



GOVERNANCE FRAMEWORK OF THE NIGERIAN PETROLEUM SECTOR: AN APPRAISAL

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ABSTRACT

The most recent literature highlights the link between particular natural resources and institutional capacity. Institutional capacity as a primary determinant of economic growth and performance has thus been a growing focus of the natural resource governance literature. In fact, there is an agreement on the importance of institutional capacity even in the resource curse debate. The underlying assumption in the institution hypothesis is that high-quality institutions lead to good governance and good economic policies that allow for better economic growth and human development, whereas in countries with low-quality institutions, natural resources will hamper growth and invite the resource curse. Prior to the enactment of the Petroleum Industry Act (PIA) 2021, the basic institutions governing the Nigerian petroleum sector were, on the whole, not efficient. One major issue was whether the three basic functional roles in the petroleum sector should be concentrated or dispersed. While recognizing that the reform of the former institutional governance framework of the Nigerian petroleum was overdue, the paper questions the extent to which the reform measures under the PIA 2021 may be the most viable option given that Nigeria differs in its institutional attributes, on account of which her governance needs vary. It is argued that the institutions reform needs of the Nigerian petroleum sector may not necessarily be as postulated under the PIA 2021. In other words, even though the institutional reforms of the PIA 2021 are sound and supportable, the growth experiences of some resource-rich development countries seem to speak otherwise for Nigeria.

Keywords: Petroleum Sector, Nigeria, Governance, Institutions, Regulation

INTRODUCTION

It may be difficult to deny that the involvement of the Nigerian State in the Nigerian petroleum sector is similar and in consonance with the pattern in many other oil-rich jurisdictions around the world. The State has the option to involve in petroleum activities. But the extent to which the State becomes directly involved in petroleum production varies. While there arguably should not be any objection to the State, as the owner of the petroleum resources, playing a part in



petroleum activities¹, a decision on whether the State would want to be passive or active regarding the overall development of the petroleum sector would have to be taken at the commencement of the petroleum industry.² The questions ‘remains whether States want to be at the helm or whether they are able to combine dynamically various measures to reach their chosen goals (i.e., their reasons for policy)’³ Professor Hunter similarly commented that ‘[one] of the greatest regulatory challenges for a State is determining which level of State regulation is suitable for that State, which will vary depending on the outcomes the State is seeking to achieve’.⁴

In addition, a particular concern is that the goals the State may seek to achieve cannot be expected to remain the same, and may be premised upon the State making any necessary regulatory changes in the light of changes in circumstances relating to economic, commercial and political needs.⁵ Three basic types of State involvement in petroleum development can be discerned and distinguished: the minimal-intervention, the regulatory intervention and the

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¹ Y Omorogbe and P Oniemola, ‘Property Rights in Oil and Gas under Dominial Regimes’ in Aileen McHarg et al (eds) *Property and the Law in Energy and Natural Resources* (Oxford University Press 2010) 127.

² O G Austvik, ‘Landlord and Entrepreneur: The shifting Roles of the State in Norwegian Oil and Gas Policy’ (2012) 25(2) *Governance: An International Journal Policy, Administration, and Institutions* 330.

³*Ibid*, 330.

⁴ T Hunter, ‘Converging Energy Governance in Mature Petroleum Province: Political, legal and Economic Dimensions in Governing Mature Petroleum Fields in the North Sea’ in S Raszewski, *International, Political Economy of Oil and Gas* (Palgrave 2017) 5.

⁵*Ibid*.



participatory involvement.⁶ Importantly, the differences between these phases of involvement are mainly with regard to the degree of State control in petroleum development.

In State participatory involvement, as most the important phase, place emphasis on the shifting role of the State as an entrepreneur in the development of the petroleum sector.⁷ The State does not merely regulate and coordinate petroleum activities but engages in the business of oil in a manner similar to an entrepreneur or a company.⁸ As an entrepreneur, the State ‘holds a commercial interest in the extractive sector by directly controlling the boards of state-owned mining companies or by owning shares of other resource-extraction firms’.⁹ The State assumes the role of a commercial participant mainly through its national oil company.¹⁰ For the same reason, the State is enabled to influence offshore petroleum activities both within and outside the industry.¹¹

Most significant, is that this is the period in which the opportunity for State participation was most promoted in Nigeria. The Nigerian State became a commercial participant or an entrepreneur in petroleum activities through its NOC.¹² This enabled the State to adopt, maintain, and enforce a more reasonable measure of control that it considered appropriate to ensure that investment activities in the petroleum sector are undertaken in a manner sensitive to the needs of

⁶ B F Nelsen, *The State Offshore Petroleum, Policies, and State Intervention on the British and Norwegian Continental Shelves* (Praeger Publishers New York 1991) 8. See also C I Obi, ‘Oil and Development in Africa: Some Lessons from the Oil Factor in Nigeria for the Sudan’ (2007) DIIS Report 16.

⁷ Austvik (n2) 316.

⁸ n 7.

⁹ L J Uberti, ‘Is Separation of Powers a Remedy for the Resource Curse? Firm Licensing, Corruption and Mining Development in Post-War Kosovo’ (2014) 19(5) *New Political Economy* 701.

¹⁰ Facts 2014, 29.

¹¹ Nelsen (n6) 8-9.

¹² *Ibid.*



the State.¹³This enabled the Nigerian NOC to become the most relevant institution in the governance of the Nigerian petroleum sector.However, in the interaction between the defunct NNPC and other institutions, the most important issue that emerged was the obvious conflict of interest which arose where the NNPC was both a commercial agent and regulator in the Nigerian oil and gas industry, arguably resulting in the less-than-effective governance of the industry.

PAST INSTITUTIONAL GOVERNANCE STRUCTURE OF THE NIGERIAN PETROLEUM SECTOR

Nigerian government joined the Organisation of Petroleum Exporting Countries (OPEC) in 1970 and sought to increase its control over the petroleum sector by creating its own national oil company, the Nigerian National Oil Company (NNOC) in 1971.¹⁴ Before then, in 1970, the Department of Petroleum Resources (DPR) was carved out of the then Nigerian Ministry of Mines and Power.¹⁵ While the right of managing the concessions granted foreign companies to extract oil remain vested in the Ministry, the power to oversee regulatory matters was vested in the DPR.¹⁶

These three distinct institutional bodies thus formed a ‘triumvirate’akin to the separation-of-functions model practiced in Norway.¹⁷ However, the expected separation was undermined in large part by the structure of the Nigerian civil service which subordinated the NNOC and DPR

¹³*Ibid* 9.

¹⁴ Peter Lewis, *Growing Apart-Oil, Politics, and Economic Change in Indonesia and Nigeria* (University of Michigan Press 2007) 136.

¹⁵ M C Thurber *et al*, ‘Exporting the Norwegian Model: The Effect of Administrative Design on Oil Sector Performance’ (2011) *Energy Policy* 7-8.

¹⁶*Ibid*.

¹⁷*Ibid*.



to the Ministry.¹⁸ The industry was re-organised as a result (of ‘the disastrous management of Nigeria’s oil sector under this tripartite arrangement’), in which the Ministry, the DPR and the NNOC emerged to form the Nigerian National Petroleum Corporation (NNPC) in 1977.¹⁹

In many ways, the creation of an NOC did bring dramatic results for the Nigerian economy. The NOC significantly helped to drive broader national development.²⁰ The creation of the NOC marked the starting point in which the Nigerian State became proactively involved in promoting and advancing the national interest better than the IOCs.²¹ For example, the NOC acquired substantial participating interests in the concessions granted to IOCs operating in Nigeria at the time.²² Such included the 33 1/3% of equity interest in NAOC and 35% in ELF under a joint venture agreement of 1971.²³

When the NOC became the defunct NNPC in 1977, it over time ‘extended its reach into refining and marketing of petroleum products, the transport of products by pipeline and the manufacture of petrochemicals’²⁴ In order to pursue its commercial purpose, the NNPC was commercialised in 1999 and was allowed to form subsidiary companies and affiliates.²⁵ More participatory rights in the petroleum activities were acquired by the Nigerian State through the NNPC.²⁶ Available

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰ J Balouga, ‘The Nigerian Local Content: Challenges and Prospects’ (2012) 3 International Association for Energy Economics 23-26.

²¹*Ibid.*

²²I Oguine, ‘Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues’ (2011) 29 J. Energy & Nat. Resources L. 405.

²³ Y Omorogbe, ‘The Legal Framework for the Production of Petroleum in Nigeria’ (1987) 5 J. Energy & Nat. Resources L. 276.

²⁴ Oguine (n22).

²⁵ The Nigerian Public Enterprise (Privatisation and Commercialisation) (NPEPC) Act 1999, ss 6 & 8.

²⁶ F C Nlerum, ‘Reflections of Participation Regimes in Nigeria's Oil Sector’ (2007-2010) Nigerian Current Law Review 154.



contractual participation rights include the participation through Joint Venture Agreements (JVs), the participation in Production Sharing Agreements (PSAs) and participation via Service Contracts.

However, even as State control increased under these new contractual arrangements, governance was still not impressive in the Nigerian oil and gas sector. The decision to introduce PSAs in Nigeria rested on the assumption that it would enable the NNPC to meet its operational cash-call obligations under the various JVs.²⁷ But the NNPC was still not able to meet its cash-call obligations under the various JVs it entered with IOCs. Rather than making a profit, the NNPC, in fact, in 2016 recorded over \$936 million as a monthly loss.²⁸

The problem appears to have been caused by the fact that the governance and organisation of the oil sector remain largely loose. The Nigerian oil sector was subjected to a high degree of central control under the NNPC. The NNPC was the institutional embodiment of the Nigerian oil sector. When it was created in 1977, it merged the rights and responsibilities of its predecessor, the DPR and the Ministry of Petroleum. Thus, rather than focusing on a more tightly defined commercial responsibility, the NNPC carried out also regulatory and policymaking functions. As the NNPC remained the main instrument of State participation in petroleum matters, the inevitable drawback arising therefrom was that government interference crippled the operational efficiency of the NNPC. To the extent that the government sought to tighten its grip on the industry through

²⁷ See Deep Offshore Act 1993.

²⁸ See the *Nigerian Vanguard Newspapers*, 11 March 2016.



the NNPC with no exacting oversight, there was the worry that the effectiveness of the PSAs would remain undermined.²⁹

In the 1980s, the Nigerian State, however, later began to redefine state participation in order to increase the overall economic benefits of petroleum resources to the nation.³⁰ This can be said to be a reevaluation phase of petroleum sector governance in Nigeria ‘so that costs, effectiveness, and technological innovation [would be] relatively more important than national political control’.³¹ This reevaluation sought to avoid the consolidation of the Nigerian oil sector governance on one multi-purpose entity. It, in fact, seemed to question ‘the state’s entrepreneurial role on the ground that it imposed budgetary risks, generated operational inefficiencies and raised the spectre of favoritisms at the expense of private investors’³² and recognised that the industry’s natural development would require more sophisticated capabilities and technologies, which would mean that the NNPC would need to direct more of its attention to managing operations and thinking strategically about where to invest.

This seemed to have warranted a change in the way Nigeria governed and managed her oil sector—one that acknowledged the case for clarity of roles and responsibilities associated with separating policy and regulatory roles from the commercial activities of an NOC. Therefore, in

²⁹ Obi (n6) 16.

³⁰ *Ibid.*

³¹ Austvik (n2) 323.

³² Uberti (n9) 701.



the 1980s the DPR was re-established.³³ The re-establishment of the DPR took place at the same time as the re-establishment of the Ministry of Petroleum Resources.³⁴

The re-establishment of both the Ministry and DPR enabled some reallocation of tasks and responsibilities within the industry, in which the policymaking function was reassigned to the petroleum ministry while the DPR was again charged with regulatory and oversight functions (See figure 1 below). Under the new structure, the Ministry is to formulate and implement sound policies that will serve as a back-bone for the rapid development of the Nigerian petroleum sector.³⁵ Policy formulation involves the identification of priorities and the development of a coherent and integrated framework of laws, regulations and other instruments to supplement or regulate the industry.³⁶ The Ministry, therefore, handles the responsibilities of articulating, implementing and regulating policies in the industry.³⁷ It, also, exercises a supervisory role over the operators and stakeholders, to ensure compliance with all applicable laws and regulations in the industry.³⁸

The DPR on the other hand now carries out the regulatory functions hitherto performed by the NNPC, acting as well, as an oversight body. In the broadest sense, regulation involves the

³³ The Nigerian Ministry of Petroleum Resources <http://petroleumresources.gov.ng/index.php/about-us/about-mpr>> accessed 23 January 2024.

³⁴ *Ibid.*

³⁵ The Nigerian Ministry of Petroleum Resources <http://petroleumresources.gov.ng/index.php/about-us/about-mpr>> accessed 23 January 2024.

³⁶ P Andrews-Speed *et al*, 'The Ongoing Reforms to China's Government and State Sector: The Case of the Energy Industry' (2010) *Journal of Contemporary China* 9.

³⁷ The Nigerian Ministry of Petroleum Resources (n35).

³⁸ *Ibid.*



implementation of policies in order to encourage the required behaviour from the actors in the industry.³⁹ The basic functions of the DPR include:

- (i) Supervising all Petroleum Industry operations being carried out under licences and leases in the country.
- (ii) Monitoring the Petroleum Industry operations to ensure that they are in line with national goals and aspirations including those relating to flare down and Domestic Gas Supply Obligations.
- (iii) Ensuring that Health Safety & Environment regulations conform with national and international best oil field practice.
- (iv) Maintaining records on petroleum industry operations, particularly on matters relating to petroleum reserves, production/exports, licences and leases.
- (v) Advising Government and relevant Government agencies on technical matters and public policies that may have impact on the administration and petroleum activities.
- (vi) Processing industry applications for leases, licences and permits.
- (vii) Ensure timely and accurate payments of Rents, Royalties and other revenues due to the government.⁴⁰

This re-ordering, was, arguably oriented towards liberalisation. The restructuring followed the Nigerian public enterprise reform of the 1980s and 1990s. The Nigerian public enterprise reform of 1999 was needed to arguably give a freer hand to market forces and reorganise public enterprises in accordance with the new public management (NPM) solutions.⁴¹ It intended to

³⁹ Andrews-Speed et al (n36) 9.

⁴⁰ The Nigerian Department of Petroleum Resource (n33).

⁴¹ Austvik (n2) 323.



considerably reduce and weaken the control of the NNPC over the petroleum industry by allowing the NNPC's commercial and non-commercial functions to be distinguished and prioritised.⁴² The decentralisation of functions in the hydrocarbon sector, therefore, implied that the NNPC's non-commercial roles became less needed and less acceptable. In this way, the NNPC could remain mainly focused on commercial responsibilities. As will be argued below, a cursory assessment makes clear that the past institutional governance framework fell far short of meeting the needs of efficient management of the Nigerian oil and gas sector.

QUESTIONS ABOUT THE PAST INSTITUTIONAL GOVERNANCE STRUCTURE OF THE NIGERIAN PETROLEUM SECTOR

The past institutional governance structure of the Nigerian petroleum sector, as illustrated in figure 1 below would appear to show a clear functional separation of roles and responsibilities. The Figure 1, at the same time, however, shares a sense of skepticism about the past institutional governance structure of the Nigerian petroleum sector. It illustrates that the NNPC remained largely intact, despite the re-establishment of the Ministry and DPR. The creation of the DPR does not seem to automatically ensure its effective authority over the NNPC as an oversight body. This is because, in practice, the NNPC retained many of the regulatory functions that had been within its remit under the old dispensation. In other words, despite the legislative changes of the 1980s requiring that policymaking and regulatory functions be reassigned from the NNPC to the Ministry and DPR respectively, these functions were not legally and legitimately

⁴² 'Benchmarking Exercise Report' (2014) The Nigerian Natural Resource Charter (NRC) 89.



transferred.⁴³ Because regulatory powers were still held by the NNPC, there was thus no possibility of effective oversight.⁴⁴The closeness between the entities compromised the ability of DPR to effectively and independently police NNPC activities’.⁴⁵

The relationships of these bodies are not at arm-length, in other words, and have thus been characterised as one that suggests regulatory capture.⁴⁶ The net effect was that the defunct DPR was on paper independent in the discharge of its functions but, in practice, exposed to a substantial measure of control by the NNPC.⁴⁷ It arguably reflected the desire of the government to be seen to support independent oversight of the DPR, so long as it is able to maintain control from behind the scenes. True institutional independence seemed also to elude because the NNPC provided technical expertise for the Ministry and DPR as well as sharing facilities with its supposed regulator.⁴⁸ The Ministry and DPR had the NNPC staff on secondment to assist in technical matters and transfer of skills.⁴⁹ Besides, the NNPC also directly funded the operations of DPR, including the payment of staff salaries and the funding of DPR’s monitoring functions’.⁵⁰ Thus, establishing a strong regulatory body would require bridging the knowledge gap between the NNPC and its regulator.⁵¹

⁴³ A Adefulu, ‘A Critical Analysis of Institutional Reforms in Nigeria’s Oil and Gas Industry’ (2008) Nigeria Energy Intelligence 3.

⁴⁴*Ibid.*

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷The Nigerian Natural Resource Charter (n42) 9 & 35.

⁴⁸*Ibid.*

⁴⁹*Ibid.* See also V Marcel, *Oil Titans: National Oil Companies in the Middle East* (Brookings Institutional Press 2006) 87.

⁵⁰ Adefulu (n43) 3.

⁵¹ Marcel (n49).



But the more important issue is that an obvious conflict of interest arose where the NNPC was both a commercial agent and regulator in the Nigerian oil and gas industry, arguably resulting in the less-than-effective governance of the industry. Conflicting objectives have often been considered as a principal reason for the so-called ‘operational paralysis’ affecting the key players in the oil and gas sector.⁵²This is because each distinct function encompasses various interest that can potentially conflict in certain situations.

This was obviously the case with the dual functions carried out by the erstwhile NNPC- a situation that led to a degree of criticism. It was criticised as contributing to the high inefficiency of the Nigerian oil industry.⁵³ It was believed to have adversely affected the issues such as transparency, enforcement and best-practice standards within the Nigerian oil industry.⁵⁴ The truth was that the NNPC could regulate itself, nor could it regulate IOCs in activities in which it was itself a partner.⁵⁵

Therefore, the major difficulty with the perpetuation of the former institutional governance design, was not only the overbearing and dominant role of the NNPC resulting from the government displaying much less enthusiasm in the independence of the regulatory body but the fact that it seemed to have affected the commercial performance of the NNPC when compared to other high-performing NOCs such as Statoil of Norway and Petrobras of Brazil.⁵⁶ It actually

⁵² Centre for Energy Economics (CEE) Working Paper on National Oil Companies (2007) available online<http://www.beg.utexas.edu/energyecon/documents/CEE_National_Oil_Company_Mar_07.pdf> accessed 23 January 2024.

⁵³The Nigerian Natural Resource Charter (n42) 9 & 35.

⁵⁴*Ibid*, 9 & 35.

⁵⁵ Marcel (n4) 87.

⁵⁶ Thurber *et al* (n15)1-13.



pushed the NNPC into activities that were far removed from or even antithetical from efficient petroleum operations.

It is inevitable also that the erstwhile DPR was heavily impacted under ministerial control, given that it was not properly segregated from the Ministry as illustrated in figure1 above, additionally forcing it to retard in the performance of its own functions. The DPR was not only denied the statutory autonomy and capacity to deliver a meaningful check on the NNPC; its functions equally conflicted with the interests of other agencies relating to environmental regulation given that it also had the duty of ensuring that health, safety and environment regulations conformed with national and international best oil field practice.

Together, these concerns brought significant pressure to the Nigerian government. This pressure is generally seen as positive, to the extent that it has brought about the recent attempts at structural reforms of the institutions governing the Nigerian oil and gas sector.

THE CURRENT INSTITUTIONAL GOVERNANCE STRUCTURE OF THE NIGERIAN PETROLEUM SECTOR

Since 2002, the Nigerian oil and gas sector has been placed under increasing pressure to introduce in its management a supposedly new philosophy modelled on a particular vision of result-oriented management culture. Thus, in 2012, the Nigerian government through a special committee, the Nigerian Oil and Implementation Committee (OGIC), announced a wide-ranging



package of reforms in a Bill called the Petroleum Industry Bill (PIB) 2012.⁵⁷ The PIB 2012 was intended to impose a sweeping administrative and regulatory restructuring of Nigeria's oil and gas sector and to serve as a vehicle for achieving diverse government objectives related to the petroleum sector. The PIB 2012 was intended to supersede the regulation of the Nigerian oil industry under previous legislation subject, of course, to any constitutional constraints upon it.

There was, however, a great deal of uncertainty about the passage of new PIB 2012 into law. The uncertain fate the PIB 2012 faced in the Nigerian National Assembly led to an undue delay in the passage of the Bill into law. In fact, the Bill of 2012 outlived several sessions of the Nigerian parliament and suffered several defeats before the present National Assembly vowed to see it sail through.⁵⁸ It was most regrettable that the Bill remained un-enacted despite occupying the current parliament for a very long time. The inability of the Nigerian parliament to pass the PIB into law was said to be contrary to public interest, representing a moral failing of a great magnitude. The danger of the prolonged process was of course industrial crisis and un-performing petroleum sector. The failure to enact the PIB into law was attributed substantially to the wide range of matters it covers.⁵⁹ It was realised that the objectives of the PIB were quite unlikely to be achieved, at least to some degree, provided the PIB remained all-encompassing framework.⁶⁰

To expedite the effectiveness of the government in the management of the Nigerian petroleum sector, which is, after all, the main objective of the PIB, it was considered convenient and

⁵⁷ Donna Obaseki-Ogunnaike, 'Understanding the Nigerian Petroleum Industry Governance Bill 2016' (2017) 15(1) OGEL 1.

⁵⁸ 1) OGEL 2.

⁶⁰ (n 57).



necessary by the present administration to split the PIB into four smaller pieces of legislation as set out below:

1. the Petroleum Industry Governance Bill (PIGB);
2. the Fiscal Regime Bill; and
3. the Upstream and Midstream Administration Bill, and the Petroleum Revenue Bill.⁶¹

Among the four Bills, the PIGB was the only one on circulation having passed the first reading and was very likely to pass the second reading⁶² before the bills were later merged as one. After several years tergiversation, the PIB was passed into law by the Nigerian senate and subsequently assented to by the Nigerian President in 2021 as the Nigerian Petroleum Industry Act (PIA) 2021.

The Petroleum Industry Act (PIA) 2021

At heart of the PIA is the need for a greater clarity on the respective roles in the petroleum industry. The PIA is equally concerned with the exact corporate governance structure that would be the remedy for the commercial failures of the Nigerian NOC. For instance, following the model of other jurisdictions such as Norway (as will be further discussed in due course), the PIA tended to completely decentralise the administration of the Nigerian oil and gas sector.

The general objectives of the Act are thus to: create efficient and effective governing institutions, with clear and separate; create efficient and effective governing institutions, with clear and separate roles for the petroleum industry; establish a framework for the creation of a

⁶¹*Ibid.*

⁶² (n 57).



commercially oriented and profit-driven national petroleum company; promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; and foster a business environment conducive for petroleum operations.⁶³

To achieve this, the Act first establishes the Ministry of Petroleum to be headed by the Minister who shall, inter alia, be responsible for policy formulation and will also provide supervisory roles over the affairs and operations of the petroleum industry on behalf of the Federal Government.⁶⁴ The Ministers shall also:

- i. exercise general supervision over the affairs and operations of the petroleum industry in accordance with the provisions of this Act;
- ii. report developments in the petroleum industry to the government;
- iii. represent Nigeria at international organisations on petroleum matters;
- iv. promote an enabling environment for investment in the Nigerian petroleum industry;
- v. negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the Government;
- vi. upon the recommendation of the Commission, grant Petroleum Prospecting Licences and Petroleum Mining Leases through the processes established in this Act;
- vii. upon the recommendation of the Commission and pursuant to the provisions of this Act and the Regulations, revoke and assign interests in Petroleum Prospecting Licences and Petroleum Mining Leases;
- viii. delegate in writing to the Chief Executive of the Commission or Authority any power conferred on the Minister by or under this Act;

⁶³ PIA 2021, s 2.

⁶⁴ *Ibid*, s 3.



- ix. upon the recommendation of the Commission or Authority approve the fees for services rendered by the Commission or Authority in Regulations;
- x. upon the recommendation of the Commission or the Authority, direct in writing the suspension of petroleum operations in any area—(i) until arrangements to prevent danger to life or property have been made to his satisfaction, or (ii) where in his opinion, a contravention of this Act or any Regulation made under this Act has occurred or is likely to occur.
- xi. The Minister may order a cutback of the levels of crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria.
- xii. The Minister shall have rights of pre-emption of petroleum and petroleum products marketed under any licence or lease in the event of a national emergency under the First Schedule to this Act;
- xiii. The Minister may give general policy directives to the commission on matters concerning upstream petroleum operations and to the authority on matters relating to midstream and downstream petroleum operations in line with the provisions of this Act and the Commission and the Authority shall comply with such directives; and
- xiv. The Minister shall cause the general policy directives issued pursuant to subsection (4) of this section to be published in the Gazette.⁶⁵

Secondly, and first of its kind in Nigeria, the Act establishes two independent regulatory bodies: the Nigerian Upstream Regulatory Commission⁶⁶ and the Nigerian Midstream and Downstream Petroleum Regulatory Authority⁶⁷ which the Act refers to as the ‘Commission’ and the ‘Authority’ respectively. These two independent institutions assumed the functions of defunct

⁶⁵PIA 2021, s 3(1)(2)(3)(4) and (5).

⁶⁶*Ibid*, s 4.

⁶⁷*Ibid*, s 29.



Department of Petroleum Resources (DPR).⁶⁸An obvious innovation is that the Minister would no longer be required to carry out regulatory functions. The Commission and Authority shall thus be the industry Regulators. While the objects and functions of the Commission are limited to the upstream petroleum operations, that of the Authority are limited to the midstream and downstream petroleum operations in the petroleum industry.⁶⁹ They shall, among other things, be responsible for licensing, supervision of petroleum operations, commercial and technical regulation of the upstream and midstream and downstream petroleum operations, enforcing laws, regulations and standards across the industry value chain.⁷⁰

In collaboration with the Ministry of Environment and other relevant agencies, the Commission and Authority shall also promote health and safety and ensure strict implementation of environmental policies, laws and regulations as it pertains to petroleum operations in accordance with the national and international standards.⁷¹

Thirdly, the Act repeals the NNPC Act 1977 and transformed the NNPC into a limited liability company under the Nigerian corporate laws.⁷²The Minister shall at the incorporation of NNPC Limited, consult with the Minister of Finance to determine the number and nominal value of the shares to be allotted, which shall form the initial paid-up share capital of NNPC Limited and the Government shall subscribe and pay cash for the shares.⁷³ The ownership of all shares in NNPC Limited shall be vested in the Government at incorporation and held by the Ministry of Finance

⁶⁸*Ibid.*, s 10.

⁶⁹*Ibid.*, ss 4, 5, 29 and 31.

⁷⁰*Ibid.*, ss 4, 6, 8 and 9.

⁷¹ PIA 2021.

⁷²*Ibid.*, ss 53 and 54.

⁷³*Ibid.*



Incorporated on behalf of the Government.⁷⁴The Ministry of Finance Incorporated in consultation with the Government, may increase the equity capital of NNPC Limited. The shares held by the Government in NNPC Limited are not transferable.⁷⁵

Certainly, these changes provide a welcome acknowledgement of institutional governance challenges of the Nigerian petroleum sector, whilst previous reforms have remained almost completely silent as to their existence. However, while the use of multiple independent agencies may be desirable, they may present an inevitable challenge in light of the fact that overall institutional capacity is yet to improve in Nigeria. There is much more doubt about the extent that these agencies can be shown to be effective. Their capability to check and balance the other may not be a reality for lack of contextual and integrative capacity-‘quality institutions, strong governance principles, freedom from political intervention, and strong training and human resources policies to competently staff more than one sets of institutions’.⁷⁶

It remains therefore to be seen whether the separation of powers called for will be achieved in the Nigerian petroleum sector. It raises the questions as to: (1) whether there is anything to show that the separation-of-functions approach would generate the same outcome it generated in Norway and (2) whether the institutions in Nigeria which failed to check and balance the other in the 1970s and 1980s has suddenly developed the strength to be effective checks now. Weighed in light of prevailing circumstances, one can estimate that there is no indication for the above

⁷⁴*Ibid.*

⁷⁵ n 74.

⁷⁶Kwasi Dartey-Baah *et al*, ‘Rent-Seeking Resource and Institutional Challenges in Ghana’s Nascent Oil Economy’ (2014) *Int. J.L.M* 363.



answers to be in the affirmative. It may be queried also as to whether the restructuring of the NNPC from a state-owned statutory corporation to a state-owned company would be more logical in achieving the desired 'wing clipping' of the corporation. These issues will be matters for discussion in other papers.

Taken furthermore into the provisions of the Act, it could also be submitted that Act is ill-equipped for the purposes of privatization. The Act is arguably vague with regard of the privatization of the NNPC limited. The Act is not only vague on privatization, it is not clear on whether the shares of the NNPC limited would be sold to the public in a transparent manner as well as to whether the said divestment will include both domestic and international listing.⁷⁷ In spite of the considerable advantages offered by both domestic and international listing, there is thus the concern that the Act does not seem to make provision for international listing.⁷⁸ It is thus unlikely that the NNPC Limited would undergo a kind of ownership change that could bring about a more commercial, high performing management systems. It does not, in other words, seem to offer a radical reform with regard to corporatization.

Finally, the Act has not been able to address issues of overlap/duplication of environmental regulatory functions. It is somewhat surprisingly that within the oil and gas industry the regulators (the Commission and Authority) are still tasked with having supervisory roles over

⁷⁸Aaron Sayne *et al* 'The Petroleum Industry Bill and the Future of NNPC' (2012) Revenue Watch Institute <http://www.resourcegovernance.org/sites/default/files/rwi_bp_nnpc_synth_rev2.pdf> last accessed 26 January 2024.



environmental matters.⁷⁹This could have an impact on the effective enforcement of environmental regulations in the oil sector.

This assessment is, however, considered provisional given that the ramifications of restructuring plan are still uncharted waters. It would, therefore, be too far to argue that these changes to the governance of the Nigerian petroleum sector will result in the forging of an appropriate institutional governance framework, one which would, in particular, involve the NNPC limited as a truly significant commercial player. Of course, the changes are obviously too recent a vintage to make any assessment as to their impact. What can be conceded to is that, these provisions aside, the PIA2021 has responded in very significant ways to the demands to improve and upgrade the efficiency of the institutions governing the Nigerian petroleum sector.

CONCLUSION

The governance framework in which the relevant institutions in the Nigerian oil sector operate has remained one of the most pressing challenges facing the Nigerian economy. In appreciating this concern, this article has analyzed the various approaches it took to direct the role of the State in the petroleum sector. The approaches taken the State has, first, moved away from minimal and regulatory interventions and, secondly, evinced greater willingness to take a more active part in petroleum activities.

The concept of State involvement in the petroleum sector shows that the State taking a less active role in petroleum activities risks leaving the social and economic value of oil and gas resources

⁷⁹ (n 78).4.



on the table. The primary concern was to ensure that no detriment was suffered by the IOCs as a result of the limited capacities and technology gaps. The yield of petroleum resource benefits thus became less significant when the costs of production were factored into the equation. Approaching the oil sector on the basis of a more active role for the State, however, provided a more certain measure of equity in the governance of the Nigerian oil sector.

This paper has demonstrated that the former institutional governance framework governing the Nigerian oil and gas sector was, on the whole, not an efficient one. One major issue was whether the three basic functional roles in the petroleum sector should be concentrated or dispersed. The occasion of the involvement of the defunct NNPC as a regulatory actor seems particularly to be the problem. The NNPC was not only a commercial agent but was also empowered with de facto regulatory authority. The analysis revealed that the failure of the past institutional governance framework largely revolved around the manner and the extent the government and the NNPC combined to limit the independence and effectiveness of the defunct DPR. The NNPC's intrusion into regulatory matters is thus believed to have failed to bring about the needed change in the governance of the Nigerian petroleum sector.

In addition to the issues of conflicts of interest, as far as the commercial roles of the NNPC were concerned, it was still a drop in the ocean when compared to other high-performing NOCs in the world. If the argument that it reduced the ability of the NNPC to function as a real commercial agent is tenuous, there was no compelling economic reason for the continued existence of the past institutional framework.



Thus, in the absence of a policy change amounting to a more clearer demarcation of roles and responsibilities, in a manner sustainable, it is believed that petroleum resources in Nigeria cannot truly contribute in any meaningful way to socio-economic growth and development. This conclusion suggests that, at the very least, the reform of the former institutional governance framework was overdue. The PIA therefore came at the right time. The essential worry, however, is that the reform measures under the PIA 2021 may not be the most viable option given that Nigeria differs in its institutional attributes, on account of which her governance needs vary. That the system privileged the voice of the defunct NNPC over other agencies came, of course, as no surprise, given the foundational nature of the NNPC as a statutory corporation, in which the sovereign will of the State, as opposed to efficiency, dominated. A case is therefore made that the restructure of corporate governance role and status of the NNPC Limited rather than the creation of multiple independent agencies would appear a more veritable strategy for addressing the transient and ineffective governance of the Nigerian oil and gas sector.