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**Journal of  
PRIVATE AND COMPARATIVE LAW**

**A Publication of the  
DEPARTMENT OF PRIVATE LAW  
AHMADU BELLO UNIVERSITY, ZARIA**

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ISBN: 15975789

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This journal is to be cited as  
J.P.C.L Vol. 8 of 2015

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# ACQUISITION OF PETROLEUM RIGHTS IN NIGERIA: THE RIGHTS, POWERS AND RESTRICTIONS ATTACHED THEREWITH\*

## **Abstract**

*In order to acquire petroleum rights in Nigeria and to avoid being criminalized for legal acts executed illegally, the Petroleum Act, Cap.P10, Laws of the Federation of Nigeria, 2004 inter alia stipulates the nature, rights, powers and restrictions attached to the exploration and exploitation of petroleum in Nigeria. Under the national laws, there are three types of rights that an interested company can acquire and each of the rights has conditions for its acquisition. Once granted, the holder of any of the rights has rights and powers over the licenced or leased area, as well as limitations to the exercise of those rights and powers. This paper examines the nature of each of the petroleum rights, the formal requirements to the grant of the rights, the powers, as well as restrictions attached thereto under Nigerian laws. The paper concludes that in order to avoid being penalized for an act that could be done legally, one should avoid the penalty by complying with the national laws which states the conditions for procuring any of the rights to explore and exploit for Nigerian crude oil.*

**Key words:** Acquisition, Petroleum Rights, Oil Exploration Licence, Oil Prospecting Licence, Oil Mining Lease.

## **Introduction**

Petroleum comprises of hydrocarbon which is a compound name for hydrogen and carbon. This hydrocarbon can exist in either gaseous, liquid or in solid form. Where it exists in gaseous form, it is referred to as natural gas, and it is known as crude oil where it comes in form of a liquid. However, when it is found as a solid, it is either shale, bitumen or tar sands.<sup>1</sup> According to Yinka Omoregbe, "the most commonly known hydrocarbon is crude oil, which is also referred to by many as petroleum..."<sup>2</sup> In essence and for clarification, the discourse of this paper is in relation to liquid form of hydrocarbon, which is known as crude oil and commonly referred to by many as petroleum.<sup>3</sup>

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\* Bose Lawal, Lecturer, Department of Business Law, Faculty of Law, Lagos State University, Ojo, Lagos State.  
E-mail: [boselawal2000@yahoo.co.uk](mailto:boselawal2000@yahoo.co.uk)

<sup>1</sup> Yinka Omoregbe, Oil and Gas Law in Nigeria, Malthouse Press Ltd., Lagos, Benin, Ibadan, Jos, Oxford, (2001), p.1.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.* In this paper therefore, petroleum and crude oil may be used interchangeably.

According to the Petroleum Act, "Petroleum" is defined to mean "*mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata,...*"<sup>4</sup> However, this definition of petroleum does not include coal or bitumen shales or other stratified deposits. Although shale, bitumen or tar sands can be a source of hydrocarbon in solid form, they are however not petroleum. Furthermore, the Act defines "Crude Oil" to mean "*oil in its natural state before it has been refined or treated....*"

According to Osborn's Concise Law Dictionary<sup>5</sup>, "right" is "*an interest recognised and protected by the law, respect for which is a duty and disregard for which is a wrong*". This means that right is recognised by the law with attached duties and penalty for disobedience. In defining what a "right" or "petroleum right" means, the *Petroleum Resources Act* of the Province of Nova Scotia, Canada defines it to mean "*an exploration licence, an exploration agreement, a production lease or a coal gas agreement granted pursuant to [the] Act ... and includes any right arising from an exploration agreement, production lease or coal gas agreement.*"<sup>6</sup> This interpretation is to the effect that "right" in relation to petroleum is the licence or lease acquired to explore for the nation's crude oil amongst others.

In order to acquire the right to explore for Nigeria crude oil, the required legal processes must be followed because the *Constitution of the Federal Republic of Nigeria* with its provisions having binding force on all authorities and persons throughout Nigeria<sup>7</sup> specifically provides that:

*"...the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation...."*<sup>8</sup>

In similar terms, the *Petroleum Act* vests the ownership and control of all petroleum in, under or upon any lands in Nigeria, under the territorial waters of Nigeria or forms part of the continental shelves or Exclusive Economic Zone of

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<sup>4</sup> Petroleum Act, Cap. P10 Laws of the Federation of Nigeria, 2004

<sup>5</sup> Sheila Bone (ed.) Osborn's Concise Law Dictionary, Sweet & Maxwell, London, 9<sup>th</sup> Edition, (2001), p. 338.

<sup>6</sup> See section 2(h) of the 2000 Nova Scotia Petroleum Resources Act. R.S., c. 342, s.1, available online: <<http://nslegislature.ca/legc/statutes/petrol.htm>>, visited on September 20, 2014.

<sup>7</sup> See Section 1(1) of the Constitution of the Federal Republic of Nigeria (Promulgation) Act, Cap. C23. 1999.

<sup>8</sup> Section 44(3) Ibid.

Nigeria in the Federal Government.<sup>9</sup> It must be noted that where the ownership of petroleum in-situ is vested in the Federal Government, it is generally acknowledged that the government has the absolute discretion to determine whether its petroleum resources should be explored, developed and produced or not. Where the government determines positively, it is free to fix terms and conditions for the exploration and exploitation of the mineral resources within its jurisdiction. Thus, crude oil in situ or in strata cannot be of any practical use unless it is exploited and produced.<sup>10</sup> As a result of this, Nigeria enacted legislations defining the conditions for the exploration and exploitation of its crude oil as well as granting the rights and powers to explore, prospect and win its crude oil.

Bearing in mind the importance of crude oil as one of the two most important sources of energy in the world today,<sup>11</sup> this article examines the pre-requirements for the acquisition of crude oil rights to qualify one for the exploration and exploitation of Nigerian crude oil. It also analyses the nature, status, rights, powers as well as restrictions placed on the holder of crude oil rights, as opposed to refined oil. Another issue raised in the article is that where a person explore or exploit Nigeria crude oil without acquiring necessary right, what will be the legal consequence of such action?

The article is divided into six parts. Part I is the introduction, Part II examines the nature of oil rights under national laws in Nigeria, Part III examines the formal requirements for the grant of crude oil rights, Part IV discusses the rights and powers of the holders of crude oil rights on the licences or leased area, while Part V examines the restrictions to the rights and powers. The last part of this article analyzes the penalty for exploring and exploiting Nigeria crude oil without a licence or lease. The article recommends that the penalty imposed on the person that obstructs the licensee or lessee in the conduct of its activity is so meagre and needs a reconsideration to serve as deterrent to would be violator. It also concludes that in order to avoid being criminalized for acts that could be done legally, it is pertinent to follow the formal and legal procedure towards acquiring the oil rights that will enable one to explore and exploit for Nigeria crude oil.

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<sup>9</sup> Section 1 of the Petroleum Act, note 4 above. See also: Lawal, B., "Ownership of Crude Oil under Nigerian Legislations: Which Way Forward?" (2007-2008) Vol. 3 & 4 UILJ, pp. 44-56

<sup>10</sup> Mike Omeri Agbo Omeri and Suleiman Ismaila Nchi, *Petroleum in Nigeria: Legal, Economic & Political Issue*, Greenworld Publishing Company Limited, Jos, Plateau State (2007), p. 48.

<sup>11</sup> The other one is natural gas. See Omoregbe, Y., *op cit*, p. 3

## **The Nature of Oil Rights under National Laws in Nigeria**

There are three types of oil rights under Nigerian Legislations. These rights are the Oil Exploration Licence, Oil Prospecting Licence, and Oil Mining Lease. Section 2 of the *Petroleum Act* vests the Minister of Petroleum Resources with the power to grant any of the three Licences. The Act provides thus:

- (1) Subject to this Act, the Minister may grant-
  - (a) a licence, to be known as an oil exploration licence, to explore for petroleum
  - (b) a licence, to be known as an oil prospecting licence to prospect for petroleum; and
  - (c) a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum.<sup>12</sup>

Notwithstanding the power conferred on the Minister under the Act, it is pertinent that any of these rights can only be granted to a company which is incorporated in Nigeria under the *Companies and Allied Matters Act* or any other corresponding law.<sup>13</sup> Essentially, there is no restriction on the ownership of the company that wishes to apply for any of the rights. This in essence means that once the conditions of incorporation is complied with, such company is eligible to apply for a petroleum right in Nigeria whether the ownership of such company is solely foreign owned or owned partially by Nigerians.

In order to understand at what point in time and to what extent of area a particular right is obtained, it is pertinent to know the nature of each of the rights as provided for under the law.

### **(a) Oil Exploration Licence**

Oil exploration licence (OEL) is the first licence to be granted to any prospective person interested in the exploration, development and production of Nigeria oil. To explore in relation to crude oil means "*to make a preliminary search by surface geological and geophysical methods, including aerial surveys but excluding drilling below 91.44 metres.*"<sup>14</sup>

An oil exploration licence authorises the licensee to undertake exploration for petroleum in the area of the licence, but the authority shall exclude lands to

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<sup>12</sup> Section 2(1)(a)-(c) of the Petroleum Act, note 4 above.

<sup>13</sup> Section 2(2) Ibid. This provision is an improvement on the 1969 Petroleum Act which provides that only citizens of Nigeria and Companies incorporated under the Companies and Allied Matters Act may be granted any of the rights.

<sup>14</sup> See Section 15(1), *ibid.*

which an oil prospecting licence or oil mining lease has been approved by the Minister, or in force.<sup>15</sup> The entire land to which the licence relates must not exceed twelve thousand, nine hundred and fifty (12,950) kilometres in area,<sup>16</sup> or five thousand (5,000) square miles.<sup>17</sup> Similarly, an oil exploration licence shall not confer any exclusive rights over the area nor preclude the grant of another oil exploration or oil prospecting licence or oil mining lease over any part of the licenced area or all part of the same.<sup>18</sup>

This licence terminates on 31 December next following the date on which it was granted. However, an oil exploration licensee has an option to renew the licence for another year subject to three conditions: first, where he has fulfilled in respect of the licence all obligations imposed upon him by the *Petroleum Act* or otherwise, second, if the Minister is satisfied with work done and the reports submitted by the licensee in pursuance of the oil exploration licence, and third, where the licensee has made an application for renewal of the licence at least, three months before the date of the expiry of the licence. Whether or not renewal is granted, an oil exploration licence does not confer any right to the grant of oil prospecting licence or oil mining lease.<sup>19</sup> As a result of the discovery and exploration of many oil wells today, oil exploration licences are rarely given.<sup>20</sup>

### **(b) Oil Prospecting Licence**

To prospect in relation to crude oil and in accordance with the Act<sup>21</sup> means to "search for by all geological and geophysical methods, including drilling and seismic operations".<sup>22</sup> The area covered by this licence must not exceed two thousand five hundred and ninety (2,590) square kilometres in area,<sup>23</sup> or one thousand (1, 000) square miles.<sup>24</sup> Unlike an oil exploration licence, oil prospecting licence confers exclusive right to explore and prospect for petroleum within the area on the holder of the oil prospecting licence. The licence also allows him to carry away and dispose of petroleum won during prospecting operations. His right to carry away the petroleum won is however subject to the

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<sup>15</sup> Par. 1 of the First Schedule to the Petroleum Act

<sup>16</sup> See Omoregbe, Y., note 1 above, p. 20.

<sup>17</sup> Regulation 2(2)(b) of the Petroleum (Drilling and Production) Regulations, Cap. P10 Laws of the Federation of Nigeria, 2004.

<sup>18</sup> See par. 2 of the First Schedule, note 15 above.

<sup>19</sup> Paragraphs 3 and 4, *Ibid.*

<sup>20</sup> See also, Omoregbe, Y., op cit, p. 21

<sup>21</sup> Petroleum Act, Cap. P10.

<sup>22</sup> Section 15(1) *Ibid.*

<sup>23</sup> Omoregbe, Y., op cit, p. 20

<sup>24</sup> Regulation 2(2)(b), note 17 above.

fulfillment of obligations imposed upon him by or under the *Petroleum Act* or by the *Petroleum Profits Tax Act* or any other law imposing taxation in respect of petroleum.<sup>25</sup> The duration of the licence is determined by the Minister, but shall not exceed five years.<sup>26</sup>

### **(c) Oil Mining Lease**

An oil mining lease can be granted only to the holder of an oil prospecting licence that has satisfied all the conditions imposed on the licence or otherwise on him by the *Petroleum Act* and has discovered oil in commercial quantities. Before an oil prospecting licensee could be said to have discovered oil in commercial quantities, the Minister must be satisfied upon evidence adduced by the licensee that he<sup>27</sup> is capable of producing at least 10,000 (ten thousand) barrels per day of crude oil from the licenced area.<sup>28</sup> Yinka Omorogbe said that, "*the oil mining lease can only be in respect of a maximum area of two hundred and ninety five square kilometres*"<sup>29</sup> or five hundred (500) square miles.<sup>30</sup> Upon the grant of an oil mining lease, the lessee has the exclusive right within the leased area "*to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area*".<sup>31</sup>

The duration of an oil mining lease does not exceed twenty years, but may further be renewed. Nonetheless, the renewal is tied to three conditions. The first condition is that, not less than twelve months before the expiration of the existing lease, the lessee must apply in writing to the Minister for a renewal of the lease either in respect of the whole or any particular part of the leased area. Secondly, the lessee must have paid all rent and royalties due, and thirdly, he has performed all his obligations under the lease.<sup>32</sup> Notwithstanding the provision for the renewal of oil mining lease, once an initial lease is ten years

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<sup>25</sup> See paragraphs 5 and 7 of the First Schedule, note 15 above.

<sup>26</sup> The five years include any periods of renewal. See paragraph 6, *ibid.*

<sup>27</sup> Oil Prospecting Licensee.

<sup>28</sup> A barrel of crude oil means a barrel of 42 United State gallons. See Section 15(1) of the Petroleum Act, note 4 above. Also, a barrel is defined and described by Michael Honrem Owhoko as: "A crude oil measurement. This is a unit of volume equal to 120 litres or one drum or 42 U.S. gallons. The weight of a barrel is about 306 pounds or 5.80 million British thermal unit (Btu) of crude oil. In energy terms, one barrel of oil is about 6 million Btu." See, Michael Honrem Owhoko, *The Language of Oil & Gas*, Media Issues Limited, (2010), p. 11.

<sup>29</sup> Omoregbe, Y., *op cit*, p. 20

<sup>30</sup> See Regulation 2(2)(c), note 17 above.

<sup>31</sup> See, paragraph 11 of the First Schedule, note 15 above. This provision is however subject to the provisions of the Petroleum Act and special terms and conditions imposed under paragraph 34 of the First Schedule to the Act.

<sup>32</sup> See generally, par. 13 of the First Schedule, *ibid.*

after its grant, one half of the area of the lease must be relinquished by the lessee.<sup>33</sup> But, any lease that has been renewed will not be relinquished.<sup>34</sup>

Of immense importance for discussion under oil mining lease are views of scholars regarding the duration of oil mining lease that were granted under the *Mineral Oils Ordinance of 1914*<sup>35</sup> which were for primary terms of thirty and forty years, considering the fact that the 1969 *Petroleum Act*<sup>36</sup> made provision for a primary term not exceeding twenty years<sup>37</sup> The question is, if the provisions for the duration of oil mining lease under the *Mineral Oils Ordinance of 1914* were reduced to a shorter term of twenty years under the 1969 *Petroleum Act*, will the longer terms of the subsisting oil mining leases be retained under the 1969 *Petroleum Act*, or will all the pre-1969 oil mining lease contracts go into abeyance and substituted for shorter terms as existing under the 1969 *Petroleum Act*? A writer submitted that as a result of the transition and saving provisions under the 1969 *Petroleum Act* and the principle of sanctity of contract, *"the duration of (oil mining leases) granted under the repealed Ordinance before November 27, 1969 cannot be validly reduced"*.<sup>38</sup> Another learned author, Lawrence Atsegbua<sup>39</sup> also supported the view that pre-1969 oil mining lease continued its existence under the 1969 Act. He however based his claim not on the principle of sanctity of contract, but on the transitional and savings provisions contained in the fourth schedule of the 1969 Act to the effect that:

*Any licence or lease granted under an enactment repealed by this Act shall continue in force notwithstanding the repeal, but shall be subject to this Act and to any regulations made thereunder except as regards the duration of the licence or lease, the rent and royalties payable in respect thereof and any term or condition as to which the Minister certifies that the justice of the case*

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<sup>33</sup> *Ibid*, par. 12(1). See further, par. 19 to 23 on the implication of relinquishing pursuant to par. 12(1).

<sup>34</sup> This is so because, the provisions of par. 12 does not apply in relation to a lease that has been renewed. See par. 13(2), *ibid*.

<sup>35</sup> The Mineral Oils Ordinance, 1914, as amended in 1925 and 1950 was the first Petroleum enactment in Nigeria.

<sup>36</sup> Petroleum Act, 1969, as amended by Petroleum Act, Cap. 350 Laws of the Federation of Nigeria, 1990 and now Petroleum Act, Cap. P10, Laws of the Federation of Nigeria, 2004.

<sup>37</sup> *Ibid*.

<sup>38</sup> Momodu Kassim-Momodu, "Duration of Oil Mining Leases in Nigeria" (1988) 6 J.E.N.R.L 103 at 104, expressed in Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice*, 2<sup>nd</sup> ed. (New Era Publications, Benin, Lagos, 2004), p. 69-70.

<sup>39</sup> Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice*, 2<sup>nd</sup> ed., New Era Publications, Benin, Lagos, (2004), p. 69-71.

*requires that the term or condition in question shall continue to be effective notwithstanding this Act ....*<sup>40</sup>

We humbly concur with the position of Lawrence Atsegbua because the Act has specifically laid down the conditions attaching to all pre-1969 oil mining leases. All the said leases shall be subject to the rules, regulations and conditions as stipulated under the 1969 Act, but the duration as stipulated in the pre-1969 leases subsists as well as the rents and royalties payable. In addition to the duration, rents and royalties, where the Minister considers that in the interest of justice, certain condition(s) in the pre-1969 leases ought to be applicable to the subsisting lease(s), such condition(s) will continue to apply notwithstanding anything to the contrary in the Act.

Having gone through the nature of each of the rights which can be granted by the Minister for the purposes of exploring and exploiting Nigeria's natural resources, crude oil; it is of great importance to know also the requirements for the grant of the rights.

### **Formal Requirements for the Grant of Crude Oil Rights in Nigeria**

To any prospective company that wishes to explore or prospect for oil in Nigeria, there are some requirements that such person must follow. First, the person must make an application. This application must be made to the Minister in writing on an appropriate form. An application for an oil exploration licence is made on Form A, application for oil prospecting licence is made on Form B while the application for oil mining lease is made on Form C.<sup>41</sup>

Second, every application must be accompanied by the prescribed fee.<sup>42</sup> The amount to be paid varies, as it depends on the nature of the application being made. However, the fees are not refundable in any circumstances. On an application for oil prospecting licence, the sum of US\$ 10,000 is payable, while an application for an oil mining lease attracts US\$500,000.<sup>43</sup> This is an improvement on the provisions of the 1990 Act which stipulates N100 for an application for oil exploration licence, N200 for oil prospecting licence and N400 for oil mining lease.<sup>44</sup> This statutory improvement came in February 1996, as a result of amendment to the Act by virtue of *Petroleum (Drilling and Production)*

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<sup>40</sup> See also, the Fourth Schedule to the Petroleum Act, op cit.

<sup>41</sup> See, Regulations 10 and 14, note 17 above. For specimen of the applications, see the Schedule to the Petroleum (Drilling and Production) Regulations, *ibid*.

<sup>42</sup> See, Regulation 2(a), *ibid*.

<sup>43</sup> Regulation 59(a) and (c), *Ibid*.

<sup>44</sup> See, Regulation 58 of the Petroleum (Drilling and Production) Regulations, Cap. 350, Laws of the Federation of Nigeria, 1990.

(Amendment) Regulations 1996 which substituted Regulation 58 of 1969 *Petroleum Act*, as amended in 1990 Act.

In addition to the prescribed fees, ten copies of a map showing the boundaries of the area in respect of which the application is made, an adequate survey description of the boundaries of the area, evidence of financial status and technical competence of the applicant, as well as details of work that the applicant is prepared to undertake or a programme for executing minimum working obligations imposed must also accompany the application.<sup>45</sup>

Other items to accompany the application include detail of annual expenditure the applicant is prepared to make, the date on which the applicant is prepared to begin operation after the grant, details of scheme for recruitment and training of Nigerians, evidence of the applicant's ability to market any petroleum produced, annual reports in respect of the applicant's activities in petroleum field in the preceding three years, and any other information the Minister may require by notice in the Federal *Gazette* or otherwise.<sup>46</sup> Where the Director of Petroleum Resources requires that further evidence relating to all items submitted alongside the application, the applicant must furnish such further evidence.

Once all the above requirements are met and the Minister granted any of the oil rights, the holder of such right *must*<sup>47</sup> register it if the law of the State in which the relevant area is situated makes it registrable. The costs of the registration are borne by the Licensee/Lessee, and a copy of the registered licence or lease must be submitted to the Director of Petroleum Resources. Whether the law of the relevant area demands for the registration or not, the effect and implication of any of the oil rights is the attachment of some rights and powers. These rights and powers are considered next.<sup>48</sup>

### **Rights and Powers of the Holders of Crude Oil Rights**

When discussing the rights and powers of the holders of each of the three rights, it must be noted that the laws regulating acquisition of oil rights in Nigeria accorded the same rights and powers to the holders of the oil prospecting licence and oil mining lease, while the holder of an oil exploration licence has limited rights and powers.

According to the *Petroleum Act*, the holder of an oil exploration licence has the right to build and erect upon the relevant area temporary structures,

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<sup>45</sup> See, Regulation 2(b)-(e), *Ibid.*

<sup>46</sup> Regulation 2(f)-(k), *Ibid.*

<sup>47</sup> Emphasis supplied.

<sup>48</sup> See, Regulation 18, *Ibid.*

machineries and other things that are necessary for its operation. He also has the right to dismantle and remove same. However, this right is subject to rights of the owners and occupiers of the relevant areas and also subject to the approval of the Director of Petroleum Resources.<sup>49</sup> Thus, in absence of any conflicting right with the either the owners or occupiers of the area, the Director of Petroleum Resources must also approve such building and erection, failure which the holder of the oil exploration licence loses the right. In addition to the right to build and erect, the holder of an oil exploration licence may remove for examination and analysis samples and specimen of rocks and petroleum found in the course of its operation. The licensee has the right to register its right if the law of the State in which the relevant area situates so provides.

Part 3 of the *Petroleum (Drilling and Production) Regulations* and in particular, Regulation 15 makes provisions for the rights and powers that the holders of oil prospecting licence and oil mining lease may exercise in respect of the area covered by the licence/lease. These powers are necessary in order to effect the purposes for which the licence/lease is granted. Nevertheless, the rights and powers are subject to all the applicable laws, the approval in writing of the Director of Petroleum Resources and of other appropriate government agencies and any conditions they may impose.<sup>50</sup>

These rights and powers include the right to cut down and clear timber and undergrowth, to make roads, and to appropriate and use water found in the relevant area in such a way as not to deprive other third party users of a reasonable supply of water.<sup>51</sup> Other rights and powers include the right to construct and demolish any industrial buildings and installations, means of communication facilities for shipping and aircraft, living accommodation and amenities for its employees, the right to dredge and to dig and get free of charge gravel, sand, clay, and stone not subject to any licence within the unoccupied State land.<sup>52</sup> However, such gravel, sand, etc. must not be sold. The law allows any of these rights and powers to be exercised through agents or independent contractors of the Licensee or Lessee, but the holder of such right will be responsible for the actions of the said agents and contractors.<sup>53</sup>

One of the fundamental rights of a Licensee or Lessee of an oil right is that he or his servants or agents must not be interfered with or obstructed in the

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<sup>49</sup> Regulation 11, *Ibid.*

<sup>50</sup> Regulation 15(1) *Ibid.*

<sup>51</sup> Regulation 15(1)(a)-(c) *Ibid.*

<sup>52</sup> Regulation 15(1)(d)-(f) *Ibid.*

<sup>53</sup> Regulation 15(2).

exercise of any of the rights, power or liberty conferred on him by the Act, the licence or lease. Where he is obstructed or interfered with by any person, the latter shall be guilty of an offence and on conviction be liable to a fine not exceeding ₦200 (Two hundred naira) only or to imprisonment for a period not exceeding six months, or to both.<sup>54</sup> Although this legal mechanism is a way of protecting the holder of an oil right from illegal interference in the course of its duty, and exercise of its powers and rights, however, this writer humbly opine that the penalty imposed is so meagre and needs a reconsideration to serve as deterrent to would be violator.

Aside from the applicable laws and approval of the Director of Petroleum Resources to which the above rights and powers are subjected, the issue is, are there no other limitations to which the holders of oil prospecting and mining rights are subjected. This question can be answered affirmatively, as the Act itself states the instances where the holders of these rights will not be able to exercise their rights.

### **Restrictions on the Holders of Crude Oil Rights**

Specifically, Regulation 17 of the *Petroleum (Drilling and Production) Regulations* stipulates the limitations of the rights and powers of the holders of oil prospecting and oil mining rights by providing that the Licensee or Lessee is not authorised to enter upon or occupy, or to exercise any of the rights and powers conferred on his licence or lease in relation to certain part(s) of the area to which the oil rights is granted.<sup>55</sup> The limitation placed on affected areas may however be absolute or conditional. Where it is absolute, the holder of any of the oil rights will not be able to exercise any of the powers and rights whatsoever. But, where the restriction placed is conditional, such rights and powers could still be exercised although subject to permission from the Minister.

The areas to which absolute limitation affects are lands held to be sacred.<sup>56</sup> Regarding the areas affected by conditional restrictions are any part set apart for or used or appropriated or dedicated to public purposes, any part occupied for the purposes of the government of the Federation or State, and any part under cultivation. any part situate within a township, town, village, market, burial ground or cemetery, In addition to these are, any part which is the site of, or within fifty yards of any building, installation, reservoir, dam, public road or

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<sup>54</sup> Section 13(1) of the Petroleum Act, note 4 above.

<sup>55</sup> See Regulation 17(1), *Ibid.*

<sup>56</sup> Regulation 17(1)(a), *Ibid.*

tramway or which is appropriated for or situate within fifty yards of any railway, and any part consisting of private land.<sup>57</sup>

Further to the restrictions placed on the holders of oil rights, the Licensee or Lessee must comply with town planning laws, and must not prevent or hinder any person from having access to or using at his own risk any road constructed in the exercise of its rights and powers. Except with the consent of the Minister, the Lessee must not cultivate or use the relevant area in any manner except for the exploration and exploitation of petroleum.

In spite of the fact that the Licensee/Lessee has the right to cut down timber and undergrowth, this right is limited in that the Licensee/Lessee cannot cut or take away any protected tree<sup>58</sup> without the consent of the State authority and upon payment of appropriate fees and royalties. Similarly where the Licensee/Lessee cuts down or take any other productive tree, he must pay fair and adequate compensation to the owner of the productive tree.<sup>59</sup> A Licensee/Lessee also has no right to destroy or injure any object of veneration except with the permission of the State authority given on such terms as he may direct, and must not exercise the conferred rights and powers as it will unreasonably interfere with the exercise of fishing rights. Where it does, compensation must be paid to the injured person.<sup>60</sup>

### **Penalty for Exploration without Oil Right**

It is incumbent to have appropriate oil right in order to commence exploration, prospecting, or mining of crude oil in Nigeria. Where any of these rights is exercised without licence/lease, then such person shall be penalised. This is because, the Act provides that any person who in any land to which section 1 of the *Petroleum Act*<sup>61</sup> applies-

- (i) explores for petroleum without an oil exploration licence; or
- (ii) prospects for petroleum without an oil prospecting licence; or
- (iii) wins or works petroleum otherwise than in pursuance of a licence or lease granted under this Act, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ₦2,000.<sup>62</sup>

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<sup>57</sup> Regulation 17(1)(b) and (c), *Ibid.*

<sup>58</sup> Protected tree means "a tree protected by law, and includes all trees in a forest reserve". See Regulation 21(3), *ibid.*

<sup>59</sup> According to the Act "other productive tree" is defined to mean "a tree having commercial value which is not a protected tree". See Regulation 21(3), *ibid.*

<sup>60</sup> See Regulations 22 and 23, *ibid.*

<sup>61</sup> See page 3 above, and in particular, the provisions in notes 8 and 9 above.

<sup>62</sup> Section 13(2)(b) of Petroleum Act, *Ibid.*

In addition to the above penalty, the court may also order the crude oil to be forfeited or order the defaulter to pay to the Minister the value of the crude oil in question.<sup>63</sup> This provision suggests that the court shall impose a fine that must not exceed ₦2,000 in addition to either forfeiture or payment of the value of the crude oil in question. This latter order is discretionary. With the gravity of this offence, this writer believes that the court should not be vested with discretionary power to either order the forfeiture of the crude oil or pay its value. The court should order the forfeiture of the oil. Additionally, this writer humbly suggests that the monetary penal sanction should be increased to two million naira (₦2,000,000) in addition to the forfeiture of the crude oil and other minerals obtained in the course. A learned author however summed up Section 13(2)(b) of the Act as "*the placement of restrictions on the conduct of petroleum operations*".<sup>64</sup> Nevertheless, this penal section will not apply to the Nigerian National Petroleum Corporation (NNPC) as an agency of the Federal Government "*charged with the duty of exploring and prospecting for, working, winning or otherwise acquiring, possessing and disposing of petroleum*".<sup>65</sup>

## Conclusion

In order to avoid being criminalized for exercising the rights and powers inherent in the exploration and exploitation of Nigerian crude oil, it is advisable to procure oil rights conferring those rights and powers in accordance with the laid down policies and regulations. Moreover, a statutory provision that will increase the penalty imposed on the person that obstructs the licensee or lessee in the conduct of exploration and exploitation activities is needed in order to serve as deterrent to would be violator.

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<sup>63</sup> See Section 13(4) of the Act.

<sup>64</sup> Patrick Ndubisi Oche, *Petroleum Law in Nigeria: Arrangements for Upstream Operations*, Heirs Great Commission, Jos, (2004), p. 56.

<sup>65</sup> Section 5(1)(a) of the Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004. See Oche, P.N., *op.cit.*, at pp.56-58 with respect to the argument regarding the status of NNPC and its exemption under Section 13(2)(b).