Assessing the Petroleum Fiscal Regimes of Nigeria, Ghana, and Cameroon

by

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Abstract

Petroleum extraction is a lucrative source of tax revenue for many governments in Sub-Saharan Africa. However the generation of oil tax revenue can be limited by the need to attract and incentivize oil companies to conduct exploration and extraction activities. This thesis assesses how three African countries – Nigeria, Ghana, and Cameroon – administer the tradeoff between maximizing tax revenue for the state and attracting investment. It uses a four-point framework to examine the inputs or design of each country’s regime by focusing on: the state’s dependence on oil revenue; the stage of development of the oil industry; the government’s financial position; and the extent of state participation in the oil sector.
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1 Introduction

Oil production\(^1\) generates significant amounts of wealth for national governments in Sub-Saharan Africa.\(^2\) In the past thirty years, proven oil reserves in the region increased by over 120\%, from 57 billion barrels in 1980 to 124 billion barrels in 2012.\(^3\) Production will likely increase, as an estimated 100 billion barrels in reserves are offshore.\(^4\) Driven by increased global demand, particularly from emerging economies such as China, India, and Brazil, states across the region will probably continue to cash in on the tremendous wealth potential of their oil reserves. Nigeria and Angola, the region’s two largest exporters, earn estimated annual oil revenues of approximately USD 100 billion and USD 70 billion, respectively.\(^5\)

As oil prices remain high and new oil fields are discovered,\(^6\) revenue generated from the taxation of oil production will continue to contribute to the national budgets and development objectives of oil-rich African states, in significant ways. With high oil prices and increased levels of output, the taxation of oil production can provide a stable source of revenue for oil-rich African states, especially as sources of other domestic revenue and external sources of finances dwindle.\(^7\) Taxation from oil production has the potential to provide oil-rich African states with the funding to build needed public infrastructure (such as roads, hospitals, and

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\(^1\) The oil-production examined here consists of upstream activities which consists of all activities involved in the exploration for crude oil, and the drilling and operation of crude oil wells. The terms “petroleum” and “oil” are used interchangeably throughout this paper.

\(^2\) Also referred to as “Africa”.


\(^4\) Ibid.


\(^6\) KPMG, supra note 3 at 5.

schools), and it may offer a way to create an environment that supports greater economic growth and development in the state.\(^8\)

However, natural resources rents do not necessarily lead to development or higher rates of economic growth. The “resource curse” hypothesis, as developed by economists,\(^9\) helps to explain why many oil-producing states achieved slower economic growth and weaker development outcomes than other nations with a similar amount of even less resources.\(^10\)

According to the hypothesis, natural resource endowments can be more of a curse to low- and middle-income developing countries than a blessing.\(^11\) The resource curse is defined as a combination of harmful economic and political effects,\(^12\) including “Dutch disease”, which describes the negative effect of the rise of the value of a country’s currency to non-extractive industries.\(^13\) The resource curse has taken many forms in Africa; most notable have been the political effects, which included elites pocketing economic rents with little accountability and governance oversight.\(^14\)

In addition to the risks associated with the resource curse, many oil-producing African states lack the capacity to explore and produce crude oil themselves.\(^15\) As a solution, they rely on their petroleum fiscal regimes to achieve two key objectives: attract investment from foreign oil companies to conduct upstream oil production; and maximize the generation of tax revenue from this activity for the state. However, these two objectives inherently conflict when oil-producing African states use fiscal measures to attract investment, as they often

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\(^{8\text{ Ibid.}}\)


\(^{11\text{ Ibid at 1.}}\)

\(^{12\text{ Patrícia Galvão Ferreira, Breaking the Weak Governance Curse: Global Regulation and Governance Reform in Resource-Rich Developing Countries (SJD Thesis, University of Toronto Faculty of Law, 2012) at 28 [unpublished] [Ferreira].}}\)

\(^{13\text{ Auty, supra note 9 at 3.}}\)


\(^{15\text{ Several oil-producing African states, including Angola, Cameroon, Chad, Côte d'Ivoire, Equatorial Guinea, Ghana, Mali, Mauritania, Nigeria, Senegal, South Sudan, Sudan, and South Africa, have state oil companies that are integrally involved in the oil industry. However, only the national oil companies of Angola and South Africa are engaged directly in oil production through exploration and drilling, while Ghana’s state oil company undertook exploration activities prior to the discovery of its recent oil fields.}}\)
Attractive fiscal measures cut into the petroleum revenues oil-producing African states can maximize for themselves. Consequently, the proper design of the fiscal regime is key for oil-producing African states to balance these two conflicting objectives and potentially benefit from growing levels of oil production.

Currently, national governments in oil-producing African states use a variety of different fiscal instruments to govern oil production. Royalties, resource rent taxes, corporate income taxes, and contractual schemes such as service contracts and production-sharing agreements are used to tax oil production directly. Additionally, oil-producing African states make use of tax incentives to further formulate their petroleum fiscal regime.

The precise combination of policies used varies from country-to-country, as no two oil-producing African states are the same — social and economic conditions vary, including levels of development, economic diversity, and the availability of tax revenue from other sources. Accordingly, a tax regime that is designed to meet the fiscal and development objectives of one state may not be suitable for another. Therefore petroleum fiscal regimes should be country-specific and tailored to the needs and demands of individual states. For this reason, there is no blueprint for petroleum fiscal regimes that achieves the right balance between tax revenue generation and attracting foreign oil investment.

Despite the lack of a blueprint to evaluate these regimes, four key factors help differentiate oil-producing states and contribute to the design of country-specific fiscal regimes: the extent of oil dependence; the stage of development of the oil industry; the government’s financial position; and state participation in the oil sector. To better understand whether oil-producing African states are achieving the right balance between maximizing the generation of oil revenue and attracting foreign oil investment to conduct upstream oil production, these

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17 Ibid.
four factors will be used as an analytical framework to assess the petroleum fiscal regimes in place in three oil-producing African states – Nigeria, Ghana, and Cameroon.

1.1 Context: The Growing Importance of Oil Taxation Revenues

Taxation is considered vital to a country’s development agenda – it provides a stable source of revenue to finance development objectives, such as the construction of social and physical infrastructure. Furthermore, tax revenues are a valuable way to promote economic development by funding government activities that stimulate production of goods for export, as well as to assist the growth of small and medium sized enterprises. Securing reliable domestic sources of financing is viewed as being most important now as external sources of funding (particularly foreign aid) decline. Adding to this call that taxation is important to the development agenda was the support of the international community at two United Nations conferences on financing for development: Monterrey in 2002, and Doha in 2008.

As owners of their mineral rights, including oil, the national governments of Nigeria, Ghana, and Cameroon have all formulated fiscal policies to govern oil production and generate tax revenue. Taxation of oil-production is already proving to be an important source of revenue for the governments of these three Sub-Saharan African countries. Of the three, the International Monetary Fund classifies both Nigeria and Cameroon as being fiscally dependent on revenues derived from resource extraction, with over 20% of budgetary revenue consisting of natural resource revenue. In Ghana less than 5% of budgetary

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22 Pfister, supra note 7 at 6.
23 Ibid at 5.
25 Pfister, supra note 7 at 5.
revenue is derived from natural resource revenue;\textsuperscript{28} however, with the discovery of the offshore Jubilee oil fields in 2010, oil production may become a greater source of revenue for Ghana’s national budget in the near future and increase the amount of funds available to finance important development objectives.\textsuperscript{29}

Declining revenues from other sources also highlights the importance of taxing oil wealth. According to economist Mike Pfister, African governments will likely see a decline in revenues generated from trade, as free trade agreements lower tariff rates in the region.\textsuperscript{30} Currently, up to 30\% of non-resource tax revenue in some African countries is raised through tariffs and other trade related taxes.\textsuperscript{31} It is projected this share will decrease over the coming years as African states satisfy the conditions of trade agreements and economic partnership agreements with other states. Oil taxation offers a way for oil-producing African states to offset the shortfall in revenue from other sources, and to boost their tax-to-GDP ratio. Currently, Sub-Saharan African states still lag behind developed states in the ratio of tax-to-GDP. Recent figures show Organisation for Economic Cooperation and Development (OECD) countries average a tax-to-GDP ratio of 36\%, compared to an average of 25\% in Sub-Saharan Africa, and less than 10\% in Nigeria, Ghana, and Cameroon.\textsuperscript{32}

When designing fiscal regimes, governments should balance the aim to collect revenue against any deterrence effects this may have on attracting investment from foreign oil companies.\textsuperscript{33} Fiscal regimes dictate much of the environment in which investment takes place – foreign investment is drawn to jurisdictions where taxes are low and incentives are in place to maximize profits repatriated to the investor’s home state;\textsuperscript{34} stringent tax codes are

\textsuperscript{29} KPMG, supra note 3 at 5.
\textsuperscript{30} Pfister, supra note 7 at 8.
\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid at 7, 9.
seen as a deterrent to investment.\textsuperscript{35} On the other hand, however, this objective inherently conflicts with the host government’s goal of retaining as much of the revenue generated from the exploitation of its natural resources.\textsuperscript{36} Although the presence of immobile wealth-generating resources, such as oil, may be enough to attract investment, and minimize the impact of a strict fiscal regime,\textsuperscript{37} “governments are pulled in different directions”\textsuperscript{38} as they strive to provide sufficient incentives to attract FDI while maintaining the ability to collect revenue needed to meet development goals.

1.2 Research Question and Hypothesis

The design of a state’s petroleum fiscal regime is crucial to ensuring the national government maximizes the generation of tax revenue from oil production while also ensuring the regime does not deter foreign oil companies from investing in oil production activities. Although the fiscal regime is country-specific, there are four factors – the extent of oil dependence; the stage of development of the oil industry; the government’s financial position; and state participation in the oil sector – that should shape the formulation of petroleum fiscal regimes in all countries.\textsuperscript{39} The purpose of this thesis is to utilize these factors as an analytical framework to answer: do the petroleum fiscal regimes in Nigeria, Ghana, and Cameroon achieve the right balance between maximizing the generation of tax revenue and attracting foreign oil investment?

Other evaluations of petroleum fiscal regimes utilize criteria such as efficiency, neutrality, equity, risk sharing, stability, clarity and simplicity to assess the fiscal instruments that govern oil production.\textsuperscript{40} What this existing literature has in common is a focus on the outcomes of a given tax regime by measuring its performance and robustness against set

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{35} Mark Klaver & Michael Trebilcock, “Chinese Investment in Africa” (2011) 4:1 The Law and Development Review 168 at 198 [Klaver].
\item \textsuperscript{36} UNECA, supra note 34.
\item \textsuperscript{37} Lundgren, supra note 10 at 60.
\item \textsuperscript{38} UNECA, supra note 34.
\item \textsuperscript{39} Davis, supra note 20; Lundgren, supra note 10 at 52.
\end{itemize}
\end{footnotesize}
This does not capture the policy considerations involved in the design of the regime itself. The four factors which I propose fill this gap by delineating these considerations and explores their utility as inputs into the design of a given tax regime from a policy perspective. By focusing on the inputs, it is possible to formulate unique country-specific policy options, which the methods of evaluation listed above do not address. Thus, the application of this model was inadequate to address my research question.

1.3 Methodology

Three qualitative case studies based exclusively on secondary sources are used to answer the research question. No quantitative data is used to measure the four factors included in the analytical framework. The literature used was taken from development banks, international financial institutions, regional organizations, and prominent academics that discuss petroleum fiscal management in Sub-Saharan Africa generally, and Nigeria, Ghana, and Cameroon in particular. The research included: canvassing relevant literature in order to identify factors for the analytical framework; gathering information related to the different fiscal policies available to governments; collecting data about the scale of the oil sector in Nigeria, Ghana, and Cameroon; and learning more about current fiscal policies in use and their impact on revenue generation.

The design of fiscal policies assumes that there are institutions and good governance, which are vital to maximizing the generation of tax revenue in oil-producing African states. Without these institutions and governance mechanisms to facilitate the administration of these policies, the state cannot benefit from them.42 The importance of good governance and institutions in oil-producing African states is well documented in literature and will not be revisited here.

1.4 Outline

Chapter Two undertakes an analysis of the relevant literature. The analytical framework is explained in greater detail, as well as the various fiscal instruments available for generating

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41 Nakhle, ibid at 11.
42 Paul Collier, The Plundered Planet: Why We Must – and How We Can – Manage Nature for Global Prosperity (London: Allen Lane, 2010) at 60; Ferreira, supra note 12 at 53; Klaver, supra note 14 at 205.
tax revenue from oil production and attracting foreign oil investment. The petroleum fiscal regimes of Nigeria, Ghana, and Cameroon are then described in Chapter Three. Chapter Four analyzes each state’s regimes and makes specific policy recommendations. Chapter Five concludes the thesis.
Chapter 2
Literature Review

2 Literature Review

2.1 Introduction

This chapter examines how balancing the interests of national governments against the need to attract foreign oil investment and incentivize companies to conduct petroleum-related activities is key to the design of petroleum fiscal regimes.\textsuperscript{43} Oil-producing states control the terms and conditions in which foreign oil companies invest in their sector and can structure the regime to ensure a balanced distribution of wealth to both the national government and oil companies. A fiscal regime that extracts significant amounts from oil companies gives national governments a greater share of resource wealth, but may undermine the private sector’s desire to explore and drill for oil.\textsuperscript{44} Thus, it is crucial for oil-producing states to design and implement the optimal fiscal regime that achieves the balance of distributing wealth between both the national government and oil companies. Yet despite overwhelming agreement regarding this objective, scholars and policymakers have thus far argued that there is no ideal system;\textsuperscript{45} rather the consensus is that petroleum fiscal regimes should be tailored to a country’s specific conditions and circumstances.

To assess whether the petroleum fiscal regimes in Nigeria, Ghana, and Cameroon are tailored, country-specific policies that achieve the balance between generating tax revenue and attracting and incentivizing oil companies, this paper utilizes an analytical framework consisting of four factors that should shape fiscal policy formulation. These four factors were identified from the literature but no other author brings them together, as I do here. Thus, each of these factors has been explored individually, and before bringing them together for the analysis of the cases, I discuss each of them are discussed in Section 2.2.

\textsuperscript{43} Otto, \textit{Mining Royalties}, \textit{supra} note 19 at 8.
\textsuperscript{44} Ibid.
2.2 Analytical Framework – Factors That Should Shape Fiscal Policy Formulation

A number of different factors may influence the formulation of petroleum fiscal regimes in Sub-Saharan Africa, including the geological, economic, social and political circumstances of each individual state. Of the different variables available, this chapter focuses on four specific factors discussed in the literature:

1) the extent of oil dependence;
2) the stage of development of the oil industry;
3) the government’s financial position; and
4) state participation in the oil sector.

These four factors were selected because they are defining characteristics of oil-producing states and are key components of the state’s fiscal relationship with the oil sector. As a result, each should be accounted for in the formulation of petroleum fiscal regimes in Sub-Saharan Africa. In this thesis, these four factors are used to analyze the design and inputs of a petroleum fiscal regime, and help determine whether the regime achieves the right balance between balancing government and private interests. In sum, these factors will be used to assess whether the petroleum fiscal regimes in Nigeria, Ghana, and Cameroon reached the right balance between the conflicting objectives of generating tax revenue for national governments and attracting and incentivizing foreign oil investment (Chapter 4). Sections 2.2.1 to 2.2.4 examine each of these four factors and how each should impact on countries’ fiscal considerations.

2.2.1 Dependence on Oil Revenue

Revenue generated from oil production is a significant source of income for oil-producing African states and can be used to finance economic and social development objectives. Oil-producing African countries are characterized by the under-provision of public services, the

46 Otto, Mining Royalties, supra note 19 at 2.
47 Davis, supra note 20 at 2; Lundgren, supra note 10 at 52.
48 Outlook, supra note 24 at 79.
underdevelopment of public infrastructure, and large fiscal deficits. Thus the value of oil revenue to the national budget of an oil-producing African state should be reflected in its petroleum fiscal regime.

Oil-producing states are some of the countries that most depend on resource revenues as a source for financing the national budget in Africa. Among the Sub-Saharan African states classified as “resource-rich” by the International Monetary Fund (“IMF”), oil revenue ranges from over 90% of budgetary revenue in Equatorial Guinea to slightly under 60% in Gabon. Adding to the dependence of oil-producing African states on oil revenue is the increasing shortage of funds available from external sources – such as development assistance, foreign grants and loans – and the limited administrative capacity to mobilize domestic resources, including personal and corporate income tax. At the other end of the spectrum are resource-rich states that have a smaller percentage of their budgetary revenues consist of natural resource receipts; in both Ghana and South Africa, for example, less than 5% of budgetary revenue is generated from the taxation of natural resource extraction.

Compounding a state’s dependence on oil revenue is its effect on other sectors of the economy. According to the resource curse, a state that is well endowed in natural resources tends to suffer from Dutch disease when the export of natural resources leads to an influx in foreign currency, which raises the value of that country’s currency to a level that is detrimental to other exporting sectors. As a result, these other exporting sectors are less competitive and output in the whole economy can decline, leading to lower tax revenues available from these sectors and thus entrenching the states dependence on oil revenue. Therefore, rather than maximizing revenue generation and supporting economic growth, dependence on oil taxes can hurt a country’s economy in the long run because it limits

51 The International Monetary Fund defines resource-rich states as significant exporters of natural resources (IMF, supra note 27 at 60).
52 Thomas, supra note 28 at 4. According to the IMF report, countries are deemed “fiscally dependent” on natural resources if natural resource revenue exceeds 20% of budgetary revenue.
53 Outlook, supra note 24 at 79.
54 Thomas, supra note 28 at 4.
55 Collier, supra note 42 at 41.
economic diversification and the employment opportunities which this creates.\textsuperscript{56} Furthermore, the amount of tax revenue available from other industries is limited as insufficient economic diversification and weak non-oil sectors restricts the availability of non-oil tax revenue.\textsuperscript{57}

In an effort to neutralize the impact of the resource curse, oil-producing African states should structure their petroleum fiscal regime to account for their level of dependence on oil revenue and its potential effects; they should seek to strike a balance between maintaining a level of dependence that is not detrimental to foreign oil investors and supports other sectors of its economy that can contribute to a reduced dependence on oil revenue. How this can look varies as a result of the state’s level of dependence.

Oil-producing African states with a high dependence on oil revenue\textsuperscript{58} should strive to maintain consistent levels of revenue from oil production while also enacting fiscal policies that can help reduce dependency long-term. Fiscally dependent national governments can tax slightly below peak level that ensures significant revenue generation and divert forgone revenue to dependency-reducing efforts. These efforts should consist of both government- and firm-related measures. At the government level, the state should direct some fiscal revenue to non-petroleum industries, such as agriculture and manufacturing, in order to encourage economic diversification and support other exporting sectors of the economy harmed by the effects of Dutch disease. At the firm level, the state can provide either fiscal incentives or stipulate contractual provisions (or use a combination of both) to encourage oil companies to engage in activities that support value-added production in the oil sector, such as manufacturing crude-based products. With a combination of these efforts, highly dependent oil-producing African states can encourage economic diversification as a way to reduce dependency on oil revenue.

\textsuperscript{56}Ibid at 42.
\textsuperscript{58}According to the IMF Working Paper by Alun Thomas and Juan P. Treviño, countries are deemed “fiscally dependent” on natural resources if natural resource revenue exceeds 20% of budgetary revenue (Thomas, supra note 28 at 4).
On the other hand, oil-producing African states that are less dependent on oil revenue should restructure their petroleum fiscal regimes to ensure that oil production is being taxed at a level that does not sacrifice maximum revenue generation in favour of investment. The current petroleum fiscal regime in less fiscally dependent states may be formulated to encourage investment at the expense of revenue maximization by the national government. Instead, national governments should ensure the regime supports its budgetary objectives by enacting royalties and tax rates that achieve maximum revenue generation, and by eliminating either standalone incentives or those included in contractual schemes that reduce revenues available to the state. This may include reducing the number of available deductions, or altering contractual provisions that limit the state’s share of revenue from joint ventures. Furthermore, to ensure alterations to the petroleum fiscal regime do not increase the state’s dependency on oil revenue, national governments can direct some of the new revenue to measures aimed at diversifying oil activities or supporting other sectors of the domestic economy.

2.2.2 Stage of Development of the Oil Industry

Oil sectors across Sub-Saharan Africa are at different stages of development, ranging from mature industries in countries like Nigeria (which began commercial oil production in the late 1950s), to relatively newer production in Ghana, whose sector undertook commercial activities starting in 2010. In addition to the age of the sector, the longevity of a state’s oil sector is another determinative characteristic of the industry’s stage of development. Referred to as “resource horizon”, some oil sectors are facing depleting reserves while others are burgeoning. Oil-producing African states should assess the number of years that oil can be expected to generate revenues for the national government and account for both the resource horizon and age of its oil sector when formulating petroleum fiscal policies.

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62 Ibid.
The age of the oil sector impacts the state’s ability to tax heavily. States with younger petroleum sectors consisting of new or undiscovered oil reserves should prioritize attracting and incentivizing oil companies to undertake exploration. Once oil is discovered, the new oil-producing state can maintain that same fiscal regime in order to encourage further exploration and drilling.\(^{63}\) Despite the positive impact this will have on investment, it may be done at the expense of generating tax revenues. Therefore new oil producers with long resource horizons should progressively remove incentives and shift its priorities to increasing revenue generation over the remaining life of the project.\(^{64}\)

If, however, a new producer is faced with a short resource horizon, the state should ensure revenue generation is front-loaded to ensure that as much tax revenue as possible is gained from the project before the reserve is depleted. To this end, the state should offer minimal incentives applied in either one of two ways. First, incentives can be used only in the short-term during the first few years of extraction so that maximum revenue generation occurs in the remaining years of the project. Or alternatively, the state can offer to apply the same incentives over a longer period of time. Both approaches do not risk deterring investment during the early stages of the project; and they also support maximum revenue generation for a new producer with a short resource horizon, as minimal incentives are offered in favour of maximum revenue generation.

In instances where mature oil producers have long resource horizons (as is often the case), national governments should provide incentives that ensure continued investment from oil companies over the length of the project.\(^{65}\) However, if a mature producer has a depleting reserve, the petroleum fiscal regime should be structured to emphasize maximum revenue generation over the remaining life of the project since the state will soon lose the reserve as a source of revenue. Incentives should be phased out in instances where all of the state’s reserves are depleting. If it is only one reserve and there is potential for the discovery of others, the state should introduce incentives to encourage new exploration and drilling.

\(^{63}\) Amoako-Tuffour, supra note 40 at 8.


\(^{65}\) Ibid.
In addition to these concerns, both young and mature oil producers should be mindful of managing price volatility, which is a component of the next factor addressed below.

2.2.3 Government’s Financial Position

Governments’ financial positions vary drastically across oil-producing Sub-Saharan Africa. Fiscal deficits and public debt is a concern for many oil-producing states; and levels of public debt impact a government’s ability to access alternative sources of financing, such as credit. Consequently, if a state’s fiscal position limits its access to alternative sources of financing, it may be forced to rely extensively on oil production as a source of revenue to combat budgetary deficits and reduce levels of public debt.

An important consideration for states when managing levels of public debt is the price of oil. Higher oil prices allow states to generate more tax revenue from oil companies that have earned more income as a result of the increase in price. However, oil prices do not remain constant – they frequently change and are influenced by factors beyond state control. Therefore oil-producing African states should account for the volatility in oil prices in their petroleum fiscal regimes to ensure consistency in revenue generation wherever possible.

For heavily-indebted oil producers, this should include policies that ensure government revenues rise in line with oil-prices, while also securing consistent levels of revenue when prices are low. To do so, the petroleum fiscal regime can include a progressive royalty rate and resource rent tax that increases as profits rise with higher oil prices. Also, if the national government is an active partner in extraction with some oil companies through state participation schemes, the arrangement should be framed to provide the state with a greater share. Such measures can help buffer the impact of price volatility in the oil market.

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68 Ibid at 20.
70 Ibid.
Oil-producing African states that have strong credit market access may be less likely to account for oil-price volatility in their petroleum fiscal regimes.\textsuperscript{71} However, to ensure revenue generation is not negatively affected by changes in the price of oil, these states can use a progressive resource rent tax only while maintaining a constant royalty rate, corporate income tax, and share of state participation schemes. Since resource rents (or economic rents) are the returns that far exceed what the investor requires to conduct its operations, states can tax rents at a high rate and not affect the business’s bottom line.\textsuperscript{72} This approach is advantageous for states that are concerned with both attracting investment and combatting price volatility.

2.2.4 Extent of State Participation

The presence and role of a public oil company is another vital consideration in the formulation of petroleum fiscal regimes. A state-owned oil company is common to oil-producing states in Africa.\textsuperscript{73} However, many of them lack the capacity to explore and produce oil themselves.\textsuperscript{74} Therefore, attracting private investment is vital to oil sectors across Africa. Although private firms almost exclusively conduct oil activities in most oil-producing African states,\textsuperscript{75} national oil companies can play a pivotal role in the generation of tax revenue by engaging jointly with oil companies.

Through state participation, African oil-producers can directly share in the financial rewards available from oil production, rather than being a passive collector of tax revenue.\textsuperscript{76} State participation offers a number of benefits to African oil-producers; of particular relevance to the fiscal regime is the ability to potentially increase government revenues beyond what the regime normally provides.\textsuperscript{77} There are various versions of state participation, including equity participation (where government acquires a stake in oil production), service

\textsuperscript{71} Cottarelli, \textit{supra} note 66 at para 22.
\textsuperscript{72} Daniel, “Extracting Resource Revenues”, \textit{supra} note 61 at 22.
\textsuperscript{73} See Appendix 1 for a list of state-owned oil companies in Sub-Saharan Africa.
\textsuperscript{75} Ibid.
\textsuperscript{76} Ayoade, \textit{supra} note 16 at 202.
agreements, and production sharing agreements. Section 2.3.5 discusses each scheme in greater detail.

Several oil-producing African states, including Nigeria, Ghana, and Cameroon, engage in participatory schemes through a national oil company. The role of the national oil company can either be to act as the contracting party on behalf of the state; or in some countries, such as Angola and South Africa, the national oil company has the technical capacity to directly engage in oil activities. In states where there is no national oil company, the national government may contract directly with an oil company through the responsible ministry, such as finance.

Where a state enters into a contract either directly or through its national oil company, both the government and the oil company face increased financial risk as they explore and drill for oil. The risk is particularly high for the state in instances where it contracts the services of the oil company as it is contributing public funds to a project that may have little return. However, a major benefit of contractual schemes for national governments is the opportunity to accrue revenues directly by selling their share of the oil directly on the international market. These schemes are especially beneficial when oil prices are high (although any participation agreement should also account for volatilities in oil prices, as discussed in Section 2.2.3).

State participation presents significant benefits to oil-producing African states, and each should ensure its degree of participation is supporting maximum revenue generation. All of the petroleum fiscal regimes of Nigeria, Ghana, and Cameroon include some form of state participation. Greater details of each are discussed in Chapter Three; analysis of the schemes is undertaken in Chapter Four. The following Section 2.3 provides an overview of the various fiscal instruments that can comprise a petroleum fiscal regime.

78 Oshionebo, “Fiscal regimes”, supra note 26 at 213.
79 Ibid.
80 World Bank, Nigeria, supra note 71 at 42.
81 Oshionebo, supra note 26 at 213.
82 Ibid.
2.3 Fiscal Instruments

Petroleum fiscal regimes consist of various instruments, including: royalties; resource rent taxes; auctions; corporate income taxes; and contractual schemes, which include equity participation, service agreements, and production sharing agreements. Each will be examined in turn below.

2.3.1 Royalties

Oil-producing African governments generally expect to earn “a share of the surplus revenue” earned by oil companies after the costs of capital and labour are taken into account. Royalties are a measure through which this can be done – they allow national governments to retain a share of the resource rents as the resource owner.

The rate of a royalty can be based on three distinct measures: the value of the resource extracted; the profits earned by the company; or the weight of each unit of extracted resource. Under the unit-based approach, the royalty is set at a fixed rate; this approach can be attractive to states as it limits the impact of oil-price volatility on the revenue it collects. In contrast, the value-based and profit-based approaches utilize a flexible rate that is tied to the value of the resource and the profitability of the extractive operation, which impacts the amount of revenue the state will generate.

For governments, royalties are an attractive fiscal mechanism, as they ensure a share of revenue as soon as extraction commences. Royalties are also advantageous during times of high oil prices; however it does expose the host government to significant vulnerability if the price decreases drastically. Additionally, the share of revenue accrued by the government is dependent on full disclosure on the part of oil companies, which may not always occur.

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84 Oshioneb, “Fiscal regimes”, supra note 26 at 201.
85 Ibid at 202.
86 Ibid.
87 Ibid at 212.
88 Ibid at 202.
89 Ibid at 212.
Companies may deliberately distort the amount of profits earned in order to avoid paying higher royalties.90

Royalties can potentially impact a company’s decision to invest because of their impact on profitability.91 This effect depends on the rate charged, specifically if the future level of the royalty is lower than the current value as it makes extracting tomorrow more attractive than commencing production today.92 Royalties can also impact a company’s decision to continue operations, particularly in circumstances when oil prices are too low to cover both the costs of extraction plus the royalty.93

2.3.2 Resource Rent Taxes

Resource rent taxes are also charged on the surplus revenue earned by oil companies.94 Like royalties, rent taxes can be either profit- or value-based.95 Due to the accumulation of economic rents in the extractive sector, mineral economist John A. Cordes argues that this “has convinced many that mineral revenues should be taxed in a manner separate from and different to the income of other producing sectors.”96 Taking such an approach has its advantages for national governments, as rents “can be taxed at up to (just less than) 100 percent without causing any change of behaviour.”97 Another advantage to resource rent taxation is that rents tend to be accumulated over the life of an extractive project, thus providing a continued source of revenue for national governments.98 However, like royalties, the rate of return varies depending on the profitability of the project, which depends on global commodity prices.99

Different types of resource rent taxes are currently in use. Most of the distinguishing features vary depending on the tax base that is used as the unit of calculation and the potential

90 Ibid.
91 Boadway, supra note 83 at 28.
92 Ibid.
93 Ibid.
94 Ibid at 31.
97 Boadway, supra note 83 at 15.
99 Ibid.
The \textit{R-based cash flow tax} (also commonly referred to as the \textit{Brown tax}) is charged on the producer’s cash flow, which “consists of all real (as opposed to financial) transactions on a cash basis.”\footnote{Boadway, \textit{supra} note 83 at 32; Blake, \textit{supra} note 34 at 96.} Therefore the base for this tax is “all revenue from the sale of output less all cash outlays for the purchases of all inputs, both capital and current.”\footnote{Boadway, \textit{ibid}.} Since deductions are already accounted for in the taxation formula, further deductions for such things as interest or other financial costs are not made.\footnote{Ibid.}

Another feature of the Brown tax that is inherent in its design is the immediate recovery for tax losses.\footnote{Ibid.} Based on these features, Andon Blake and Mark Roberts describe this variation of the rent tax as “non-distortionary or neutral” as it “would not alter decisions on consumption, trade or production…”\footnote{Ibid.}

Robin Boadway and Michael Keen discuss two other variations of the rent tax that are available to oil-producing countries but are rarely utilized. These are the \textit{S-based cash flow tax} and the \textit{Allowance for Corporate Equity (ACE) tax}.\footnote{Boadway, \textit{supra} note 83 at 32-33. Boadway and Keen also describe a distinct “\textit{resource rent tax}”, which they describe as originating with Garnaut and Clunies Ross (1975, 1983). This variation is similar to the Brown tax, with the main difference being that losses are carried forward (at 33).} The S-based cash flow tax is charged against the “net distributions to shareholders”, which captures rents from financial services and is of little concern to resource firms.\footnote{Ibid at 33.} Similarly, the ACE tax allows firms to deduct interest payments on debt, as well as allow for “a notional return on equity, with the retained earnings element of equity calculated…using the same depreciation rate as that used to calculate taxable profits.”\footnote{Ibid.}

According to Cordes, a purely rents-based taxation scheme is attractive to extractive investors “since no tax is collected unless and until a normal profit or acceptable rate of return is realized.”\footnote{Cordes, \textit{supra} note 96 at 30.} However, this approach presents disadvantages to national governments. Firstly, it shifts the risk of not collecting tax revenue to the state and society as
a result of the scheme’s neutral nature. Secondly, the scheme does not guarantee immediate return, since taxable revenue may not accrue for a number of years after the start of a project. Lastly, rent-based systems may be more difficult to administer, as the tax is charged per project, which can be cumbersome to monitor if numerous projects are in place.\textsuperscript{110}

2.3.3 Auctions

Unlike royalties and resource rent taxes, auctions provide governments with a source of revenue that is independent of an extractive project’s profitability. Auctions serve two key functions for oil-producing states: first, they allocate extraction rights to prospective investors, which also allows national governments to assess the optimal royalty or taxation arrangement during the process; and second, they allow states to generate revenues “ex ante.”\textsuperscript{111} Auctions can be carried out in a number of different ways. Examples include open or closed bids (which require companies to submit technical applications), and “simple rationing schemes” (i.e. first-come-first-served).\textsuperscript{112} Other important considerations in auction design include clearly defining the physical rights being auctioned, as well as the length of time the rights are available.\textsuperscript{113}

Auctions are lauded for leveling the playing field between national governments and extractive corporations. According to economist Paul Collier, “asymmetric information” exists between extractive companies and governments.\textsuperscript{114} With their wealth of experience in oil production around the world, transnational corporations likely know more about the value of the resources and the cost of production than less informed national governments. As a result, a government may be duped into accepting a lower price to grant extraction rights.\textsuperscript{115} Auctions can prevent this from occurring since competition between vendors can reveal the true value of the rights and costs of production.\textsuperscript{116}

\begin{footnotes}
\item[110] \textit{Ibid}.
\item[111] Boadway, \textit{supra} note 83 at 40.
\item[112] \textit{Ibid} at 40.
\item[113] \textit{Ibid} at 41.
\item[114] Collier, \textit{supra} note 42 at 83.
\item[115] \textit{Ibid}.
\end{footnotes}
However, a government’s ability to maximize revenue through an auction “depends on such considerations as the nature of the bidders’ preferences and the characteristics of the [rights] being auctioned.”\textsuperscript{117} This scheme may limit the amount of revenue national governments can obtain, which can consist of an upfront payment or a combination of an upfront payment and royalties. Maximizing the amount of revenue from an auction is also impacted by the asymmetrical information that may exist among vendors. Boadway and Keen contend vendors may have different information about the value of the resource,\textsuperscript{118} which can lead vendors to bid cautiously if the true value is unknown. Known as the “winner’s curse”,\textsuperscript{119} governments may not receive bids that reflect the true value of rights being auctioned, resulting in a potentially underpriced winning bid.\textsuperscript{120}

Although governments can overcome the potential shortfall in revenue through sufficient post-auction taxation mechanisms,\textsuperscript{121} investors that submitted bids with the understanding that a certain tax scheme would be in place can perceive this action negatively. Therefore auctions may be less advantageous to governments wishing to maximize the amount of revenue available from oil activities, particularly if they desire greater flexibility in the short-term.

### 2.3.4 Corporate Income Tax

A corporate income tax is another popular mechanism for generating revenue in the oil sector. It is applied to businesses in general, with potential variations for resource firms. Corporate income tax is applied to a company’s profits\textsuperscript{122} – it is a tax on the income or capital of companies operating within a state that is only collected when a company earns profits.\textsuperscript{123} Key issues in designing the tax include the rate, allowable deductions, and carry forward losses.\textsuperscript{124}

\textsuperscript{117} Boadway, supra note 83 at 41.
\textsuperscript{118} Ibid.
\textsuperscript{119} Ibid.
\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid.
\textsuperscript{122} Nakhle, supra note 40 at 23.
\textsuperscript{123} Ibid at 26.
\textsuperscript{124} UNECA, supra note 34 at 93.
When tailoring the corporate tax to oil firms, national governments may consider a number of different factors. First, states may wish to introduce a separate corporate income tax that is exclusively levied against oil companies and is at a different rate than that charged to other corporate entities. This approach can be advantageous to national governments because it allows them to potentially impose higher rates, to the detriment of oil companies. Second, governments may opt to levy the corporate tax at the project, rather than at the firm level. Known as “ring-fencing”, this limits a firm’s ability to deduct losses from one project against the profits of another, resulting in an expansion of the tax base that can ultimately increase the amount of tax revenues generated by the state. Baunsgaard, Boadway, and Keen contend this approach should be used cautiously, however, as it may produce distortions in the levels of investment – firms may be discouraged from undertaking additional exploration and production because the measure limits a company’s ability to offset losses, which tend to be significant in the early stages of oil production.

Imposing a flat corporate income tax rate across the extractive sector – without imposing other taxes – is another option available to oil-producing states. Such an approach can be beneficial to national governments, as Pfister contends it simplifies tax administration and can reduce the number of incentives made by states, which can lead to less competition among African states for investment. A flat rate can also be advantageous to oil companies, particularly if the rate is low and is not affected by oil prices. When high oil prices lead to greater profits, a low flat corporate tax rate will result in greater returns for the company. However, a higher rate can reduce profits and likely impact a company’s investment decision, especially when comparable rates are lower in other jurisdictions.

2.3.5 Contractual Schemes

Contractual schemes are another common fiscal measure available to oil-producing African states. Under the contractual system, governments contract oil companies to conduct oil exploration production in a particular area and retain full ownership of production while the

125 Klaver, supra note 35 at 200.
126 Baunsgaard, supra note 18 at 7; Boadway, supra note 83 at 43.
127 Boadway, ibid.
128 Ibid.
129 Pfister, supra note 7 at 12.
company operates at its own expense.\textsuperscript{130} Through this approach national governments retain a share of ownership, which provides an alternative source of revenue generation. Contractual schemes also distance governments from the financial risks and burdens associated with exploration and extraction. Although oil companies face greater risks, they can either retain a portion of the share or receive a fee for service in return for carrying out production.

Contracts in which the company receives a share of production are known as production sharing agreements; contracts for service are referred to as service agreements.\textsuperscript{131} Under production sharing agreements, the oil company also takes title for its portion of production undertaken, allowing it to recover the costs associated with exploration and production.\textsuperscript{132} Despite this benefit to oil companies, national governments can still ensure the maximization of tax revenue through royalties and other forms of taxation.\textsuperscript{133} In contrast to production agreements, title is not taken under service agreements; however governments can allow companies to recover costs, which helps ensure that companies recover for the risks associated with oil production.\textsuperscript{134}

Equity participation is another contractual scheme available to oil-producing states; it consists of governments obtaining a small share in the oil project. This scheme offers a greater share of the wealth generated from oil projects to oil companies rather than national governments. It also provides oil companies with full control over operations. However, governments this scheme can still generate revenue for oil-producing states.\textsuperscript{135} Joint ventures are a form of equity participation.\textsuperscript{136}

2.4 Fiscal Measures to Attract and Incentivize Oil Companies

Crucial to the formulation of any petroleum fiscal regime is the inclusion of fiscal measures that attract investment from oil companies and encourages them to begin upstream

\begin{footnotes}
\item[130] Nakhle, supra note 40 at 35.
\item[131] Ibid.
\item[132] Lundgren, supra note 10 at 53.
\item[133] Ibid.
\item[134] Nakhle, supra note 40 at 36.
\item[135] Lundgren, supra note 10 at 54.
\item[136] Omorogbe, supra note 59 at 277.
\end{footnotes}
production. Competition for foreign investment among oil-producing African states forces them to introduce incentives that will attract companies to their industry.\footnote{137 World Bank, “Strategy for African Mining” (1992), online: <http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1999/10/21/000178830_98101904142281/Rendered/PDF/multi_page.pdf> at 30.} The fiscal instruments described in the preceding section can be designed in a way that entices oil companies to conduct activities in Sub-Saharan Africa; these include a low corporate income tax rate, cost recovery, and no ring-fencing. The following sections consider three additional measures that can be used to supplement the previously described schemes: discretionary tax rates, stabilization clauses and tax holidays.

### 2.4.1 Discretionary Tax Rates

Governments can stipulate that certain tax rates in their petroleum fiscal regime are discretionary. In most instances where discretionary rates are in place, the government enters into negotiations with the oil company to determine the rate.\footnote{138 “Cameroon”, online: Freshfields Bruckhaus Deringer <http://www.freshfields.com/en/africa/africa_oil_and_gas/cameroon/> at 3 [Freshfields, “Cameroon”]; “Oil and Gas Tax Guide for Africa”, online: PricewaterhouseCoopers <http://www.pwc.com/en_TZ/tz/pdf/pwc-oil-and-gas-tax-guide-for-africa-2013.pdf> at 37 [PwC].} The government, in other instances, can solely determine discretionary rates; however, unilaterally setting a discretionary rate can defeat the purpose of stability in the regime, which is discussed in Section 2.4.2 below. Historically, discretionary rates have been used to set royalties and corporate income tax.

Discretionary tax rates are attractive to oil companies, as they can negotiate a rate that they feel better accounts for the costs of production.\footnote{139 PwC, ibid.} Combined with a stabilization clause, the oil company can ensure it is locked into a favourable tax rate for the length of its operations. For governments, discretionary tax rates can be a valuable incentive; but it is also one that can reduce the levels of income generated.\footnote{140 Ibid.}
2.4.2 Stabilization Clauses

Stabilization clauses are either contractual or statutory obligations that aim to “freeze” the law of the host country to the date the national government enters into an agreement with the oil company.\textsuperscript{141} The effect is to insulate the corporation from future changes to the host country’s laws, which could potentially harm its investment. Stabilization clauses have historically taken many forms, ranging from a full “freezing” of the legal and fiscal regimes governing extractive projects, to “partial stability” clauses (which limit particular aspects of the country’s fiscal and legal regimes), to “economic equilibrium” clauses that permit changes to a state’s fiscal and legal regimes and instead require that contracting parties are “restored to the position they occupied prior to the changes.”\textsuperscript{142}

Stabilization clauses offer oil companies certain guarantees during the course of their investment, which is particularly advantageous to companies operating in countries with an unstable political climate.\textsuperscript{143} However, these clauses can affect a state’s ability to amend its fiscal regime. The inflexibility caused by stabilization clauses limits a government’s ability to respond to changing local and global conditions, such as economic crises or changes in oil prices.\textsuperscript{144} Consequently, these clauses are seen as offering few benefits to governments other than acting as incentive for investment.\textsuperscript{145}

2.4.2 Tax Holidays

Tax holidays are a period of time in which a corporation is exempt from paying taxes.\textsuperscript{146} Oil-producing states tend to place certain restrictions on the application of this scheme to ensure its limited application. These include restricting the scheme to new investors that are undertaking activity in a remote part of the country.\textsuperscript{147} Tax holidays also tend to be available for a short period of time, and are not used to cover the length of a project.

\textsuperscript{141} Oshionebo, “Stabilization Clauses”, \textit{supra} note 74 at 1.
\textsuperscript{142} \textit{Ibid} at 1-2.
\textsuperscript{143} \textit{Ibid}.
\textsuperscript{144} \textit{Ibid} at 12.
\textsuperscript{145} \textit{Ibid} at 1-2.
\textsuperscript{146} Otto, \textit{Mining Taxation}, \textit{supra} note 45 at 13.
\textsuperscript{147} \textit{Ibid}.
The use of tax holidays is declining globally, which likely does not make the scheme mandatory for oil companies looking to invest in Sub-Saharan Africa. However, the scheme can be attractive for oil-producing states that have an onerous fiscal regime, as a tax holiday can help relieve the initial burden incurred after beginning oil production.\textsuperscript{148}

2.5 Conclusion

The preferable combination of fiscal measures used in an oil-producing state depends on the economic and social conditions of each country, and the petroleum fiscal regime should be tailored and country-specific as a result. The four factors discussed in this chapter – the extent of oil dependence; the stage of development of the oil industry; the government’s financial position; and state participation in the oil sector – are all elements that should be accounted for in the design of a state’s petroleum fiscal regime. Thus, they provide a framework to assess whether the regime is country-specific and tailored to the country’s circumstances. By using this framework, I will assess whether three oil-producing African states are achieving the balance between the government’s objective of maximizing the generation of tax revenue against the need to attract investment.

\textsuperscript{148} Ibid.
Chapter Three
Case Studies

3 Petroleum Fiscal Regimes in Nigeria, Ghana, and Cameroon

3.1 Introduction

This chapter aims to undertake a comparative analysis of petroleum fiscal regimes in three Sub-Saharan African countries. Based on the four factors identified in the previous chapter, I selected three countries with very diverse oil sectors in an effort to assess whether three oil-producing African states are achieving the balance between the government’s objective of maximizing the generation of tax revenue against the need to attract investment. Nigeria’s regime is being studied because its oil industry is one of the oldest in Africa. The Nigerian government is also one of the most dependent on tax revenues derived from oil production. At the other end of the spectrum is Ghana, which has a much younger petroleum industry and a national government that is less dependent on oil revenues. Although Ghana’s younger industry may explain why the country is less reliant on oil revenue, Ghana’s budgetary revenue in recent years has relied less and less on mineral revenues generally, which suggests that the state will likely be less dependent on oil revenues compared to other oil-producing states like Nigeria. Compared to the other case studies, Cameroon offers perspective on a declining oil sector that is between the older, dominant oil industry in Nigeria and the new, emerging sector in Ghana. Recent studies by Cameroon’s state-owned oil company, the Société Nationale des Hydrocarbures (“SNH”) projects that in the absence of new discoveries, oil reserves currently being exploited will be exhausted in the next two to three years.149

Additionally, comparing three West African states provides insights into the petroleum fiscal regimes of geographical neighbours, which may impact the competitiveness of their regimes. Two of the case studies – Nigeria and Ghana – are also members of the same regional

economic organization, the Economic Community of West African States (“ECOWAS”). Furthermore, Nigeria, Cameroon, and now Ghana all benefit from the massive offshore oil reserves in the Gulf of Guinea.\footnote{KPMG, supra note 3 at 5. Please see Appendix 2 for a map of the Gulf of Guinea.}

\section*{3.2 Nigeria’s Petroleum Fiscal Regime}

\subsection*{3.2.1 The History of Oil Production}

The foundations of Nigeria’s petroleum fiscal regime were first set during the colonial period, when the British colonial administration issued two ordinances – the Petroleum Ordinance of 1889, and the Mineral Regulation (Oil) Ordinance of 1907.\footnote{Omorogbe, supra note 59 at 273.} Although the 1907 Ordinance stipulated that oil exploration was restricted to British subjects and British-controlled companies, the first concession agreement was granted to a German company in 1908.\footnote{Ibid.} Exploration was terminated when World War One began in 1914, and no further exploration was undertaken in Nigeria until Shell D’Arcy Petroleum Development Company (the first predecessor of the modern Shell Petroleum Development Company of Nigeria) was awarded a concession grant in 1938.\footnote{Ibid at 274.}

The concession issued to Shell was an oil exploration licence covering the entire mainland of Nigeria,\footnote{Ibid at 274.} which granted Shell an early monopoly on the exploration of oil. Shell made Nigeria’s first commercial oil discovery in 1956 at Oloibiri Bayelsa State.\footnote{Shell Petroleum Development Company of Nigeria, online: <http://www.shell.com.ng/aboutshell/our-business/bus-nigeria/e-and-p/spdc.html> [Shell].} Soon after this discovery, other oil companies, including Mobil and Texaco/Chevron, were granted concession licences to conduct onshore and offshore exploration.\footnote{Omorogbe, supra note 59 at 274.} However Shell’s early exploration monopoly placed it in the position to dominate oil production in Nigeria. Today, the company is responsible for 39\% of oil production in Nigeria.\footnote{Shell, supra note 155.}
Nigeria’s modern petroleum fiscal regime was established in 1969 with the passing of the Petroleum Act and the Petroleum (Drilling and Production) Regulations. Both pieces of legislation provide the legal framework for oil production in Nigeria. At its core is the vesting of petroleum in the state; Section 1(1) of the NPA stipulates: “The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.” The NPA grants companies incorporated in Nigeria the following rights:

(a) a licence, to be known as an oil exploration licence to explore for petroleum; (b) a licence, to be known as an oil prospecting licence to prospect for petroleum; and (c) a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum.”

Given its proven oil reserves that have led to a robust and mature petroleum sector, Nigeria’s fiscal regime has little in the way of measures responding to socio-political matters that may disrupt production and deter investment. One prime example is the conflict in the Niger Delta. Most of Nigeria’s oil production occurs in the Delta, yet poverty and environmental degradation in the region spurred years of conflict. Groups living in the Delta agitated politically for a greater share of oil wealth, and extended their campaign to violently interrupting oil production by occupying and shutting down oil facilities, kidnapping the staff of oil companies operating in the region and stealing equipment. Despite the violence, the fiscal regime did not include measures to offset the impact of the conflict.

Section 3.2.2 of the thesis describes the features of Nigeria’s petroleum fiscal regime in greater detail.

3.2.2 Features of the Petroleum Fiscal Regime

(a) Petroleum Profits Tax

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158 Omorogbe, supra note 59 at 274.
160 Petroleum (Drilling and Production) Regulations, L.N. 69 of 1969 (the “Regulations”).
161 NPA, supra note 159 at s 2(1).
162 Ayoade, supra note 16 at 172.
164 Ibid.
The Petroleum Profits Tax Act,\textsuperscript{165} Nigeria’s current petroleum fiscal statute, was first introduced in 1959. It governs the taxation of oil companies operating in Nigeria, including both local and foreign oil producers.\textsuperscript{166} Tax charged under the PPTA is equivalent to corporate income tax charged to non-oil sector companies.

Section 8 of the PPTA stipulates the provision for taxation; it states “There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period, a tax to be charged, assessed and payable in accordance with the provisions of this Act.” The specific operations captured by the PPTA are defined in section 2, which provides that “petroleum operations” consist of

the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company.

Since the definition of petroleum operations excludes refinery operations, only upstream oil production undertaken by such producers as Total E&P Nigeria,\textsuperscript{167} Chevron Nigeria, Mobil Producing Nigeria, Nigerian Agip Oil Company, and Shell Petroleum Development Company of Nigeria fall under the PPTA.\textsuperscript{168}

“Profits” is defined in section 9, which stipulates

(1) …the profits of that period of a company shall be taken to be the aggregate of—
(a) the proceeds of sale of all chargeable oil sold by the company in that period;
(b) the value of all chargeable oil disposed of by the company in that period; and
(c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations.

(2) For the purposes of subsection (1) (b) of this section, the value of any chargeable oil so disposed of shall be taken to be the aggregate of—
(a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of any enactment applicable thereto and any financial agreement or arrangement between the Federal Government of Nigeria and the company;
(b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a) of this subsection; and
(c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.

\textsuperscript{165} Petroleum Profits Tax Act (1990), Chapter 354 ("PPTA").
\textsuperscript{166} Ayoade, supra note 16 at 172.
\textsuperscript{167} Formerly Elf Petroleum Nigeria.
\textsuperscript{168} Ayoade, supra note 16 at 185.
Section 9 goes further and defines “adjusted”, “assessable”, and “chargeable” profits as

(3) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 10 of this Act and any adjustments to be made in accordance with the provisions of section 14 of this Act.
(4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 20 of this Act.
(5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 20 of this Act.

The deductions available through sections 10 and 14 include “rents for lands or buildings…; non-productive rents; royalty paid; administrative expenses; and capital expenditure such as tangible or intangible expenses from the appraisal of an exploration well and next two appraisal wells.” Section 14 deductions “concern the exclusion of income generated from the transportation of chargeable oil from ocean going oil tankers operated by or on behalf of the oil producing company from Nigeria to another overseas destination.” The deductions permitted under section 20 are listed in the Second Schedule of the act, which lists the available allowances. Section 20 sets a cap on allowances to the lesser of either the aggregate amount computed under section 20(2) or “a sum equal to 85% of the assessable profits of the accounting period less 170% of the total amount of the deduction allowed as petroleum investment allowance computed under the Second Schedule.”

MA Ayoade of the University of Lagos Faculty of Law succinctly describes the computation of tax under the PPTA as a four-stage process that consists of

(i) ascertaining all income derived from petroleum operations;
(ii) determining adjusted profits by deducting expenses permitted by section 10 of the PPTA;
(iii) finding out assessable profits by subtracting loss sustained in previous accounting periods from the present adjusted profit of the present accounting period; and
(iv) deducting capital allowances granted on fixed assets from assessable profits to determine chargeable profits on which the appropriate [tax] rate can be levied.

Currently, tax under the PPTA is calculated at 85% of chargeable profits. New oil companies, however, are charged a rate of 67.5% for the first five years of production, and 85% afterwards.

169 Ibid at 186.
170 Ibid.
171 PPTA, supra note 165 at s 20.
172 Ayoade, supra note 16 at 187.
(b) Resource Rents and Royalties

In addition to the petroleum profits tax, the Nigerian national government requires that oil companies pay both resource rents and royalties. The respective provisions are sections 60 and 61 of the Regulations. Section 60 divides resource rents into two categories – those paid on an existing oil exploration licence, and those payable on an oil prospecting licence or oil mining lease. A minimum rent of NGN 500 is required annually for every year an exploration licence is in force. Annual rents payable on an oil prospecting licence are USD 10 for each square mile; for a mining lease, the rents payable are USD 20 for each square kilometer of the first ten years of the lease, then USD 15 for the remainder.

Royalties in Nigeria are charged at a rate per centum based on the chargeable value of crude oil produced under a licence or lease. The percentage charged varies according to the location or place of production (onshore versus offshore), and the depth of water in the area of production. Currently, royalties are charged at: 20% for onshore areas; 18.5% in areas up to 100 metres water depth; 16.5% in areas up to 200 metres water depth; 12.5% in areas from 201 to 500 metres water depth; 8% in areas from 501 to 800 metres water depth; 4% in areas from 802 to 1000 metres water depth; and 0% in areas beyond 1000 metres water depth.

Section 62 of the Regulations lists the royalties charged as part of onshore and shallow offshore production sharing contracts. The rates are only slightly lower than those listed above. For onshore contracts, the rates are 5% for production below 2000 bpd, 7.5% for production between 2000 to 5000 bpd, 15% for production between 5000 and 10000 bpd, and 20% for production above 10000 bpd. Offshore contracts are similarly scaled like the onshore contracts based on level of production, beginning at 2.5% for production below 5000 bpd in water depths up to 100 metres, and 1.5% for production below 5000 bpd in water depths between 100 and 200 metres. However, a discounted rate is not charged for the
highest levels of production – firms operating under production sharing contracts are not at an advantage. The royalty rates for production sharing contracts are almost equivalent to the rates charged against non-production sharing projects: 18.5% and 16.67% for less than 100 metres in water depth and between 100 to 200 meters in water depth, respectively.\textsuperscript{180}

\textit{(c) Additional Fees}

Nigeria’s petroleum fiscal regime also includes a number of one-time fees: signature bonus at the completion of a successful bid; production bonus (generally limited to instances where a production sharing agreement is in place); various application fees for licences or other applications; terminal dues (which are meant to facilitate the “evacuation of oil from export terminals”\textsuperscript{181}); and the commission paid to the Central Bank on taxes under the PPTA, royalties, and rents to the foreign exchange accounts of the Bank and federal tax authorities.\textsuperscript{182}

\textit{(d) State Participation}

State participation is also another significant component of Nigeria’s petroleum fiscal regime. The push for the Nigerian government to participate in the oil sector began in 1969 when the then Ministry of Finance issued a Fact Finding Mission Report that highlighted the importance of state participation in the industry at that time.\textsuperscript{183} Among other things, the report emphasized “the need for systematic renegotiation of company agreements to give the state an undivided interest.”\textsuperscript{184} According to the report this was best achieved through the development of an “organized, systematic strategy for participation.”\textsuperscript{185} Supporters of state participation continued advocating for the policy until 1971, when their efforts were buttressed by Nigeria’s accession to the Organization of the Petroleum Exporting Countries

\begin{flushleft}
\textsuperscript{180} Ibid at s 62.
\textsuperscript{181} Ayoade, \textit{supra} note 16 at 194.
\textsuperscript{182} Ibid at 192-94.
\textsuperscript{183} Omorogbe, \textit{supra} note 59 at 276.
\textsuperscript{184} Ibid.
\textsuperscript{185} Ibid.
\end{flushleft}
A central policy of the Organization is state participation in the oil sector. That same year, the Nigerian National Oil Corporation (“NNOC”) was established.\textsuperscript{187}

The NNOC’s initial mandate was “to engage in prospecting for mining and marketing oil and in all other activities with the petroleum oil industry.”\textsuperscript{188} The first six years that the NNOC was in operation were tumultuous as conflicts arose between it and the federal ministry responsible for the Corporation, the Ministry of Mines and Power.\textsuperscript{189} The power struggle between the Corporation and the Ministry resulted in the NNOC being practically inoperative; to end its ineffectiveness, the national government merged the Ministry into the NNOC to create the Nigerian National Petroleum Corporation (“NNPC”) in 1977.\textsuperscript{190}

Prior to the creation of the NNPC, however, Nigeria’s government undertook a number of key policy objectives through the NNOC. First, it was able to negotiate equity participation agreements of 35% with Elf, Shell-BP,\textsuperscript{191} Mobil, and Gulf concessions.\textsuperscript{192} The government also assigned to the NNOC in 1972 “all areas in the country not covered by existing licences and leases, [as well as] concession areas…held by the oil companies which might be surrendered from time to time”,\textsuperscript{193} and halted issuing any new concessions.\textsuperscript{194} From then on, the state-owned oil company was legally permitted to enter into contracts or partnerships with private oil companies. As a result, Nigeria’s participation in the oil sector consists of joint ventures, production sharing agreements, and service contracts.

There are currently six joint ventures in place between the NNPC and foreign oil companies. Table 1 below lists each venture and the participation interests of each party.

\begin{table}
\caption{List of Joint Ventures}
\begin{tabular}{|c|c|c|}
\hline
Venture & Participation & Company \hline

\end{tabular}
\end{table}
Table 1
Joint Venture Agreements in Nigeria

<table>
<thead>
<tr>
<th>Company</th>
<th>Company Participation (%)</th>
<th>NNPC Participation (%)</th>
<th>Level of Production – barrels per day (bpd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shell Petroleum Development Company of Nigeria Limited</td>
<td>Shell – 30</td>
<td>55</td>
<td>1 million&lt;sup&gt;195&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Elf – 10</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Agip – 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chevron Nigeria Limited</td>
<td>40</td>
<td>60</td>
<td>233 000&lt;sup&gt;196&lt;/sup&gt;</td>
</tr>
<tr>
<td>Mobil Producing Nigeria Unlimited</td>
<td>40</td>
<td>60</td>
<td>550 000&lt;sup&gt;197&lt;/sup&gt;</td>
</tr>
<tr>
<td>Nigerian Agip Oil Company Limited</td>
<td>Agip – 20 Phillips</td>
<td>60</td>
<td>150 000</td>
</tr>
<tr>
<td></td>
<td>Petroleum – 20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total E&amp;P Nigeria Limited</td>
<td>40</td>
<td>60</td>
<td>250 000&lt;sup&gt;198&lt;/sup&gt;</td>
</tr>
<tr>
<td>Texaco Overseas Petroleum Company of Nigeria Unlimited</td>
<td>Texaco – 20</td>
<td>60</td>
<td>60 000</td>
</tr>
<tr>
<td></td>
<td>Chevron – 20</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Nigerian National Petroleum Corporation Joint Ventures<sup>199</sup>

Nigeria’s joint venture contracts include provisions to address: the level of participation; the ownership of production facilities and assets; and the interests and obligations of each party.<sup>200</sup> In all agreements at least one of the parties is designated the “operator”, which

<sup>195</sup> Shell, <i>supra</i> note 155.
<sup>198</sup> Total E&P Nigeria, online: <http://www.ng.total.com/04_total_nigeria_activities/0401_our_activities.htm>.
<sup>200</sup> <i>Ibid.</i>
happens to be the foreign oil company in all of Nigeria’s joint ventures. However, the NNPC reserves the right to become an operator if it so chooses.

Production sharing agreements are also widely in use in Nigeria’s petroleum sector. Nigeria introduced the fiscal instrument in order to pass off the risks and financing of oil exploration to companies in areas that are assigned to the NNPC. As part of the contract, the NNPC engages a company to carry out operations on land that is under its control; the contractor can recover its expenses if oil is discovered and drilled. The contractor is entitled to that fraction of the crude oil allocated to [it] under the cost oil (oil to recoup production cost) and equity oil (oil to guarantee return on investment). [The contractor] can also dispose of the tax oil (oil to defray tax and royalty obligations) subject to NNPC’s approval. The balance of the oil, if any (after cost, equity, and tax), is shared between the parties (profit oil).

Currently, production sharing agreements are Nigeria’s dominant form of state participation in the petroleum industry. Recent data shows that approximately ten oil companies are operating under production sharing agreements today.

Service contracts are less commonly used in Nigeria; currently a service contract is only in place with Agip Oil Company. Under the service contract the NNPC retains title under the oil prospecting licence; like the production sharing agreement, the service contractor covers the costs of all exploration and production and can recoup its costs if oil is discovered and extracted. Unlike the production sharing agreement, the service contract is for a fixed five-year term, and automatically terminates if a commercial discovery is not made. To offset

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201 Omorogbe, supra note 59 at 279.
202 NNPC, supra note 199. The NNPC does not explain under what circumstances it may wish to become the operator.
204 Ibid.
205 Ibid.
206 Ibid.
207 Ibid.
209 Ibid.
210 Ibid.
the risks assumed by the contractor in this type of agreement, the NNPC grants the contractor first option to purchase certain quantities of oil produced under the agreement.\textsuperscript{211}

Oil companies engaged in a service contract are exempt from paying taxes under the PPTA, and instead are only required to pay corporate income tax as per the obligations in the Company Income Tax Act.\textsuperscript{212} Despite this exemption under service contracts, Yinka Omorogbe – a leading Nigerian scholar in oil and gas law – contends that this form of state participation is a potentially greater source of revenue for the national government than production sharing agreements.\textsuperscript{213}

(e) Incentives

Nigeria’s petroleum fiscal regime has a limited number of incentives for oil companies. Historically, the primary incentives instrument was the Memorandum of Understanding ("MOU") that was entered into between the government of Nigeria and its joint venture partners. It provided incentives to joint venture partners in exchange for certain work commitments.\textsuperscript{214} It was a measure uniquely used by Nigeria and not seen in other oil-producing states.\textsuperscript{215} The MOU emerged in the 1980s as a response to the decline in oil prices and the rise in costs of production.\textsuperscript{216} The Nigerian authorities developed the measure in an effort to reverse declining levels of exploration and production that reduced tax revenues.\textsuperscript{217} Despite being developed in response to industry conditions at the time, the MOU was renewed and revised in 1991, and again in 2000.\textsuperscript{218} While the literature and Nigerian government sources are conflicting, it appears the Nigerian government cancelled the 2000 MOU without replacing it in 2007, leaving a gap in the incentives structure that may detrimentally impact of new foreign oil investment.\textsuperscript{219}

\begin{itemize}
  \item \textsuperscript{211} \textit{Ibid.}
  \item \textsuperscript{212} Omorogbe, \textit{supra} note 59 at 282.
  \item \textsuperscript{213} \textit{Ibid.}
  \item \textsuperscript{214} Ayoade, \textit{supra} note 16 at 195.
  \item \textsuperscript{215} "Memorandum of Understanding", online: NIPC <http://www.nipc.gov.ng/memounder.html>.
  \item \textsuperscript{216} Ayoade, \textit{supra} note 16 at 195.
  \item \textsuperscript{217} \textit{Ibid.}
  \item \textsuperscript{218} \textit{Ibid} at 196.
  \item \textsuperscript{219} Ayoade, \textit{ibid} at 198. Oshionebo, “Fiscal regimes”, \textit{supra} note 26 at 206 cited a 2006 United Nations Conference on Trade and Development report stating the MOU was still in use. The NIPC website also suggests
\end{itemize}
Incentivizing deductions available to oil companies are restricted to those in the PPTA discussed above in Subsection (a). Although the PPTA does not limit an oil company’s deductions to a particular project, it is important to note that production sharing agreements do ring-fence deductions on a project-to-project basis. In its implementation of the conflicting fiscal instruments, the Nigerian government prefers the terms of the contract to those in the statute.

Despite the application of ring-fencing to petroleum operations, oil companies can apply deductions available in the PPTA broadly as a result of judicial interpretation of the term “petroleum operations.” In 1996, the Supreme Court of Nigeria overturned a decision by the Federal Board of Inland Revenue (the precursor to the current federal tax agency, the Federal Inland Revenue Service) that disallowed deductions submitted by Shell. The company submitted “foreign exchange losses, Central Bank commissions and educational scholarship expenses” as deductions. The Supreme Court held that Shell was entitled to deduct all three categories in the calculation of its final taxes owing because “they were ‘incidental to petroleum operations’ and were ‘wholly, exclusively, and necessarily’ incurred for this purpose.” The Court’s ruling expanded the scope of deductions available to oil companies by permitting the inclusion of any “statutory or contractual obligation to incur an expense”, even when that expense is not directly related to its petroleum operations.

A tax holiday is another component of Nigeria’s incentives structure, although its application in the oil sector is restricted. The Nigerian Investment Promotion Commission offers tax holidays to companies that qualify for “pioneer status”, which limits its availability to the first year that a company commences production otherwise the application is time-barred.

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the MOU is still in place; however the website appears updated, and the information was not verifiable on other Government of Nigeria websites.

220 Ayoade, ibid at 190.
221 Ibid.
222 Ibid at 189.
223 Ibid.
224 Ibid.
225 Ibid.
226 Ibid.
227 Ibid.
Qualifying foreign corporations must also have incurred capital expenditures of at least NGN 5 million.\textsuperscript{229}

Although it is not a direct incentive to encourage the extraction of petroleum, Nigeria’s Oil and Gas Export Free Zone is an available incentive that may influence the investment decisions of foreign oil companies. Established in 1996, the zone – located around the ports of Onne (near the city of Port Harcourt in the Gulf of Guinea), Calabar, and Warri – provides facilities to support the export of crude oil.\textsuperscript{230} Companies that are permitted to operate in the zone have access to the following incentives: exemption from “legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations”,\textsuperscript{231} “full repatriation of capital and profit, no foreign exchange restrictions, 100% foreign ownership, … and no pre-shipment inspection of goods imported into the zone.”\textsuperscript{232}

3.3 Ghana’s Petroleum Fiscal Regime

3.3.1 The History of Oil Production

Commercial oil production expanded in Ghana following the discovery of the offshore Jubilee oil field in 2007.\textsuperscript{233} From 2009 to 2012, oil production in Ghana increased from 7,000 bpd to 80,000 bpd. As of January 2013, the country’s proven oil reserves were 660 million barrels, which is expected to rise as further exploration leads to new discoveries.\textsuperscript{234}

The terms of Ghana’s petroleum fiscal regime were first established with the passing of the Petroleum Exploration and Production Law in 1984, and the Petroleum Income Tax Law (“PITL”) of 1988.\textsuperscript{235} Under the Petroleum Exploration and Production Law, the Government of Ghana has the authority to enter into Petroleum Agreements with oil companies; these

\begin{itemize}
  \item \textsuperscript{229} Ibid.
  \item \textsuperscript{230} Ibid.
  \item \textsuperscript{231} Ibid.
  \item \textsuperscript{232} Ayoade, supra note 16 at 200.
  \item \textsuperscript{233} Nana Adjoa Hackman, “Was Ghana Right In Choosing Royalty Tax System For The Oil Sector?”, online: <http://danquahinstitute.org/docs/OilSectorUnderScrutiny.pdf> at 2 [Hackman].
  \item \textsuperscript{234} “Ghana – Country Analysis Note”, online: US Energy Information Administration <http://www.eia.gov/countries/country-data.cfm?fips=gh>.
\end{itemize}
agreements govern the relationship between the state and the oil company, and contractually lay out the fiscal obligations of the company.\textsuperscript{236}

Currently, legislation to revise the Petroleum Exploration and Production Law is before the Ghanaian Parliament; the Petroleum Exploration and Production Bill was first introduced in 2010 but was withdrawn after protests from civil society groups.\textsuperscript{237} The Bill was reintroduced this past year and was recently approved by Ghana’s cabinet.\textsuperscript{238} It is now awaiting ratification by Parliament before becoming law.

Despite the delay in passing the Bill, Ghana’s government continued to enter into agreements with oil companies. Four agreements were signed, and there is the possibility that the national government will sign three more.\textsuperscript{239} However, although Ghana’s petroleum fiscal regime will soon change, its current agreements are still governed by the 1984 act.

\subsection*{3.3.3 Features of the Petroleum Fiscal Regime}

\subsubsection*{(a) Petroleum Income Tax Law}

Section 1 of the PITL imposes the tax on “Every person carrying on petroleum operations,” and requires that “subject to the provisions of this Law, pay for each year of assessment a tax on his chargeable income calculated in the manner provided in this Part.”\textsuperscript{240} “Petroleum operations” is not defined in the legislation. “Chargeable income” is defined in section 2 as “income from the sale of petroleum shall be taken into account at selling price actually realised, and in the case of a sale to an affiliate or an export without sale at world market prices established in the manner provided for in the Petroleum Agreement to which such person is party” subject to the following deductions listed in section 3(1):

(a) rentals;
(b) royalties;
(c) sums payable by way of interest, fees or charges upon any money borrowed …;

\begin{thebibliography}{9}
\bibitem{236} Ibid.
\bibitem{238} “Cabinet Approves Petroleum Exploration and Production Bill” (9 April 2014), online: <http://www.energymin.gov.gh/?p=2252>.
\bibitem{239} Ibid.
\bibitem{240} Petroleum Income Tax Law 1988, PNDCL 188 s 1.
\end{thebibliography}
(d) any expense incurred for repair of premises, plant, machinery or fixtures employed for the purposes of petroleum operations or for the repair or alteration of any implements, utensils or articles so employed, …;

e) debt directly incurred in the conduct of petroleum operations and proved to the satisfaction of the Commissioner to have become bad or doubtful in the year of assessment…;

(f) any contribution to a pension or provident fund or other similar fund which is approved by the Commissioner…;

(g) any sums actually expended by that person in the education or training of citizens and nationals of Ghana in approved educational and technical institutions …;

(h) sums representing a special carried interest allowance for that year of …

Following the year of commencement of a project, an oil company is entitled to deduct capital allowance, and any loss incurred during the previous assessment year.\(^{241}\)

Other important incentives provided by the PITL are:

- no provisions against transfer pricing,…
- no limitation on treatment of interest expense and no withholding taxes on interest and dividend payments. …
- no provision for decommissioning costs, but the proposed exploration bill make provisions and such costs shall be deductible expense. [and]
- limited ring fencing.\(^{242}\)

The default tax rate under the PITL is 50%; however, this may be altered by contract between the national government and the oil company.\(^{243}\) For the production carried out at the Jubilee oil field, the tax rate was set at 35% (roughly 10% more than the corporate income tax rate).\(^{244}\)

\((b)\, Royalties\)

A royalty is charged on crude oil production in Ghana at a percentage that is set in the Petroleum Agreement between the national government and the oil company.\(^{245}\) The rates range from 4% to 12.5%, depending on water depth.\(^{246}\)

\((c)\, Additional\, Fees\)

\(^{241}\, Ibid\, at\, ss\, 3(2)-3(3).\)

\(^{242}\, Amoako-Tuffour, supra\, note \,40\, at\, 10.\)

\(^{243}\, Ibid.\)

\(^{244}\, Ibid.\)

\(^{245}\, Hackman, supra\, note \,233\, at\, 5.\)

\(^{246}\, Ibid;\, Amoako-Tuffour, supra\, note \,40\, at\, 10.\)
The Additional Oil Entitlement (“AOE”) is another payment – aside from corporate income tax and royalties – that oil companies are required to pay the Government of Ghana in accordance with the terms of its Petroleum Agreement.247 Calculated monthly, quarterly, or annually, the AOE is a percentage entitlement to crude oil production that can be viewed as an equivalent to windfall tax.248 The entitlement is “based on the after-tax inflation-adjusted rate of return that the [oil company] achieved with respect to each field…”249 Oil companies are required to start paying the AOE “once net cash flow for a month (revenues for the month, less one-twelfth of income tax due for the calendar year in question less petroleum costs) turns positive.”250

(d) State Participation

The Constitution of Ghana vests petroleum in its natural state in the President of Ghana on behalf of and in trust for the people of Ghana; thus, only the national government can grant concessions for the exploration and production of oil.251 For a number of years prior to the 2007 discovery, the state-owned Ghana National Petroleum Corporation (“GNPC”) undertook exploration activities in an effort to attract foreign oil companies to invest in its industry and begin production activities.252

Petroleum Agreements govern the relationship between the national government, GNPC, and oil companies. Through these agreements, Ghana usually acquires a 10% interest in the exploration and development stage of operations, which is then converted into a 10% interest equity stake in production.253 Ghana has a Model Petroleum Agreement that is modified to reflect the negotiated terms between the parties; among other things, the agreement will specify “the area that has been applied for and awarded, the exploration period and the related work program and cost, and sanctions in case of default… the benefits to be derived

247 PwC, supra note 138 at 40.
248 Ibid.
249 Ibid.
251 Ibid at 1.
253 PwC, supra note 138 at 37.
by the state in the form of royalties and income tax and the [company’s] portion of benefits and responsibilities.”

The agreement also permits the GNPC the authority to assume control and management of petroleum operations, in which instance the investor may recover its costs. Ghana includes this provision in recognition of the importance of tax revenues generated from petroleum projects, and the state’s role as owner of the resource. The GNPC is also entitled to jointly manage the project in accordance with Article 6 of the Petroleum Agreement, which provides for the creation of a Joint Management Committee consisting of two members each from the GNPC and oil company, and chaired by the GNPC.

(e) Incentives

In addition to the incentives included in the PITL, oil companies are “exempted from any tax, duty, fee or other impost in respect of activities related to petroleum operations” not provided for in the Petroleum Agreement.

3.4 Cameroon’s Petroleum Fiscal Regime

3.4.1 History of Oil Production

Oil exploration in Cameroon began late in the colonial period by the French Office of Oil Research, which led to the issuance of the first exploration permit in 1952. However, it was not until 1972 that the first commercial discovery of oil was made at Betika oil field. Additional oil production commenced five years later at two other sites located offshore: the Kolé oil field situated in the northwest Rio del Rey basin neighbouring the Niger Delta, and oil fields in the Douala/Kribi-Campo basin located in the southwest region of the country.

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254 Ibid.
255 Framework, supra note 235 at 3.
256 Ibid.
257 Ibid.
258 PwC, supra note 138 at 42.
259 Freshfields, “Cameroon”, supra note 138 at 1.
260 Ibid.
261 Ibid.
After these initial discoveries, oil production steadily climbed in Cameroon until it peaked at 185,000 bpd in 1986.\footnote{262 British High Commission, supra note 149 at 6.} Despite declining levels of production, crude oil remains Cameroon’s leading export commodity, accounting for 39% of exports.\footnote{263 Ibid.} Currently, oil production in Cameroon is approximately 62,000 bpd.\footnote{264 “Cameroon - Overview Data”, online: US Energy Information Administration <http://www.eia.gov/countries/country-data.cfm?fips=CM>.} It is projected that production will continue to decline as proven oil reserves are exhausted by 2016-2017.\footnote{265 British High Commission, supra note 149 at 9.}

Three key pieces of legislation govern the petroleum fiscal regime in Cameroon: the Petroleum Code, instituted by Law No. 99/013 of December 1999; the Petroleum Regulations, introduced by Decree No. 2000/465 of June 2000; and Decree No. 80/086 of March 1980, which established the SNH.\footnote{266 Freshfields, “Cameroon”, supra note 138 at 1.}

3.4.2 Features of the Petroleum Fiscal Regime

(a) Corporate Income Tax

Section 89 and onwards of the Petroleum Code provides the main taxes for which oil companies are required to pay.\footnote{267 Ibid at 3.} There are two taxes levied at the corporate level. The first is a corporation tax; the rate at which it is charged is negotiated with the national government on a per company basis. Negotiated rates must fall within the permitted range set out in the General Tax Code – anywhere between 38.5% and 50%.\footnote{268 Ibid.} The second is a 15% gross income tax that is levied against “income paid to natural persons and corporate bodies domiciled out of Cameroon, by enterprises or establishments based in Cameroon, the State or regional and local authorities: (...) remuneration paid to companies engaged in drilling, research or assistance work on behalf of oil companies and, in general, specific services of any nature where such companies waive assessment on the basis of their returns…”\footnote{269 Ibid.}
Companies can be exempt from paying the special income tax if they either do not have a permanent establishment in Cameroon or provide services at cost price.\textsuperscript{270}

\textit{(b) Royalties}

Oil companies that hold a concession agreement are subject to a monthly royalty based on monthly volumes. The rate and basis for calculation are specified in the concession agreement.\textsuperscript{271}

\textit{(c) Additional Fees}

In addition to paying corporate income tax and royalties, oil companies in Cameroon are subject to a signature bonus and an annual surface rental fee.\textsuperscript{272} Signature bonuses are negotiated with the Government of Cameroon on a per contract basis.\textsuperscript{273} The annual surface rental fee is based on the rate set in the Cameroonian annual finance law that is in force on the date in which the oil company enters into a production sharing agreement with the national government.\textsuperscript{274} It is calculated by multiplying the rate by each square kilometer of relevant surface area used in the company’s petroleum operations.\textsuperscript{275}

\textit{(d) State Participation}

Article 3 of the Petroleum Code vests all of the petroleum resources located within Cameroon in the national government.\textsuperscript{276} To carry out petroleum extraction, the Government of Cameroon is authorized to enter into a production sharing agreement or service contract with oil companies. Production sharing agreements have been the dominant type of Cameroon’s recent petroleum contracts.\textsuperscript{277} Oil companies may enter into a production sharing agreement with the national government directly or through the SNH by either competing in competitive bidding process, or by submitting an application directly to the Ministry of Mines. Under the agreement, the Cameroonian government contracts the oil

\footnotesize{\textsuperscript{270} Ibid.}
\footnotesize{\textsuperscript{271} Freshfields, “Cameroon”, supra note 138 at 4.}
\footnotesize{\textsuperscript{272} Ibid at 3-4.}
\footnotesize{\textsuperscript{273} Ibid at 3.}
\footnotesize{\textsuperscript{274} Ibid at 4.}
\footnotesize{\textsuperscript{275} Ibid.}
\footnotesize{\textsuperscript{276} Ibid at 1.}
\footnotesize{\textsuperscript{277} Ibid at 2.}
company to carry out exploration and production activities on its behalf. The oil company is responsible for covering all costs of exploration and production. If a discovery is made, the crude oil is shared between the state and the oil company in accordance with the terms of the agreement.278

If it chooses, the Government of Cameroon can acquire any legal interest in all or part of the petroleum operations undertaken by an oil company, in accordance with Section 6 of the Petroleum Code.279 Under this provision, the national government reserves the right to acquire a legal interest either directly or indirectly through an intermediary or government entity.280

(e) Incentives

The Petroleum Code stipulates certain incentives that may be offered by the Government of Cameroon in the production sharing agreements. These include a stabilization clause covering “economic and tax conditions”,281 and an arbitration clause permitting dispute settlement in accordance with the rules of the International Centre for the Settlement of Investment Disputes.282

278 Ibid.
279 Ibid at 3.
280 Ibid.
281 Ibid at 5.
282 Ibid.
Chapter 4
Analysis and Recommendations

4 Analysis and Recommendations

4.1 Introduction

This chapter uses the analytical framework described in Section 2.2 to assess the petroleum fiscal regimes of Nigeria, Ghana, and Cameroon, specifically how the framework’s four factors – dependence on the resource, stage of development of the oil industry, government’s financial position, and extent of state participation – should shape the formulation of each state’s regime. Resolving the conflict between the fiscal objectives of the state and the commercial interests of oil companies is recognized as a key objective of oil-producing states.\(^{283}\) In order to resolve this conflict, petroleum fiscal regimes in Africa should achieve the delicate balance of maximizing the generation of tax revenue for the state and providing sufficient incentives to encourage foreign investment in oil exploration and production.

4.2 Analysis

4.2.1 Nigeria

(a) Dependence on Oil Revenue

Nigeria is highly dependent on the tax revenues generated from oil production. Oil accounts for over 90% of Nigeria’s exports and provides close to 80% of the national government’s budgetary revenue.\(^{284}\) As it stands, Nigeria’s petroleum fiscal regime will maintain this high level of dependency and do little to reduce it, likely to the detriment of other exporting sectors in the economy as high levels of dependence will entrench the country’s reliance on oil tax revenue and will not lead the government to support growth in other exporting sectors. Accordingly, it is vital that the regime better supports a level of dependence that meets the state’s fiscal objectives but is neither detrimental to other exporting sectors nor the objective of attracting oil investors.

\(^{283}\) Ayoade, supra note 16 at 173.
\(^{284}\) Thomas, supra note 28 at 5.
Despite its comparatively strict fiscal regime, and the remnants of violence in the Delta region, Nigeria does not appear to be at risk of losing foreign oil investment. Instead, the country has maintained steady levels of investment, which suggests the state has achieved the balance between its conflicting interests with the private sector. However, the state should not take the presence of foreign oil firms for granted and ignore the importance of providing incentives to ensure continued investment, especially as new producers, like Ghana, emerge. Currently, Nigeria’s petroleum profits tax, resource rents, and royalties are among some of the highest in oil-producing Africa. The regime also burdens investors with a number of other additional fees that are not present in other countries. Furthermore, incentives in the regime are now only limited to those available in the PPTA after the termination of the MOU scheme. Rather than reform the regime so that it can help foster less dependence on oil revenue, the national government is instead proposing changes under the Petroleum Industry Bill (“PIB”) to increase levels of oil revenue.

Currently before the Nigerian parliament, the PIB is facing criticism from a consortium of foreign oil investors operating as the Oil Producers Trade Section (“OPTS”). The group (which includes Shell, ExxonMobil, Total E&P, and Agip Oil) contends passage of the Bill will create “one of the world’s harshest fiscal regimes” as “[the] proposed terms increase royalties, increase taxes and lower allowances or incentives all at the same time.” The OPTS also argues that Nigeria risks losing USD 185 billion in the ten years following passage of the bill as the high tax rates and lower incentives deter investment.

The purpose of the bill is understandable given the importance of oil revenue to the state. However, the bill should instead include two key measures that can help reduce Nigeria’s dependence on oil revenue and foster economic diversification. First, the PIB should not increase oil revenue directed to the state. The regime should retain the levels of oil revenue currently going to the Nigeria government. Civil society groups in Nigeria spoke out strongly

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286 Sunley, supra note 32 at 170.
287 Whitehead, supra note 285.
288 Ibid.
289 Ibid.
290 Ibid.
against any increases in the government’s oil revenue given the history of gross financial mismanagement in the country.\textsuperscript{291} Secondly, the bill should include provisions to help strengthen indigenous capacity and support greater downstream petroleum activities. Due to the concerns surrounding accountability and fiscal responsibility in the national government, the PIB can incentivize private oil companies to undertake projects that achieve this objective.

\textit{(b) Stage of Development of the Oil Industry}

Oil production in Nigeria has been an active part of its economy, and it is projected to remain vibrant over the coming years. The industry is also mature compared to other oil-producing African states. Much of Nigeria’s petroleum fiscal regime is still suited to ensuring continued government take over the length of the country’s resource horizon. Since oil reserves are not threatened by depletion, the government should not look to increase taxes and royalties in order to receive greater revenue before the wells are dry. As discussed in the preceding section, doing so may detrimentally impact investment and further entrench the state’s dependency on oil revenue. Due to these effects, the proposed reforms in the PIB aimed at increasing tax revenue are not vital. Instead, the regime should be revised to reflect the maturity of Nigeria’s petroleum sector.

Nigeria’s mature petroleum sector should be reflected in the regime by modernizing applicable legislation. Nigeria’s petroleum fiscal regime still consists of legislation introduced in the 1960s and 1970s. New legislation should be introduced to modernize the regime by simplifying the terms, particularly in the PPTA which determines taxable income by using three separate classes of income. As a mature industry, the corporate income tax, rents and royalty rates should be tied to the length of an extraction project as an additional incentive to offset any competition from emerging producers like Ghana. Such changes will update the regime and make it more competitive, which will ensure continued investment and maximum generation of tax revenue.

\textit{(c) Government’s Financial Position}

According to a recent debt sustainability analysis conducted by the International Monetary Fund, Nigeria is not at risk of “debt distress”.\textsuperscript{292} Nigeria’s external debt has been eliminated during the past ten years through agreements with external creditors, which resulted in an USD 18 billion reduction.\textsuperscript{293} At the end of 2012, Nigeria’s external debt was projected to be a total of USD 6.5 billion, or 2.4\% of GDP.\textsuperscript{294} With the rebasing of its economy this past year, Nigeria’s external debt is projected to account for only 1\% of GDP.\textsuperscript{295} Despite these reductions in debt, Nigeria’s current credit rating by global ratings agencies is negative.\textsuperscript{296}

In its current form, Nigeria’s petroleum fiscal regime does not include provisions to account for the state’s changing financial position. The regime is static and maintains the status quo. Furthermore, the regime does not include measures that allow the state to make adjustments in response to volatilities in the price of oil. To protect itself against any sudden and drastic changes in the price of oil, the regime should provide greater flexibility to the national government to change terms when the price of oil is low; or alternatively, rates of taxation should be progressively tied to profits so that the state can receive a greater take during times of prosperity that can offset reduced levels of revenue when prices are low.

\textit{(d) Extent of State Participation}

Through the NNPC, Nigeria to play an active role in the country’s petroleum sector through joint ventures and production sharing agreements. This participation allowed the national government to engage directly in the sector and enjoy the benefits of being a direct owner, such as earning a greater share of oil wealth.\textsuperscript{297}

The terms of both production sharing agreements and joint ventures are favourable to the Nigerian government (compared to similar regimes in neighbouring states). Nigeria enjoys no less than a 55\% share in its joint ventures, and contracts with ten oil companies through

\textsuperscript{293} \textit{Ibid} at 2.
\textsuperscript{294} \textit{Ibid}.
\textsuperscript{295} “Revised GDP shrinks Nigeria budget deficit to 1 pct” (25 May 2014), online: <http://af.reuters.com/article/investingNews/idAFKBN0E509320140525>.
\textsuperscript{297} Ayoade, \textit{supra} note 16 at 173.
production sharing agreements. However, the NNPC should consider including more service contracts in the regime, especially when it is entering new exploration contracts. Service contracts are for a shorter term, which can act as an incentive for oil companies to explore and make a discovery.\(^{298}\) The terms of the service contract are also more favourable to the state as it does not tie the government to an agreement if oil is not discovered.\(^{299}\)

### 4.2.2 Ghana

#### (a) Dependence on Oil Revenue

Ghana is not a resource-dependent state.\(^{300}\) Although natural resource exports account for approximately 40% of Ghana’s exports, less than 5% of budget revenues are derived from natural resources.\(^{301}\) Although these figures do not account for any contributions arising from recent oil discoveries, it is unlikely that the state’s minimal dependence on natural resource revenue will reverse as a result of the new oil production; sources of budgetary revenue are already sufficiently diversified.

However, in its current form, Ghana’s petroleum fiscal regime is not maximizing government revenue to the extent that it can. The PITL risks long-term revenue generation prospects.\(^{302}\) It imposes minimal front-end charges, and also provides several deductions for rentals, royalties, and any funds paid as interest or fees on borrowed money. Although the default tax rate under the PITL is 50%, the actual rate charged is negotiable; for example, the rate currently being charged for production at Jubilee is 35%, which is lower than such regional neighbours as Nigeria (85%). Royalty rates in Ghana can also be changed to better support maximum revenue generation by increasing the highest rate from 12.5% to either 15%, or even 20%. Both rates are still in line with regional competitors, like Nigeria and Angola which both charge a maximum 20% royalty.\(^{303}\)

#### (b) Stage of Development of the Oil Industry

\(^{298}\) Omorogbe, *supra* note 59 at 282.
\(^{299}\) *Ibid.*
\(^{300}\) Thomas, *supra* note 28 at 5.
\(^{301}\) *Ibid.*
\(^{302}\) Ayoade, *supra* note 16 at 30.
\(^{303}\) Sunley, *supra* note 32 at 170.
The recent oil discoveries in Ghana has increased oil production to levels not previously seen, and it is projected that oil production will remain steady for the foreseeable future. Despite the relative youth of the industry, the petroleum fiscal regime was established close to thirty years ago. The regime introduced at that time, and which is still in place today, was largely structured to encourage petroleum exploration and production in a sector that lacked significant foreign investment. The lower tax and royalty rates discussed in the previous section further confirm that the regime is designed to attract investment.

Ghana’s regime, however, does provide opportunities to revise the fiscal terms applied to oil companies through the Petroleum Agreement. As a result of this mechanism, Ghana can adjust certain taxes levied against oil companies as the need arises. However, it is unclear if stabilization clauses that could limit adjustments are included in the agreements. If so, the regime should be reformed to allow the state to increase rates and generate more revenue as the industry grows. This can be done when the regime is up for review, since the government is likely unwilling to make drastic changes that may discourage investment. A review should occur soon, as updating the regime to modern standards is a valuable endeavour. At that point the Ghanaian government should seek to remove any stabilization clauses from its Model Petroleum Agreement, and also include provisions in its new regime that either permit greater flexibility or introduce progressive rates of taxation.

(c) Government’s Financial Position

Ghana’s recent government deficit is 10.8% of GDP, which resulted in a negative credit rating from global credit rating agencies. Part of the negative rating was due to lower tax revenue. Greater revenue generation from petroleum operations can help improve the government’s fiscal position. Currently, the Ghana’s petroleum fiscal regime is not formulated to maximize the tax revenue available from oil operations. The reforms to the regime discussed in the previous two sections can help improve the government’s revenue take from oil production.

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To ensure greater long-term stability in the regime, it should also account for any changes in oil prices that may arise, which it currently does not. Provisions that account for price volatility by linking tax rates to profit levels should be included in new Petroleum Agreements or through revisions to applicable legislation, such as the PITL.

(d) Extent of State Participation

Although Ghana acquires a stake in petroleum operations, it is only a 10% interest. The stake is low compared to other oil-producing African states. There is room for Ghana to increase its level of participation in order to gain a greater direct benefit from petroleum production. Also, while the Model Petroleum Agreement does grant the government (through the GNPC) the authority to assume control and management of petroleum operations, this measure may never be used if the GNPC does not develop the capacity to undertake petroleum extraction. If capacity is developed, assuming greater control and management of petroleum operations can also help increase the state’s take from production sharing contracts.

4.2.3 Cameroon

(a) Dependence on Oil Revenue

Oil is Cameroon’s main commodity export; it accounts for approximately 50% of export earnings and contributes around USD 1.2 billion to the national budgetary revenues each year, which is roughly 30%.305

Exacerbating its high dependence on oil revenue is Cameroon’s underdevelopment. Petroleum taxes can be used to respond to the country’s social development challenges.306 In its current form, however, the petroleum fiscal regime does not reflect the state’s reliance on oil revenue. Royalties are negotiable, as is corporate income tax. Neither does the regime include measures to support economic diversification, which is vital to Cameroon’s economy as it faces dwindling oil reserves.

305 Thomas, supra note 28 at 5; “Cameroon-Extractive Industries”, online: Extractive Industries Transparency Initiative <http://eiti.org/Cameroon>.
With the reserves projected to deplete in the next few years, the national government should consider adopting measures to direct tax revenue toward enhancing downstream production activities. Although oil for this production will not come from local reserves in coming years, Cameroon can potentially develop an industry that makes it the regional hub for oil refining and other production activities in the Gulf of Guinea.

(b) Stage of Development of the Oil Industry

Cameroon is facing depleting reserves that will detrimentally impact its ability to generate oil tax revenues once reserves are exhausted. The petroleum fiscal regime in a state with depleting reserves should be adjusted to allow the government to receive greater revenues before production ends. In Cameroon, however, stabilization and arbitration clauses included in the negotiated production sharing agreements limits the state’s ability to do so. With this restriction, the state should direct its policy efforts to introducing new sources of revenue into the economy, such as downstream oil activities.

(c) Government’s Financial Position

Due to debt relief it received as part of the Heavily Indebted Poor Countries and Multilateral Debt Relief Initiatives, Cameroon’s debt burden is low. However, projections for Cameroon’s public debt are not positive, and the country’s credit ratings remain constrained. Historically Cameroon’s petroleum fiscal regime did not account for the state’s financial position as the measures in place were not maximizing government revenue. Reforms to the petroleum fiscal regime discussed in the previous sections can potentially improve Cameroon’s financial position, as the state must find new sources of revenue generation due to depleting reserves.

(d) Extent of State Participation

Either directly or through the SNH, the Government of Cameroon may acquire an interest in petroleum operations. This is done on a per contract basis, without any statutory minimum

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requirement for the state’s share. Without legislating industry-wide standards, Cameroon is at risk of losing out on benefits available through direct state participation. It is not clear from the literature whether Cameroon currently negotiates high percentage shares in its production sharing agreements, or progressive rates that are meant to account for dwindling oil reserves. Since continued participation in oil production will not continue after the reserves are depleted, Cameroon can potentially engage in the new forms of revenue generation linked to the petroleum sector that were discussed in the preceding sections. Offering to act as a partner may help incentivize investors to establish downstream production activities in the state. Additionally, like upstream production sharing, collaborating with external partners helps pass off components of the project that the state itself cannot undertake due to its limited capacity.

4.3 Recommendations

The preceding evaluation of the petroleum fiscal regimes in Nigeria, Ghana, and Cameroon suggest greater flexibility can be a valuable addition to each. Petroleum operations evolve, and fiscal regimes should be able to account for changes that occur in the industry. Although Ghana and Cameroon may incorporate some level of flexibility into their respective petroleum agreements, both states do not appear to be making much use of it. Therefore, a key recommendation is incorporating greater flexibility into the regime.

One way this can be achieved is through progressive tax rates. Nigeria currently provides sliding royalties to encourage offshore exploration and production in deep-water areas offshore. The same approach is taken in Ghana, while Cameroon offers negotiated tax and royalty rates. However, the rates themselves remain static once they are set, and do not adjust to changing economic circumstances. Progressive taxation can “provide an orderly and predictable…means of reconciling the economic interests of governments and investors [by allowing] the Government share of fiscal benefits to adjust to changes in economic circumstances.”

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Progressivity currently not in use in Nigeria, Ghana, and Cameroon can be applied to profits taxes, price-based windfall taxes, and profit-oil sharing under production sharing agreements.\textsuperscript{310} Progressive profits taxes can apply a tax rate that increases as taxable income rises, rather than applying a flat rate.\textsuperscript{311} The challenge with this method of progressivity is determining what scale of taxation is appropriate, particularly so that the regime does not discriminate between small and large producers. Basing the scale on profit ratios rather than absolute levels of profit can overcome this challenge.\textsuperscript{312}

Profit-oil sharing under production sharing agreements is another means of progressive taxation. Through production sharing agreements, governments are allocated a static share of oil production. Using a progressive approach, governments can introduce a sliding scale that ties its shares of oil to levels of production, which tends to correlate closely to profitability when the costs of production remain constant.\textsuperscript{313}

An alternative option to progressive tax rates is a price-based windfall tax. This is a simpler and indirect way of taxing profits – governments can target windfall profits as a “proxy for profitability” during times of higher prices.\textsuperscript{314} However the limitation of this approach is that prices alone are not determinative of profit; in circumstances, rising costs can erode any profitability that arises from higher prices.\textsuperscript{315}

Another important element of flexibility is permitting changes in fiscal legislation during the length of a contract. Unfortunately, stabilization clauses may limit this from occurring. Nigeria and Ghana should ensure that these clauses are not introduced in any future agreements.

In addition to flexibility, Nigeria, Ghana, and Cameroon should undertake efforts to combat transfer pricing. Through transfer pricing, oil companies “[seek] to minimize income and maximize deductible expenditures in high-tax jurisdictions and vice-versa in low-tax

\textsuperscript{310} Ibid at 162, 164, and 165.
\textsuperscript{311} Ibid at 162.
\textsuperscript{312} Ibid at 163.
\textsuperscript{313} Ibid at 166.
\textsuperscript{314} Ibid at 164.
\textsuperscript{315} Ibid at 164.
jurisdictions.”316 It is difficult to detect, but provisions can be included in tax legislation to safeguard against this. One such measure is requiring that transactions between related parties be “assessed on an arm’s-length basis”, 317 or requiring that certain “deductions be capped as a share of total costs.”318

Addressing competition among producers is another measure all three states can undertake. As neighbours that all have oil reserves in the Gulf of Guinea, Nigeria, Ghana, and Cameroon can adopt regional mechanisms to combat competition among them.319 Both Ghana and Cameroon have lower comparative rates of taxation than Nigeria, and proposed reforms in Nigeria threaten to make that country’s industry less attractive to investment. In an effort to combat competition among Gulf of Guinea oil-producers that may lead states to lower taxation rates to levels that limit maximum revenue generation, oil-producers in the region should work collaboratively to develop common fiscal standards and aims in their petroleum regimes. This can include agreeing to a range of tax rates that is suitable for all regional partners, as the pursuit of the collective interest results in a more favourable outcome for all states involved.320 Regional economic organizations in the region can be used to facilitate cooperation; it may also be achieved either through a continental framework such as the Africa Mining Vision, or a new forum developed specifically for Gulf of Guinea countries.

316 Sunley, supra note 32 at 158.
317 Ibid.
318 Ibid.
319 Klaver, supra note 35 at 200.
320 Ibid.
5 Conclusion

5.1 Introduction

This Chapter provides a summary of the findings and a discussion of the study’s limitations.

5.2 Limitations

The aim of this thesis was to evaluate the petroleum fiscal regimes of three African countries in order to determine whether the regime in each state is currently designed to balance the conflicting goals of maximizing tax revenues for the government and attracting foreign oil investment. Although there is a consensus in the literature that this is a key objective in each oil-producing state, there is no clear, agreed upon framework to conduct this analysis. By canvassing the literature, I identified four common factors that should be variables in the formulation of petroleum fiscal regimes – dependence on oil revenue; stage of development of the oil industry; government’s financial position; and the extent of state participation in the oil sector. Using these factors, I endeavoured to answer my research question.

The analytical framework used in this thesis is one way to assess whether petroleum fiscal regimes are achieving the key objective of balancing conflicting interests. It offers a way to conduct the analysis by considering four important factors to the design of petroleum fiscal regimes. The framework may not fully capture whether a balance is achieved. However, I hope the framework, as it was structured in this thesis, can advance the assessment of oil-producing states, particularly in Africa.

5.3 Summary of the Findings

The taxation of oil production is a vital source of revenue for oil-producing states in Africa. As the potential for oil extraction grows, African states are poised to garner more and more wealth that can be used to meet economic and social development objectives. However,
petroleum fiscal regimes should be structured to generate maximum levels of revenue while also maintaining measures to attract foreign investment.

The assessment of the petroleum fiscal regimes of Nigeria, Ghana, and Cameroon reveals that the regimes are not balanced. Overall, the regimes in each country can better reflect the importance of each factor in the framework in the design of petroleum fiscal regimes.

In Nigeria, the regime should aim to reduce the state’s level of dependency on oil revenue. As the regime is currently structured, it generates tax revenue for the state that will maintain high levels of dependence. Current levels of taxation are not deterring investment, but new legislation aimed at increasing government take from oil production (that will only sustain high levels of dependency) can potentially harm new oil investment.

As a mature oil industry, Nigeria’s petroleum fiscal regime should account for the long resource horizon of its reserves. Tax rates can be tied to the length of a project, and incentives introduced moderately in order to encourage any new investment and oil discoveries as existing wells deplete. The government’s financial position should also be reflected in the regime through progressive fiscal positions that permit the state to respond to changing circumstances due to fluctuations in the price of oil. Finally, Nigeria should ensure any participation in its oil sector is advantageous. This may include reforming current production sharing agreements or entering different types of agreements, such as service contracts.

Ghana’s petroleum fiscal regime should be reformed to ensure maximum long-term revenue generation, even if the state is not fiscally dependent on oil revenue. Much of the regime is currently formulated to attract investment to a young industry. Given the long resource horizons of its newly discovered reserves, Ghana is in a position to enact measures that will ensure long-term revenue stability. These measures should account for the government’s changing financial position, and the fluctuations in oil prices. The regime can also achieve greater take by increasing the state’s share in production sharing agreements.

With its depleting oil reserves, Cameroon is at risk of losing significant revenue. As a country that is highly dependent on oil revenue, the current petroleum fiscal regime is
inadequate to respond to the shortage of oil revenue that will soon occur. Measures to encourage more exploration, or other diverse economic activity, should be adopted. Such measures account for the government’s financial position and need for tax revenue. To support these new policies, the Cameroonian government should ensure continued state participation in order to maximize its fiscal benefits.
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“Revised GDP shrinks Nigeria budget deficit to 1 pct” (25 May 2014), online: <http://af.reuters.com/article/investingNews/idAFKBN0E509320140525>.


Total E&P Nigeria, online: <http://www.ng.total.com/04_total_nigeria_activities/0401_our_activities.htm>.


Legislation

**Nigeria**
Petroleum Act (1969), Chapter 350. (159)
Petroleum (Drilling and Production) Regulations, L.N. 69 of 1969. (160)
Petroleum Profits Tax Act (1990), Chapter 354 (165)

**Ghana**
## Appendix 1

### State-Owned Oil Companies in Sub-Saharan Africa

<table>
<thead>
<tr>
<th>Country</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
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</tr>
<tr>
<td>Cameroon</td>
<td>Société Nationale des Hydrocarbures (SNH)</td>
</tr>
<tr>
<td>Chad</td>
<td>Société Des Hydrocarbures Du Tchad S.A</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>Société Nationale d'Operations Pétrolières de la Côte d'Ivoire</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>GEPetrol</td>
</tr>
<tr>
<td>Ghana</td>
<td>Ghana National Petroleum Corporation</td>
</tr>
<tr>
<td>Mali</td>
<td>Autorité pour la Promotion de la Recherche Pétrolière au Mali</td>
</tr>
<tr>
<td>Nigeria</td>
<td>Nigerian National Petroleum Corporation</td>
</tr>
<tr>
<td>Senegal</td>
<td>Senegalese National Oil Company</td>
</tr>
<tr>
<td>South Africa</td>
<td>Petroleum, Oil and Gas Corporation of South Africa</td>
</tr>
<tr>
<td>South Sudan</td>
<td>Nilepet</td>
</tr>
<tr>
<td>Sudan</td>
<td>Sudapet</td>
</tr>
</tbody>
</table>

Appendix 2

Gulf of Guinea

Map 1: The Gulf of Guinea

Source: Chatham House
(http://www.chathamhouse.org/sites/default/files/public/Research/Africa/0312confreport_maritimesecurity.pdf)