LEGAL ANALYSIS OF EFFECTIVE REGULATORY GOVERNANCE OF NIGERIA'S PETROLEUM INDUSTRY: IMPEDIMENTS AND IMPERATIVE FOR REFORM

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ABSTRACT

Petroleum production is traditionally associated with enormous national wealth vis-à-vis availability of refined petroleum products and sustainability of energy supplies to the citizenry of the nation where petroleum resources is tapped. However, the case of Nigeria is at variance with this trend. 'Resource curse' had become the language that best describes the Nigerian experience. The purpose of this article was to conduct a legal analysis of the efficient regulatory control of Nigeria's petroleum industry, identify and talk about the current barriers, and argue that reform is necessary. This article adopted the doctrinal approach to carry out the analysis of the relevant rules, legal instruments and regulatory governance institutions controlling Nigeria's petroleum industry. The article found out that the vertical integration of the International Oil Corporations (IOCs) which hampers the quest for indigenous oil companies to gain proper foothold in the nation's petroleum industry and hinders the latter's industrial growth constitutes an impediment to effective regulatory governance of Nigeria's petroleum industry. The article concluded that the regulatory governance mechanism of Nigeria's petroleum industry is under-performing, thus making the clamour for reform imperative. Hence the article recommended that the operations of the IOCs should be restricted to the upstream while the activities at the midstream and downstream should be reserved for the indigenous oil companies in order to reverse the undesirable trend of denying the latter from gaining foothold and experiencing growth in the petroleum industry and rejig the effectiveness of the regulatory governance of Nigeria's petroleum industry.

Key words:Petroleum industry, International Oil Corporations, regulatory governance.

INTRODUCTION

Modern development revolves on natural resources with petroleum resources at its very epicenter. In other words, petroleum resources happen to be fundamentally central and cardinal to modern development as petroleum products constitute the pivot upon which industrial activities are driven. In fact, in the contemporary era, petroleum resources are more or less the king of all the natural resources. If properly harnessed, the petroleum industry wields the potential of attracting enormous economic fortune to the citizens and government of any nation that possesses it. The first petroleum exploration activities in Nigeria started as far back as 1908, with the Nigerian Bitumen Company (a business entity from Germany) embarking on their initial operations in the Araromi area of Western Nigeria. This happened before crude oil was discovered at Oloibiri, a town in Bayelsa State. In 1958, 5,100 barrels per day were the town's first significant production and export capability.[1]

Nigeria's oil and gas industry developed as a result of the successful discovery of crude oil. The exploitation, development and production that followed sprang up some level of commercial activities which revolved around the petroleum resources as various transactions took place either directly or indirectly with the concessionaires. The totality of these commercial activities, which extended to oil and gas development, production, transportation and marketing collectively constitute what is known in the modern parlance as the petroleum industry.[2] In fact, the petroleum industry, as an industry that pulls the string of global economic advancement, cooperation and integration, wields the economic capacity that impacts almost all the countries across the entire global community. This development is traditionally expected to give rise to the tendency for a slanted growth and development among the countries of the world depending on the magnitude of petroleum deposits wielded by a particular country. However, it is imperative to note that whether enormous benefits that accrues from the petroleum wealth will adequately drive the dream for developmental stride in any particular country (Nigeria in this instance) and considerably raise the standard of living of the citizenry of the said country, or not, is largely a direct function of how

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[1] Y Omorogbe, *Nigerian Gas and Oil* (Malthouse Press Limited 2001).

[2] Ibid.

well the regulatory governance of the petroleum business is driven. Good regulatory governance is important.

Nigeria, as a country, can be effortlessly seen as one of the petroleum-bearing countries of the world where prevailing evidence of the benefits of the petroleum wealth is negatively impactful on the social framework and across the geo-political landscape of the country. Nigeria is a distinctive instance of a petroleum resources-rich country with questionable regulatory governance model. In other words, the nation's petroleum resources-base is typified by vastness and abundance, but it has arguably not been accorded an impressively adequate regulatory governance attention by the concerned governing authorities and agencies. Although the petroleum industry dominates Nigeria's principal extractive sector, it is nonetheless crucial to the country's economy. Since this has been the political economy of the nation's foundation for many years.Other economic sectors have been neglected ever since the oil and gas boom.[3] The petroleum resources profile of Nigeria generally reveals a richly endowed petroleum resources base that has been so badly and poorly harnessed, exploited, and utilized. Responsible for this condition and development is the lack of a healthy and effective petroleum resources regulatory governance regime sufficiently capable of positively impacting the nation's quest for growth and development as well as bringing home to the country's citizenry the desirable good and dividend of a richly endowed petroleum resources country.[4]

Prevailing evidence regarding Nigeria's petroleum industry lends strength to the argument among notable scholars, like Amuzegar, who claimed that nations that export oil have either benefitted the least or suffered the most from the discovery and exploitation of their resources.[5] In most instances, this trend is largely occasioned by ineffective regulatory governance of the industry. There is probably an inverse relationship between the endowment of natural resources

[3] A C Okoli, 'How Nigeria can effectively Manage her Resource for Inclusive Growth and National Development' (Draft Essay Submitted to Centre for Management and Development, Abuja Nigeria 2015).

[4](n 3).

[5] L Amuzegar, A Very Mixed Blessing: Oil Wealth Foreign Affairs, [1982] (60), 814–835.

and most other factors and the capacity to properly harness the resources and bring the desirable impact on the country in question. In other words, a country can be richly endowed and still be going cap in hand, stooping before other countries in the quest to import refined petroleum products. This statement generally describes the situation that exists in Nigeria, where crude oil is frequently traded and petroleum products are imported. It is arguable that the petroleum industry's weak regulatory governance is to blame for this irony of circumstance and fate. The foregoing trend is an inevitable facet of the socio-economic phenomenon often referred to as 'resource curse'. The greater chunk of Nigeria's population is perpetually suffering deprivation in terms of access to petroleum products *in spite of* the nation's enormous petroleum wealth.

Across the Nigerian geo-political landscape, there abound sweeping evidence of underdevelopment, abject pauperization, absence of essential services and infrastructure for a modern society, such as a reliable supply of drinkable water and power (which should be mostly gas-driven), health-care facilities, good roads and rail network, cottage industries and mass employment.[6] However, petroleum resources galvanize and dominate virtually all the economic activities in Nigeria. Despite the nation's abundant natural gas and crude oil reserves, the above-mentioned evidence shows that insufficient regulatory oversight of the petroleum industry has been the norm and this has triggered a situation whereby low capacity utilization of the nation's refineries has resulted to insecurity of supply of refined petroleum products. This trend makes every day dissatisfaction and incessant complaints daily ways of life as energy poverty has persistently taken the centre stage and become a popular term that describes the daily experience of the ordinary citizens of the country.[7] The task of meeting the nation's need for accessible petroleum products in fairly reliable, affordable and sustainable ways happens to be a very daunting task for not only government, but also for the international oil corporations (IOCs) and

[6] E C A Obisike, 'The Niger Delta Experience: The Effects of Oil Exploration and Production in Nigeria' [2019] (9)(1) *Journal of Property Law and Contemporary Issues,* 82

[7] S C Dike, *Energy Security: The Case of Nigeria and Lessons from Brazil, Norway, and the* UK (Port Harcourt: Pearl Publishers, 2015) 99.

the petroleum industry *per se*. For purpose of emphasis, in spite of the enormous petroleum resources deposit in the country, Nigeria has a fair share of the energy-deprived population.[8]

Reiterating that the Federal Government of Nigeria (FG of Nigeria) is solely responsible for the regulatory governance of the petroleum industry is important. The FG of Nigeria uses the aforementioned tools, among others, to govern and regulate the business. This also applies to the PIA, which follows the precedent set by earlier laws by transferring ownership and management of the nation's petroleum resources to the FG. It has overtly become imperative for the country to develop a more secured, people-oriented, fairer and more equitable petroleum regulatory governance regime.[9] Such a regulatory governance regime would drive a more transparent regulatory governance system that would justly distribute, apportion and allocate the petroleum resources-based energy needs to all stakeholders and ultimately guarantee sustainable growth and development. This article is poised to examine the extent to which the government vis-à-vis the regulatory governing institutions have fared in their responsibilities so far vis-à-vis what is likely going to be obtainable in the face of the recently enacted PIA, and suggest strategies to improve the efficiency and focus on results of Nigeria's petroleum industry's regulatory governance system.

LEGAL ISSUES THAT AFFECT REGULATORY GOVERNANCE OF NIGERIA’S PETROLEUM INDUSTRY

Investments

Before the Nigerian National Petroleum Corporation (NNPC) was founded in 1977, Britain and other developed nations of the wealthy North-West were primarily responsible for all investments in Nigeria's petroleum sector. Possibly the majority of the funds invested on the discovery and

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[8] Ibid.

[9] E H Nyekwere and E Emenike, ‘An Examination of Natural Resources Ownership Governance in Nigeria’ [2019] (10) (1) *The Journal of Property Law and Contemporary Issues*, 16.

utilization of the nation's petroleum resources, for a reasonable length of time in history, were reserved for British companies or British subjects.[10] Nigeria was caught up in the old system, whereby multinational oil firms (IOCs) with headquarters in the more developed technological nations of Europe and North America were solely responsible for investments in the discovery and exploitation of her petroleum resources. The capital, technology, management resources, and ability to produce petroleum resources were all under the exclusive control of the IOCs. They were, therefore, *sine qua non* to the nation's petroleum resources' exploration and exploitation.[11]

The IOCs, as one of the major engines of global economic cooperation and integration, are conferred with very significant benefits under the global investment mechanisms. In other words, the IOCs are more or less direct beneficiaries of certain regional and global arrangements which are basically designed to lead the commitment to break down barriers to trade and investments around the world.[12] To emphasize, Nigeria lacks the necessary money to fuel investments in the petroleum industry because it is a very capital-intensive sector that is primarily technology-driven.

Investments in any of Nigeria's petroleum industry's sectors would, of course, often involve a complicated interplay of a number of important concerns. Some of these salient issues include capital, economics, law, technology, politics and managerial skills. The outcome of any petroleum development contract between a host nation, such as Nigeria, and any IOC will presumably depend on the relative bargaining power and strengths of the parties involved in the contract most of the time. In the light of the sophisticated nature of the industry and the IOCs' access to the sources of the vast and enormous liquid capital required by the industry (as earlier indicated), the IOCs' bargaining power are usually very high.

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[10] Y Oke, *Nigerian Energy Resources Law and Practices* (Lagos: Princeton and Associates Publishing Co. Ltd. 2019) 8-154.

[11] Ibid.

[12] J L Dunoff, 'The Misguided Argument on NGO Participation at the WTO' [1998] (1) *Journal of International Economic Law*, 433.

Furthermore, the IOCs' enviable technological know-how, formidable managerial skills and the very expansive marketing outlets based upon their global connections place them at a very advantageous position on the bargaining table. Nigeria, on the other hand, exercises sovereignty over the country's natural resources as a host nation.[13] Hence Nigeria, as a host country, is ordinarily expected to wield the responsibility of producing the template for a more stable and efficient legal, administrative and regulatory governance framework to attract and encourage potential investments in the industry and to enhance a more robust development of the nation's petroleum industry.

Ownership and Control

Natural resources, such as petroleum resources, as very enviable gifts endowed by nature, are paramount for the sustenance of any nation that possesses it. The petroleum industry certainly requires proper regulatory governance if, and only if, the realization of availability, affordability and sustainability of energy sources including steady national growth and actualization of sustainable development (being the most desirable national attainments) would be possible. This assertion is particularly akin to developing countries, like Nigeria, where the importance of natural resources, especially petroleum resources, it is vitally essential in determining national wealth and opulence.[14] Many academics, including Amuzegar, hold the opinion that oil exporting nations have 'gained the least, or lost the most,' as a result of the discovery and exploitation of petroleum resources inside their respective geopolitical domains.[15] Meanwhile, it is impossible to overstate

[13] M M Gidado, *The Nigerian Experience with Petroleum Development Contracts with International Oil Companies* (ED-Inform Services Press, 1999) 38.

[14] K Hamilton and G Ruta, 'Natural Resources and Institutional Quality: From Curse to Blessing' [2006] (24) *Environmental Matters.*

[15] L Amuzegar, 'Wealth from Oil: A Very Mixed Blessing [1982] (60) *Foreign Affairs* 36.

the role that petroleum resources play in the daily lives of people all over the world. Almost all of the countries in the world depend on petroleum resources to power their respective economies.

In the meantime, one of the UNGA's historic Resolutions from 1962 developed and established the notion of Permanent Sovereignty over Natural Resources (PNSR). The principle was specially tailored to reverse the persistent trend whereby the international oil companies (IOCs) would be smiling home with deep pockets and massage the interests of their host countries while the expedient energy needs and the questions of sustainable growth and development of their respective host countries remain unaddressed. This historic Resolution is the UNGA Resolution 1803 (XVII)[16] which was birthed based on the passionate demand by the petroleum resources-rich developing nations, particularly Latin American countries and the Arab World, that states with access to petroleum resources should take up ownership and management from IOCs.

The adoption of the PNSR principle has marked a turning point in the development and application of the international legal concepts adopted for the purpose of regulating the petroleum industry's use of natural resources, including its exploration, exploitation, production, and utilization. It is imperative to reiterate that the concept of PNSR was originally proclaimed in the 1962 UNGA Resolution, and it provides among other things that: the goals of national growth and development, including the welfare of the people of the state in question, must be served by the people and nations' right to exercise permanent sovereignty over their natural wealth and resources.[17]

Albeit, since modern development revolves on the orbit of natural resources which have the petroleum resources at its very epicenter, it goes without saying that petroleum resources are very central and cardinal to modern growth and sustainable development of the countries where they are domiciled. Emphatically, petroleum products constitute the pivot upon which most

[16] B H Weston, 'The Deprivation of Foreign-Owned Wealth and the Charter of Economic Duties of States' [1981] (2) *International Law Journal*, 43.

[17] Oke (n 10) 3.

industrial activities are driven. In fact, the petroleum resources are more or less the king of virtually all the natural resources. The development of the Nigerian petroleum law is synonymous with the evolution and growth of the NNPC which followed the UNGA's Declaration of the PSNR.

The onus was on the IOCs to conduct their operations in a way that respected the socioeconomic and environmental rights of the host nations. Such efforts that uphold and venerate the rights of host countries should be taken through legal and/or political means in accordance with the principles of the United Nations Charter (UN Charter) and the applicable international laws.

These countries are mostly characterized by higher level of population than the available resources when assessed from the development viewpoint. This trend makes labour supply relatively abundant but with fewer skills than is required to drive the sophisticated technology which is the orbit upon which the petroleum industry revolves. Furthermore, the per capita output of these natural resources-rich developing countries is often very low, and they have natural resources that are very much under-utilized, thus resulting in an economically deprived population.[18] This trend places these countries in a very disadvantageous position in their business relationships with the IOCs as they (the host countries) are particularly oriented towards foreign trade and are generally capital-deficient. Ordinarily, it would be expected that the availability of petroleum resources would constitute a big boost to the governments and the energy needs of the people of the diverse resources-rich countries. It would arguably avail them of petroleum-related energy sources, enable them promote growth and development, and enhance the welfare of the increasingly growing population including the sustainability of the ever-ailing environment of the oil-rich regions.[19] In a nutshell, every type of foreign investment that goes to recipient developing host countries will always be to the harm of those countries' economies and societies (in worst case scenarios).

[18] K Anan, 'The Primary Obstacles to the Growth and Development of Developing Nations' [2003] (7) (3) *Review of Development Economics*, 44.

[19] A Akinsanya, 'Host Government's Responses to Foreign Economic Control' [1981] (30) (4) *The International and Comparative Law Quarterly*.

This was the mode of engagement right from inception of the petroleum business operations, and the developed countries would often stop at nothing to attain profits in what they often consider as very promising petroleum business. Here, there is a special worry regarding the potential collapse of the economy of the host nations, in which case the foreign investors give the locals of the host countries false hope. The IOCs may not always feel compassion for the locals of the host nations if their commercial endeavors are bringing about suffering and having a detrimental effect on the means of subsistence for the common folk. Hence, international law is put in place to regulate certain business practices of the IOCs. Meanwhile, certain business conducts that are not in tune with best international practices are often perpetuated by the IOCs despite the existence of international legal instruments designed to trim their excesses to size. This trend has attracted series of litigations by legal advocates against the IOCs like the *Unocal* case (a California-based oil giant) being the first US company to face trial in America for tortuous acts abroad based on the principle of extra-territoriality.[20]

A Nigerian litigant used extraterritorial litigation in the case of*Akpan v Royal Dutch Shell Plc*.[21] The plaintiff in this case is a Nigerian citizen who lives in Ikot Ada Udo in the Akwa Ibom State. The plaintiff sued *Royal Dutch Shell Plc* in connection with a business identity, *Vereniging Milieudefensie*, domiciled in Amsterdam, Netherlands. The Defendants, *Royal Dutch Shell Plc*, has its major place of business in The Hague, Netherlands, and its registered office in London, United Kingdom, and *Shell Development Company (SPDC)* of Nigeria Ltd., having its headquarters in Port Harcourt, Nigeria's Rivers State. The lawsuit relates to two specific oil leaks that occurred in 2006 and 2007 at oil facilities run by SPDC close to Akpan's home village of Ada Udo in Nigeria. Extraterritorial litigation is frequently brought about by challenges and related technical barriers that are placed in the way of obtaining justice in the Nigerian jurisdiction by

[20] S Tsalik and A Schiffrin, *The Open Society Institute, 2005, Covering Oil: A Reporter's Guide to Energy and Development*, (Open Society Institute2005) 120.

[21] Case No 337050/HA ZA (January 30, 2013).

means of the need to prove special damages, the scarcity or inadequateness of monetary damages awarded by courts, and other technical problems.[22]

The sweeping influence of globalization, with its associated traditional perception that it attracts development to recipient countries, initially left in its trail an alien situation whereby the developing natural resources-rich countries of the world would virtually seek to attract the IOCs. On the flipside, the latter (the IOCs) would often see themselves as the beautiful and much sought-after brides. This trend boosted the ego of the IOCs and made them exhibit the traits of haughtiness towards their would-be host countries. The IOCs engaged in foreign business practices that were detrimental to not only the anticipated growth and development of the host countries, but also to the environmental sanity of the said host countries due to this aura of relative irreplaceability in relation to the growth and development of the natural resource-rich developing countries of the world. The IOCs were the compelling economic giants that would often call the shots, and this placed the natural resources-rich host nations at their (IOCs') beck and call.

PARADIGM SHIFT IN OWNERSHIP AND CONTROL OF PETROLEUM IN NIGERIA

The advent of the PSNR principle and Nigeria's choice to adopt it signaled a paradigm shift in the nation's ownership and management of its petroleum resources. Two basic origins or roots may be found for the PSNR principle. These consist of: (a) Peoples' right to self-determination and state sovereignty; (b) Resolution 1803 (XVII) of the UNGA, which formulated and adopted the 1962 Declaration. This principle has significant practical implications in the modern world. It arguably grants nations of the world the rights of jurisdiction over their own territories and the rights of ownership over the natural resources located there for their use in order to facilitate sustainable development and national growth.

The UNGA decided to support the apparently valid argument that the PSNR concept is inherently rooted in the deep attachment that people have to the natural resources found within

[22] Oke (n 10) 76.

their own regions. This principle was adopted on 14th December, 1962 by UNGA by casting of votes; an exercise which ended with 87 votes in favour of the adoption of the principle of PSNR and only 2 votes against the adoption of the principle while 12 persons were in abstentions.[23] The main knock-on impact of the UNGA Resolution 1803 (XVII) 1962 was that it prompted nations to establish their separate national oil firms at home (NOCs). Following the foregoing development, Oil Producing and Exporting Countries (OPEC) was also formed to protect the interest of the member nations. It is crucial to remember that while the national oil companies (NOCs) in some nations are doing extremely well and have almost complete control over the petroleum sector in those nations, the Nigerian National Oil Company (NOC) does not yet have complete control over the petroleum sector in Nigeria. The petroleum sector in Nigeria is still mostly dominated by private foreign investment [24] and investors.

The Nigerian petroleum industry continues to reflect a typical enclave industry whose contributions to the economy are limited largely to its contribution to government revenue and foreign exchange earnings of the country.[25] The need to stop the previous alien tendency is the central ideological tenet of the FG's indigenization program for the nation's petroleum industry. It is also pertinent to point out that the Nigerian adoption and application of the principle of PSNR is more or less a deviation from what is obtainable in other more advanced hydrocarbon countries of the world, like Norway and UK. In certain regions, the people, not the FG of the various countries, have the majority of the rights to ownership and management of petroleum resources. The Nigerian model of adoption and application of the principle of PSNR has arguably not helped matters in favour of the ordinary people. The nation's petroleum industry has suffered more harm

[23] A Kitangi, Note at the Beginning: Permanent Sovereignty over Natural Resources New York, 1962: General Assembly Resolution 1803 (XVII).

[24] Y Oke, 'The Global Trends in Natural Resource Management: Developing Countries' [2009] (19) *NLA Journal*, 19.

[25] Ibid.

than good as a result of this practice of keeping ownership and management of the country's resources solely in the hands of the FG rather than the people.

Arguably, the practice has constituted a cog in the wheel of progress in ensuring a smoother, stronger and more goal-oriented regulatory governance system for Nigeria's oil sector. The prevailing system has been hitherto fraught with clumsy, shady, lopsided and corrupt regulatory governance model occasioned by conflict of interests. Therefore, it has become crucial to consider how much the PSNR principle has influenced the idea of efficient regulatory control of Nigeria's petroleum industry. The Nigerian petroleum industry's regulatory governance approach has put the IOCs on very shaky ground and made them take serious advantages of the weak and porous legal regimes of the country's petroleum industry often driven by lackluster implementation willpower. Prior to the advent of the principle of the PSNR (the brainchild of UNGA) in 1962, the IOCs had acquired very dominant role in the determination of the economics, trade, investments, and in fact, the overall petroleum industry in virtually all the natural resources-rich host countries including Nigeria.

Prior to the introduction of the PSNR principle, the petroleum industry's terms of operation and organization provided the IOCs virtual ownership and control over Nigeria's petroleum resources.[26] As was previously stated, Nigeria's interests as the host country were thus restricted to the bare collection of taxes, royalties, and lease fees as well as the nominal ownership of petroleum *in situ*.[27] Therefore, it may be argued that the UNGA's adoption of the PSNR principle represented a turning point in the history of the growth of the petroleum sector around the world, including Nigeria. The passage of the foregoing resolution by UNGA piloted a new phase in the petroleum business around the global community. This development, which was largely perceived to be a very promising milestone in the advancement to global socio-economic inter-relationships, saw to the sudden ownership and control transition from the investors-ownership to national

[26] Y Oke, 'The Effects of International Law and International Best Practices on Nigeria's Governance of its Energy Resources' [2012] (1) *University of Ilorin Law J*ournal, 156.

[27] Ibid.

governments-ownership of the petroleum resources, and by extension all the natural resources.

This marked a fundamental paradigm shift in this perspective. The establishment of NOCs by the many oil and gas producing nations across the world, including Venezuela, Iraq, Saudi Arabia, Nigeria, Kuwait, and others, was expected to bring about this paradigm change. It is important to underline that the evolution and expansion of the NNPC, the country's NOC, go hand in hand with the development of Nigeria's petroleum law. After Nigeria's independence, the country saw her position in the petroleum resources operations to be virtually unsatisfactory. Therefore, the country took the bold step to join in the movement for increased local participation in petroleum resources production and ownership, which has become considerably intense on a global scale in the early 1970s.[28] This led to the quest and policy redirection to participate more in some of the operations hitherto handled by the IOCs.[29]*In spite of* this transition, the IOCs in reality still dominate the industry, providing at the same time, the investor-funds (enormous as they are), technology and the required human capacity for the growth of the petroleum industry since remembered time.[30]

There are two cardinal reasons that lend credence to the foregoing fact. First and foremost, it is an open secret that with the nature of oil and gas business, which requires very enormous liquid capital, it is only the IOCs that can easily provide such huge requisite liquid capital. Secondly, it is clearly observed that there exists a case of inability of most natural resources-rich nations of the world to, all by themselves, develop a robust and an efficient petroleum industry capable of standing on their feet and perpetually keep the business afloat. This trend has made the various established NOCs such as NNPC of Nigeria (with NNPC Ltd as its successor), Saudi Aramco of Saudi Arabia, PETRONAS of Malaysia and PETROBRASS of Brazil, still reasonably

[28] Oke (n 10) 9.

[29] Ibid.

[30] Energy Commission of Nigeria (ECN), *Renewable Energy Master Plan* (UNDP/ECN 2005) 2.

dependent on the IOCs in the perpetual development of their respective nation's petroleum industry. For the most part, Nigeria is one example of a petroleum resources-rich nation that has virtually failed to effectively develop her petroleum industry outrightly independent of the IOCs. The foregoing assertion is true irrespective of the incorporation of the country's NOC – NNPC – as far back as 1977.[31]

Succinctly, the IOCs regularly interface with the NNPC, the Nigerian FG including the host communities at different stages of the petroleum business operations, be it the sector's upstream, midstream, or downstream value chain. Suffice it to say that the midstream has been hitherto merged with the downstream under the Nigerian setting unlike what is obtainable in the Western World under which scenario the three foregoing sectors are identifiably operational in the petroleum value chain. However, under the recently enacted legal regime,[32] with the creation of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (referred to as 'the Authority'), the midstream has received explicit recognition.[33] In fact, several IOCs continue to be vertically integrated (engaging in activities across the entire value chain of the petroleum industry), thus denying the NOC and some of the domestic oil and gas private companies' ample inroads into certain legitimate oil and gas business activities which should be particularly reserved for the country's NOC and domestic oil and gas private companies.

On a global scale, there still abound instances of double standards, profit over-maximization, risk inversion by some of the IOCs. Matters are made worse as the IOCs would often fail to conscientiously adopt international best practices in some of their host countries, particularly Nigeria. These are the major factors that make the IOCs almost indispensable stakeholders in the development, growth, strength or viability of the nation's petroleum sector. This trend begs for the imperative to critically re-examine the role of the IOCs in Nigeria in respect

[31] NNPC Act Cap. N123 LFN 2004 (No. 33).

[32] PIA 2021.

[33] Ibid, s 29.

of their lack of commitment to the contribution towards upholding the principle of PSNR in its undiluted form, as obtainable in saner hydrocarbon climes like Norway. There are instances where the government has failed to create a tranquil and favorable working environment for the flourishing of the petroleum business. Things are made worse by the existence of a somewhat persistent tendency towards resistance to meaningful reforms by the IOCs.[34]

Clearly, the IOCs control the majority of licenses and leases in Nigeria's petroleum sector, and they are responsible for nearly all of the country's crude oil production (approximately 99%) through their joint venture (JV) activities and production sharing contracts (PSC).[35] They (the IOCs) mainly provide the operational capital and technology required in most production activities.[36] The JV agreements often have the mischief of lack of payment of cash calls by the nation's FG operating through the NNPC. This trend made the PSC, under which arrangement the sharing process between the IOCs and the nation's FG is carried out in terms of oil instead of money, a better alternative as the operational model in Nigeria's petroleum industry. However, inherent in the PSC is the mischief of possible overrating or falsification of the cost of production by the IOCs. There is virtually no device to find out whether the claimed cost of production by the IOCs is true or false. Hence, the cost oil can gulp up an enormous chunk of the total production (say 80 percent of total production) leaving a very minute portion (say 20 percent of total production) as the profit oil to be shared by the parties (IOC and FG).

REGULATORY GOVERNANCE REFORM: A PROSPECTIVE ISSUE IN PIA 2021

[34] S C Dike, 'LLM/PGD Lecture Notes: Key Participation in the Nigerian Petroleum Industry Rivers State University in Port Harcourt, Rivers State, Nigeria, has a law school.

[35] G Etekerentse, *Nigerian Petroleum Law* (2nd edn, Dredew Publishers 2006) 24.

[36] 'Security of International Oil and Gas: Challenges and Research Priorities' Interim Report, Centre for Petroleum Mineral Law and Policy, University of Dundee [2006] (14) *For Range of Issues Affecting Importers and Exporters*, 176.

With the advent of the new regulatory governance regime,[37] Nigeria as a country has realized the many deficiencies, with the associated mischiefs, in her legislative frameworks that had hitherto governed and regulated the petroleum industry and consequently came up with the new Petroleum Act.[38] The PIA 2021 is literally an amalgamation of sixteen pieces of legislation and codification into a single coherent statute with the sole objective of removing ambiguities in the petroleum industry's governing regulatory structure in Nigeria. Such removal of ambiguities would go a long way to reform the system and transform it into a more effective regulatory framework. Thus, it is arguable that the cardinal objective of the new legal regime[39] is to overhaul and reform Nigeria's petroleum industry. Hence, regulatory governance reform is a fundamental issue in the new legal regime.[40] However, with the vesting of the sole ownership of the petroleum resources in the country's FG[41] there are many questions about why the federal government shouldn't also grant ownership to local governments, states, and even communities that have petroleum resources.

In order to enhance the foundation of the regulatory governance framework for the country's petroleum industry, it is essential to underline that the PIA 2021 establishes a number of regulatory governance institutions. The current setup has a great chance of bringing about the long-awaited regulatory governance change in the petroleum sector. The institutional structure of the new legal system[42] is appropriately outlined as follows: (i) The Minister of Petroleum Resources, whose authority includes creating, implementing, and overseeing government policy as specified in the PIA 2021;[43] (ii) Additionally, as rightfully mandated in the PIA 2021, the Nigerian Upstream

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[37] Ibid.

[38] Dike (n 34).

[39] PIA 2021.

[40] Ibid.

[41] Ibid, s 1.

[42] Ibid.

[43] Ibid, s 3.

Petroleum Regulatory Commission ('the Commission') has been constituted and charged with the duty of supervising the technical and commercial regulation of upstream petroleum operations.[44] A Governing Board that operates in conformity with the PIA 2021's principles will properly manage 'The Commission.';[45] (iii) The Nigerian Midstream and Downstream Petroleum Authority ('the Authority'), which is tasked with managing the technical and commercial regulation of the midstream and downstream operations of the petroleum industry, is established as part of the PIA 2021.[46] 'The Authority' is to be administered by a Governing Board[47] which has all its functions clearly laid out in the PIA 2021;[48] (iv) A Governing Council is also set up to oversee and make investment choices for the Midstream and Downstream Gas Infrastructure Fund, which is under its supervision;[49] (v) Finally, the Companies and Allied Matters Act would be used to incorporate the Nigerian National Petroleum Company Ltd (NNPC Ltd) (CAMA)[50] which is going to be a solely commercial and profit-driven company with its ownership vested in the federation of Nigeria.

However, there are diverse complaints that the Minister of Petroleum Resources is still wielding a lot of powers under the PIA 2021. Despite that the granting of operational licenses and leases is not the sole responsibility of the Minister of Petroleum Resources, rather he would act in accordance with the recommendations of 'the Commission', it is still questionable whether he would obey the recommendations of 'the Commission' since it is the Minister of Petroleum Resources, being the President of the Federal Republic of Nigeria, who appoints the members of

[44] Ibid, ss. 4, 5 and 6.

[45] Ibid, ss. 11 and 12.

[46] Ibid, ss. 29, 30, 31 and 32.

[47] Ibid, s 34.

[48](n 47), s 35.

[49] Ibid, s 52.

[50] Ibid, s 53(1).

the Governing Board of 'the Commission'. It is also questionable whether the independence of NNPC Ltd is not going to be in serious jeopardy in a situation whereby the company's Board of Directors are going to be appointed by the President (who is also the Minister of Petroleum Resources).[51] The PIA 2021's aforementioned part is in conflict with the necessity that the NNPC Ltd. Board of Directors be established in line with CAMA and the Company's Articles of Association.[52]

It was a long time coming, and for period of over twenty years when the legislation was conceived, it actually went through diverse transmutations. The legislative instrument underwent rave reviews, public hearings and stakeholders' contentions around the contents of what its final product has now become; the PIA 2021. Arguably, the most vocal among the diverse contentions hulled at this legislative instrument[53] happens to be the one touching on the hot button of 3 percent of the operator's annual operating expenditure to be contributed into the host community trust fund[54] and the exploration and development of the frontier basin will receive 30% of profit oil and gas.[55] Of course, there is persistent agitation to reduce government's interference in the affairs of NNPC Ltd, but the FG of Nigeria is still directing that 30 percent of the profit oil and profit gas of the company be invested into the development of frontier basin. A limited liability company's objective, vision, and position as a board of trustees and directors are openly disregarded when decisions about how to spend its profits are made. Reforming regulatory governance may still be necessary, according to some.

Furthermore, it is noteworthy that at the global level, there is growing tendency towards deregulation of the petroleum industry. On the flipside, even under the current dispensation,

[51] PIA 2021, Ibid, s 59(2).

[52] Ibid, s 58.

[53] Ibid.

[54] Ibid, s 240(2).

[55] Ibid, s 9(4)(5).

Nigeria is still arguably exhibiting the disposition to perpetuate the regulatory mentality. Meanwhile, most advanced hydrocarbon nations allow the IOCs to self-regulate. Those countries end up achieving the desirable goal despite the high cost of self-regulation. Furthermore, if the major stakeholders in the petroleum industry fail to work dispassionately by placing the interests of the nation and the citizenry over and above political apathy, the ultimate goal of improving transparency in the regulatory governance framework of the petroleum industry would be truncated. Arguably, a reformed regulatory governance framework would go a long way to lower revenue losses which is often a direct off-shoot of institutional corrupt practices, systemic shadiness and lack of accountability.

It is imperative to reiterate that until the commencement of the PIA 2021, the nation's petroleum industry hadbeen controlled by the Petroleum Act.[56] It is worth recalling that this controlling Act was enacted in 1969, but underwent the 2004 recodification process. However, the realities on ground within the nation's petroleum industry, against the backdrop of the diverse mischiefs inherent in the hitherto controlling Acts, have ignited the persistent burning desire to have a more inclusive legal regime that would remarkably provide a more efficient and effective framework for governance, administration, fiscal, legal and regulation of the industry respectively.[57] The significance of this is that the recently passed PIA 2021 is anticipated to give the regulatory governance of Nigeria's petroleum industry a significantly better and reformatory outlook moving forward.

However, it is imperative to realize that the legal provisions inherent therein would not just operate by themselves to ensure a stable and efficacious reform in Nigeria's petroleum industry. The ensuing legal framework and institutions have to be backed by an unflinching and indomitable political will and good leadership vision. We cannot allow the new governing Act, which is

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[56] Cap. P10 LFN 2004.

[57] C Nwaozuzu and I Onyije, *Understanding the Petroleum Industry Governance Bill (PIGB(Nigerian)'s Petroleum Industry Reforms: Understanding the Elements of the PIGB) Policy and Strategic Studies* (Emerald Energy Institute for Petroleum and Energy Economics 2008) 14.

inscribed in the fundamental position or pride of place of good, accountable, and responsible regulatory governance of Nigeria's petroleum industry, to be undermined,[58] and the nation's constitution. The issue of reform of the regulatory governance of the nation's petroleum industry is central to the vision that has ultimately blossomed into the new legal regime.[59] The question that now begs for answer is whether there will be undiluted commitment to the enforceability question. The PIA 2021 offers very enviable promises of reform of the regulatory governance of the nation's petroleum industry, but there must be adequate political will to enforce the Act.

CONCLUSION

The institutions that have, up to now, controlled the Nigerian petroleum industry's regulatory governance system and its performance have been subpar. This has made the perpetual clamour for reform imperative. Nigeria continues to import petroleum products, and this article has plainly understudied the extent to which the nation produces large amounts of petroleum. This alien trend has inevitably led to the prevailing energy poverty in the midst of plenty. This paradox which can best be compared to someone in the middle of a water body and the soap in his eyes is giving him the worst discomfort is more or less a function of an underperforming and ineffective regulatory governance of the nation's petroleum industry. In other words, there is a positive relationship between improved accessibility, affordability, and sustainability of the petroleum products from which energy is obtained and successful regulatory control of Nigeria's petroleum industry.

This study's objective is to conduct a legal examination of how well Nigeria's petroleum industry is governed by regulations. This comes with the commitment to point out the impediments and the imperative for reform. Underpinning this aim is the compelling responsibility to aptly establish an in-depth understanding of the factors behind the frail and ineffective regulatory

[58] PIA 2021.

[59] PIA 2021.

governance mechanism. The task includes the legal analysis of the weak institutional frameworks controlling Nigeria's petroleum industry and identifying the impediments to effective regulatory governance in a bid of proffering possible regulatory governance reform.

RECOMMENDATIONS

Based on the analysis above, the article inevitably makes the following recommendations:

1. The process of passing knowledge and technology to the locals should be supported and strengthened in order to ensure that IOCs are limited to upstream petroleum operations and that the midstream and downstream operations are completely reserved for indigenous oil businesses. These efforts are imperative in order to reverse the ugly trend whereby the indigenous oil companies are denied the opportunity of gaining formidable foothold in the nation's petroleum industry. Furthermore, the intensification of such frantic efforts would arguably make the indigenous oil companies experience growth in the industry.
2. The petroleum resources ownership solely wielded by the FG of Nigeria should be extended to the people of the country in adherence to the tenet of the principle of PSNR as practised in more advanced hydrocarbon climes like Norway. The ownership right has to be extended to the entire citizenry of Nigeria, in strict accordance with the tenet of the UNGA's Declaration on the principle of PSNR, and not just the FG as stipulated in the CFRN, upheld by successive legal regimes governing the industry and even under the current legal regime. This will help to address the sense of injustice, suspicion and resentment among the petroleum resources-bearing states and communities.
3. EGASPIN should be given the status of law through an Act of NASS in order to give it biting teeth and enhance its effectiveness. Arguably, if EGASPIN is given the status of an Act of NASS, and not a mere body of regulations as it is at the present moment, it will

command greater impact on the major players in the industry. The fact that EGASPIN is viewed as a mere body of regulations often makes the IOCs and other major players in the nation's petroleum industry to treat environmental issues with lackluster attitude. Thus, making EGASPIN have the potency of an Act of NASS will enable it possess biting teeth and wield deterrence effect on would-be culprits in oil-related environmental crimes.