

**TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE
DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE ON THE JOINT
DEVELOPMENT OF PETROLEUM AND OTHER RESOURCES IN AREAS
OF THE EXCLUSIVE ECONOMIC ZONE OF THE TWO STATES
(RATIFICATION AND ENFORCEMENT) ACT, 2005.**



ARRANGEMENT OF SECTIONS

SECTION :

1. Enforcement of the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on Joint Development of Petroleum and other Resources in Areas of the Exclusive Economic Zone of the two States.
2. Short title.
Schedule

TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE DEMOCRATIC REPUBLIC OF
SAO TOME AND PRINCIPE ON THE JOINT DEVELOPMENT OF PETROLEUM AND OTHER
RESOURCES IN AREAS OF THE EXCLUSIVE ECONOMIC ZONE OF THE TWO STATES
(RATIFICATION AND ENFORCEMENT) ACT, 2005.

2005 ACT, No. 1

AN ACT TO ENABLE EFFECT TO BE GIVEN IN THE FEDERAL REPUBLIC OF NIGERIA TO THE
TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE DEMOCRATIC REPUBLIC OF
SAO TOME AND PRINCIPE ON THE JOINT DEVELOPMENT OF PETROLEUM AND OTHER
RESOURCES IN AREAS OF THE EXCLUSIVE ECONOMIC ZONE OF THE TWO STATES ; AND FOR
RELATED PURPOSES

[28th February, 2005]

Commence-
ment

WHEREAS the United Nations Convention on the Law of the Sea done at Montego Bay on 10th December, 1982 and in particular, Article 74 (3) which requires States with opposite coasts, in a spirit of understanding and co-operation, to make every effort, pending agreement on delimitation, to enter into provisional arrangements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of their Exclusive Economic Zones ;

AND WHEREAS Nigeria is a member of State of the African Union and a signatory to the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and Other Resources in Areas of the Exclusive Economic Zone of the two States ;

AND WHEREAS the Government of the Federal Republic of Nigeria has in accordance with her constitutional process ratified the said Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and Other Resources in Areas of the Exclusive Economic Zone of the two States on 23rd July, 2001.

AND WHEREAS it is necessary and expedient to enact a law to enable effect to be given to the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and Other Resources in areas of the Exclusive Economic Zone of the two States in the Federal Republic of Nigeria.

NOW THEREFORE IT IS—

ENACTED by the National Assembly of the Federal Republic of Nigeria :

Enforcement
of the Treaty
between the
Federal
Republic of
Nigeria and
the
Democratic
Republic of
Sao Tome
and Principe
on Joint
Development
of Petroleum
and other
Resources in
Areas of the
Exclusive
Economic
Zone of the
two States.

1. The provisions of the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and Other Resources in Areas of the Exclusive Economic Zone of the two States which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

Short title.

2. This Act may be cited as the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and Other Resources in Areas of the Exclusive Economic Zone of the two States (Ratification and Enforcement) Act, 2005.

SCHEDULE

Section 1

TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE DEMOCRATIC REPUBLIC OF
SAO TOME AND PRINCIPE ON THE JOINT DEVELOPMENT OF PETROLEUM AND OTHER
RESOURCES IN RESPECT OF AREAS OF THE EXCLUSIVE ECONOMIC ZONE OF THE TWO STATES

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea
done at Montego Bay on 10th December, 1982 and in particular, Article 74 (3) which
requires States with opposite coasts, in a spirit of understanding and cooperation, to
make every effort, pending agreement on delimitation, to enter into provisional
arrangements of a practical nature which do not jeopardise or hamper the reaching of
final agreement on the delimitation of their Exclusive Economic Zones ;

FULLY COMMITTED to maintaining, renewing and further strengthening the mutual
respect, friendship and co-operate between their two countries, as well as promoting
constructive neighbourly co-operation ;

ACKNOWLEDGING THE EXISTENCE of an area of overlapping maritime claims as to
the exclusive economic zones lying between their respective territories ("the
Areas") ;

DETERMINED to pursue their common economic and strategic interests ;

NOTING the possibility that petroleum and other resources may exist in the
Area ;

DESIRING to enable the exploration for and exploitation of those resources
without delay and in an orderly fashion ;

MINDFUL of the interests which their countries share as immediate
neighbours, and in a spirit of co-operation, friendship and goodwill ;

CONVINCED that this Treaty will contribute to the strengthening of relations
between their two countries ; and

BELIEVING that the establishment of joint arrangements to permit the exploration
for, and exploitation of petroleum and other resources in the Area will further augment
the range of contact and co-operation between the Governments of the two countries
and benefit the development of contacts between their peoples ;

HAVING DECIDED ACCORDINGLY TO CONSTITUTE by the present Treaty a joint
development zone for the Area, without prejudice to the eventual delimitation of their
respective maritime zones by agreement in accordance with international law ;

REAFFIRMING that the rules of international law will continue to govern
questions not regulated by the provisions of this Treaty ;

HAVE AGREED as follows :

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PRELIMINARY

ARTICLE 1—DEFINITIONS

For the purpose of this Treaty :

"Applicable law" means this Treaty, and the principles and rules of law applicable in the Zone by virtue of this Treaty ;

"Authority" means the Joint Authority established by part Three of this Treaty ;

"Board" means the Board of the Authority, as referred to in Article 9 ;

"Contract Area" means a part of the Zone which is the subject of a development contract, but excluding areas which have been relinquished by the contractor ;

"Contractor" means a party to a development contract other than the Authority ;

"Council" means the Joint Ministerial Council established under Part Two of this Treaty ;

"Development Activity" means any economic activity in or concerning the Zone, including petroleum activity, fishing activity, all other activities for the development or exploitation of other mineral or living resources of the Zone, and all forms of exploration and research relating to any of the foregoing ;

"Development Contract" means any agreement (including leases, licences, production sharing contracts and concessions) from time to time entered into between the Authority and a contractor in relation to a development activity ;

"Exclusive Maritime area" means any area of continental shelf or exclusive economic zone, outside the Zone, which pertains to one or other of the States Parties under international law ;

"Financial Terms" includes all obligations in the nature of taxation (whether production or income based) and any other financial obligations including royalties, payments in kind, production sharing arrangements and resource rentals ;

"Fishing Activity" means any activity concerning the harvesting and exploitation of living natural resources of the Zone ;

"Installation" means any structure, device or artificial island utilised in development activities, installed above, in, on or under the seabed including drilling vessels *in situ* ;

"National" means a natural or juridical person having the nationality of a State Party in accordance with the laws of that State Party ;

"National Body" means a Ministry or a governmental or quasi-governmental administrative or technical organ of a State Party responsible for activities in or in the waters of that State Party ;

"Operating Agreement" means a contract concluded between two or more contractors for the purpose of carrying out development activities in the Zone ;

"Operator" means a contractor appointed and acting as operator under the terms of an operating agreement ;

"Petroleum" means-

(a) any hydrocarbons or mixture of hydrocarbons, whether in a gaseous, liquid or solid state, naturally occurring beneath the seabed ;

(b) any petroleum as defined by subparagraph (a) that has been returned to a reservoir ; and

(c) any other minerals which are produced in association with them ;

"Petroleum Activities" means all activities of exploration for and exploitation of the petroleum in the Zone ;

"Petroleum Contractor" means a contractor in respect of a petroleum development contract ;

"Petroleum Development Contract" means a development contract relating to petroleum ;

"Pollution" means the introduction of substances or energy into the marine environment, including estuaries, which results or is likely to result in deleterious effects such as harm to living resources and marine life, hazards to human health, impairment of quality for use of sea water or reduction of amenity ;

"Secretariat" means the Secretariat of the Authority as referred to in Article 13 ;

"States Parties" means the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe ;

"Zone" means, the area of seabed and subsoil, together with the superjacent waters, established as a joint development zone under Article 2 ;

"Zone Plan" means the development plan or plans from time to time adopted by the Council; pursuant to Part Seven of this Treaty, for activities in the Zone.

PART I—THE JOINT DEVELOPMENT ZONE

ARTICLE 2—ESTABLISHMENT OF JOINT DEVELOPMENT ZONE

2.1 The Zone is hereby established as an area of joint development by the States parties in accordance with, and for the purposes set out in this Treaty.

2.2 The area covered by the Zone shall be as follows-

(a) the area of the sea which is bounded by geodesic lines joining the following points using the WGS 84 Datum in the order listed below; and

(b) the seabed, subsoil and the superjacent waters thereof.

Degrees	Minutes	Seconds	Degrees	Minutes	Seconds
03	02	02N	07	07	31E
02	50	50N	07	25	52E
02	42	42N	07	36	25E
02	20	20N	06	52	45E
01	40	40N	05	57	54E
01	09	09N	04	51	39E
01	09	09N	04	41	27E
01	13	13N	E	24	14E
01	21	21N	04	06	55E
01	31	31N	04	06	55E
01	42	42N	03	50	23E
01	55	55N	03	34	33E
01	58	58N	03	53	40E
02	02	02N	04	15	11E
02	05	05N	04	24	56E
02	10	10N	04	47	58E
02	15	15N	05	06	03E
02	19	19N	05	17	11E
02	22	22N	05	26	57E
02	26	26N	05	36	20E
02	30	30N	05	45	22E
02	33	33N	05	52	58E
02	36	36N	05	59	00E
02	45	45N	06	15	57E
02	50	50N	06	26	41E
02	51	51N	06	29	27E
02	52	52N	06	31	46E
02	54	54N	06	38	07E
03	00	00N	06	56	58E
03	01	01N	07	01	07E
03	01	01N	07	01	46E
03	01	01N	07	03	07E
03	02	02N	07	07	31E

2.3 The area covered by the Zone is depicted for illustrative purposes on the attached map. The Authority may for its purposes more accurately depict the boundaries of the Zone on a chart or charts of appropriate scale.

ARTICLE 3—PRINCIPLES OF JOINT DEVELOPMENT

(1) Within the Zone, there shall be joint control by the States Parties of the exploration for and exploitation of resources, aimed at achieving optimum commercial utilization. The State Parties shall share, in the proportions: Nigeria 60 per cent, Sao

Tome and Principe 40 per cent, all benefits and obligations arising from development activities carried out in the Zone in accordance with this Treaty.

(2) No development activities shall be conducted or permitted in the Zone except in accordance with this Treaty.

(3) The rights and responsibilities of the States Parties to develop the Zone shall be exercised by the Council and the Authority in accordance with this Treaty.

(4) The petroleum and other resources of the Zone shall be exploited efficiently in accordance with this Treaty having due regard to the protection of the marine environment, and in a manner consistent with generally accepted good oilfield and fisheries practice.

(5) Subject to paragraph 4, the Council and the Authority shall take all necessary steps to enable the commencement of exploration for and exploitation of the petroleum resources of the Zone as soon as possible after the entry into force of this Treaty.

ARTICLE 4—NO RENUNCIATION OF CLAIMS TO THE ZONE

(1) Nothing contained in this Treaty shall be interpreted as a renunciation of any right or claim relating to the whole or any part of the Zone by either State Party or as recognition of the other State Party's position with regard to any right or claim to the Zone or any part thereof.

(2) No Act or activities taking place as a consequence of this Treaty or its operation, and no law operating in the Zone by virtue of this Treaty, may be relied on as a basis for asserting, supporting or denying the position of either State Party with regard to rights or claims over the Zone or any part thereof.

PART 2—THE JOINT MINISTERIAL COUNCIL

ARTICLE 5—COMPOSITION OF THE COUNCIL

(1) A Joint Ministerial Council for the Zone is hereby established.

(2) The Council shall comprise not less than two nor more than four Ministers or Persons of equivalent rank appointed by the respective Heads of State of each State Party.

(3) The Council does not have separate legal personality.

(4) Any member of the Council may by written notice to the Secretariat nominate a representative to participate on his or her behalf at one or more meetings of the Council. Subject to the specific terms of the nomination, every such representative shall be entitled, in the absence of the designating member, to exercise any power or function of that member of the Council, including counting towards a quorum.

(5) The Executive Director acting as Secretary of the Authority shall also act as Secretary of the Council.

ARTICLE 6—MEETINGS AND DECISIONS OF THE COUNCIL

- (1) The quorum for a valid meeting of the Council shall be at least half the members, including at least one appointed by each of the States Parties.
- (2) The Council shall meet at least twice a year and as often as may be required, alternately in Nigeria and in Sao Tome and Principe. The first meeting shall be held not later than 60 days after the entry into force of this Treaty.
- (3) Meetings shall be chaired by a member nominated by the host State Party.
- (4) All decisions of the Council shall be adopted by consensus.
- (5) The Council may establish its own procedures, including procedures for taking decisions out of session.
- (6) No decision of the Council shall be valid unless it is recorded in writing and signed by at least one member from each State Party.

ARTICLE 7—FUNCTIONS AND POWERS OF THE COUNCIL

- (1) The Council shall have overall responsibility for all matters relating to the exploration for and exploitation of the resources in the Zone, and such other functions as the States Parties may entrust to it.
- (2) The functions of the Council shall include the following—
 - (a) to give directions to the Authority on the discharge of its functions under this Treaty ;
 - (b) to approve rules, regulations (including staff regulations) and procedures for the effective functioning of the Authority ;
 - (c) to consider and approve the audited accounts and audit reports of the Authority ;
 - (d) to consider and approve the Annual Report of the Authority ;
 - (e) to review the operation of this Treaty and to make recommendations to the States Parties on any matter concerning the functioning or amendment of this Treaty as may be appropriate ;
 - (f) to approve development contracts which the Authority may propose to enter into with any contractor ;
 - (g) to approve the termination of development contracts entered into between the Authority and contractors ;
 - (h) subject to the provisions of paragraph 2 of Article 17, to approve the distribution to the States Parties of revenues or products derived from development contracts in the Zone ;
 - (i) to consider and approve the annual budget of the Authority ;
 - (j) to approve the opening of bank accounts by the Authority ;
 - (k) to vary any time limit imposed upon the Authority under the terms of this Treaty ;

(l) through consultation, to settle disputes in the Authority ;

(m) to appoint the external auditors for the Authority and approve their remuneration.

(3) Each of the State Parties shall have full access on request to all papers of the Council and the Authority.

(4) The Council, its members and its Secretary shall be entitled to use the services of the Secretariat of the Authority as necessary for the discharge of the functions under this Treaty.

PART 3—THE JOINT AUTHORITY

ARTICLE 8—ESTABLISHMENT, FUNCTIONS AND POWERS

(1) The Authority is hereby established.

(2) The Authority shall have juridical personality in international law and under the law of each of the States Parties and such legal capacities under the law of both States Parties as are necessary for the exercise of its powers and the performance of its functions. In particular, the Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.

(3) The Authority shall be responsible to the Council.

(4) Unless and until the Council otherwise decides, the seat of the Authority shall be at Abuja, Nigeria, with a subsidiary office in Sao Tome, Sao Tome e Principe.

(5) The Authority shall commence functioning on entry into force of this Treaty.

(6) The Authority, subject to directions from the Council, shall be responsible for the management of activities relating to exploration for and exploitation of the resources in the Zone, in accordance with this Treaty. In particular, the Authority shall have the following functions—

(a) the division of the Zone into contract areas, and the negotiation, tendering for and issue and supervision of contracts with respect to such areas ;

(b) entering into development contracts with contractors, subject to the approval of the Council ;

(c) oversight and control of the activities of contractors ;

(d) recommending to the Council the termination of development contracts ;

(e) terminating development contracts, subject to the approval of the Council ;

(f) subject to paragraph 2 of Article 17, collecting and, with the approval of the Council, distributing between the two States Parties the proceeds or products of the Authority's share of production from development contracts ;

(g) preparation of budgets of the Authority for submission to the Council ; expenditure shall be incurred in accordance with budgets or estimates approved by the Council or otherwise in accordance with regulations and procedures approved by the Council ;

(h) controlling the movements into, within and out of the Zone of vessels, aircraft, structures, equipment and people ;

(i) the establishment of safety zones and restricted zones, consistent with international law to ensure the safety of navigation, petroleum activities, fishing activities and other development activities and the effective management of the Zone ;

(j) issuing regulations and giving directions on all matters related to the supervision and control of operations, including on health, safety and environmental issues ;

(k) the regulation of marine scientific research ;

(l) preparation of Annual Reports, for submission to the Council ;

(m) inspecting and auditing contractors' books and accounts relating to development contracts, for any calendar year ;

(n) making recommendations to the States Parties on any issues arising as to the applicable law, and on any changes to that law which may be necessary to promote the development of the resources of the Zone ;

(o) the preservation of the marine environment, having regard to the relevant rules of international law applicable to the Zone ;

(p) the collection and exchange of scientific, technical and other data concerning the Zone and its resources ;

(q) the appointment and dismissal of technical and other staff of the Authority other than Executive Directors ;

(r) requesting action by the appropriate authorities of the States Parties consistent with this Treaty, in respect of the following matters—

(i) search and rescue operations in the Zone,

(ii) deterrence or suppression of terrorist or other threats to vessels and structures engaged in development activities in the Zone, and

(iii) the prevention or remedying of pollution ;

(s) consideration of matters from time to time specifically referred to it by the Council or by either State Party ; and

(t) such other functions as may be conferred to it by the Council.

(7) The working language of the Authority shall be English.

ARTICLE 9—THE BOARD

(1) Subject to this Treaty and to any direction of the Council, the Authority shall be governed by a Board consisting of four Executive Directors. Two (and their replacements from time to time) shall be appointed by the Head of State of Nigeria from among Nigerian nationals of suitable qualifications and experience, and two (and their replacements from time to time) shall be appointed by the Head of State of Sao Tome and Principe from among nationals of Sao Tome and Principe, of suitable qualifications

and experience. All such appointments shall be effected by notice in writing served upon the Head of the other State Party. Executive Directors shall hold office for such period as the appointing Head of State shall determine, normally for a period of six years once renewable or until a replacement is appointed.

(2) Executive Directors may from time to time be assigned by the Council, on a three year basis, to head various departments of the Authority, including to act as Secretary of the Authority and Head of the Secretariat.

(3) The Board shall meet on the request of the Council, either State Party or any Executive Director, or otherwise, as often as necessary for the discharge of its functions.

(4) The quorum for a valid meeting of the Board shall be at least two Executive Directors including at least one appointed by each State Party.

(5) Decisions of the Executive Directors of the Authority shall be arrived at by consensus. Where consensus cannot be reached, the matter shall be referred to the Council.

(6) Unless the Board otherwise decides, it shall meet at the seat of the Authority.

(7) No decision of the Board shall be valid unless recorded in writing and signed by two Executive Directors, including at least one appointed by each State Party.

(8) The personnel of the Authority shall be appointed by the Board under terms and conditions approved by the Council, that have regard to the proper functioning of the Authority.

(9) Unless the Council otherwise decides, it shall appoint one of the Executive Directors to act as Chairman of the Authority and of the Board, such appointment to be for a one year period.

(10) Subject to this Treaty and to any direction of the Council, the Board may determine its own procedures.

ARTICLE 10—ACCOUNTABILITY

(1) The Authority shall in all respects be responsible and accountable to the Council and shall comply with all directions from time to time given to it by the Council.

(2) The Secretariat and all other administrative agencies or organs and technical or other committees of the Authority shall in all respects be responsible and accountable to the Board.

(3) The Authority shall produce an Annual Report on its activities and on the progress made in the Zone, in accordance with any directions of the Council, and shall submit it to the Council for approval.

(4) The Executive Directors, officers and other personnel of the Authority who are nationals of one or other State Party shall be subject to taxation in respect of any remuneration for services performed under this Treaty only by the State Party of their nationality, irrespective of where the services in question are performed.

(5) A person who is a national of both States Parties shall be required to elect which of the two nationalities is to be treated as effective for the purposes of the Treaty.

ARTICLE 11—PRIVILEGES AND IMMUNITIES

(1) The Authority shall be immune from all forms of taxation in respect of its activities under this Treaty. This is without prejudice to the application of non-discriminatory fees or charges for services in respect of activities of the Authority on the territory of a State Party, to the extent that a national authority of that State Party would be subject to corresponding fees or charges in respect of equivalent activities.

(2) The Authority shall be immune from the jurisdiction of any court or tribunal of a State Party except as concerns—

(a) commercial transactions entered into on the territory of the State Party in question, to the extent that such transactions are not subject to dispute resolution under Article 46 ;

(b) non-discretionary decisions which would be reviewable if they were made in equivalent circumstances by a national authority on the territory of the State Party in question.

(3) The Executive Directors, officers and other personnel of the Authority who are nationals of one or other State Party shall be subject to taxation in respect of any remuneration for services performed under this Treaty only by the State Party of their nationality, irrespective of where the services in question are performed.

(4) A person who is a national of both States Parties shall be required to elect which of the two nationalities is to be treated as effective for the purposes of the Treaty.

ARTICLE 12—SUPPLY OF SERVICES

(1) Subject to this Treaty and in accordance with the principles set out in Article 3, for the accomplishment of its functions, the Authority may use technical structures and other services already existing in the States Parties. Different services may be requested from different entities.

(2) The entities to which such delegation is made shall be accountable to the Authority.

(3) The immunities of the Authority under paragraphs 1 and 2 of Article 11 shall apply to the activities of any entity exercising delegated functions under the present Article.

(4) A delegation under paragraph 1 of this Article remains in force in accordance with its terms until it is revoked by the Board.

(5) Any entity to which functions are delegated under paragraph 1 shall accept the secondment to its staff, at appropriate levels of seniority, of nominees of any State Party not already involved in the entity, for the purposes of training and exchange of

information and expertise, and shall involve those persons to the fullest extent in the exercise of the delegated functions.

(6) The number and placement of the persons referred to in paragraph 5 are subject to agreement between the States Parties, having regard to the extent of the functions to be performed and the needs for personnel development and training of the State Party not already involved in the entity.

(7) Costs and other expenses, including personnel costs and expenses, incurred in the exercise of delegated functions, are reimbursable, subject to the terms and conditions agreed upon with the Authority.

(8) The staff of or retained by the Authority (including the Secretariat) shall be selected on a basis which ensures that the maximum percentage of such staff who are nationals or residents of Sao Tome and Principe does not exceed 40 per cent.

PART 4—ADMINISTRATIVE SERVICES

ARTICLE 13—SECRETARIAT AND OTHER SERVICES

(1) The Authority shall establish a Secretariat headed by one of the Executive Directors as Secretary on a three year rotating basis, to carry out the administrative work of the Council and the Authority.

(2) All appointments to the Secretariat shall be made by the Board, within the limits and subject to any procedures laid down by the Council.

(3) The officers and staff of the Secretariat shall be recruited on such terms as the Authority approves. Senior appointments shall be subject to approval by the Council. Such officers and staff may but need not be selected from amongst the officials or employees, or former officials or employees, of the Government of either State Party.

PART 5—DUTIES OF PERSONNEL

ARTICLE 14—IMPARTIALITY AND CONFLICTS OF INTEREST

(1) Members of the board, officers and other staff of the Authority in their capacities as such shall have regard to the interests of the Authority alone, and shall act with impartiality and without favouring either of the States Parties at the expense of the other. This principle shall apply equally to a national body or other entity and its personnel in respect of the exercise by it of delegated functions under Article 12.

(2) Unless otherwise expressly approved by the Council, no Executive Director, officer or other staff member of the Authority may have any direct or indirect financial interest in development activities in the Zone.

(3) Executive Directors, officers and other staff members of the Authority shall, before assuming their functions, make a written declaration under oath, in a form approved by the Council, detailing any direct or indirect interest which might reasonably be considered to amount to a financial interest as referred to in paragraph 2.

ARTICLE 15—CONFIDENTIALITY

(1) Members of the Board, officers and other staff of the Authority, as well as each State Party, shall treat the contents of all confidential papers and information produced or received for the purposes of or pursuant to this Treaty as confidential, and shall not further disclose or publish any such document or information without the authority of both States Parties or as the case may be of the other State Party.

(2) No Executive Director or officer or other staff member of the Authority shall disclose, during or after the termination of their functions, any industrial secret or proprietary data which comes to their knowledge or into the possession of the Authority, or any other confidential information coming to his or her knowledge by reason of his or her holding a position in the Authority.

(3) This Article does not derogate from any other obligation upon a person, or any remedy available to the Authority or to a State Party, in respect of any actual or potential breach of confidentiality.

PART 6—FINANCE

ARTICLE 16—BUDGETS, ACCOUNTS AND AUDIT

(1) The Authority shall be financed from revenues collected as a result of its activities. The State Parties shall advance such funds as they jointly determine to be necessary to enable the Authority to commence its operations.

(2) All funds, paid or payable to the Authority shall be held by the Authority in such accounts as it shall establish, in accordance with sub-paragraph 2 (i) of Article 7.

(3) The Authority shall prepare and maintain full, proper and up-to-date accounts, balance sheets, budgets and cash flow projections, in accordance with good international accountancy practice and with any directions of the Council.

(4) All costs and expenses from time to time incurred by the Council, the Authority and their respective members and other personnel shall be paid by the Authority.

(5) All such costs and expenses shall be subject to a budgetary and accounting system to be established by the Authority and approved by the Council within five months of the entry into force of this Treaty.

(6) All budgets, costs and expenses, and in addition all other receipts and payments by the Authority, and all accounts of the Authority, shall be audited annually by external auditors approved by the Council.

(7) Any shortfall in the approved budget for any accounting period shall be borne by the States Parties in the proportions Nigeria 60 per cent, Sao Tome and Principe 40 per cent. Unless the Council otherwise decides, budgetary contributions under this paragraph shall constitute interest-free loans to the Authority, repayable as first charges on the surplus of the Authority in any subsequent accounting period.

(8) The Authority shall comply with the budgetary procedures in force and shall make efficient use of its available resources.

ARTICLE 17—APPLICATION OF SURPLUSES

(1) The Authority may with the approval of the Council establish such reserve funds as it considers prudent.

(2) All surpluses of revenue over expenditure shall, after the establishment of such reserve funds, be promptly paid, without deduction or withholding to the national treasuries of the States Parties in the proportions Nigeria 60 per cent, Sao Tome and Principe 40 per cent, as shall any sum held in a reserve which is no longer required.

PART 7—THE ZONE PLAN

ARTICLE 18—PREPARATION AND APPROVAL OF THE ZONE PLAN

(1) As soon as practicable following the entry into force of this Treaty the Authority shall meet in order to prepare an initial Zone Plan in accordance with the principles set out in Article 3, so as to establish ways in which the resources of the Zone may be developed in an efficient, economical and expeditious manner.

(2) For the purposes of paragraph 1, the States Parties have provided each other with all material information available to them in respect of economic activity, actual or prospective, within the Zone.

(3) The Zone Plan is subject to the approval of the Council, which may approve it with or without amendment or refer it back to the Authority with recommendations for further work or instructions for change.

(4) The Zone Plan approved by the Council shall be published in an appropriate manner by the Authority and the States Parties.

(5) Matters which are not included in the Zone Plan shall be governed by this Treaty, or in the absence of any provision in this Treaty by decisions of the Council or supplemental agreement between the States Parties.

ARTICLE 19—PERIODIC REVIEW OF THE ZONE PLAN

(1) Unless otherwise directed by the Council, the Authority shall revise the Zone Plan at least every three years and submit any proposed revisions to the Council for adoption.

(2) Pending adoption of any revised Zone Plan the previously approved Zone Plan shall remain in force.

(3) Paragraphs 3 to 5 of Article 18 apply to any proposed or approved revision of the Zone Plan.

PART 8—REGIME FOR PETROLEUM IN THE ZONE

ARTICLE 20—REGULATORY AND TAX REGIME FOR PETROLEUM ACTIVITIES

(1) As soon as practicable following the entry into force of any event within a three month period, the Authority shall prepare for the approval of the Council a regulatory and tax regime consistent with this Treaty, which shall be the applicable law relating to the exploration for and exploitation of petroleum in the Zone.

(2) Within six months of the entry into force of this treaty, the draft regulatory and tax regime shall be adopted by the Council with such modifications as the Council considers appropriate. By virtue of such adoption the regime shall become legally applicable to petroleum activity throughout the Zone, and shall be enforced accordingly by the Authority.

(3) Upon its adoption, the regulatory and tax regime shall be promptly published by the Authority.

(4) The Council may at any time adopt such modifications as it thinks fit to the regulatory and tax regime so established, and any such modification shall immediately become legally applicable in the Zone and enforced by the Authority.

(5) The Authority shall promptly publish every such modification to the regulatory and tax regime.

ARTICLE 21—CUSTOMS AND DUTY EXEMPTIONS

(1) Petroleum equipment shall not be subject to any customs duties or other taxes and duties in respect of its import into, use in or export from the Zone unless and to the extent the Council otherwise decides. Nothing in this Article shall affect a State Party's rights in respect of export or import, following the completion of its use in the Zone or petroleum equipment having the territory of that State Party as its country of, respectively, origin or destination.

(2) For the purposes of this Article "petroleum equipment" includes installations, plant and equipment (including drilling rigs) and any materials and other goods necessary for the conduct of petroleum activities in the Zone.

(3) The shipment of petroleum extracted from the Zone to areas within the jurisdiction of the States Parties shall be free of all taxes and duties other than those provided for in the financial terms of the relevant development contract.

ARTICLE 22—GENERAL REGIME FOR PETROLEUM DEVELOPMENT CONTRACTS

(1) No petroleum activities may be undertaken in the Zone other than pursuant to a petroleum development contract between the Authority and one or more contractors.

(2) Unless the Council otherwise decides, and in accordance with procedures laid down by the Council for tendering, the principle of holding licensing rounds must be followed prior to the signing of any petroleum development contract.

ARTICLE 23—FINANCIAL REGIME FOR PETROLEUM DEVELOPMENT CONTRACTS

(1) The financial (including fiscal) obligations of contractors to the Authority in respect of petroleum activities in the Zone shall be exclusively determined by the financial terms of petroleum development contracts as provided under this Article.

(2) In addition to the financial terms imposed by the regulatory and tax regime established pursuant to Article 20, the Authority may impose such other terms, not inconsistent with the foregoing, as it may formulate, having regard to the requirement to balance the following needs—

(a) to obtain optimum revenues for the Authority and through the Authority the States Parties from commercial exploitation of the resources;

(b) to encourage commercial exploitation and provide incentives for investment;

(c) to ensure clarity and certainty of operation;

(d) to ensure as far as possible that contractors' tax payments under the financial terms qualify for double taxation relief, including in third States;

(e) to ensure optimum utilisation of any fields wholly or partly within the Zone over the life of those fields.

(3) The States Parties shall take all appropriate measures within their national legal systems to ensure that the financial terms are enforced.

(4) Neither State Party shall tax development activities in the Zone or the proceeds deriving therefrom except in accordance with this Article. This does not affect the States Parties' rights to tax any profits arising from the processing or further treatment of petroleum beyond the initial treatment necessary to effect its sale as a raw material.

ARTICLE 24—RIGHTS AND DUTIES OF CONTRACTORS

(1) A contractor shall have exclusive rights to carry out the activities authorised under its respective petroleum development contract for the duration of the latter, subject to compliance with its terms and the applicable law.

(2) A contractor may dispose of any petroleum to which it is entitled under the relevant development contract, subject only to any non-discriminatory restrictions the Authority may impose on landing, identity of the purchaser and verification of the volumes concerned.

ARTICLE 25—EFFECT OF CANCELLATION OR SUSPENSION OF PETROLEUM DEVELOPMENT CONTRACTS ON CO-CONTRACTORS

(1) If following a contractor's default the Authority cancels a petroleum development contract held jointly by more than one contractor, the Authority shall offer a new contract for that area to any contractor(s) not in default, as far as possible on similar terms to those of the previous contract.

(2) The offer may be subject to—

- (a) a requirement that the offeree(s) remedy any consequences of the default ;
- (b) the acceptance by the offeree(s) of a suitable replacement contractor identified by or acceptable to the Authority.

(3) This Article is without prejudice to any obligations to which the other contractor(s) may be liable under the original petroleum development contract.

ARTICLE 26—ASSIGNMENT OF CONTRACTORS' RIGHTS

A contractor's rights and obligations under a petroleum development contract shall not be transferred without the consent of the Authority. The Authority shall not unreasonably withhold its consent where the proposed transferee is financially and technically qualified and otherwise meets any requirements maintained by the Authority.

ARTICLE 27—OPERATIONS BY PETROLEUM CONTRACTORS IN THE TERRITORY OF THE STATES PARTIES OUTSIDE THE ZONE

Within the territory of either State Party petroleum contractors may acquire, construct, maintain, use and dispose of buildings, platforms, tanks, pipelines, terminals and other facilities necessary for petroleum activities in the Zone in accordance with the laws and regulations of the State Party concerned.

ARTICLE 28—ACCESS TO OPERATIONS

(1) In accordance with the principles of joint development set out in Article 3, each State Party is entitled to—

- (a) the benefit of non-discriminatory consideration of its nationals' applications for petroleum development contracts ;
- (b) monitor, and be kept regularly informed as to the progress of petroleum development activities in the Zone ;
- (c) obtain access to geological data, subject to obligations of confidentiality under Article 15 or otherwise ;
- (d) independently meter, monitor or inspect any petroleum activities (including the right of access to installations in order to carry out such metering, monitoring or inspection).

(2) The Authority and/or the States Parties shall adopt procedures in respect of metering production designed to ensure agreement on the quantities of petroleum uplifted.

ARTICLE 29—INSPECTION RIGHTS

(1) The Authority, acting either itself or through a national body or third party, shall have responsibility for the inspection of petroleum activities, related installations and pipelines, and for the supervision of operations carried out on such pipelines and installations situated in the Zone.

(2) The Authority shall decide upon the certification procedures to be followed by the inspectors carrying out the activities referred to in paragraph 1.

(3) Where, in the opinion of a State Party, it appears to it, following an inspection, that applicable laws are not being observed in the Zone, that State Party may by written notice request the Authority to remedy the situation.

(4) If the Authority fails or refuses to take action at such request by one of the States Parties, that State Party may refer the matter to the Council.

(5) Unless otherwise directed, the inspectors referred to in paragraph 1 may order the immediate cessation of any or all petroleum operations in the Zone if such a course appears necessary or expedient—

(a) for the purpose of avoiding an accident involving loss of life or danger to life ;

(b) for the purpose of avoiding actual or threatened damage;

(c) to protect the coastline or other maritime interests of either State Party, including fishing interests, against actual or potential pollution ;

(d) due to force majeure distress or an emergency which may give rise to reasonable fears of major harmful consequences ; or

(e) to minimise the consequences of such a casualty or other accident.

(6) The content of and justification for any such order must be reported immediately to the Board.

(7) The Board shall thereafter meet promptly to consider the actions necessary for the safe and speedy resumption of operations.

ARTICLE 30—PETROLEUM UNITIZATION

(1) If any single geological petroleum structure or petroleum field exists, verified by drilling to extend across the dividing line between the Zone and an exclusive maritime area of one of the States Parties, and part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the said dividing line, either of the States Parties may give notice thereof to the other, whereupon the States Parties shall endeavour to reach agreement upon a fair and reasonable basis for the unitization of such structure or field, having regard to the principles set out in Article 3 and their respective proportion of the petroleum located on each side of the dividing line. If such agreement is not reached within nine months following the giving of such notice, a fair and reasonable apportionment shall be made, having regard as aforesaid, of the petroleum to be taken from the structure or field. Such apportionment shall be with retrospective effect back to the start of production provided that the State Party which has given notice did so with reasonable promptitude after the verification by drilling.

(2) If any single geological petroleum structure or petroleum field exists, verified by drilling to extend across the dividing line between any contract areas within the Zone, and the part of such structure or field which is situated on one side of the

dividing line is exploitable, wholly or in part, from the other side of the said dividing line, the Council shall seek to reach agreement as to the manner in which the structure or field can most effectively be exploited and the manner in which the fiscal returns should be apportioned, having regard to the principles set out in Article 3 and to the respective proportion of the resource located on each side of the dividing line.

(3) If any single geological petroleum structure or petroleum field exists, verified by drilling to extend across the dividing line between the Zone and an exclusive maritime area of a third State, and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the said dividing line, then the Authority shall consider whether to seek to reach agreement with the third State as to the manner in which the structure or field can most effectively be exploited and the manner in which the fiscal returns shall be apportioned, having regard to the respective proportions of the resource located on each side of the dividing line and, so far as concerns the rights of the States Parties, to the principles set out in Article 3. No such agreement with a third State shall be reached without the approval of the Council.

(4) The Authority shall take any necessary steps, in consultation with any contractors, to give effect to any agreement reached under paragraphs 1, 2 and 3.

PART 9—OTHER RESOURCES OF THE ZONE

ARTICLE 31—PROVISION IN THE ZONE PLAN FOR NON-PETROLEUM RESOURCES

The Zone Plan may make provision for non-petroleum development activities within the Zone, to such extent as the Authority considers appropriate or the Council may direct.

ARTICLE 32—DEVELOPMENT OF REGULATORY AND TAX REGIME

As and when required by the Zone Plan or otherwise considered appropriate by the Council, the Authority shall prepare and submit to the Council proposals for regulatory and tax regimes applicable to non-petroleum development activities within the Zone.

ARTICLE 33—ARRANGEMENT IN THE ABSENCE OF A REGULATORY AND TAX REGIME FOR NON-PETROLEUM DEVELOPMENT ACTIVITIES

(1) In the absence of any special regime proposed under Article 32 and approved by the Council, the States Parties shall apply the provisions of their own laws relating to the exclusive economic zone to the activity of their own nationals in the Zone, but shall refrain from applying these laws to the conduct of persons who are nationals of the other State Party.

(2) Each State Party may accept, in accordance with its own laws, applications by non-nationals to engage in non-petroleum development activity in the Zone, but shall forthwith inform the other State Party of each such application. In the absence of a reasonable objection from that State Party within one month, the State Party applied to may consider the application on its merits and decide upon it.

(3) If the State Party applied to, considers that, notwithstanding an objection under paragraph 2, the application ought nonetheless to be approved, it shall refer the application to the Council for a decision.

(4) In dealing with applications under this Article States Parties and the Council shall take into account—

(a) the principles set out in Article 3;

(b) their respective obligations under the United Nations Convention on the Law of the Sea and under any Convention in force related thereto;

(c) in the case of living marine resources, any determination by the Council of the allowable catch within the Zone for the period in question.

(5) A person to whom permission to engage in a non-petroleum development activity in the Zone is given under this Article may carry out that activity, subject to the laws of the authorising State Party and to its exclusive administration.

ARTICLE 34—INFORMATION AND MONITORING

(1) Each State Party shall, through the Authority, periodically inform the other of the outcome of applications made, whether by nationals or non-nationals, in respect of non-petroleum development activity in the Zone.

(2) The Authority may request further information as to the consequences of development activities carried out pursuant to this Part. The States Parties shall comply with all reasonable requests in this regard.

PART 10—MISCELLANEOUS

ARTICLE 35—EMPLOYMENT AND TRAINING

(1) The Authority may issue guidelines in respect of the employment and training policies to be followed by contractors in the Zone for the purposes of—

(a) enhancing the employment opportunities of nationals of the States Parties consistent with the safe and efficient conduct of petroleum and other development activities;

(b) assisting to the extent practicable the equitable division of employment and training benefits between the States Parties.

(2) The terms of development contracts shall comply with such guidelines.

(3) The States Parties shall cooperate in the administration of their immigration and employment laws so as to facilitate the issue of visas and work permits for the purposes of development contracts in relation to the Zone.

ARTICLE 36—HEALTH AND SAFETY

(1) The Authority shall take all reasonable steps to secure the health and safety of personnel engaged in development activities and the safety of the installations and pipelines in the Zone, and shall promptly propose to the Council, for adoption as part of the applicable law, laws, regulations and guidelines for health and safety in relation to off-shore development activity.

(2) The States Parties shall, on the recommendation of the Authority, adopt administrative procedures for the exchange of information concerning the matters referred to in paragraph 1.

ARTICLE 37—PREVENTION OF POLLUTION AND PROTECTION OF THE MARINE ENVIRONMENT

(1) The Authority shall take all reasonable steps to ensure that development activities in the Zone do not cause or create any appreciable risk of causing pollution or other harm to the marine environment.

(2) In accordance with paragraph 1, the States Parties on the recommendation of the Authority shall agree necessary measures and procedures to prevent and remedy pollution of the marine environment resulting from development activities in the Zone.

(3) In order to facilitate the effective monitoring of the environmental impact of petroleum activities in the Zone both States Parties shall regularly provide the Authority with such relevant information as they obtain from contractors or inspectors concerning levels of petroleum discharge and contamination. In particular the States Parties shall immediately inform the Authority of the occurrence of the following events—

(a) any petroleum spillage or event likely to cause pollution and requiring remedial measures beyond the capacity of the operator ;

(b) discharge into the sea of large quantities of petroleum from an installation or pipeline ;

(c) collisions at sea involving damage to an installation or pipeline ;

(d) evacuation of personnel from an installation due to force majeure, distress or other emergency.

The notification shall include any measures taken or proposed with respect to such events.

(4) Nothing in this Treaty shall prejudice the taking or enforcement by each State Party or by the States Parties jointly of measures, in the Zone proportionate to the actual or threatened damage to protect their coastline or exclusive, maritime areas from pollution or threat of pollution which may reasonably be expected to result in major harmful consequences.

ARTICLE 38—APPLICABLE PRIVATE LAW

In accordance with Article 3, the Authority shall propose to the Council for immediate adoption as part of the applicable law, to the extent that the private law of the Zone is not determined by or pursuant to other parts of this Treaty, the private law of one of the States Parties.

ARTICLE 39—CRIMINAL LAW AND JURISDICTION

(1) Subject to paragraph 3 of this Article a national or permanent resident of a State Party shall be subject to the criminal law of that State Party in respect of acts or omissions occurring in the Zone provided that a permanent resident of a State Party who is a national of the other State Party shall be subject to the criminal law of the latter

State Party. A national of both States Parties shall be subject to the criminal law of both.

(2) A national of a third State, not being a permanent resident of either State Party, shall be subject to the criminal law of both States Parties in respect of acts or omissions occurring in the Zone. Such a person shall not be subject to criminal proceedings under the law of one State Party if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the same act or omission under the law of the other State Party.

(3) The States Parties shall provide assistance to and co-operate with each other including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.

(4) Each State Party recognizes the interest of the other where a victim of an alleged offence is a national of that other State Party, and shall keep the other State Party informed to the extent permitted by its law of action being taken with regard to the alleged offence.

(5) A State Party may make arrangements permitting officials of the other State Party to assist in the enforcement of the criminal law of the first State Party. Where such assistance involves the detention by the other State Party of a person who under the foregoing provisions of this Article is subject to the jurisdiction of the first State Party, that detention may continue only until it is practicable to hand the person over to the relevant officials of the first State Party.

(6) This Article is without prejudice to any other basis for the exercise of the criminal jurisdiction of either of the States Parties.

ARTICLE 40—COMPLIANCE AND ENFORCEMENT

(1) Development activities in the Zone shall be carried on in accordance with the relevant applicable law.

(2) The States Parties shall take all appropriate measures within their national legal systems to enforce the applicable law.

(3) The States Parties shall render all necessary and reasonable assistance and support in ensuring that contractors comply with the applicable law.

ARTICLE 41—CIVIL AND ADMINISTRATIVE JURISDICTION

(1) Unless otherwise provided in this Treaty, each of the States Parties may exercise civil or administrative jurisdiction in relation to development activities in the Zone, or persons present in the Zone for the purposes of those activities, to the same extent as they may do so in relation to activities and persons in their own exclusive economic zone.

(2) In the exercise of jurisdiction under paragraph 1, the States Parties shall give effect to applicable law.

Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe

(3) This Article is without prejudice to any other basis for the exercise of civil or administrative jurisdiction by either of the States Parties.

ARTICLE 42—SECURITY AND POLICING IN THE ZONE

(1) The States Parties shall to the extent from time to time appropriate having regard to the purpose of this Treaty and their respective defence and police needs, jointly conduct defence or police activities throughout the Zone (in the form of police activities for the purpose of enforcing the applicable law), except to the extent that the Council may from time to time otherwise direct. The costs of such activities shall be borne by the States Parties in the proportions set out in paragraph 1 of Article 3.

(2) If and to the extent that either State Party shall fail to comply with its obligations set out in paragraph 1 or otherwise refuse to participate in proposed joint defence or police activities then without prejudice to any other rights the other State Party may have, nothing in this Treaty shall prevent that other State Party from separately carrying on such activities to such extent as it considers necessary or appropriate.

(3) The States Parties shall consult with each other as required with a view to ensuring the effective and orderly enforcement of this Treaty and the security of the Zone for the purposes of development activities, ongoing or proposed.

(4) This Article is without prejudice to any other basis for the conduct of defence or police activities which either State Party may have under international law.

ARTICLE 43—REVIEW OF APPLICABLE LAW AND ENFORCEMENT ARRANGEMENTS

The Authority may at any time recommend to the Council any changes in the applicable law or in the arrangements for its enforcement to the extent that these may be necessary.

ARTICLE 44—RIGHTS OF THIRD STATES

(1) In the exercise of their rights and powers under this Treaty, the States Parties shall take into account the rights and freedoms of other States, in respect of the Zone as provided under generally accepted principles of international law.

(2) If any third party claims rights inconsistent with those of the States Parties under this Treaty then the States Parties shall consult through appropriate channels with a view to co-ordinating a response.

ARTICLE 45—POSITION OF THIRD PERSONS IN RELATION TO THE ZONE

(1) The States Parties shall co-operate with a view to resolving in an equitable manner as between themselves any issues arising in respect of prior dealings by either State Party with any third person in respect of any part of the Zone that have been disclosed to the other State Party in the course of negotiating the present Treaty.

(2) However, in respect of any matter not disclosed by a State Party to the other State Party in the course of the negotiation of the present Treaty, it shall be a matter for the non-disclosing State Party alone, without any right to the co-operation or assistance of the other State Party, to resolve any issue arising in respect of prior dealings by it with any third person in respect of any part of the Zone.

PART 11—RESOLUTION OF DEADLOCKS AND SETTLEMENT OF DISPUTES

ARTICLE 46—SETTLEMENT OF DISPUTES BETWEEN THE AUTHORITY AND PRIVATE INTERESTS

(1) Disputes between the Authority and a contractor or between joint contractors and/or operators concerning the interpretation of application of a development contract or operating agreements shall unless otherwise agreed between the parties thereto be subject to binding commercial arbitration pursuant to the terms of the relevant development contract or operating agreement.

(2) Unless otherwise agreed, the arbitration, shall be held in Lagos pursuant to the UNCITRAL Arbitration Rules and administered by the AACCL Centre for International Commercial Dispute Settlement, Lagos.

(3) The Authority shall be immune from suit in any court in respect of the merits of any dispute referable to arbitration in accordance with paragraph 1.

**ARTICLE 47—RESOLUTION OF DISPUTES ARISING IN THE WORK OF THE AUTHORITY
OR THE COUNCIL**

(1) Any dispute that arises with respect to the functioning of this Treaty shall be sought to be resolved by the Board having regard to the objects and purposes of this Treaty, the principles set out in Article 3 and the spirit of amicable fraternal relations between the two States Parties.

(2) If a dispute cannot be resolved by the Board and its continuance affects or threatens to affect the actual or future implementation of this Treaty, it shall be referred to the Council.

(3) The Council shall make every effort to resolve the dispute in a spirit of compromise, and without prejudice to any underlying position of either State Party.

(4) If the dispute has not been resolved by the Council within 12 months of being referred to the Council under paragraph 2, or such other period as the Heads of State may decide, the Council or either State Party may refer it to the Heads of State for their decision.

ARTICLE 48—SETTLEMENT OF UNRESOLVED DISPUTES BETWEEN THE STATES PARTIES

(1) The provisions of Article 51 shall apply—

(a) if the Heads of States agree in writing that a dispute referred to them under paragraph 4 of Article 47 concerns a matter of policy or administration and the dispute has not been resolved by the Heads of State within 12 months of its referral to them, or such additional time as they agree; or

(b) if arbitral proceedings under paragraph 2 below leave a substantial dispute between the parties unresolved by reason, either expressly or implicitly, of the fact that such dispute concerns a matter of policy or administration.

(2) In any case not covered by sub-paragraph 1.(a), if the dispute has not been resolved by the Heads of State within six months of the reference under paragraph 4 of Article 47 and unless the States Parties have otherwise agreed, either State Party may

give notice to the other State Party (the "referral") to refer the dispute to an arbitral tribunal ("the Tribunal") for resolution.

(3) The Tribunal shall be constituted in the following manner—

(a) each State Party shall, within 60 days of the referral, appoint one arbitrator and the two arbitrators so appointed shall within 60 days of the appointment of the second arbitrator appoint a national of a third State as third arbitrator who shall act as President of the Tribunal ;

(b) if a State Party fails to appoint an arbitrator within 60 days of the referral, or the two arbitrators fail to appoint a third arbitrator within 60 days of the appointment of the second, either State Party may request the President of the International Court of Justice to fill the vacancy by appointing a national of a third State ;

(c) if the President of the International Court of Justice is a national of/or habitually resident in the territory of a State Party or is otherwise unable to act, the appointment shall be made by the next most senior judge of the Court who is not a national of either State Party and who is available to act ;

(d) the Tribunal shall apply the UNCITRAL Rules and on any point not covered by those Rules shall determine its own procedure, unless the States Parties have otherwise agreed ;

(e) the Tribunal pending its final award may on the request of a State Party issue an order or orders indicating the interim measures which must be taken to preserve the respective rights of either State Party or prevent the aggravation or extension of the dispute ;

(f) unless the States Parties otherwise agree, the Tribunal shall sit at the Hague and the administering authority for the arbitration shall be the Secretariat of the Permanent Court of Arbitration.

(4) Decisions of the Tribunal shall be final and binding on the States Parties.

(5) The States Parties shall carry out in good faith all decisions of the Tribunal including any orders for interim measures. Any question as to the implementation of a decision may be referred to the Tribunal, or if the same tribunal is no longer in existence and cannot be reconstituted, to a new tribunal constituted in accordance with paragraph 3.

PART 12—ENTRY INTO FORCE AND OTHER MATTERS

ARTICLE 49—ENTRY INTO FORCE

(1) This Treaty shall enter into force on the exchange of instruments of ratification by both States Parties.

(2) Within three months of the exchange of ratifications, each State Party shall procure the enactment by its own constitutional processes of any legislation or regulations necessary to implement this Treaty in its legal system. The text of any such legislation or regulations shall be promptly forwarded to the other State Party.

(3) Upon entry into force, this Treaty shall be registered with the Secretary-General of the United Nations.

ARTICLE 50—DURATION AND TERMINATION

(1) This Treaty shall be reviewed by the States Parties in year thirty (30), and unless otherwise agreed or terminated pursuant to Article 51, shall remain in force for forty-five (45) years from the date of entry into force.

(2) If the two States Parties agree, this Treaty shall be continued in force after the initial forty-five (45) year term.

(3) Unless otherwise agreed, the expiry or other termination of this Treaty shall not affect development contracts with an expiry date after such expiry or other termination and the provisions of this Treaty shall remain in force for the sole purpose of administering such contracts and maintaining the joint development regime to the extent necessary. On the expiry or earlier termination of the last remaining such contract the outstanding provisions of this Treaty shall terminate forthwith.

(4) Accordingly, unless the States Parties otherwise agree, the Council and the Authority shall, following expiry or other termination of this Treaty, continue to exercise such residual functions as may be necessary in respect of the continuing administration of existing development contracts, and shall continue in being for that purpose.

(5) Unless the States Parties otherwise agree, such expiry or other termination shall not affect the financial rights and obligations of the States Parties accrued under or pursuant to this Treaty prior to expiry or termination.

ARTICLE 51—SPECIAL PROVISION FOR TERMINATION IN CERTAIN CASES

(1) This Article applies—

(a) in any case of a dispute which falls under paragraph 1 of Article 48;

(b) in any case in which a State Party remains for more than 180 days in material breach of an award by a tribunal constituted pursuant to Article 48.

(2) In the case referred to in subparagraph 1 (a) of this Article 51, either State Party may give six months notice of termination of this Treaty, and in the case referred to in sub-paragraph 1 (b) the aggrieved State Party may do so.

ARTICLE 52—LANGUAGE OF THE TREATY

This Treaty is executed in the English and Portuguese languages, both versions having equal authority.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe

DONE at Abuja the 21st day of February, 2001.

(Signed)

HON. DUBEM ONYIA
Minister of State for Foreign Affairs
for the Government of the
Federal Republic of Nigeria

(Signed)

HON. JOAQUIM RAFAEL BRANCO
Minister for Foreign Affairs and
Co-operation for the Government
of the Democratic Republic
of Sao Tome and Principe

I certify, in accordance with section 2 (1) of the Acts Authentication Act, Cap. A2, the Laws of the Federation of Nigeria, 2004 that this is a true copy of the Bill passed by both Houses of the National Assembly.

IBRAHIM SALIM, CON
Clerk to the National Assembly

24th Day of February, 2005

EXPLANATORY MEMORANDUM

This Act seeks to enable effect to be given in the Federal Republic of Nigeria to the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome And Principe on the Joint Development of Petroleum and Other Resources in Areas of the Exclusive Economic Zones of the two States.