigwe ; Ofa; Oza; Qua-Ibo; Stubb Creek; Tom Shot Bank; Tsekelewu; Uquo; Akepo; Dawesn Island; Ekeh; Ke; Ogedeh; Oriri; Ororo; Amoji/Matsogo; Obodugwa; Umusati/Igboku; Umusadege

26 The current list of 31 marginal field operators who were awarded the 24 marginal fields are: Afren; African Oil and Gas; Angus Energy (USA); Association Oil and Gas services Ltd; Bayelsa Oil Corporation; Bicta Energy and Management System Ltd.; Britannia- U Nigeria Ltd.; Chorus Energy Ltd.; Del-Sigma Petroleum Nigeria Ltd; Energia Company Ltd.; Eurafic Energy Ltd; Excel Exploration and Production Services; Exile; Frontier Oil Ltd.; Geo Energy; Goland Petroleum Development Corporation Ltd.; Guarantee Petroleum Corporation; Hardy Oil Nigeria Ltd.; Independent Energy; Mart Resources; Midwestern Oil and Gas Corporation; Millennium Oil and Gas Ltd.; Morris Petroleum Ltd.; Movido E and P; Network E and P; Oando Pic; Owena Oil and Gas Ltd.; Platform Petroleum Corporation Ltd.; Pillar Oil Ltd.; Prime Energy Resources Ltd.; Sahara Energy Field Ltd.; Sogenal Ltd.; Suffolk Petroleum Services Ltd.; Suntrust; Universal Energy Resources Ltd.; Walter Smith Petroleum Oil Ltd.

27 The 2001 Guidelines for Farm-out and Operations of Marginal Fields issued by the Ministry of Petroleum Resources.

28 "Nigerian Marginal Fields: Navigating Through the Financing Storms", www.themixoilandwaterLhtml. Accessed June 17,2011

1.4 Marginal Fields In Oil Leases

The Oil Mining Lease (OML) is the foundational agreement regulating the joint ventures in Nigeria. The majority of Nigerian oil is produced under this arrangement. The problems of legal access to marginal fields centre on the oil-mining lease unlike the production sharing and service contracts which by their very nature offer no title to the companies which are engaged as contractors for consideration in kind or cash. A typical Nigerian OML contains the following grant and right to petroleum²⁹

In consideration of the rents, royalties, covenants and agreements herein reserved and contained and on the part of the lessee to be paid and observed, the commissioner doth hereby grant unto the lessee all or any petroleum lying or being within or under the submarine areas described in the schedule: A hereto (herein after called "the leased, area") and also, the rights, powers, licenses (but subject to the restrictions and conditions as to the exercise of the same) to be exercised in connection with the said petroleum and the leased area.³⁰

The lessee shall have the right also to hold, exercise and enjoy the rights, powers and benefits conferred by the OML as thus:

The lessee shall have the exclusive right, in and upon the leased area to mine, bore, quarry, dig, search for, win, get work, store, carry away, export, refine or otherwise treat and dispose of petroleum -within or under the leased area or the products therefore (the aforesaid being hereinafter referred to as "the operations" of hereunder) without interruption, claim or disturbance from or by the Government or any other person, subject to the reservations,

²⁹ OML 90, Federal Republic of Nigeria to Gulf Oil Company (Nigeria) Ltd, now Chevron Ltd.

³⁰ Ibid

*exclusions and restrictions...*³¹

In furtherance of this right to get petroleum other ancillary and incidental rights are also conferred. This OML agreement was to serve for forty years.³²

From all this, it is clear that rights under the OMLs are concessionary in nature and quite extensive. However, they can not in any way be seen as giving rights which can in any way be likened to ownership rights.³³ Therefore, it is difficult to understand the reasoning behind an article that sees the right of the companies over their concession areas as being superior to the right of the government.³⁴ To the writers, the rights of an oil mining lease holder are exactly the same as those of persons with a certificate of occupancy over a parcel of land in accordance with the terms of the Land Use Act 1978.³⁵ Under the Land Use Act,³⁶ where a certificate of occupancy is granted all previously existing rights to the use and occupation of the land in question are extinguished. Therefore, these writers are of the opinion that the acquisition by the government of a marginal field located in an oil-mining lease held by a company amounts to nationalisation for which compensation must be paid. Another writer is of the opinion that the above writers do not have sufficient appraisal of the clauses in existing oil-mining leases. The rights granted are very extensive in relation to petroleum. However, they are not tantamount to ownership rights.³⁷

Be that as it may, an examination of the relevant municipal legislation and international legal concepts and treaties will reveal clearly who has the rights to the crude oil 'in situ'.

The ownership of all minerals, including petroleum, is unequivocally vested in the Federal Republic of Nigeria according to Section 44(3) of the constitution.³⁸ This right of ownership is not subject to the section which deals

³¹ Ibid

³² This is an example of traditional concessions granted to companies

³³ Omorogbe, Y. "Fundamental Issues Relating to the Development of Marginal Fields in Nigeria", in *Modern Practice Journal of Finance and Investment Law*, Vol. 3, No 4 1999, p. 743.

³⁴ Okagbue S.N, Olabampe A. "Legal Framework for the Acquisition of Marginal Oil Field in Nigeria" (1997) 2 *Modus International Law and Business Quarterly* (MILBQ) 24

³⁵ Section 5(2) Land Use Act Cap L5 L.F.N 2004

³⁶ Cap L5, L. F. N. 2004

³⁷ Omorogbe Y. "Fundamental Issues Relating to the Development of Marginal Fields in Nigeria", in *Modern Practice Journal of Finance and Investment Law*, Vol. 3, No 4 1999; p.743

³⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 L. F. N. 2004

with the rights to prompt payment of compensation and of access to the court of any person whose property is compulsorily acquired.³⁹ The Exclusive Economic Zone Act of 1978⁴⁰ vests sovereign and exclusive rights to all natural resources of the sea-bed, the sub-soil and superjacent waters in the Exclusive Economic Zone in the Federal Republic of Nigeria. Again, section 1 of the Petroleum Act 1969⁴¹, vests the entire ownership and control of all petroleum in, under or upon all land in Nigeria, under the territorial waters, or which forms parts of the continental shelf, in the Nigerian state. Add to these municipal laws, the right of permanent sovereignty over natural resources is well recognised even in quarters that are traditionally hostile to anything that erodes the ownership rights of investor companies or multinational or trans-national companies.⁴²

Equally, according to the United Nations Charter 1945,⁴³ "every state has and shall freely exercise full permanent sovereignty including possession, use and disposal over all, its wealth and natural resources..." under Article 4(c) of the charter, each state is entitled to exercise 'effective control' over her resources and the exploitation including a right to nationalisation or transfer of ownership to its nationals.

The issues raised are correspondingly handled by the Nigerian constitution and other laws which vest ownership in the state. It follows, therefore, that where the State grants a 'marginal field' to an indigenous company which existed in an OML granted to a foreign company or multinational oil company, it is simply exercising the right to ownership. The oil mining lease in Nigeria is a type of concession that forms part of the legal relationship known as the joint venture. So any attempt to see concession of OML in independent isolation can only lead to confusion as to who owns the crude oil 'in situ'. This is why most of the concessions go hand-in-hand with 'Participation Agreements' signed between the government or its representative (often the NNPC) and the oil companies as stated in the following clause.⁴⁴

*Nigerian National Petroleum Company (NNPC)
and the Company hereby agree that the said Oil*

39 Section 44(1) (a - b) of the Constitution Federal Republic of Nigeria (as amended) Cap C23 L. F. N. 2004
40 Cap E17, Vol. 6, L.F.N 2004

41 Cap PIO, Vol. 10, L.F.N 2004

42 Omorogbe Y, "The Question of the Ownership of Natural Gas in Nigeria" (19;8/89) 3 OGLTR 75, p. 76-79.

43 Article 2(1)

44 Taken from the 1983 Participation Agreement Between NNPC and Gulf Oil Company of Nigeria (now Chevron)

*mining leases and all other agreements and arrangements currently existing between NNPC and the Company shall remain and continue in full force and effect in accordance with their terms, save only as modified by the terms of this Agreements and the Operating Agreement.*⁴⁵

Thus, to a very large extent, the Oil Mining Leases are representatives of the NNPC in her Nigerian Oil Ownerships or Possession. This is because these companies, even though they work, win, carry, export and sell, the money so realised belongs to Nigeria. Thus, the government is adequately competent to award marginal fields and it will not amount to breach of contract.⁴⁶

The joint venture relationship in Nigeria came about as an expression of the state's right of ownership over its petroleum resources. It is important to realise that the expression of this right could have occurred through nationalisation as occurred in Libya or through the negotiation of new contractual agreements with existing companies as was done in Venezuela.⁴⁷ Thus any rights acquired by oil companies are secondary to both the right to ownership and right to nationalisation of the resources by the country and those clamouring for sanctity of contract should have a better look at their position.

The property right (temporary) held by oil companies cannot rank above the sovereign rights of state. The government definitely has rights over all crude oil 'in situ' including that which is found in a marginal field. And by reason of public interest and statutory and national rights the government has a recognised legal right to the oil in a marginal field.⁴⁸

⁴⁵ Ibid

⁴⁶ Under the 2nd schedule of the Petroleum Act, Cap pi 0 L.F.N 2004, the Holder of OML may farm out marginal fields under it or the President may do so. It is submitted that this statutory provision cannot be impeached by whatever argument that may be presented by 'companies ownership' supporters.

⁴⁷ President Hugo Chavez since coming to power has totally overhauled the country's petroleum contracts www.cncp.com.cn/eng/cncpworldwide/sendcentamerica/venezuela/ accessed July 17 2011. In the 1970's under Muammar Ghaddafi, Libya, initiated a socialist style nationalists program under which the government either nationalized oil companies or became a participant. Culled from http://en.wikipedia.org/wiki/National_oil_corporation accessed July 17th, 2011.

⁴⁸ This is notwithstanding anything whatsoever in any contractual agreement executed between the same government and any company (At so ne point it may sound ridiculous that oil and gas situate in a country can be owned by a multinational oil company contracted to work the fields.

1.5 Marginal Fields Contractual Devices

The major problem with the development of marginal fields in Nigeria has arisen mainly because the contractual components of the joint venture do not provide for situations where one party categorises a field as commercial and wishes to develop it, and the other party does not. This is the position in the Draft 1979 Service Contract which contains provisions dealing with the question of whether or not a field is commercial and what to do if both parties feel that the field is not commercial or is marginal or if only one party believes that the field can be commercially produced.

However, the above position has changed as Standard Marginal Field Farm-Out Agreements (SMFFA) have been fashioned out by an informal body - the Marginal Fields Operators' Group (MFOG)⁴⁹, the Directorate of Petroleum Resources and the NNPC, which spells out the contents and provisions of such agreements. The first part contains the parties namely: NNPC and its joint venture company leaseholder (AGIP, Chevron, Elf, Shell or Texaco) collectively called "the farmer" on the one part and the marginal fields awardee or awardees (as applicable where the award is jointly made) called "the Farmee" on the other part.⁵⁰ The second part of such agreements provide for recitals of facts and law relating to the farmer's rights and interests in the OML where the marginal field is situate deriving from the participation and joint operating agreement (JOA) between the farmer (NNPC and Oil Company leaseholder) indicating the date of the said Participation Agreement and the JOA⁵¹.

Also the farmee's marginal field award letter from the Ministry of Petroleum Resources (it date and reference number stated) but the legal interest in the entire OML still remaining in the Farmer.⁵²

The third part of the Standard Marginal Fields Farm-Out Agreement (SMFFA) is the definitions of the keywords in the contract and it includes technical words like "Additional Reservoir", "Abandonment Security Agreement", "Farmout Area", and so forth.⁵³

The fourth part is the body of the agreement which includes: Parties' Representative, Assignment, Duration, Re-Determination Of The Marginal Field, Financial Obligations of Farmee, the Parties' Rights and Obligations, the nature of the operations, warranties, representation and disclaimers; evacuation of farmee's production, confidentiality obligation by both parties, Abandonment

⁴⁹ Etikerentse, G. "Nigerian Petroleum Law" Dredew Publishers Ltd., London, 2004, page 101

⁵⁰ Etikerentse, G. "Nigerian Petroleum Law", Dredew Publishers Ltd, London, 2004, page 101

⁵¹ Ibid

⁵² Ibid pages 101-102

⁵³ Ibid pages 102-104

Security Agreement, Insurance, Liability and Indemnity provision, applicable law and dispute resolutions, transfer of interest by the Farmee, Termination and reasons for doing so, and the parties involved as stakeholders and their respective risk.⁵⁴

This comprehensive part shows that there is in existence a contractual device capable of handling any matter of marginal field awards and provide adequate care for the fears of the parties while fulfilling their aims under the contract.⁵⁵

Another point that often comes up during discussions on marginal fields development is the condition under and the extent to which the third party marginal field developer or operator will be able to utilise the existing facilities which have been put in place by the OML holder, for the development and possibly, transportation of crude oil from the field in question.⁵⁶ This is not a legal insurmountable problem as parties can negotiate and reach agreement as to terms of access. However, it would be difficult for a company to completely disallow access of the facilities to the third party. This is in view of the world wide trend towards the liberalisation of access to facilities brought about by increased economic integration and globalisation with competitive tendencies.

It is very clear that the issues raised, contractual devices, can be used to surmount or circumvent any seeming sticking point that will hinder the acquisition and development of marginal fields.

1.6 Reasons for the Concept of Marginal Fields

In the Nigerian context, marginal fields were developed as a policy by government in the oil and gas exploration and prospecting sector due to the following reasons:

a. The Nigerian Oil and Gas Industry Content Development Act 2010 provides in its preamble that it is "an Act for the development of Nigerian content in the Nigerian oil and gas industry, Nigerian content plan... and implementation of Nigerian content"⁵⁷. Under sections 3 and 41⁵⁸, Nigerian independent operators shall be given first consideration in the award of oil

⁵⁴ Ibid pages 104-111

⁵⁵ The nature of title of marginal fields can be likened to a sub lease in which there is a head lease between the Government as lessor and the OML holder on the one hand and a sub lease between the OML holder (the Farmor) and a marginal field holder (farmee) on the other hand. A lease grants possession and a sub lease grants interest in accordance with the head lease. If farmed out by the President, the farmee gets legal title subject to further agreements with the Farmor-OML holder.

⁵⁶ Omorogbe, Y. "Fundamental issues Relating to the Development of Marginal Field in Nigeria", in *Modern Practice Journal of Finance and Investment Law*, Vol. 3 No. 4 1999, p. 751

⁵⁷ Nigerian Oil and Gas Industry Content Development Act 2010

⁵⁸ Ibid

blocks, oil field licences, oil lifting licences" ...subject to the fulfilment of such conditions as may be specified by the Minister. "The Minister shall also make regulations setting out targets to ensure:

- i. full utilization and steady growth of indigenous companies engaged in exploration;
- ii. seismic data processing;
- iii. engineering design;
- iv. reservoir studies;
- v. manufacturing and fabrication of equipment; and
- vi. other facilities as well as the provision of other support services for the Nigerian oil and gas industry".⁵⁹

The above is a codification of the government policy of awarding oil fields to indigenous companies - marginal fields inclusive,

b. Another vital reason for the introduction of the concept was to discourage the continuous holding of undeveloped fields by MNOCs. Thus, the creation of marginal fields was to reduce the rates of abundance of depleting fields and assure the government's take in acreages that would otherwise have become unproductive⁶⁰.

c. Nigeria has an estimated proven oil reserve of 37 billion barrels expected to last 66 years⁶¹ and presently, Nigeria does not adequately meet her OPEC production quota of 2,306,000 barrels because she produces 2,250,000 barrels per day⁶². Add this to the recent demand by "crude-thirsty" developing economies and the very high price of crude especially of the Nigerian type, it becomes inevitable for the country to want to increase her production to maximise her resources, meet her quota and cash in from the windfall.

d. "Oil and gas hydrocarbons in a specific field are depletable reserves. Once the first barrel has been produced, the asset, in a sense, is on a declining curve. That barrel once produced, cannot be produced again"⁶³. This is another underlying reason especially as existing 'elephant' fields are beginning to turn out low yield, and it has been recognised within the industry that the possibilities of discovering large fields are relatively remote.

⁵⁹ Ibid, section 41

⁶⁰Oke Oyeyemi "Marginal Fields in Nigeria: Who owns the Fields?" Culled from www.businessday.com/NG/index.php/iaw/cover/21306. Accessed July 18 2011

⁶¹ Proven oil reserves -CIA Factbook 2009 culled from http://en.wikipedia.org/wiki/oil_reserves . Accessed 18 July, 2011

⁶² Culled from [www.opec.org/opec..web/en/about us/24.htm](http://www.opec.org/opec..web/en/about_us/24.htm).

⁶³ Experts in the Gulf of Mexico claim that depleted wells are recovering http://en.wikipedia.org/wiki/oil_reserves. accessed July 18. Also in [www.safewater.org/PDFS/resourcesknowthefacts/oil field pdf](http://www.safewater.org/PDFS/resourcesknowthefacts/oil_field.pdf). Retrieved July 18 2011

Consequently, the government has embarked on the program of marginal fields with the aim of unlocking and maximising the potentials of abandoned fields.

e. Without participation in the oil and gas sector by indigenous oil companies, how do we get and manage the much anticipated technology-transfer? The marginal oil fields afford us the opportunity to build our capacity in technology and for strategic national and economic interests begin to liberate ourselves, albeit at snail-speed-rate, from the clutches of neo-colonialism. Arguments subsist that Nigeria and the government do not know exactly how much oil is won and sold⁶⁴. Thus, local participation will serve as an intervening factor to stand up for ourselves and learn the truth.

1.7 Marginal Fields Award And Operation

Despite arguments and counter arguments over ownership of oil 'in situ', the DPR in 2002 conducted licensing round for marginal fields under the auspices of the Nigerian Government notwithstanding the provisions of paragraph 17(1) of the First Schedule of the Petroleum Act⁶⁵ which provides that the holder of an oil mining lease may, with the consent of and on such terms and conditions as may be approved by the President, farm-out any marginal field which lies within the leased area.⁶⁶

Since the consent of the President is required, it can safely be concluded that he may not grant it but choose to farm out the marginal fields using Directorate of Petroleum Resources (DPR).

On the other hand, under paragraph 17(2)(3),⁶⁷ the President may cause the farm out of a marginal field if it has been left unattended for a period of not less than ten years from the date of the first discovery of the marginal field.⁶⁸ This is the legal framework that informed the 2003 licensing and award rounds. However, it is germane to consider how these awards (24 marginal fields and the 31 operators⁶⁹) have fared over the years. This will provide a value judgement on the marginal oil fields and the need for their continued existence or not.

The records have been appalling; only a dismal 6 companies out of the

64Rafsanjani A.M, "Policy Brief on the Petroleum Industry Bill", Civil Society Legislative Advocacy Centre (CISLAC),2011page3

65CapP10L.F.N2004

66 Ibid. These conditions are public interest and where a field has been left unattended for an unreasonable time and the government accepts the parties.

67 First Schedule to the Petroleum Act Cap P10 L.F.N 2004

68 Ibid

69 Culled from www.nigeria-oil-gas.com/nigeria : list of operators-112-10-2-9... Accessed June 17 2011.

31 marginal field operators have come on stream. The Ajapa marginal field operated by Britannia-U began production in January, 2010. It is the first offshore field operation with a purpose built floating, production, offloading unit (FPOU) with capacity to handle 10,000 barrels of crude oil per day. It also has a 780,000 barrels capacity ocean going tanker and a 4,200 horse power tug boat that lifts its crude to Chevron's export facility and the tanker is available to handle crude oil movement services for interested third party companies.⁷⁰

The company recently completed a \$30 million buy-out of its foreign partners, Syntroleum Nigeria Limited, a member of the Pan-Petroleum (Holding) Cyprus Limited.⁷¹

Midwestern Oil and Gas Company Limited and its technical partner Mart Resources have unveiled plans to upgrade their permanent central production facility located at the Umusadege, Umu Field to process up 30,000 barrels per day (bpd). Aggregate production from the UMU-6 well since December 2010 is approximately 52,000 barrels per day. This marginal field is located in the former OML 56 in the central Niger Delta, some 100 km northeast of Warri and was discovered by Elf in 1974.⁷²

After two years of production in the Asuokpu/Umutu marginal field "of Umutu 2 and Umutu 4, Platform Petroleum which has merged with Shebah Petroleum Development Company to form Seplat Petroleum executed a Sales and Purchase Agreement (SPA) with Shell, Total and Eni for the acquisition of their combined 45 percent interest in oil mining lease 04, 38 and 41, three blocks in onshore western Niger Delta with 30 wells and a production capacity of approximately 50,000 bpd. The existing Asuokpu/Umutu field is at the eastern end of OML 38."⁷³

These are some of the success stories of the indigenous companies, which have shown resilience despite the challenging environment of their operations and have shown the capacity to handle bigger responsibilities in a highly competitive global world economy.

However, on the score card, where 24 marginal fields were awarded, only 6 companies are producing and the remaining 25 operators not producing is an abysmal failure. The score card of the 6 oil companies producing is very good.

Some of the pressing factors that have militated against some of these indigenous marginal field operators include the short duration for the sub-lease or

70 Culled from www.nigeriaoilgas.com/?p=409. Accessed June 17 2011.

71 Ibid

72 Culled from www.themixoilandwaterxom/2011/Q5nigerian-marginal-fields-navigating.html and www.nigeriaoilgas.com/?prz509 Accessed June 17 2011.

73 Ibid

lease from the award which is at most two years subject to renewal. Others include the lack of finance or financial access to obtain the capital required in this capital intensive operation,⁷⁴ the highly fluctuating technical assistance from foreign equity partners who cite insecurity to life and property in the Niger-Delta and other flimsy excuses of tariff to withdraw assistance, and the delay in the much-touted comprehensive Petroleum Industry Bill (PIB).

It is best hoped that these challenges facing the marginal field operations be surmounted as quickly as possible by the PIB.

1.8 Merits And Demerits Of Marginal Fields

An attempt is made here to crystallize the benefits of the marginal field concept as well as its demerits. The demerits are as follows:

First, a considerable amount of oil is retained in the ground even after being subjected to many years of primary recovery methods⁷⁵. In order to recover a significant amount of the retained oil, special or unconventional equipment and technology (such as thermal injection equipment) is required. However, these equipments and technologies are not readily accessible throughout the oil industry. Furthermore, since the technology required is unconventional, it is considerably more expensive with the result that the cost recovery (operational cost) may be as great as to render the venture unprofitable⁷⁶.

Second, being a member of OPEC, there is a limit on the amount of petroleum Nigeria can produce in a day. Presently, many firms have the capacity for higher output but are limited by the quota allocated to them. Thus, where you have more fields allocated for development and production, the daily production quota allocated to all companies will have to be reduced or negotiated upwards at OPEC to allow for additional production. A company's allocation may be too small but bi-lateral oil negotiations and OPEC upward review is welcome.

Third, the current fiscal regime relating to marginal fields does not make the development of these fields attractive. It only offers a reduction of 19.25

⁷⁴ Finance for the development of the marginal fields may come from individuals, a consortium of banks in Nigeria or foreign banks since dollars is the main denomination used. Each block would require about \$30 million to bring to production taking into consideration that these fields were discovered 30 years ago and the infrastructure may be in poor shape. Most of the \$30 million will go to work - over flow stations, pipelines design and survey, environmental impact assessment (EIA), offices expenses and so on.

⁷⁵ Alexander's Gas & Oil connections, Nigerian marginal field for indigenous oil firms. www.gasandoil.com/goc/newsnews/nta71101.htm

⁷⁶ Agoro Bode S., "How Feasible is Nigeria's Policy of Increasing Petroleum Production" culled from www.dundee.ac.uk/cejpmplp/car/html/car4_art5.htm

per cent in petroleum profit tax. This does not adequately reflect the fact that the operation of these fields requires the use of unconventional technology, which is very expensive⁷⁷.

Fourth, the current reality is a strong deterrent. Out of the 24 fields awarded to 31 companies, only six companies are producing and successfully. Others cite the non-passage of PIB, lack of finance, technical partners and technology to kick-start production⁷⁸. This has led to a call for the revocation of the awards as they are merely "sitting on the acreage"⁷⁹.

Fifth, the current legislation is based on DPR regulations for the operation of marginal fields in Nigeria⁸⁰. This guideline restricts participation to only indigenous firms. Thus, a fully owned foreign company wishing to participate in the development of the marginal fields is not permitted to acquire interests in concession blocks that consist of marginal fields⁸¹.

Despite these problems associated with the marginal oil fields, there are benefits which accrue mainly to the government and not the exploration and production companies principally.

First, there is increased revenue to the government in the sense that more petroleum means more revenue.

Second, foreign partners are permitted to be technical partners to the indigenous firms. This gives the indigenous companies the opportunity to acquire knowledge and expertise⁸².

Third, the marginal fields contain very substantial quantities of crude oil. If the fields are operated well they can yield financial benefits to the indigenous companies.

Fourth, the stage is set through marginal oil fields to substantially increase existing reserve base and daily production.

Fifth, the policy for the development of marginal fields has given indigenous oil firms an opportunity to participate in the lucrative upstream sector, which was hitherto left in the hands of Multinational Oil Companies.

However, it must be reiterated that the strategic and national interests make the merits far outweigh the problems.

⁷⁷ Ibid

⁷⁸ "Nigerian Marginal Fields: Status Update" www.themixoilandwater.com/2011/05/Nigerian_marginal_field_navigating.html

⁷⁹ "Marginal Field Framework". http://interxinvest.co.uk/index.php?option=com_content&view=article&id=60:marginal-field-framework&catid=56:marginal-fields-program&Itemid=70

⁸⁰ DPR Guideline for the Farm-out of Marginal Fields 2001

⁸¹ Agoro Bode S. "How Feasible is Nigeria's Policy of Increasing Petroleum Production" culled from www.dundee.ac.uk/cerpmlp/car/html/Vcar4_art5Jitm. It with the Nigerian oil and gas industry content development act 2010.

⁸² Ibid

1.9 Recommendation

Despite the much heated controversy as to the merits and demerits of the marginal oil fields⁸³, it is pertinent to provide some recommendations as suggestions which may enhance the abysmal failure of the overall marginal field operation but not the success story of the producing six (6) companies which is impeccable. The recommendations include:

- i. The recent Nigerian Oil and Gas Industry content Development Act 2010 should be used as a launching pad to intensify the efforts to make the marginal oil fields more productive.
- ii. A new licensing bid round should ensue to allow the revocation of un-productive operator's license and the award of same to willing and more equipped companies.
- iii. The Petroleum Industry Bill which has been seen as the major factor preventing all the operators from coming on stream should be passed into law with the necessary and adequate corrections to avoid bottlenecks and varied views in interpretation.
- iv. Provisions in the new PIB should alter the legal framework for oil leases and marginal field acquisition to create two different leases independent of each other in such a way that once an OML holder discovers a marginal field, it automatically reverts to the state.
- v. Many existing non productive onshore OML can be apportioned to marginal field operators to enable them build the necessary, skill and acquire the needed technology before venturing offshore.
- vi. The state can **take up issues on behalf of marginal oil field** operators with their technical partners who abscond or are docile in their attitude towards the contract they entered into.
- vii. The government can enhance the financial status of me^marginal field operators by providing loan facilities and participating through agreements designed to regulate as well as provide the needed financial capacity for the companies to flourish and flower.
- viii. The government, can through its plenipotentiaire extraordinary at the OPEC in Vienna, negotiate an increase in its quota especially in today's world when the world economy is

⁸³ An attempt at the merits and demerits was made in Omorogbe Y. *supra* page 752. consider also the list provided by Agoro S B, "How Feasible is Nigeria's Policy of Increasing Petroleum Production" culled from [w^vw.dundee.ac.uk/ceipmlp/car/html/car^artS.htm](http://www.dundee.ac.uk/ceipmlp/car/html/car^artS.htm)

heated in search for oil and India and China are ready markets for such extra oil so as to market the extra oil these marginal fields can produce.

- ix. The duration of the awards granted to marginal fields operators should be extended to such a period that is minimal enough to allow the operator develop sufficient capacity and technical skill if awarded a marginal oil field.

1.10 Conclusion

As considered above the marginal oil fields have become part of our oil and gas sector and need to be entrenched in better ways by applying most of the suggestions made. The merits and demerits arguments, ownership and possession, issues which are mostly jurisprudential in nature can detract from the main issue: are these marginal oil fields necessary? The assessment given above shows that on the whole, the performance of the marginal field operators have been 'marginal'. However, taken individually, those operators who have gone into production are performing well. Therefore, these fields are considered to the economic and national development of the country; they should be made more necessary by making their matters a necessity.