



THE PROCESS TO ACCEDE TO THE ENERGY CHARTER TREATY; WHAT IS IN FOR NIGERIA

By

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OUTLINE

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1. INTRODUCTION

- The Energy Commission of Nigeria came to being through the enabling Act No. 62 of 1979, as amended by Act No. 32 of 1988 and Act No. 19 of 1989, now encapsulated in ECN Act Cap. E10, LFN 2004.
- The primary legal mandate of the ECN is to produce strategic plans and co-ordinate national policies on energy in all its ramifications. The Commission's law also mandates it to:
 - Serve as a centre for gathering and disseminating information relating to national policy in the field of energy development;
 - Serve as centre for solving any inter-related technical problems that may arise in the implementation of any policy relating to the field of energy;
 - Advise the Government of the Federation or a State on questions relating to such aspects of energy, as the Government of the Federation or a State, may from time to time refer to it;
 - Prepare, after consultation with such agencies of government whose functions relate to the field of energy development or supply as the Commission considers appropriate, periodic master plans for the balanced and coordinated development of energy in Nigeria and such plans shall include:
 - Recommendations for the exploitation of new sources of energy as and when considered necessary; and
 - Such other recommendations to the Government of the Federation relating to its functions under its Act and as the Commission may consider to be in the national interest;

1. INTRODUCTION....CONTD.

- Lay down guidelines on the utilization of energy types for specific purposes and in a prescribed sequence;
- Inquire into and advise the Government of the Federation or a State on the adequate funding of the energy sector including research and development, production and distribution;
- Advise the Government of the Federation or of a State as to grants and other financial disbursements to authorities charged with production and distribution of energy and other similar institutions in Nigeria;
- Collate, analyze and publish information relating to the field of energy from all sources, where such information is relevant to the discharge of its function under the Act;
- Monitor the performance of the energy sector in the execution of government policies on energy;
- Liaise with international organizations on energy matters such as International Atomic Energy Agency (IAEA), World Energy Council (WEC), African Energy Commission (AEC) the International Renewable Energy Agency(IRENA), International Energy Charter, and other similar bodies.

1. INTRODUCTION, CONTD.

ECN GOVERNING BOARD

- **President, C-in-C as the Chairman**
- **Members: Ministers charged with the responsibility for:**
 1. **Agriculture Rural Development**
 2. **Defence**
 3. **Finance**
 4. **Foreign Affairs**
 5. **Mines & Steel Development**
 6. **Petroleum**
 7. **Power**
 8. **Science, Technology & Innovation.**
- **The Director-General of the Energy Commission of Nigeria is the Secretary to the Commission.**

2. INTERNATIONAL ENERGY CHARTER

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EVOLUTION OF THE ENERGY CHARTER PROCESS

- Dec. 1991 – European Energy **Charter**
political commitment – not legally binding
- Dec. 1994 - Energy Charter **Treaty**
52 states + EU and Euratom – legally binding entered into force April 1998
- May 2015 **International Energy Charter**
Modernized version of EECh political commitment – not legally binding
- Energy Charter **Process**
based on the ECT – international policy forum, best practices exchange, cooperation with interested third parties.



MEMBERS AND OBSERVERS OF THE ENERGY CHARTER CONFERENCE

as of 25 June 2022

MEMBERS (54)

Sig	Rat	EEC	IEC	Country
1994	2013	2006	2015	Afghanistan
1994	1997	1991	2015	Albania
1994	1997	1991	2015	Armenia
1994	1997	1991	2015	Austria
1994	1997	1991	2018	Azerbaijan
1994	1991	2015	2015	Belarus (provisional application suspended)
1994	1998	1991	2015	Belgium
1995	2001	1995	2016	Bosnia and Herzegovina
1994	1996	1991	2015	Bulgaria
1994	1997	1993	2015	Croatia
1994	1998	1991	2015	Cyprus
1995	1996	1993	2015	Czech Republic
1994	1997	1991	2015	Denmark
1994	1998	1992	2015	Estonia
1994	1998	1991	2015	European Union
1994	1998	1991	2015	EURATOM
1994	1997	1991	2015	Finland
1994	1999	1991	2015	France
1994	1995	1991	2015	Georgia
1994	1997	1991	2015	Germany
1994	1997	1991	2015	Greece
1995	1998	1991	2015	Hungary
1994	2015	1991	2015	Iceland
1994	1999	1991	2015	Ireland
1995	2002	1991	2015	Japan
1994	2018	2007	2015	Jordan
1994	1995	1991	2015	Kazakhstan
1994	1997	1992	2015	Kyrgyzstan
1994	1995	1991	2015	Latvia
1994	1997	1991	2015	Liechtenstein
1995	1998	1992	2015	Lithuania
1994	1997	1991	2015	Luxembourg
1994	2001	1991	2015	Malta
1994	1996	1992	2015	Moldova
1999	1997	2015	2015	Mongolia
1994	2015	2012	2015	Montenegro
1997	1997	1991	2015	Netherlands
1994	1997	1996	2015	North Macedonia
1995	1991	2015	2015	Norway
1994	2000	1991	2015	Poland
1994	1997	1991	2015	Portugal
1994	1996	1991	2015	Romania
1994	1995	1993	2015	Slovakia
1994	1997	1992	2015	Slovenia
1994	1997	1991	2015	Spain
1994	1997	1991	2015	Sweden
1994	1996	1991	2015	Switzerland
1994	1997	1991	2015	Tajikistan
1994	2001	1991	2015	Türkiye
1994	1997	1994	2015	Turkmenistan
1994	1998	1991	2015	Ukraine
1994	1996	1991	2015	United Kingdom
1995	1995	1991	2015	Uzbekistan
1994	2018	2014	2015	Yemen

INTERNATIONAL ENERGY CHARTER 2015 (91)

EUROPEAN ENERGY CHARTER 1991 (70)

ENERGY CHARTER TREATY 1994 (56)

ECT SIGNATORIES



OBSERVERS (44)

Country	EEC	IEC
Australia	1991	
Bangladesh		2015
Benin		2015
Burkina Faso		2017
Burundi	2015	2015
Cambodia		2015
Canada	1991	
Chad	2015	2015
Chile		2015
China		2015
Colombia		2015
EAC		2016
ECCAS		2016
ECOWAS		2015
Eswatini		2015
GS Sahel		2016
Gambia		2017
Guatemala		2016
Guyana		2018
Indonesia	2009	
Iran		2016
Iraq		2016
Italy	1991	2015
Kenya		2017
Mali		2017
Mauritania	2014	2015
Marocco	2012	2015
Niger	2015	2015
Nigeria		2017
Pakistan	2005	2015
Palestine	2014	2015
Panama		2017
Rwanda		2016
Senegal		2016
Serbia	2001	2015
Sierra Leone		2018
South Korea		2015
South Sudan		2021
Syria	2010	
Tanzania		2015
UAE		2017
Uganda	2019	2015
USA	1991	2015
Vietnam		2018

INTERNATIONAL ORGANISATIONS WITH OBSERVER STATUS (by decision of the Energy Charter Conference):

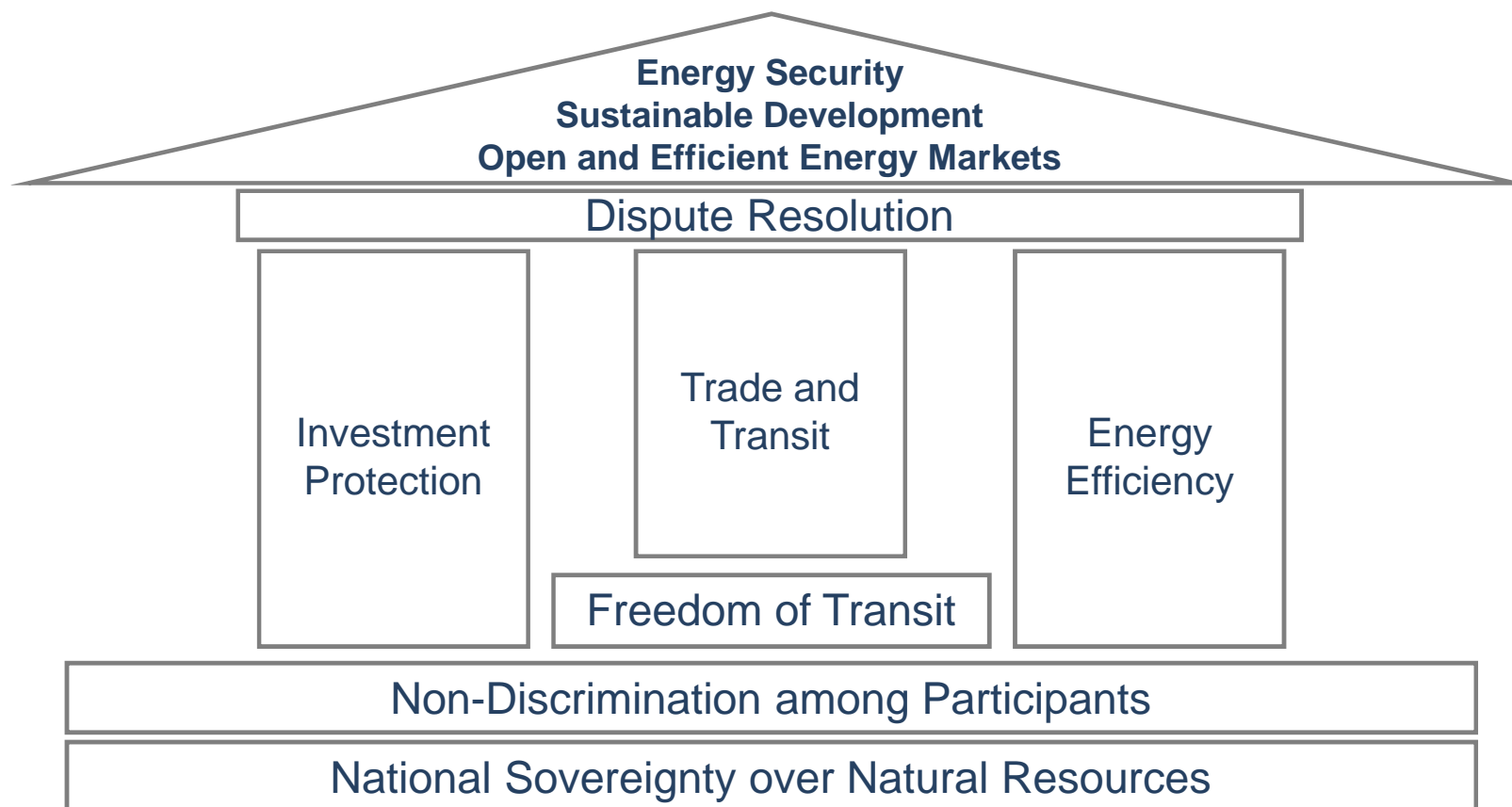


2. INTERNATIONAL ENERGY CHARTER CONTD.

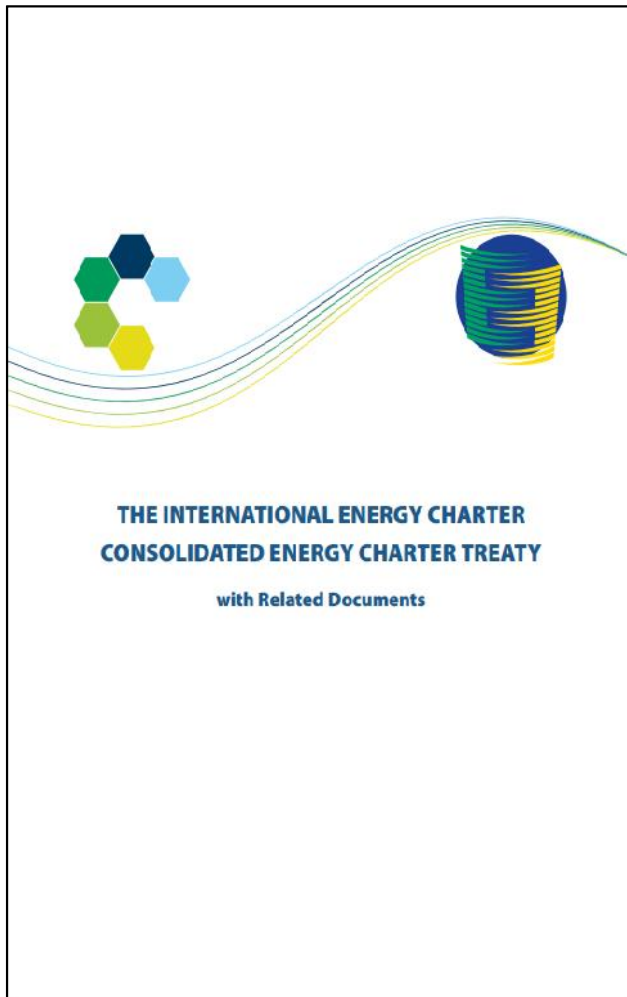
PURPOSE OF THE ENERGY CHARTER TREATY

- Provide open energy markets, and to secure and diversify energy supply;
- Stimulate cross-border investment and trade in the energy sector;
- Assist countries in economic transition in the development of their energy strategies and of appropriate institutional and legal framework for energy.

2. INTERNATIONAL ENERGY CHARTER CONTD.



2. INTERNATIONAL ENERGY CHARTER CONTD.



DISPUTE SETTLEMENT

- Part V of the ECT addresses dispute settlement.
- Article 26 (1) stipulates that disputes between a Contracting Party and an investor shall be settled amicably if possible.
- Article 26 (2) says that if the dispute cannot be settled amicably within a period of three months, the Investor party to the dispute may choose to submit it for resolution:
 - a) To the courts or administrative tribunals of the Contracting Party party to the dispute;
 - b) In accordance with any applicable, previously agreed dispute settlement procedure; or

2. INTERNATIONAL ENERGY CHARTER CONTD.

c) In accordance with the following paragraphs of this Article.

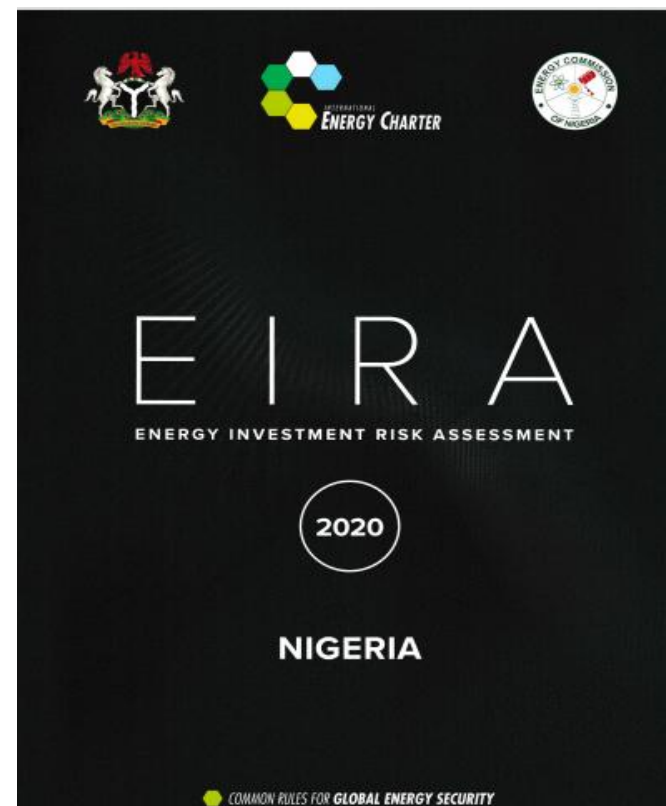
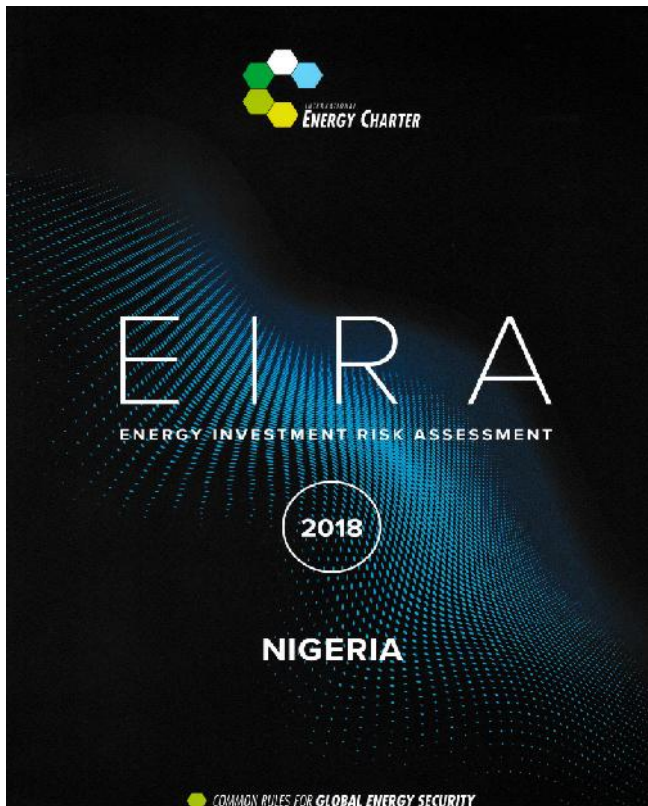
- Article 26 (3) subject to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.
- Discussion at an advanced stage for Treaty Modernisation – Article 34(7) of the ECT stipulates a five-yearly review.

3. BENEFITS OF THE ENERGY CHARTER

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- To attract investments in the Nigerian energy sector.
- Offers a platform for shaping energy policies.
- Provides tools for monitoring energy performance.
- Acts as a forum for national and regional cooperation on energy.
 - It will provide a platform for dialogue to discuss and share international experience, the best practices, and lessons learnt on energy infrastructure and integrating energy markets to facilitate cross-border trade.

3. BENEFITS OF THE ENERGY CHARTER



4. ACCESSION PROCESS

4. ACCESSION PROCESS

- Accession to the Treaty/Protocol means full participation in the Treaty/Protocol as a Contracting Party.
- The act of accession is a means of expression of consent by a State/REIO to be bound by the Treaty/Protocol;
- Under international law it has the same status as ratification.

4. ACCESSION PROCESS CONTD.

The basic conditions for accession therefore involve:

- a) the acceptance of the principles embodied in the Energy Charter;
- b) the obligations contained in the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and related Environmental Aspects;
- c) all decisions of the provisional Charter Conference and the Charter Conference in effect at the time of the deposit of the instrument of accession to the Treaty/Protocol; and
- d) the elaboration of certain, clearly specified documents providing exhaustive information about the legislative climate and other conditions for making business in the energy sector of the acceding State/ Regional Economic Integration Organisation (REIO).

4. ACCESSION PROCESSCONTD.

As a part of a consultation process, the State/REIO is requested to elaborate three reports:

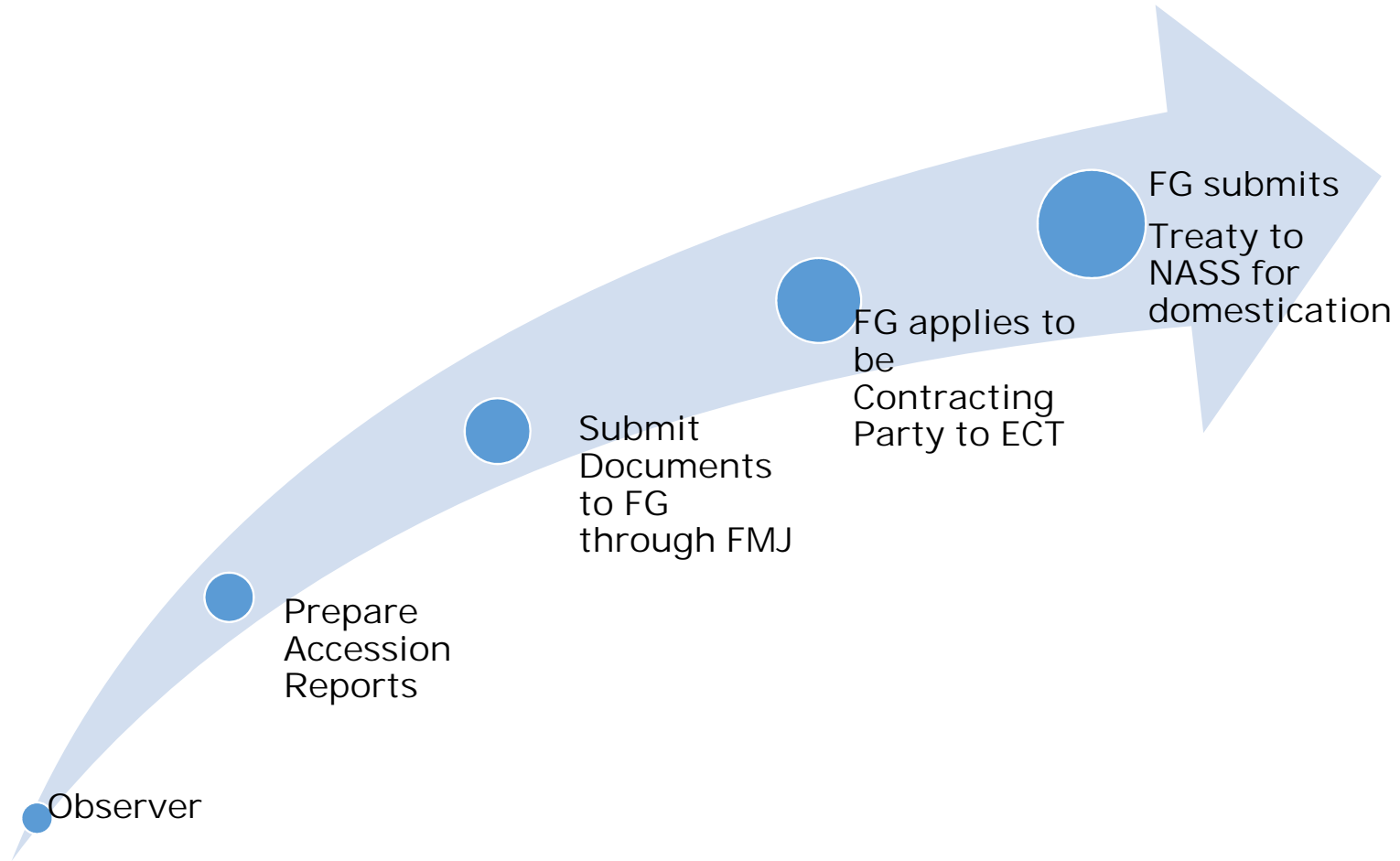
- a) Report on harmonisation of laws and regulations with the provisions of the Treaty;
- b) Report on investment climate and exceptions to national treatment addressing general policy issues, energy supply and demand, market structure by sub-sectors, future development and investment needs in each of energy sub-sectors, issues of privatisation and monopolies, general legislation relevant to investment, exceptions to national treatment and plans for further liberalisation, etc.;
- c) Report on energy efficiency describing energy efficiency and environmental policies and addressing all relevant issues contained in Articles 3-9 of the Protocol.

4. ACCESSION PROCESS... CONTD.

- Nigeria adheres to a dualist approach to the application of International Law. Thus, treaties that are concluded between Nigeria and other subjects of international law are not automatically applicable in Nigeria.
- They must be specifically passed into law as an Act of the National Assembly in accordance with Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- Section 12 (1) of the 1999 Constitution provides that:

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

4. ACCESSION PROCESS



5. NEXT STEPS

- Having prepared the three accessions reports, we want to organize a forum to harvest inputs from the relevant stakeholders – other ministries, departments and agencies of government, civil society organizations,
- We will continue to participate in the activities of the International Energy Charter as far as the Observer status will permit;
- We will continue to collaborate with and give updates to all stakeholders that have roles to play in the accession process, such as the Federal Ministry of Justice, the National Assembly, Civil Society Organisations, etc.

6. CONCLUSION

- We believe that Nigeria can benefit immensely by being a Contracting Party to the Energy Charter Treaty;
- Becoming a Contracting Party will reassure the global community that Nigeria is ready to play by international rules;
- This can facilitate investment into the Nigerian energy sector.

THANK YOU
FOR
YOUR ATTENTION