OWNERSHIP AND CONTROL OF NATURAL GAS IN NIGERIA

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Abstract
Nigeria is ranked among the tenth largest producer of oil in the world and the seventh in terms of gas. The proven gas reserve is approximated at 187 trillion cubic feet (tcf) and 300,600 tcf of unproven gas reserve. In line with the Geneva Convention on Permanent Sovereignty Over Natural Resources, Nigeria in exercise of her ownership right as a Host State enacted laws wherein the ownership of natural gas was clearly stated by the law. During the course of research and analysis of the relevant laws regulating the Nigerian Natural gas, it was discovered that indeed the question of ownership is not in doubt but the control of the Nigerian Natural gas and the oil industry in general leaves much to be desired of a sovereign nation. Thus laws, statutory instruments etc were x-rayed and consequently it was found that the ownership and control of Natural Gas in Nigeria is still in Limbo. Recommendations were made to fill up the gap and strengthen Nigeria’s sovereignty over her natural resource.

Key Words: Oil, Gas, Petroleum, Natural, Associated, Ownership, Ownership etc

Introduction and Meaning of Oil and Gas :

The definition of oil and gas is the same as seen in the principal legislation. It is defined as mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shale or other stratified deposit from which oil can be extracted by destructive distillation. Yinka Omorogbe variously although conveying same meaning defined it thus “Petroleum is a compound mainly composed of hydrogen and carbon and is commonly called hydrocarbon. It can exist in gaseous, liquid or solid form. When it is found as a solid, it is either coal, shale, tar sands or bitumen. In liquid form, it is referred to as crude oil. Hydrocarbons in gaseous form are known as natural gas”.

The definitions above clearly show that there are no separate definitions for oil and for gas. Both are regarded as a form of petroleum. This explains why the Petroleum Act did not differentiate them. As a result, oil and gas are used interchangeably.

Gas emerged as an essential resource with great impact in the Nigeria’s oil and gas industry. Gas production, anywhere in the world has contributed to the global development through the gas resource utilization in the domestic economy of nations. It has created international impacts to the world’s economy, an inter-play of international market. The use of gas, as commodity, has since assumed international relevance which drives the world’s economy to the highest level of her present state. Gas, simply, put is an essential commodity in the global market.

Gas due to its assumed economic boosted and prevalence have been defined slightly different from the definition of the petroleum Act given above. Consequently the Webster’s Universal Dictionary and Thesaurus defined Gas to mean “… An air-like substance with the capacity to expand indefinitely and not liquefy or solidify at ordinary temperature” the denotative meaning affords us a clear, but wide meaning of gas. For purposes of our study Gas is to be viewed within the purview of the oil and gas industry in Nigeria. There are two types of gas-Natural Gas and Associated Gas
Natural Gas: This is a homogenous fluid of low density and low viscosity. It is a clean, efficient, easily combustible, low-Sulphur fuel and has consequently replaced coal as a domestic, industrial and power generating fuel in many parts of the world. It normally constitutes methane, in its natural state.

Associated Gas: On the other hand, is defined as the gas component or substance with other impurities such as oil and water combined in the natural state underneath the earth’s surface or its natural reservoir. Associated Gas becomes useful, only when all other components of impurities such as oil and water are separated or knocked-out under very high temperature and pressure given rise to a purified natural gas for usage. It is commonly extracted in many flow stations in the Niger Delta Region of Nigeria, there are many built flow stations with purification mechanism to purify the drilled or extracted associated gas to a purified gas ready for usage. It is also called associated gas because it comes alongside petroleum. It is not drilled separately or directly like the Natural Gas, but rather comes in association with oil.

Strictly speaking, natural gas and associated gas share similar characteristics of gaseous component in nature. Both in their natural gaseous state can only be commercially transported in gaseous form via pipelines, or in liquefied form in specially constructed cryogenic tankers. They require definite buyers who will be linked to their sellers through the pipeline network, or will have re-gasification plants to convert the Liquefied Natural Gas (LNG) back to natural gas, as the case may be. To rightly tap the economic benefit associated with natural gas and to conserve environment, the country is adopting the technically more complex and more expensive option of liquefying natural gas-LNG. It should be noted that during refining process of crude oil, gas is usually emitted in form of gas flaming as commonly observed in Nigeria. Gas flaring is the controlled and safe burning of gas which cannot be used for commercial or technical reasons. These flared gas are very light in nature, which can be rechanneled for re-gasification process of converting them to its liquefied state. At this stage of their liquefied state, such gas becomes useful for other uses. This is one of the reasons why the Nigerian Government promulgated legislation banning gas flaring, via the Associated Gas Reinjection Act, 1979. No company, amongst all the multinational companies, was to flare gas after 1st January, 1984 without the permission of the Minister. The penalty of non-compliance in the original enactment was stringent, though later unrealistic, and punishment of forfeiture of concession.

After several shift of deadline date for flaring of gas, the Associated Gas Reinjection (Continued flaring of Gas) Regulation, 1984 came into force and provided for exemption to the general ban on flaring. However, it is observed that the Federal Government of Nigeria is still battling with implementation of Zero-flaring of gas till date. Several number of shifts of deadline have been the case with different administrations since 1984.

The last postponed ban date was in 2010, for which multinational companies have not since complied thereby forcing the government policy to be extended to 2015. It is hereby submitted that the lips service policy being adopted to effect ban of gas flaring in Nigeria is not the best. This is because of the large scale of extremely wasteful and environmentally harmful practice resulting in the act which persists to the disadvantage of the inhabitant who reside within where these flaring take place. These flaring is universally discouraged as they are major contributors of the greenhouse gasses. Nigeria has one of the world’s worst flaring rates of about 70%.

Nigeria Liquefied Natural Gas (LNG)

Nigeria started the idea of production of crude oil through drilling and refining of products for the commercial and domestic use of refined products such as petrol, Kerosene, diesel etc. The continuous search for crude oil and its production saw the emergence of natural gas reservoirs which were untapped. While exploring these reservoirs for better economic utilization, the idea of liquefy natural gas-LNG production was conceived by the major operators in Nigerian oil and gas sector. On the other hand, some reservoirs have petroleum with impurities in their various natural states. The exploration of these reservoir gave rise to the emergence in the production of Associated Gas at one point, natural gas and associated gas (herein referred to as Gas competences) were flared off into the environment with little or no cost implication on the operators in the oil and gas sector.

The idea became an issue of grown concern at one point because in Nigeria Associated Gas (Gas component inclusive) flaring stations and operational locations constitute a major source of environmental worry and represents a colossal economic loss of valuable resources.
The associated gas, as well as natural gas rather than being flared was to be stored as exportable Liquefied Petroleum Gas (LPG), thus generating additional revenue for Nigeria. The LPG are the propane-butane mixture derived from crude oil refining or natural gas fractionation for convenience of transportation. These gasses are liquid through pressurization. This desire brought about the incorporation of Nigeria LNG limited in 1989.

The Nigeria Liquefy Natural Gas Limited came into existence on 19th March, 1989 and was statutorily backed up, owning to its investment portfolio by the shareholders, with a legislation called Nigeria LNG (Fiscal Incentives, Guarantee and Assurance) Act Cap N87, LFN 2004 (hereinafter called the Nigeria LNG ACT). The said legislation recognized Nigeria LNG as a pioneer company with our laws in Nigeria. The Nigerian LNG limited is a creation of a venture described in the shareholder’s contract comprising of Nigeria National Petroleum Cooperation having 49%; shell Gas B.V. Having 25.6% Total LNG having 15% and Eni International, operators of Agip having 10.4%. Thus, the Nigeria LNG ltd can be described as a joint venture with shareholders having their equity shares in the company.

The Nigeria LNG project is worth US $3.86 which the shareholders contributed equally and is clearly the biggest gas utilization initiative in Africa. The Nigeria LNG plant project is utilizing non-associated gas with same 10% associated gas at the start. The associated gas content is poised to increase yearly until it fully replaces the non-associated gas. At its inception, the non-associated gas is sourced as national gas to be different from those gas components that forms associated gas. The raw material for Nigeria LNG is the product itself. The liquefied natural gas is natural gas that has been cooled into liquid state so that it takes up only 1/600 of the volume of natural Gas. These are sourced via LPG, Liquefied Petroleum Gas, and Associated Gas flowing from AGGP. Associated Gas Gathering Plant, involving the process of collecting natural gas or transmission facilities. This is the source from where the Nigeria LNG produces liquefied natural gas amounting to roughly 10% of the world’s LNG consumption.

Nigeria LNG is incorporated as a private limited liability company in Nigeria as an independent, autonomous commercial entity and its operations policies, procedures and conditions of services to be determined by the Board of Directors of the company. The Nigeria LNG Act further guarantee and assures the equity share of the shareholder in the investment venture. It is provided in section 9 as the guarantees and assurances set out in the second schedule to the Act shall have effect with respect to the shareholder of the company and the company.

The exact provision with preamble of the second schedule is as follows “The Federal Government … these guarantees, assurances and undertaken shall have effect from the date hereof, and so long as the company, or any successor thereto, is in existence and carrying on the business of liquefying and selling liquefied natural gas and natural gas liquefied within and /or outside the Federal Republic of Nigeria” These have been put in place to help secure and guarantee the investments of shareholders into the company. The company is also accorded the sole producer and seller of LNG in Nigeria to the international market. From the above reference, it is pertinent to state that the Nigeria LNG gathers from production, natural gas and associated gas (as gas component) for gasification of same into liquid form for the market of same on behalf of the government of the Federal Republic of Nigeria.

Ownership of Gas

The ownership of gas resources as well as oil is a sensitive issue across the various oil and gas yielding countries of the world. Traditionally, ownership is defined as the right to enjoy or dispose of a thing in the most absolute manner. In practice, the right is often limited in one way or the other. Ownership is the collection of rights allowing one to use and enjoy property including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Possession is the de facto exercise of a claim; ownership is the de jure recognition of one, the guarantee of the law, while possession is the guarantee of the fact. The cardinal focus of ownership, here, is described as a magnetic coil which remains when all present rights of ownership are removed from it, and which attracts to itself the various elements temporarily held by others as they lapse. This issue, generally help reduce or clear the perceived friction of who exercises control over such resources. Hence, oil and gas yielding countries usually adopted one pattern or theories within the three known discernible pattern or the theories of the ownership associated with oil and gas.
The following are the three discernible patterns or theories of ownership of oil and gas as applicable to gas; one is complete state ownership of oil and gas resources; the second is the resting of complete ownership right in the individual land owner(s); while the third is a hybrid of the two, where the state owns to some extent, but reserves some right in the individual.

**The Concept of Permanent Sovereignty Natural Resources**

The question of ownership over natural resources gas inclusive, has received a lot of attention at international levels in the recent past. The trends shown reveal a shift from inventor ownership and control, towards state control and permanent sovereignty over natural resources. This stemmed from the tendencies in the company (multinational oil companies) charged with exploration and production of the natural resources exercising rights that amounted to sovereignty over resources.

The host counties, having been aware of these recent state of affair by the use of the nationalization policy which beaconed the insistent on international rules of compensation between the inventor companies and the home state.

The developing and socialist counties attempted to redress what to them was an inequitable state of affairs mainly through resolution of the general assembly via General Assembly Resolution No. 626 (vii) which provided that: “The right of people freely to use and exploit their natural wealth and resources is inherent in their sovereignty”

The above position prompted the adoption of the General Assembly 1803 (xvii) in December 14, 1962 titled: “Permanent Sovereignty over Natural Resources” which Provided inter alia “the right of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned”

The resolution recognized nationalization, expropriation or requisitioning which are the grounds for public utility, scrutiny and national interest. It further recognizes the payment of appropriate compensation in accordance with the rules in force in the state which by extension must be in accordance with international law.

The above position of the General Assembly was reinforced in 1966 by Resolution No 1258 (xxi) which provided for government supervision over the activity of foreign capital in the exploitation and development of natural resources geared toward ensuring that it is used in the interest of natural development. This direction was adopted due to the regard to development needs and obligation of the peoples concerned.

On December 12, 1974, the General Assembly adopted Resolution No3281 (xxix) entitled “Charter of Economic Rights and Duties of State”. The Resolution provided for each state to freely exercise full permanent sovereignty, which includes possession, use and disposal, over all of its wealth, natural resources and economic activities. Each state has the right to nationalize, expropriate or transfer ownership of foreign property upon payment of appropriate compensation in time with relevant laws and regulations. In all, these united nations resolutions reveal a definite trend away from the traditional concepts of inventor ownership and control which emphasizes the protection of individual rights towards host state ownership of natural resources. They support the clamor for state ownership rather than the pro-foreign natural resources ownership and control via de facto possession by many multinationals in their host community state.

**Ownership of Gas in Nigeria**

In Nigeria today, it is common knowledge that natural resources are controlled by the Federal Government of Nigeria. This is because Nigeria adopts the state, public or dominated system of ownership in which ownership of natural resources, to include gas, are vested in the sovereign. This right of ownership by the sovereign is enshrined in the constitution and other statute.

The provision of section 44(3) constitution of the Federal Republic of Nigeria, 1999 (hereafter referred as the constitution) states as follows:

Notwithstanding, the forgoing provisions of this section, the entire property in and control of all minerals oil and natural gas in, under or upon any land in Nigeria or in, under or upon any territorial waters and the exclusive economic zone 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 is further buttressed by the enlistment in item 39 on the exclusive legislative list, part 1, second schedule to the Constitution 1999, stating in categorical terms as follows:
The above position of the provision raises an irrebuttable assertion of state ownership and control of gas in Nigeria inclusion of other natural resources. The state, then, has the option of exploring and exploiting its natural resources, to include gas, by itself, or granting rights to third parties (such as multinationals and indigenous oil companies) on whatever condition it may decide thereupon.

It is pertinent to point out further two schools of thought with respect to ownership of natural gas vis-à-vis associated gas. The first school holds that the natural gas in its natural state belongs to the state, then, has the option of exploring and exploiting its natural resources, to include gas, by itself, or granting rights to third parties (such as multinationals and indigenous oil companies) on whatever condition it may decide thereupon.

Control of Gas in Nigeria

Suffice it to state that ownership and control of gas in Nigeria, in its natural state in the reservoir, is invested in the hands of the Government of the Federation of Nigeria. However, the exercise of control of gas would depend on the state of the gas itself. It would depend on who is in possession of the gas at the natural time to exercise control over same.

In Nigeria, the drilling and production of gas is usually associated with activities of the upstream sector in the oil and gas industry. The operators in the upstream sector are the multinational companies with their high technical expertise in oil drilling exploration and production. Upon a successful drilling process, the petroleum/crude oil is extracted via drilling pipe and channeled to the Nigerian National Petroleum Corporation (NNPC) - to the refineries where the product is refined. Other quantities of the crude are channeled for shipment as sale of crude oil for the international market. The petroleum product at this stage is under the control of the state, via the state agent - NNPC - who supervises the production capacity of crude oil as produced by the multinational companies in the various flow stations, operation locations and bases. It is at this state that royalties are paid by the multinational oil companies to the government. Offshore royalties rate is also to be found in the deep offshore and inland basin production sharing Contract Decree No. 9 1999.

In practice, NNPC does not participate in drilling and production of crude oil directly. The control being exercised is limited to the control of product via data production system of barrel as transmitted to NNPC by the multinational companies. Thus, the exact control of gas, inclusive of petroleum product, lies with the de facto controller of the multinational companies that produced the crude oil or natural gas as the case may be.

It is submitted that the multinational companies are the de facto controller or in de facto control of gas, as at its production stage, while the government; via NNPC is the de jure controller or de jure control of gas in Nigeria. This is because the multinational oil companies, particularly those in the upstream subsection of the oil and gas sector, exercise possessive ownership and control over natural gas; while the Government through NNPC exercises regulatory function over natural gas. It should be noted that the NNPC exercise control on gas production via the Nigeria Gas Company Ltd, a subsidiary of NNPC representing the environment of the Federal Republic of Nigeria in the oil and gas industry.

The ownership and control of gas component being flared as a byproduct of a petroleum refining constitute a burning issue. At the point/stage of refining of petroleum, it is crude oil (petroleum owned by the Federal Government of Nigeria and under the control) depending on the crude oil quantum, for supply. The flared gas component is a byproduct under the direct control of the oil company producing same. For instance, the Shell PDC drills and explores petroleum from natural reservoir and royalties are paid by the quantum explored. The flared gas component is deemed to be owned and to be controlled by the company.

That ownership and control of gas in Nigeria is directly with the government of Federation of Nigeria, who exercises actual control via the multinational oil companies and NNPC as stakeholder based on the grant of license to them. This view is on the basis that the fact that government still oversees the general operations in the oil and gas sector, through her agent–NNPC - at the same time giving leeway for private companies (multinationals) to participate by the investment in the oil and gas sector. The understanding that flows amongst the Government and other stakeholders brings about the harmonization that is seen via policies of the government and participation by the multinationals in the sectors.

In addition to the above observations, it is germane to point out that gas component in the possession of NNPC, via its subsidiaries, Nigerian Gas Company and Nigeria LNG Ltd., are” controlled on behalf of the Government. Thus, there is a limited control exercised by these agencies of Government, owing to the
Recommendations/Conclusions:

By the statutory provision of the laws regulating oil and gas industry in Nigeria, the concept of ownership and control lays with the Government of Federation of Nigeria. It is recommended that this status quo be maintained in line with the cost implications involved in the direct investments in oil and gas sector of the Nigerian economy. This will afford the oil bearing communities with the Niger Delta region the opportunity of having the resources properly harnessed for optimal utilization than where it will be left in the hands of private individual or communities.

Also, security of these investments in the oil and gas sector should take a collaborative support geared towards preventing economic sabotage and loss in revenue accruable to the Government. With sufficient revenue base from the sector, and transparency on the part of Government, gas resources will be better harnessed and revenue thereof better utilized for the overall transformation and development needed in the Niger Delta, region and Nigeria at large.

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