DECOMMISSIONING OFFSHORE OIL PLATFORMS: FORMULATING A COMPREHENSIVE LEGAL REGIME FOR NIGERIA

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ABSTRACT

Offshore decommissioning describes the set of activities undertaken to manage and dispose of offshore oil installations and eliminate environmental footprint once an oil producing field is nearing or reaches the end of its economic life. It is regulated by rules of international law which determine the nature of national regulatory regimes on the subject.

During offshore decommissioning, the marine environment is usually adversely affected. It is necessary to identify the sources and consequences of marine pollution with a view to preventing it. Therefore, the international legal framework for environmental protection and sustainable practices must be at the core of the planning programme.

In Nigeria, offshore decommissioning is yet to become a regular activity and there is need for adequate planning ahead of time. Planning for offshore decommissioning should include formulating a comprehensive legal framework which must in all ramifications meet the requirement under international law of offshore decommissioning and international environmental law.

Hence, this research examines the international regulatory regime for offshore decommissioning. It also studies the environmental consequences of offshore decommissioning. It goes further to develop a worthwhile legal regime on offshore decommissioning for Nigeria.

1.0. INTRODUCTION

It goes without saying that Nigeria is one of the oil rich countries, not only in Africa, but also within the community of nations of the world. Her reserves make Nigeria the
tenth most petroleum-rich nation and by far the most affluent in Africa.\(^1\) Beyond production, Nigeria’s proven oil reserves have witnessed astronomical progression over the years. These oil reserves are located offshore, hence, the existence of offshore oil platforms. However, a time will come when these platforms are no longer needed and the issue of offshore decommissioning comes up.

Decommissioning is a general term for a formal process to remove something from active status, the act of taking something out of service or rendering it unusable.\(^2\) It is also the planned shut-down or removal of a building, equipment, plant, etc., from operation or usage.\(^3\) In other words, it is a controlled process used to safely retire a facility that is no longer needed\(^4\). This definition conforms with that given by the International Atomic Energy Agency (IAEA) which defines decommissioning as: *the activities taken at the end of the useful life of a facility in retiring it from service with adequate regard for the health and safety of workers and members of the public.*\(^5\)

In oil nomenclature, decommissioning describes the set of activities to be undertaken to manage and dispose of installations and platforms and eliminate environmental footprint once an oil producing field is nearing or reaches the end of its economic life.\(^8\) During decommissioning, radioactive and hazardous materials, equipment or structures are cleaned or secured so that the facility does not pose a risk to public health or the environment now or in the future.\(^9\)

Offshore decommissioning is essentially an international law regime issue based on the Law of the sea Conventions and regional conventions.\(^10\) These in turn shape the various national regulations on the subject. In jurisdictions like the United Kingdom

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1 “Oil industry in Nigeria”. At en.wikipedia.org/wiki/oil_industry_in_Nigeria  
2 At http://en.wikipedia.org/wiki/Decommissioning  
3 At http://www.businessdictionary.com/definition/decommissioning.html  
4 “What is decommissioning”? At www.bnl.gov/erd/cleanupdate/vol4no2/decom42.html  
9 “What is decommissioning”? At www.bnl.gov/erd/cleanupdate/vol4no2/decom42.html  
and the United States, legal provisions have been developed to regulate offshore decommissioning. In the North Sea region in particular, the Brent Spar saga heralded an era of hot debate on the legal obligation of states. In contrast, Nigeria is yet to experience decommissioning and lacks adequate legal rules to regulate it. It became imperative to embark on a mission of formulating a comprehensive legal framework for offshore decommissioning.

KEYWORDS: Decommissioning, oil, platform, legal, Nigeria.

2.0 ENVIRONMENTAL IMPACTS OF OFFSHORE DECOMMISSIONING

A pertinent question that needs to be answered is this: why develop an offshore decommissioning regime? Offshore decommissioning is a process associated with tremendous environmental consequences. This is because the installations usually undergo cleaning and draining before removal, leading to the discharge of oil, waste and other harmful substances into the marine environment. In addition, the physical act of removal itself affects the marine environment as it often involves the use of explosive force.

2.1 Oil Pollution

Oil can cause a lot of damage to marine life ranging from intoxication, reduced temperature regulation, loss of ability to migrate and death. Exposure to oil can also result in non-lethal impacts including liver and eye damage and skin irritations. While these effects may not cause immediate death, they can reduce survival rates by

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11 For example, Part IV of the U.K. Petroleum Act 1998.
12 “Greenpeace Brent Spar Protest in the North Sea”. At archive.greenpeace.org/comms/brent/brent.html
15 Ibid. P. 29
compromising an animal’s ability to find food and shelter, reproduce and avoid predators.\textsuperscript{18}

2.2 Waste

Waste comes in various forms such as toxic and hazardous waste, sewage, debris, garbage, and a host of others.\textsuperscript{19} Most of these forms of waste could be discharged into the sea during offshore decommissioning. Many strange and unnatural mutations in animals can be linked to toxic waste.\textsuperscript{20} It can also be introduced into marine food webs. This can cause a change to tissue matter, biochemistry, behaviour, reproduction and suppress growth in marine life.\textsuperscript{21} Since many animal feeds have a high fish meal or fish hydrolysate content, marine toxins can be transferred to land animals and appear later in meat and dairy products.\textsuperscript{22} Marine debris such as plastic can cause death of marine animals through suffocation and entanglement.\textsuperscript{23} Sewage uses up the oxygen in the marine environment thereby making it scarce for marine plants and animals.\textsuperscript{24}

2.3 Explosives

Explosive impacts depend on the extent of explosive force; this ranges from light hemorrhaging to rupture of the entire body cavity.\textsuperscript{25}

It is thus important that any offshore decommissioning activity must take into cognizance the negative environmental effects that are likely to result from it. This gives those involved the opportunity to adopt appropriate measures with a view to eliminating or at least minimizing these effects.

\begin{flushleft}
\textsuperscript{18} Ibid.
\textsuperscript{19} “Marine Pollution”. At http://en.wikipedia.org/wiki/Marine_Pollution
\textsuperscript{21} Supra, note 19
\textsuperscript{22} Ibid
\textsuperscript{23} Ibid
\textsuperscript{24} “Environmental Impacts of Sewage”. At www.ukmarinesac.org.uk/activities/ports/ph6_2_3.htm
\textsuperscript{25} Stanislav, P. Supra, note 16
\end{flushleft}
3.0. OFFSHORE DECOMMISSIONING RELATED PROVISIONS UNDER NIGERIAN LAW

As stated from the outset, the major focus of this research is to develop a worthwhile offshore decommissioning regulatory regime for Nigeria. The reason is that the country’s present regulatory structure is inadequate\(^{26}\). Nigerian law has fallen short of meeting the country’s obligation under international law. However, the research deems it fit to point out that there are certain provisions under Nigerian law indicative of offshore decommissioning.

By virtue of section 9 of the Petroleum Act\(^{27}\), the minister is empowered to make regulations providing for certain matters including the prevention of pollution of water courses and the atmosphere\(^ {28}\), as well as for regulating the construction, maintenance and operation of installations\(^ {29}\). It is in the exercise of this power that the Petroleum (Drilling and Production) Regulations of 1969 were made. Here, there is a requirement for an abandonment programme which must be approved by the Director of Petroleum Resources\(^ {30}\). However, the content of such abandonment programme is not specified. Furthermore, Regulation 46(3) requires the licensees or lessees upon the termination of their license or lease to remove all buildings, installations, chattels, works, or effects erected or brought by the licensee or lessee in connection with their operations unless the minister exercises the right to take over the structures\(^ {31}\). Here again, the party with decommissioning responsibility is not specified unless it can be implied that the minister bears the burden after acquisition\(^ {32}\).

\(^{26}\) Zuru, S. A. *Supra* note 13.
\(^{27}\) Petroleum Act 1969, Cap P10 Laws of the Federation of Nigeria, 2004
\(^{28}\) Section 9(1) (b) (iii)
\(^{29}\) Section 9 (1) (c)
\(^{30}\) Regulation 36
\(^{31}\) Regulation 46(3)
Nigeria has ratified both the Geneva Convention on the Continental Shelf 1958 and the United Nations Convention on the Law of the Sea 1982/94.\textsuperscript{33} This means that both the total and partial removal regimes are recognized.\textsuperscript{34} Here again, there are no local guides as to which removal regime to be adopted in any particular case, therefore recourse may have to be made to the Environmental Guidelines And Standards for the Petroleum Industry in Nigeria (EGASPIN) issued by the Department of Petroleum Resources (D.P.R.). Under paragraph VIII all abandoned installation's standing in less than 100 meters (depth) of water and weighing less than 4,000 tonnes shall be removed entirely. Furthermore, it provides that the process of removal shall avoid significant adverse effects upon navigation or the marine environment. The EGASPIN is however silent on installations in water depth above 100 meters or weighing more than 4,000 tonnes.

Although the provisions of the Harmful Wastes (Special Criminal Provisions) Act and the Environmental Impact Assessment Act are relevant, these laws are not sufficient to provide the kind of environmental protection regime required for a complex process like offshore decommissioning.\textsuperscript{35}

**4.0. FORMULATING A LEGAL REGIME FOR NIGERIA**

Formulating an offshore decommissioning regime must necessarily involve identifying the issues that are strategic to achieving sustainable decommissioning and setting out internationally-acceptable standard guidelines for these issues. For this purpose, the research considers binding international rules and adopts them for Nigeria. The U.K. regime is particularly utilized in this regard. The reasons for adopting the U.K.’s regime are not far-fetched. Firstly, both Nigeria and the U.K. are subject to the same rules of international law of offshore decommissioning. Secondly, the U.K. has gone through the practical experience of decommissioning that Nigeria lacks. Thirdly, the


\textsuperscript{35} Cap H1 and Cap E12 Laws of the Federation of Nigeria, 2004. See also Morakinyo, A. A. *Supra* note 14.
U.K.’s Petroleum Act contains specific provisions governing offshore decommissioning and these provisions to a large extent conform to the standard required by international law.\textsuperscript{36} To ensure that the requirements under the Act are complied with, the Department of Energy and Climate Change (DECC) issued guidance notes that reflect U.K.’s international obligations.\textsuperscript{37} The issues are considered below:

**4.1. Offshore Decommissioning Responsibility**

Responsibility means to discharge one’s duties or to be answerable for one’s action.\textsuperscript{38} Within this work, it refers to the state of being in charge of offshore decommissioning so that the party concerned bears any consequences that could result from it. This research submits that the following category of persons should be responsible for offshore decommissioning in Nigeria:

a) A person having the management of the installation;

b) A person to whom the following applies in relation to the installation:
   i. If he has the right to explore and exploit oil in any area;
   ii. If he conveys from the area, by means of pipes or a system of pipes, oil got in the exercise of that right;

c) A person who is a party to a joint operating agreement or other similar agreements in relation to activities falling under paragraph (b) above;

d) A person who owns any interest in the installation otherwise than as security for a loan;

e) A corporate body outside paragraphs (a) to (d) above but which controls or is controlled by any company within that category; or a third company controls these two companies;

f) Two or more persons in paragraphs (a)-(e) jointly.\textsuperscript{39}

\textsuperscript{36} Part IV of the Petroleum Act 1998, sections 29-45
\textsuperscript{38} http://www.k12.hi.us/~mkunimit/responsibility.htm
\textsuperscript{39} See generally the U.K. Petroleum Act 1998 ,supra, note 11
4.2. Offshore Decommissioning Procedure

A procedure is a specified series of actions or operations which have to be executed in the same manner in order to always obtain the same result under the same circumstances.\(^{40}\) Within the context of this research, procedure means the appropriate process, including measures to be taken before any offshore decommissioning activities can commence. This has the advantage of setting a standard to be followed by all responsible parties rather than leave the decision on the matter to the discretion of multinational oil companies. It will also serve as a check to the likelihood of bias on the part of government representatives.

The procedure to be followed, as proposed by this research, is hereafter highlighted:

A. The Director of the Department of Petroleum Resources should have the power to issue a notice requiring the responsible party or parties to prepare and submit a *decommissioning programme* for his approval. The notice should specify the time within which the programme must be submitted. It should also contain a specification of the content of the programme.

B. The Director should, without delay, exercise his power either to approve (with or without modification) or reject the programme; and to prepare a decommissioning programme where the responsible party fails to do so.

C. Where a decommissioning programme is approved by the Director, it should be the duty of the responsible party who submitted it to ensure that it is carried out and that any conditions to which the approval is subject are complied with.

D. A party that is aggrieved by any of the actions of the Director should be given the right to make an application to the court. A time limit should be specified for bringing such applications. The court with jurisdiction on this matter should be the Federal High Court.\(^{41}\) In the case of *Shell Petroleum*


\(^{41}\) This is to give effect to the provision under section 251(1) of the 1999 Constitution of Nigeria which vests exclusive jurisdiction in the Federal High Court in respect of matters relating to oil fields, as well as matters having to do with the actions of any agencies of the federal government.
Development Company of Nigeria v. Abel Isiah, the Supreme Court held that the Federal High Court has exclusive jurisdiction to entertain claims pertaining to upstream oil operations.

4.3. Offshore Decommissioning Options

Options stand for the various available choices. It is the alternatives at one’s disposal from which he can choose. When an offshore installation is ripe for decommissioning, different options are provided for which the responsible party could adopt. For a better understanding of the issues involved, the research considers it necessary to give a brief description of the physical structure of offshore platforms.

A typical offshore oil platform consists of the following parts:

- A topside: the actual platform above the surface of the sea on which offshore activities take place.
- A jacket: a structure largely of tubular steel which supports the topside.
- Footings: the lowest and heaviest section of the jacket, which are considered separately for decommissioning purposes.
- A pile of ‘drill cuttings’ on the seabed beneath the platform, consisting of drilled rock particles and drilling fluids arising from drilling the wells.

The pertinent question, for Nigeria’s oil industry, is this: which is the option that best suits the country’s obligation under international law and which represents the Best Practicable Environmental Option? In the light of this question, the research examines the offshore decommissioning options that can be employed within the Nigerian oil industry. In any event, the option to be adopted will depend on the peculiar circumstances of each case underscored by state obligation under the international law.

42 (2001) 1 N.W.L.R. Part 723 at 169
4.3.1. REMOVAL OPTIONS

a. TOTAL REMOVAL: This describes a situation in which the entire structure is removed by severing the legs below the mud line and the site is restored through the clearance of all obstacles and debris. This is the removal regime provided for by the Geneva Convention on the Continental Shelf (GCCS).\(^{43}\)

b. PARTIAL REMOVAL: This refers to the situation in which only the upper portion of the platform is removed to provide safe navigational passage.\(^{44}\) All or part of the lower portion remains in place.\(^{45}\) This removal option is recognized under the United Nations Convention on the Law of the Sea (UNCLOS).\(^{46}\)

\(^{43}\) Article 5(5)
\(^{44}\) Morakinyo, A. A, *supra* note 14
\(^{45}\) Ibid.
\(^{46}\) Article 60(3)
c. LEAVE IN PLACE: Here the platform is allowed to remain onsite at the end of production. Under this option, the equipment and modules on the deck are completely or partially removed to leave the support structure standing.47
d. TOPPLING IN PLACE: Platform Toppling in Place - the installation is removed by severing its legs above the mud line, after which it falls over onto the seabed.48

In order to establish Nigeria’s removal obligation, it may be recalled that Nigeria is a party to both the Geneva Convention on the Continental Shelf and the United Nations Convention on the Law of the Sea.49 This could create a problem of determining the removal regime that binds Nigeria. Under normal circumstances, where there are two conflicting treaties on the same matter, the later in time prevails.50 It has been argued that this rule does not apply as between the Geneva Convention on the Continental Shelf and the United Nation Convention on the Law of the Sea.51 This is because Article 311(1) of the United Nations Convention on the Law of the Sea provides that “this Convention shall prevail as between state parties, over the Geneva Convention of the Law of the Sea of 29 April 1958”. On this basis, it is safe to conclude that Nigeria’s removal obligation is that provided by the United Nations Convention on the Law of the Sea. Moreover, the Supreme Court of Nigeria has held that the United Nations Convention on the Law of the Sea supersedes the Geneva Convention on the Continental Shelf.52 Since the International Maritime Organization (IMO) has been recognized53 as the “competent international organization” envisaged by the United Nations Convention on the Law of the Sea,54 then the IMO Guidelines55

48 Ibid.
49 Zuru, S. A. Supra, note 13
50 Article 64 of the Vienna Convention on the Law of Treaties provides that if a new preemptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.
51 Amakiri, A. Supra note 32
53 Amakiri, A. supra note 32
54 Article 60(3)
should be taken to be the “generally accepted international standards”\textsuperscript{56}. The implication is that total removal becomes the general rule and partial removal is allowed only under certain specified conditions\textsuperscript{57}. It is the view of this research, therefore, that this should be the position in Nigeria.

4.3.2. DISPOSAL OPTIONS

An offshore decommissioning regime must provide, not only for the removal of the installations, but also for the proper disposal of the removed parts\textsuperscript{58}. Nigeria’s oil industry must take cognizance of the fact that any unsustainable disposal will result in a violation of international environmental standards and practice. Some of the disposal options are highlighted below:

- a. Reuse
- b. Disposing As Waste On Land
- c. Disposal Of Clean Installation In A Deep Water Site
- d. Recycling
- e. Artificial Reefs

Perhaps the most interesting option is that which involves the creation of artificial reefs. Here, disused offshore oil installations are converted into artificial reefs\textsuperscript{59}. This “Rigs to Reef”\textsuperscript{60} approach is acclaimed one of the most effective means of increasing the bio-productivity of coastal waters by providing additional habitats for marine life\textsuperscript{61}. It was first utilized in the Gulf of Mexico, United States, whereby the

\begin{itemize}
\item Article 60(3)
\item See Articles 3.1 and 3.6 of the IMO Guidelines. \textit{Supra} note 55
\item “Artificial Reefs”. At \textit{en.wikipedia.org/wiki/Artificial_reef}
\item Raftican, T. “Decommissioning California’s Offshore Platforms: Rigs to Reefs in Politically Hot Waters”. At www.calreefs.org
\item Stanislav, P. \textit{Supra} note 16
\end{itemize}
decommissioned installation or its parts is left on the sea bed as a breeding ground and habitat for fish and other marine animals and plants, and thus encourage marine life.\(^{62}\) Observations in the U.S. Gulf revealed that the presence of these artificial reefs led to significant increase in commercial fish catches in the region.\(^{63}\) In addition, the areas around the artificial reefs became very popular places for recreational and sports fishing.\(^{64}\) These factors and more led to the mass movement in the U.S. in the 1980’s using the slogan “from rigs to reefs”.\(^{65}\)

It is important to point out that the artificial reefs option could in some cases pose some dangers to navigation and trawling fishing.\(^{66}\) Commercial fishermen who trawl sometimes oppose this option because their nets may snag a rig creating a hazardous situation.\(^{67}\) Navigational mishaps and diving accidents may also occur around an artificial reef.\(^{68}\) Therefore, this research holds the view that although the success of this option has resulted in it being introduced in other offshore regions,\(^{69}\) it suffices to suggest that dedicated research needs to be conducted to determine its suitability or otherwise for Nigeria.

Having considered the different disposal options, it is important to bear in mind that the London Dumping Convention will clearly apply to disposal of offshore installations in Nigeria.\(^{70}\) Therefore, its principles should be incorporated into the domestic laws of the country.\(^{71}\) The requirements of the Convention along with the IMO Guidelines

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\(^{62}\) Amakiri, A. supra note 32

\(^{63}\) Stanislav, P. supra note 16

\(^{64}\) Ibid.

\(^{65}\) “Signs and Banners and Slogans for Fishermen’s Protest Rally in DC”. At ahabsjournal.typepad.com/.../signs-and-banners-and-such-for-february-24-protest-rally-in-dc.html

\(^{66}\) “Decommissioning, abandonment and removal off offshore oil and gas facilities”. At www.offshore-environment.com/abandonment.htm

\(^{67}\) “Artificial Reefs”. At en.wikipedia.org/wiki/Artificial_reef

\(^{68}\) Ibid.

\(^{69}\) E.g., in Australia, Japan, Brunei, Malaysia, etc.

\(^{70}\) Nigeria is one of the contracting parties to the London Dumping Convention. See http://archive.greenpeace.org/odumping/

\(^{71}\) “Contracting Parties shall individually and collectively protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter. Where appropriate, they shall harmonize their policies in this regard.” (Article 2 Objectives)
should be the baseline for the disposal of any offshore installation.\textsuperscript{72} Best Practicable Environmental Option would ensure that sea dumping of facilities is fully approved by the Director of Petroleum Resources after providing clear justification that onshore dismantling or recycling options are not available or not practicable under the circumstances.

4.4. **LEGISLATION**

There is no better way of developing a legal framework for offshore decommissioning than by means of legislation. Legislation is the product of a deliberate and formal expression of rules of conduct made by the relevant law-making authority.\textsuperscript{73} Once the necessary requirements for legislation are complied with, the rules become binding and cannot be assailed by extra-legal considerations.\textsuperscript{74}

In Nigeria, since matters relating to oil mining and oil fields are within the exclusive legislative list, it means the relevant law making authority for offshore decommissioning is the National Assembly.\textsuperscript{75} Furthermore, since offshore decommissioning is basically regulated by international treaties, there is a requirement for legislative enactment before any such treaty can be domesticated within the country.\textsuperscript{76} In addition to the matters addressed above, the legislation should bestow upon the Director of Petroleum Resources the power to make regulations in respect of certain matters. It should create offences for contravention of its provisions and prescribe penalties.

4.5. **THE CONTRACT REGIME**

The major factor that underlies the existence of petroleum contracts is the United Nations Resolution number 1803 of 1962 which in effect vests sovereignty over natural resources in the nation states where the resources abound.\textsuperscript{77} The oil-producing states


\textsuperscript{74} Ibid.

\textsuperscript{75} Section 4 of and second schedule to the Constitution of the Federal Republic of Nigeria, 1999.

\textsuperscript{76} Section 12 of the Constitution.

\textsuperscript{77} “Permanent Sovereignty over Natural Resources”. At www.un.org/documents/ga/res/17/ares17.htm
are mainly developing countries that usually lack not only the capital requirement but also expertise needed to venture into oil exploitation and production.\footnote{Zuru, S. A. supra note 13} This state of affairs thus sets the stage for contractual relationship between the governments of oil-producing countries and multinational oil companies.\footnote{Ibid.} This is the practice in Nigeria.\footnote{Gidado, M. (1999). \textit{Petroleum Development Contracts with Multinational Oil Firms: the Nigerian Experience}. Maiduguri. Ed-Linform services}

The Nigerian government has operated many international oil contracts with different multinational oil companies (the seven sisters).\footnote{Shell, Mobil, Chevron, Elf, Total, Agip, Texaco. See \texttt{http://www.journeytoforever.org/biofuel_library/sevensusisters/7sistersToC.html}} These contracts are of different types,\footnote{Traditional Concession Contracts, Joint Venture Contracts, Production Sharing Contracts and Risk Service Contracts. See Gidado, M. supra note 77} the central objective being to seek a balance of the interests, rights, obligations and benefits between the two parties in order to achieve greater mutuality of interest, commerciality and stability.\footnote{Gao, Z. (1994) \textit{International Petroleum Contracts: Current Trends and New Directions}. London, Graham & Trotman ltd.} At the same time, the relationship breeds conflict because of the differences in the underlying objectives of each party.\footnote{Ibid.} While the government seeks to develop resources for public good, the multinational oil companies have as cornerstone profit maximization at the least risk.\footnote{Ibid.}

That said, sustainable decommissioning of offshore installations is an issue that the Nigerian government must treat as a matter of public good. One way to do this is to incorporate relevant decommissioning clauses into the oil contracts with multinationals. Each party is bound to perform its part of the bargain based on the legal principle of \textit{pacta sunt servanda}.\footnote{It is a Latin phrase which stands for “agreements must be kept”. See \texttt{www.britannica.com/EBchecked/topic/.../pacta-sunt-servanda.}} This, in effect, creates a binding obligation on the parties involved and thus establishes a sustainable offshore decommissioning regime for the country.

On the other hand, the existing oil contracts between Nigerian government and the multinationals\textsuperscript{87} should be revised and adapted to reflect Nigeria’s offshore decommissioning obligation. As noted above, the principle of pacta \textit{sunt servanda} creates a binding obligation on the government to perform its own part of the deal. Again these contracts usually contain \textit{stabilization clauses}.\textsuperscript{88} The question thus arises: how can the government achieve a revision of contractual terms without breaching the contract itself? The answer lies in resorting to the well established principle of \textit{clausula rebus sic stantibus}.\textsuperscript{89}

\textbf{5.0. CONCLUSION}

Nigeria as a country exists within the community of nations of the world. As such, it is imperative that the country adopts policies that conform with the pursuit of the common good of the international community. Nowhere is this more relevant than in the area of offshore decommissioning. This is because any unsustainable offshore decommissioning practice within Nigeria’s territory could have negative extra-territorial environmental implications since the marine environment suffers damage. This damage is usually far-reaching and affects not only marine life but also plants, animals and humans on land. A good grasp of the forms and extent of this damage is important in tackling the problem of marine pollution.

Understandably, Nigeria’s environmental regime is not well equipped to handle offshore decommissioning because the installations are yet to mature for it. However, since these installations are approaching the end of their productive lives, it has become mandatory to have, ahead of time, a comprehensive offshore decommissioning strategy.

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\textsuperscript{87} E.g., the Joint Venture between NNPC, Shell, Elf and Agip, entered in 1997 and covering over eighty oil fields. See \url{http://www.nnpcgroup.com/nnpc-business/upstream}

\textsuperscript{88} These are clauses contained in international petroleum contracts that seek to ensure that future changes in the legislation of the host country does not vary the terms of the contract between the parties. See Sornarajah, M. (1996). \textit{The International Law on Foreign Investment}. New York, Cambridge University Press.

\textsuperscript{89} The concept of \textit{rebus sic stantibus} (Latin: “things standing thus”) stipulates that, where there has been a fundamental change of circumstances, a party may withdraw from or terminate the treaty or contract in question. See \url{http://www.britannica.com/EBchecked/topic/930525/rebus-sic-stantibus}
decommissioning regulatory regime. Such a regime must in all its ramifications meet the standard imposed on all states by the binding international law on the subject.

Apart from the rules of international law, Nigeria can learn from the experiences of other jurisdictions where offshore decommissioning has taken place. The lessons to be drawn from the political and socio-economic controversies that surrounded the Brent Spar decommissioning in the U.K. as well as the “Rigs to Reefs” debate in the United States cannot be ignored. In other words, public opinion plays an important role which must be taken into consideration.

Any discussion on offshore decommissioning in Nigeria will be incomplete without mention of the Petroleum Industry Bill 2009. Provisions relating specifically to offshore decommissioning are found under section 287 and 288 of the Bill. This is commendable considering the country’s poor regulatory structure on the subject. However, this research considers it useful to note the following:

The Bill allows either the Inspectorate or the licensee or lessee to issue a decommissioning notice. However, the time frame for issuing such notice is not specified.

The Bill requires that offshore decommissioning be conducted in accordance with the guidelines and standards set by the IMO. The IMO Guidelines alone is not adequate for various reasons. Firstly, it makes no provision for decommissioning of offshore pipelines. Secondly, it is concerned mainly with safety of navigation while fishing and other interests are not given due consideration. The IMO Guidelines are mere recommendations rather obligations. This might promote discrepancy in offshore decommissioning practice. It is the view of this research therefore that IMO Guidelines should only be implemented as part of general international instruments such as the London Dumping Convention.
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• IMO Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone 1989
• United Nations Convention on the Law of the Sea
• Vienna Convention on the Law of Treaties

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• Petroleum (Drilling and Production) Regulations 1969
• Petroleum Act Cap P10 L.F.N. 2004
• Guidance Notes on Decommissioning of Offshore Oil Installations and Pipelines (U.K.)
• Petroleum Act 1998 (U.K)