EXPROPRIATION OF RIGHTS IN NIGERIA"S OIL AND GAS SECTOR: BALANCING STATE INTERESTS AND INVESTORS PROTECTIONS

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Abstract

To say that the oil and gas sector of the Nigerian economy is the toast of many foreign investors is to state the obvious. It is axiomatic that any investor would strive to satisfy himself that his investment is tailored towards profitability and all measures that could threaten the prosperity of such investment are considered before embarking on the business endeavor. Chiefs among dilemma that could come in the way of oil and gas investment are instability in pricing, political instability and regulatory dynamism which at its peak could climax into expropriation of foreign investments by the Nigerian government. Almost all the oil producing countries have had a taste in nationalisation of investments in the oil and gas sector which are almost immediately accompanied with crisis, conflict and bitter exchanges between the investors and the expropriating governments. Admittedly, there could be justifications for expropriation in some cases but experiences have shown that many governments of oil producing countries arbitrarily exercise their powers of expropriation to roguishly inherit the wealth, infrastructure and assets of investing foreigners in their oil sector and unfairly deny such investors the fruits of their labours. In as much as the principle of state sovereignty over their natural resources remains unassailable, this work, found that an exercise of a state's powers to expropriate needs to be done judicially and judiciously. Expropriation may only be resorted to in extreme situations bothering on national interests and even at that, the investors deserve justice, fairness and due process. And, this is the focus of this paper.

keywords: Expropriation, Nationalisation, Investors, Investments, Justice

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1. Inroduction

Expropriation of rights in Oil and Gas sector is, fundamentally, the attempt and measures, by oil producing states, to expand the greatest national advantage from the exploitation of national resources found in their domains. This attempt is otherwise known as resources nationalism. Expropriation of rights in the oil sector is rooted in the connection between the Oil Producing States (OPSs) and the International Oil Companies (IOCs).[1] The concept is the fallout of the persistent manipulative strands of the IOCs on the resources of the OPSs which at many instances instigated activisms and agitations against the many shenanigans of the IOCs *vis-a-vis* the resources they exploit. Of course Nigeria had also gone through this experience and it is shown in this work how IOCs took advantage of the country nascent oil and gas sector and paid back the country in a resource-curse manner.

It is important to dwell on the history of oil exploration in Nigeria to fully understand the dimensions of this paper. Oil exploration in Nigeria is dated back to 1903.[2] However, drilling activities could not start until 1951. The year, 1956 marks a milestone in the history of the sector as oil was discovered in a commercial quantity, that year at Oloibiri, a community in Bayelsa State, Nigeria.[3] The discovery was made by Shell-British Petroleum (BP). Shell was the sole concessionaire of the country‗s oil sector at that time. The commercial quantity discovery effectively brought Nigeria in the ranks of major oil producers in the world because by 1958, it produced 5,100 bpd. After 1960, exploration rights in onshore and offshore areas adjoining the Niger Delta were extended to other foreign companies.[4]

The 1958 first major production heralded the commencement of exportation of Nigeria oil to the global markets. After the Nigerian civil war in 1970, the world witnessed tremendous surge in the prices of oil, hence, the country made a lot of fortunes needed to finance its reformative agenda and the reconstruction of the country after the dilapidating effects of the Biafra war. Effectively, oil became the cornerstone and backbone of Nigeria economy, hence, the need for a regulatory regime and governance structure to manage oil exploration

[1] Femi Asu, ―Nigeria: International Oil Companies face new challenges amid oil prices drop‖ (2024), https://www.theafricareport.com/361302/nigeria-international-oil-companies-face-new-challenges-amid-oil-prices-drop/ accessed on 1/2/26

[2] https://en.wikipedia.org/wiki/Petroleum_industry_in_Nigeria accessed on 19/1/26

[3] https://historicalnigeria.com/oloibiri-1956-nigerias-first-commercial-oil-discovery-and-its-consequences/ accessed on 11/2/26

[4] ibid

and production became inevitable. The first idea was to put the control and general administration of the oil sector under the Ministry of Mines and Power.

The oil industry continued to witness growth and its influence on the country economy continued to become evident. The government realized the need for more poignant need to affirm more control over the burgeoning industry and this informed the decision to join the Organization of Petroleum Exporting Countries (OPEC) in 1971,[5] so as to position it for strategic engagements in global oil markets. The Nigerian National Oil Corporation (NNOC) was established in that same year.[6]

The Ministry of Petroleum Resources was created in 1975 by Nigerian government in view of the economic importance of the oil industry which they felt deserved a standalone from other energy resources and removing the sector from the Ministry of Mines and Power.[7] The Ministry of Petroleum was charged with responsibilities to overseeing the activities of IOCs. The Ministry took over the control of the oil sector and by the 1970s and 1980s; the country witnessed very important rapid expansion and nationalization during that time.[8] The government indigenization policies, encapsulated in the Nigerian Enterprises Promotion Decree of 1972 and 1977, sought to increase Nigerian participation in the oil industry. During this period, the Ministry of Petroleum worked closely with the NNOC, which merged with the Ministry Petroleum Inspectorate to form the NNPC in 1977.[9]

The Nigerian Content Development initiative[10] began to take shape at the periods of booms in the oil sector. There was the perception that Nigerians be allowed to partake in the running, ownership and management of the oil sector. This continued until the 2000s when it actually came into fruition. Within the periods of oil boom and even beyond, there were agitations in the oil producing region of the Niger-Delta against issues of environmental impact of oil exploitation in the area. The Ministry of Petroleum was so preoccupied with these issues at this time. There was sharp decline in oil prices and resultant economic decline in the country in the 1990s, the Ministry of Petroleum remained instrumental in guiding Nigeria oil policy. The Ministry role in managing the downstream sector expanded,

[5] https://www.opec.org/member-countries.html accessed on 11/11/26

[6] Ministry of Petroleum Resources, O*ur History, A Comprehensive Overview of the Ministry of Petroleum Resources, Nigeria, https://petroleumresources.gov.ng/our-history/ accessed on 11/10/25*

[7] https://allafrica.com/stories/201103040661.html accessed on 2/1/26

[8] ibid

[9] ibid

[10] https://ncdmb.gov.ng/ accessed on 19/1/26

with a focus on ensuring petroleum product availability through government owned refineries.[11]

The passage of the Petroleum Industry Act (PIA)[12] in 2021 brought about transformation in the history of the country oil sector development. The PIA introduced sweeping reforms to Nigeria oil and gas industry. The PIA restructured key institutions in the oil sector, leading to the unbundling of the NNPC into a commercial entity, NNPC Limited, which would operate more independently from government interference. This reform created a new regulatory framework for the upstream, midstream, and downstream sectors. The role of the Ministry evolved to focus more on policy formulation and oversight, ensuring that regulatory bodies such as the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)[13] and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)[14] effectively manage the industry. In recent years, the Ministry has also intensified efforts to promote Nigeria gas sector as a critical part of the country energy transition strategy. Initiatives such as the National Gas Expansion Programme (NGEP)[15] and the Decade of Gas (2021-2030)[16] have been launched to harness gas as Nigeria referred transition fuel in the global shift towards cleaner energy sources.

Nigerian oil and gas industry has undergone series of experience, from the traditional concession era to the modern regime of license and leases under the Petroleum Industry Act, 2021. Just like the stories of other petroleum producing countries, the experiences of colonialism and neocolonialism has intolerably necessitated situations of expropriation and nationalisation in the sector. Expropriation of foreign investments is a serious problem that calls for a balance between the sovereign rights of the state as guaranteed by the United Nation Resolutions and other legislation and the protection of investor interests. Legal frameworks in Nigeria such as the National Investments Promotion Council Act (NIPC), 1996,[17] Investments and Securities Act (ISA),[18] and Bilateral Investment Treaties (BITs),

[11]ibid
[12] https://pia.gov.ng/petroleum-industry-act/ accessed on 20/1/26
[13] https://www.nuprc.gov.ng/ accessed on 11/11/25
[14] https://www.nmdpra.gov.ng/ accessed on 11/9/25
[15] Central Bank of Nigeria, ―CBN UPDATES‖ (2020) ISSN No: 2695-2394 Vol. 2 No. 9 September 2020, https://www.cbn.gov.ng/out/2021/ccd/cbn%20update%20(september%202020).pdf. Accessed on 19/12/25
[16] https://decadeofgas.com.ng/about-decade-of-gas accessed on 19/12/25
[17]https://investmentpolicy.unctad.org/investment-laws/laws/234/nigeria-nigerian-investment-promotion-commission-act accessed on 10/10/25
[18] https://sec.gov.ng/documents/1319/Investments_and_Securities_Act_2025_x9rSXtI.pdf accessed on 14/10/25

provide adequate safeguards and protections for foreign investors by making provisions for adequate compensation for them and legal redress in cases of expropriation. These protections allay possible fears being nursed by investors while contemplating investing in Nigeria and more importantly, when investors confidence is sustained the country witnesses economic growth and development.

2. Understanding Expropriation of Interests in Oil and Gas Sector

Expropriation of interests in the oil and gas industry occurs when authorities of an oil producing country legally takes over the investments of IOCs that have come to invest in the country oil and gas sector. Another word for expropriation is _nationalisation'. Under expropriation, the investment property of the IOCs is compulsorily taken over by the state so that such investments thereafter become that of the oil producing host country. Under a democratic structure, the processes for expropriation are governed by the law, while Decrees are unilaterally imposed by a military government to expropriate. In the case of ***Starrett Housing Corp v. Iran.,***[19] the Court held to the effect *that* expropriation may take various forms; it happens when the State takes over mineral sites and it can also occur when government takes over the property of the IOCs in the form of nationalization. The decision of the court here underscores the fact that expropriation of investments in the oil and gas sector may not be limited to foreign investments alone but may also happen against the investments of citizens of host country.

There is no doubt in the fact that a state has the powers to deal with all manners of issues affecting it and its citizenry. In exercising its powers over the sector, government actions and its dealings with IOCs may amount to a wholesome expropriation or what is termed an indirect form of expropriation. Regulatory powers of a host country over the IOCs may take the form of wholesome expropriation and it may be a partial application of nationalization agenda of the host country. The Courts have, over time streamlined factors that show the dichotomy in a host government actions amounting to wholesome expropriation of rights and that which are indirect forms of expropriation. These factors are

[19] https://jusmundi.com/en/document/decision/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-final-award-award-no-314-24-1-friday-14th-august-1987 accessed on 1/2/26

termed the sole effects doctrine[20] The Courts have consistently opined that it is the substantive effect of an act which makes it expropriation and not its form. In this case, one must look at the general impacts of the government's actions on the IOCs. If the host government actions seriously deprive the investors of substantial value of their investments, to the extent that such actions resulted in loss of control and values, it is expropriation. However, where the regulation of a host country does not substantially wrestle the controlling powers of the IOCs, but only imposes some measures of control, that would be an indirect form of expropriation.

Indirect expropriation could be said to have taken place when authorities of a host country imposes taxation measures on IOCs. In the ***UK: Occidental Exploration and Petroleum Co v The Republic of Ecuador***[21]**.** Occidental brought a claim for breach of the Ecuador/US BIT, and EnCana, a company controlled by Canadian nationals who had subsidiaries investing in the Ecuadorian oil sector, brought a claim for breach of the Ecuador/Canada BIT.[22] The Tribunal ruled that areas of state regulation may have a negative impact on the oil and gas sector thus giving rise to indirect expropriation. The change in VAT laws did not render EnCana activities so marginal as effectively to deprive it of their character as its investments. Similarly there was no deprivation of Occidental's use or reasonably expected economic benefits of its investment. Thus, although in both cases it was recognised that taxation measures in principle could amount to indirect expropriation, no expropriation was found to have occurred in fact.[23]

Indirect expropriation was also said to have taken place where the host government deployed the use of force in foisting its Nationals as Directors and Managers of IOCs. This was the situation at the Iran during its 1979 Revolutionary struggles.[24] Many Tribunals by the Iran/United States Claims Tribunal found that exercise of such regulatory measures by Iran was indirect expropriation as the exercise of the state powers interferes with

[20] George Joffé, Paul Stevens, Tony George, Jonathan Lux, and Carol Searle, ―Expropriation of oil and gas investments: Historical, legal and economic perspectives in a new age of resource nationalism‖, (2009), Journal of World Energy Law & Business, 2009, Vol. 2, No. 1.
[21] [2004] London Court of International Arbitration Award 1 July 2004 (Occidental).
[22] See UK: EnCana Corp v Republic of Ecuador [2006] London Court of International Arbitration Award 3 February 2006 (EnCana) para 177
[23] George Joffé, Paul Stevens, Tony George, Jonathan Lux, and Carol Searle, ―Expropriation of oil and gas investments: Historical, legal and economic perspectives in a new age of resource nationalism‖, (2009), Journal of World Energy Law & Business, 2009, Vol. 2, No. 1.
[24] Biloune and Marine Drive Complex Ltd v Ghana Investments Centre [1989] Award 27 October 1989, 95 ILR 183, 209 (Biloune).

managerial control or ownership rights. Where a host state employs coercive measures, such as threats of arrest of senior management of the investor for alleged under-payment of tax or the institution of criminal proceedings for alleged breaches in regulatory spheres, such actions, when combined with other facts, may be used to support a creeping expropriation claim if they contribute to the destruction of the value of an investment.[25]

Expropriation process in Nigeria's Oil and Gas Sector typically starts with a procedure whereby the government issues a notice of intent to affected parties (investors) and communicates the government intention to expropriate the investors investments and properties. This notice of intent will then be followed by a negotiation between the government and the affected investor. At this stage, compensation payable to the investor by the government is discussed and other issues necessary for discussion are sorted out at this stage. After the negotiation stage, the government then pays the agreed compensation or the market value of the investment set to be expropriated. If the scheme of negotiation fails or there are knotty issues yet to be agreed on, the investor seeks redress at a competent court with jurisdiction or arbitration in terms of the contract.

Just as Nigeria, in exercise of its right of sovereignty over mineral resources in the country, has powers to expropriate, foreign investors also have protections under the Bilateral Investment Treaties.[26] Nigeria has many bilateral agreements with several countries across the world. These bilateral agreements have provisions protecting investors against expropriation. The International Centre for Settlement of Investment Disputes (ICSID) is also an avenue providing arbitration mechanisms in situations where disputes arise from expropriation. The Nigerian Investment Promotion Commission (NIPC) Act also grants protection for investors against nationalization or expropriation.

Expropriation, as investment threatening as it may seem, becomes a necessary tool for national growth and stability in some situations. The government can expropriate rights for public purposes, such as for national Interest where expropriation is needed to sustain national interest or for public purpose. Overwhelming Tribunal decisions have not deviated

[25] George Joffé, Paul Stevens, Tony George, Jonathan Lux, and Carol Searle, ―Expropriation of oil and gas investments: Historical, legal and economic perspectives in a new age of resource nationalism‖, (2009), Journal of World Energy Law & Business, 2009, Vol. 2, No. 1.

[26] Tareri Avwomakpa, ―Impacts of the Petroleum Industry Act 2021 on Land and Mineral Resources Rights of Indigenous Peoples in Nigeria‖ (2025). African Journal of Law, Ethics and Education [AJLEE] Vol 8, No 3 (2025) Website: https://ajleejournal.com [ISSN: 2756 - 6870] accessed on 13/2/26

from this age-long stand. Once expropriation is done for national interest or public purpose, tribunals would only insist that adequate compensation must be paid to affected foreign investors. In situations where investors feel that expropriation is maliciously done or that they were not compensated, such investors have access to courts or tribunals for dispute resolution.

There are several key cases whereby expropriation and investors rights have been brought to the fore. In 2007, in ***ConocoPhillips v. Venezuela***,[27] Venezuela expropriated assets from ConocoPhillips, ExxonMobil, and other foreign oil companies, citing nationalization efforts. This led to lengthy international arbitration cases, with ConocoPhillips winning an $8.7 billion award and ExxonMobil receiving $984.5 million compensation. A US court upheld this award in 2022.

In a more recent case of expropriation involving the Venezuela government, ***ExxonMobil v. Venezuela***.[28] ExxonMobil's oil projects Cerro Negro and La Ceiba were expropriated by the Venezuela regime in 2007. A US court ruled to the effect that Venezuela has an obligation to pay $984.5 million in compensation.

There are reports that the recent abduction of the Venezuelan President Maduro by the US Trump led administration has an economic undertone connected with the series of expropriation of the US oil giant companies by Venezuela. Hence, the US has imposed sanctions on Venezuela, including restrictions on oil transactions and asset freezes, aiming to pressure the government to address these expropriations. Recently, the US seized Venezuelan oil tankers and plans to sell Venezuelan oil, sparking controversy over international law and rights of sovereignty over mineral resources.

In Nigeria, there are cases where the Courts or Tribunals had also had to intervene in cases of expropriation of oil and gas investments. In ***Shell Petroleum N.V. and Shell Nigeria v. Nigeria***[29] An active ICSID case regarding disputes over Shell's investment was categorized as a potential expropriation.. Other ongoing expropriation cases in Nigeria are; ***Eni/Agip v.***

[27] https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/245/conocophillips-v-venezuela accessed on 3/2/26

[28] https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/253/mobil-and-others-v-venezuela accessed on 3/2/26

[29] Shell v. Nigeria (II) Shell Petroleum N.V. and the Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria (II) (ICSID Case No. ARB/21/7) https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1142/shell-v-nigeria-ii- accessed on 11/1/26

Nigeria.[30] a case involving Eni International and Nigerian Agip Exploration, highlighting, alongside Shell, ongoing tension regarding oil investment stability as well as ***KNOC Nigeria***[31] where Korea National Oil Corporation, along with Nigerian West and East Oil Companies, initiated arbitration, marking one of the latest disputes.

3. Expropriation Of Interest in Oil and Gas Sector under Nigerian Laws

Expropriation of rights in oil and gas investment is an inevitable political tool retained by the Nigerian government to assert its proprietary rights over the mineral resources found anywhere within the length and breadth of the federal republic of Nigeria. The powers are not without basis or justification; they are a cumulative of international and national authorities supported by the United Nations as well as the Constitution of the Federal Republic of Nigeria as well as other local legislation. There are various resolutions of multilateral organizations such as the United Nation, African Union, Organization of Petroleum Exporting Countries (OPEC),[32] etc that lay credence to the right of every Nation to its natural resources or resources found within its territories. The United Nations General Assembly Resolution No. 626 (VII),[33] which was adopted in 1952, states with respect to oil mineral resources that:

> *the right of people freely to use and exploit their natural resources is inherent in their sovereignty.*

Further to that, the United Nations in 1962, at its General Assembly, adopted Resolution 1803 (XVII) (Permanent Sovereignty over Natural Resources), which vests in each country, the right to permanent sovereignty over their natural resources. The said Resolution 1803 provides further that the resources of each country must be deployed for the use, benefits and interests of its citizens and general development of the country.

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30 https://jusmundi.com/en/document/decision/en-eni-international-b-v-eni-oil-holdings-b-v-and-nigerian-agip-exploration-limited-v-federal-republic-of-nigeria-order-of-the-united-states-district-court-for-the-district-of-delaware-thursday-15th-october-2020 accessed on 19/1/26

31 KNOC v. Nigeria Korea National Oil Corporation, KNOC Nigerian West Oil Company Limited, and KNOC Nigerian East Oil Company Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/23/19)

32 OPEC for instance in its Resolution XVI entitled, ‗Declaratory Statement of Petroleum Policy in Member Countries,‘ recommended that members should take active participation in and control over the oil and gas operations in their countries. This Resolution was obviously targeted at taking over the powers to influence the oil market from multinational oil giants such as Shell BP, Texaco, etc.

33 https://digitallibrary.un.org/record/211441?ln=en&v=pdf accessed on 3/2/26

And, interestingly, more recently, the United Nations, through its General Assembly, adopted Resolution No. 3281 (XXIX). Article 2 of this Resolution provides as follows:

> very state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over its wealth, natural resources and economic activities.

Further to these resolutions, the Nigerian government gave a constitutional backing to the right of Nigerian authorities to permanent sovereignty over mineral resources in Nigeria. Section 44 (3) of the Nigerian 1999 Constitution provides that:[34]

> 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 Zones of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

This constitutional provision justifies the government ownership and extent of control over mineral resources including the oil and gas sector of the economy.[35] In the absence of this, there would be unhealthy competition and dangerous claims among the competing component states which could end up derailing the very fabric of cohesion needed to sustain our different cultural values; justifiable and unjustifiable claims over lands where resources are domiciled would characterize our national affairs and ultimately secessionists would see more reasons to advance their cause(s).

Contrary to Yemi Oke contention that the principle of permanent sovereignty over natural resources is an attempt to deprive the resource bearing communities their means of livelihood,[36] what ought to be advocated for instead, is adequate compensation regimes for

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[34] 1999 Constitution of the Federal Republic of Nigeria (as amended)

[35] Tareri Avwomakpa, ―Impacts of the Petroleum Industry Act 2021on Land and Mineral Resources Rights of Indigenous Peoples in Nigeria‖ (2025) African Journal of Law, Ethics and Education [AJLEE] Vol 8, No 3 (2025). Website: https://ajleejournal.com [ISSN: 2756 - 6870] 146

[36] Yemi Oke, ―Nigerian Energy Resources Law and Practices: Oil and Gas Law (Practice, Cases & Theories)‖ (2017) (Princeton & Associates Publishing Co. Ltd, 2019)424; U. Udok & E.B. Akpan, ‗Gas Flaring in

resources bearing communities amidst other life touching initiatives which could better the lives of the people and make them truly enjoy the benefits of natural endowments in their domains. The derivative principles in the Nigerian resources allocation regime donating thirteen percent derivative funds to resources bearing communities and other innovative measures introduced under the Petroleum Industry Act, 2021 are steps in the right direction to achieving this.

The United Nation Resolutions which in unmistaken terms clearly echoes the rights of sovereignty of Nations over mineral resources is the basis for national rights of ownership as contained in section 44 (3) of Nigerian 1999 constitution. And, these represent the *sine-qua-non* and basis for expropriation of investments in the oil sector. However, more relevant legislation are also in agreement with this and as a matter of fact, they are unequivocal on the unhinged ownership right of the federal government of Nigeria over the mineral resources in Nigeria and further restate the government powers to expropriation.

The Land Use Act of 1978, for instance, in its section 1, vests all land in a state in the Governor of that state while sections 28 and 29 give powers to the Governor of a state to revoke rights of occupancy for superseding public interest, which may be for exclusive government use, mining or infrastructure development. Compensation for the value of unexhausted improvements is what the Act imposes to be paid on the part of the government. It is important to note however that even on the question of compensation for a revoked land, Section 47 ousts the jurisdiction of the court into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act.

The Nigerian Minerals and Mining Act, 2007 at section 1 (1-3) provides that the entire property in.control of 'all Mineral Resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and water' courses throughout Nigeria, any area covered: by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria. At sub-section (2) it states that all lands in which minerals have been found in

Nigeria: Problems and Prospects‖ (2017) (Global Journal of Politics and Law Research, European Centre for Research, Training and Development, U.K) March, 2017. p 20.

commercial: quantities shall, from the commencement of this Act be acquired by the government of the federation in accordance with the Act.

The Petroleum Industry Act, 2021 is the governing law regulating the Nigerian oil and gas industry. In an unmistaken term, the Act at Section 1, vests ownership and control of petroleum on the Nigerian government thus:

> the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.

The Act appreciates the necessity for concessions in the management of the industry, hence, it provides for different types of leases and licenses requisite for the smooth operation of the oil and gas industry. There is no doubt; every stage of oil production requires some expertise which to a very reasonable extent requires the expertise of IOCs and major oil companies to run. The Act vests the Minister of Petroleum grant such licenses on behalf of the country to able, capable and competent oil companies. In specific, under sections 211, 310 and 317 of the Petroleum Industry Act, 2021, the Minister is empowered to grant licenses for petroleum exploration, petroleum prospecting, and petroleum mining.

To underscore the fact that he who makes may unmake, The Act streamlines the processes for revocation of any such licenses hitherto issued by the Minister to any oil company. The Act provides that upon receipt of the written recommendation of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), for revocation, the Minister may revoke a petroleum prospecting license or petroleum mining lease, where the applicable licensee or lessee; (a) fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of this Act and any other relevant legislation; (b) interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable license, lease or approved field development plan, provided that an event of force majeure shall be an acceptable justification for interruption; (c) fails to fulfill the terms and conditions of the applicable license or lease or the approved field development plan; (d) fails to pay to Government, as they become due, rents, royalties, taxes or other payments or production shares under this Act; (e) fails to furnish any reports or data on operations as required by law after having been advised in writing by the Commission of such failure; (f) assigns, novates or otherwise transfers any interest in the applicable license or lease other than in accordance with section 95 of this Act; (g) has obtained an interest, in the applicable license or lease based on false representation or contrary to corrupt practices and money laundering laws; (h) is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated, in each case except as part of a solvent plan or scheme of re organisation, amalgamation or arrangement;[37]

The attitudes of Nigerian court to cases of expropriation has relatively been that of uncertainty; while the courts are constitutionally tasked with upholding legal protections for investors, including safeguards against unlawful expropriation, concerns persist regarding the consistency and fairness of judicial decisions in expropriation cases.[38] In ***Interocean Oil v. Nigeria***,[39] the arbitral tribunal alluded that the claimants ought to have exhausted available domestic remedies by appealing the Federal High Court decision before a judicial expropriation could be considered to have taken place.[40]

Nigerian Courts have always insisted that terms hitherto agreed to by parties must always be adhered to even during expropriation. *In* ***Federal Government of Nigeria V. Zebra Energy Limited*,**[41] Zebra Energy applied for the allocation of an Oil Prospecting License (**OPL**) subject to certain conditions, including payment of a signature bonus and reserve value. Zebra Energy failed to pay the signature bonus within the stipulated period but sought an extension of the timeframe for payment of the signature bonus, which was granted by the appellants. However, before the extension period expired, the allocation of the OPL to Zebra Energy was withdrawn by the Ministry of Petroleum Resources in

[37] section 96 (1) of the Petroleum Industry Act

[38] AO2LAW, —From Seizure to Safeguards: The Legal Landscape of Expropriation of Oil & Gas Investments in Nigeria‖ (2025), https://ao2law.com/from-seizure-to-safeguards-the-legal-landscape-of-expropriation-of-oil-gas-investments-in-nigeria/

[39] Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria, ICSID Case No. ARB/13/20

[40] Viola Echebima, ‗ICSID tribunal dismisses claims of Interocean Oil Development Company and Interocean Oil Exploration Company against Nigeria while upholding its jurisdiction to hear the claims solely based on Nigeria‘s domestic investment statute‘ (Investment Treaty News, 19 December 2020) < ICSID tribunal dismisses claims of Interocean Oil Development Company and Interocean Oil Exploration Company against Nigeria while upholding its jurisdiction to hear the claims solely based on Nigeria‘s domestic investment statute – Investment Treaty News> accessed 2 February 2025

[41] Federal Government of Nigeria and 6 others V Zebra Energy Limited (Sc 268/2001) [2002] Ngsc 18 (13 December 2002)

accordance with the recommendation of the panel established by the Nigerian Government[42] to review all contracts, licenses and appointments made by the government. Dissatisfied with the revocation of its interest in the asset, Zebra Energy approached the courts for the determination of the propriety or otherwise of the revocation of its interest in the asset. Both the trial court and the appellate court ruled in favour of Zebra Energy. When the Federal Government of Nigeria appealed to the Supreme Court, the Supreme Court held that the government was bound by its agreement with the company and that a valid contract existed between the parties and found that the revocation of the allocation of the OPL was unlawful. The apex court made the government bound by the terms of their contract with the oil company.

In the same vein, in ***NNPC v. Famfa Oil Ltd***[43], the Federal Government appealed to the Supreme Court challenging that the government had a right to participate in OML 127, the Supreme Court reaffirmed the role of the judiciary in protecting contractual agreements. The Supreme Court found that where the government reserves a right to participate in an oil and gas venture, it is like any other right and is by no means absolute but subject to limitations imposed by law. Specifically, the right of the government is burdened by its duty to follow the relevant law and the constitution. The Court ruled that the attempt of the government to acquire a 50% interest in OML 127 without adhering to the provisions of Paragraph 35 of the First Schedule to the Petroleum Act and Section 44(1) of the CFRN was unconstitutional, emphasizing that government actions cannot infringe on contractual and constitutional rights without due legal process.

What these cases have shown is that under the Nigerian legal system, investors have a better chance of protection as Nigerian courts have not hesitated ruling against the Nigerian government where the government derogates from the terms of agreements they freely entered into with foreign investors.

4. Protecting Investors Interests

It has to be admitted that every foreign investors weigh their options before deciding on investments abroad. The fear of expropriation, more importantly is the bane of so many

[42] The panel, chaired by Dr. Christopher Kolado, was established by the Federal Government of Nigeria to review all contracts, licenses, and appointments made between January 1 and May 28, 1999.
[43] (2012) 17 NWLR (Pt. 1328) 148 at 185

foreign investment drives by the government. An investor who wishes to invest abroad would want to satisfy himself that his investment is not going down the drain and that the destination country provides adequate measures of guarantee and protection for his investments. Nigeria, with this objective in mind, has established a robust legal framework to protect overseas investments and lessen the risks associated with expropriation.

a. Statutory Protection

The best place to commence discussion on this is the provisions of the Constitution, Federal Republic of Nigeria, 1999 where it provides in section 29 that upon revocation of land, compensation for the value of unexhausted improvements to the landowner who of course includes an investor. This is an obligation imposed to be paid on the part of the government. Section 44 of the Constitution also provides protection against the compulsory acquisition of property without prompt compensation.

Through the Nigerian Investment Promotion Commission (NIPC) Act, 1995 which is the keystone of investment protection in Nigeria, adequate measures are being put in place to assuage the fear of investors. The Act unambiguously forbids the expropriation or nationalization of foreign investments except for cases where it is in the national interest or for a public purpose. What more, according to the Act, even when expropriation or nationalization happen, the investors are guaranteed adequate compensations as a mitigation for expected losses. In the wordings of section 25 of the Act:

> Subject to subsections (2) and (3) of this section- (a) No enterprise shall be nationalized or expropriated by any Government of the Federation; and;
>
> (b) No person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person.
>
> (2) There shall be no acquisition of an enterprise to which this Act applies by the Federal Government, unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for-
>
> (a) Payment of fair and adequate compensation; and
>
> (b) A right of access to the courts for the determination of the investor‘s interest or right and the amount of compensation to which he is entitled.

> (3) Any compensation payable under this section shall be paid without undue delay, and authorisation for its repatriation in convertible currency shall where applicable, be issued.

The Investment and Securities Act (ISA) is another legislation protecting foreign investments and more importantly allaying the fears over possible expropriation or nationalisation of foreign investments in Nigeria. This Act empowers the Securities and Exchange Commission (SEC) to regulate investments and securities, ensuring that foreign investments are protected and that any expropriation is conducted lawfully and transparently.

b. Bilateral Investment Treaties (BITs)

Apart from the constitution and various extant legislation that protect the economic interests of the investors in the oil and gas sector, there are also numerous bilateral investment treaties to which Nigeria is a party to and which protect foreign investors against wrongful expropriation by host states. These treaties are calculated to lessen the risks connected with foreign direct investment, providing a safe, steady framework for international capital flow.

These BITs usually require that any expropriation must not be discriminatory and targeting a particular investor. They also re-echo the need for expropriation to be for a public purpose, sanctioned by law, and that there must be prompt, adequate, and effective compensation to the expropriated investments.

Generally, BITs are structured to cover both indirect expropriation and direct expropriation or nationalisation in as much as investors are being denied or deprived of the economic value or control of their investment. A common feature of the BITs is that they set a condition signaling that for an expropriation to be considered lawful, such expropriation must satisfy the following four conditions: They must be done in the public interests; they must not be discriminatorily; they must follow due process and adequate compensation must be paid to the investors of the expropriated investments.

Typical of all BITs, payments of compensation must not be delayed; compensation has to be paid promptly, adequately and effectively. The measure of compensation standard is the fair market value in a convertible currency otherwise known as the Hull formula.

BITs also have special provisions ousting the jurisdiction of local courts in disputes connected with expropriation under the Investor-State Dispute Settlement (ISDS). This allows investors to sidestep the local courts and bring arbitration claims against the host state, frequently through institutions like ICSID, to enforce these protections.

Examples of BITs with strict anti-expropriation clauses include the **U.S.-Albania BIT (1994)** under which it was provided that expropriation can only occur for a public purpose, under due process, and with adequate compensation paid the investors. The **Brazil-UAE Cooperation and Facilitation Investment Agreement (2019)** under which its Article 7 provides specific protections for investors regarding expropriation. Also, the **Brazil-India Investment Cooperation and Facilitation Agreement (2020)** has its Article 6.3 limiting the ability of the state to expropriate investments. The **Mexico–Netherlands BIT** is often used in tandem with OECD benchmarks to define and protect against indirect expropriation. Lastly, the **China's BITs with African States (e.g., Egypt, Nigeria)** do include standard protections against unlawful, non-compensated expropriation.

c. The International Centre for the Settlement of Investment Disputes (ICSID)

This centre is foremost on matters connected with settlement of investors and state investment disputes. It is an institution with around one hundred and fifty three (153) member states. A country opts to join the ICSID by ratifying the ICSID convention. Once a country becomes a member-state, it automatically enjoys access to ICSID services and must agree to enforce ICSID decisions. States have also agreed to ICSID as a forum for investor-State dispute settlement by law or by contract, or through bilateral and multilateral investment treaties.

The ICSID is the primary global institution for resolving disputes between foreign investors and States, and cases bothering on direct and indirect expropriation are some of the issues the ICSID handles. In cases where actions of the state over a foreign investment amounts to indirect expropriation, such as tax hikes, or imposition of injurious regulations, the ICSID tribunals determine such and also it intervenes when expropriation is done *malafide* or short of public purpose driven. The ICSID has intervened in such cases overtime, such as in the ***Interocean v Nigeria***[44] and ***Feldman v. Mexico***.[45]

d. Right to Compensation

There are plethora of judicial authorities, both under the Nigerian law and internationally to the effect that even though an oil producing country may expropriate rights and interests invested in the sector, investors are also entitled to a fair and adequate compensation in the event of expropriation. There are often uncertainties at what may constitute an adequate compensation, cases are often determined on the basis of merit of each case and circumstances, most especially, putting into consideration the assets and infrastructures of the company to be expropriated. The right to compensation also has constitutional/statutory supports in Nigerian Constitution and other statutes as discussed above.[46]

e. **Stabilization Clauses in Production Sharing Contracts**

An investing company may protect itself against expropriation by including stabilization clauses in their Oil Production Sharing Contracts. This is necessary to safeguard itself against the risks of expropriation or any regulatory change that could have adverse effect on the company. When there is such stabilization clause, the company are bound by it even when there is any changes in the country legal regime. These clauses protect investors by maintaining agreed-upon terms over a defined period, even if new laws or regulations are introduced.

However, the Act has introduced a limit to the scope of the stabilization clauses by providing that investors are not shielded from the effects of changes in statutes of general application, levies, taxes, or compliance obligations related to environmental, labour, health, and safety laws.[47] Moreover, they remain subject to new taxes, levies, or duties imposed to implement Nigerian climate change commitments under the United Nations

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[44] ICSID (International Centre for Settlement of Investment Disputes) ARB/13/20 of October 6, 2020

[45] ICSID (Additional Facility Rules) under Chapter Eleven of NAFTA. **Case Number:** ARB(AF)/99/1. **Date of Award:** December 16, 2002

[46] See section 44 of the 1999 Constitution, Federal Republic of Nigeria (as amended) and section 25 of the Nigerian Investment Promotion Commission (NIPC) Act, 1995

[47] section 305 of the PIA

Framework Convention on Climate Change) and related agreements. This is a departure from the broader protections available under the Petroleum Act of 1969.[48]

5. **Conclusion**

This work has critically looked into the power of an oil producing country to expropriate the asset and investment of foreign investors who invest in the oil and gas sector of the economy in line with existing international law practice and principles. It is submitted that the power to expropriate is within the legitimate powers of a state but exercising the power calls for restraint and caution.

In as much as expropriation remains a tool through which oil producing countries exalt their right over the resources being explored and exploited in their domains, it also poses major risk for investors in Nigeria petroleum sector and it ultimately hampers the country foreign investment drive. As shown above, the law allows Nigerian government to expropriate assets in the oil and gas sector, there are however series of protection for investors in the sector. Investors are entitled to adequate compensation, the right to get protected, in case of expropriation, under international disputes resolution as well as the ICSID and the protections under the stabilization clauses.

There are a lot of cases where a country right to expropriation has led to large scale dispute. In order to lessen the risks associated with expropriation, investors should deploy expertise and engage best hands to assist in thorough due diligence, get the best deals from negotiation and keep an eye on regulatory changes. When these are done, rights of investors can better be protected and through these they can actually get the best out of investments in the Nigerian oil and gas industry.

It is submitted that the powers to expropriate must be exercised in ways and manners that would foster cooperation and amity between foreign investors and the Nigerian government. The ongoing disputes between the American government and President Maduro of Venezuela abduction are not unconnected with prior expropriation activities of

[48] AO2LAW, ―From Seizure to Safeguards: The Legal Landscape of Expropriation of Oil & Gas Investments in Nigeria‖ (2025), https://ao2law.com/from-seizure-to-safeguards-the-legal-landscape-of-expropriation-of-oil-gas-investments-in-nigeria/

American oil companies in the Venezuela. It takes huge risk to invest abroad. To have one multi trillion investments expropriated overnight is very devastating and of course could lead to international conflicts if not properly managed. Hence, expropriation should be done judicially and judiciously putting the interests of the foreign investors into consideration within the framework of adequate consultations.