

Oil and Gas Governance in the Nigerian Petroleum Industry: Imbibing the Good Governance Concept

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Abstract

This study appraised the governance structure in Nigeria petroleum industry, and as contained in the recent enacted PIA 2021 which is now the principal legal instrument as far as Nigeria's petroleum industry is concerned. The challenges faced by regulators of the petroleum industry, being integral part of the system, are highlighted. It is observed that in seeking to proffer solution to tackle the problems facing Nigeria's ailing petroleum industry the Norwegian model was resorted to. The Norwegian model consists of separation of roles and responsibilities into commercial, policy and regulatory. The doctrinal research methodology was adopted. The Norwegian model and governance of the international petroleum market was appraised. The discourse was tailored along the concept of good governance; the legal mandate of regulators of the Nigerian petroleum industry; oil and gas governance in the international community; challenges of oil and gas governance in Nigeria; and guidelines for good governance in the oil and gas industry. Against this backdrop, the study recommends that the Norwegian model may not be the best for every ailing industry and adoption of the Guidelines for Good Governance in Emerging Oil and Gas producers 2016 is proposed as the likely solutions that may aid in improving Nigeria petroleum industry.

Keywords: Oil and Gas, Governance, Petroleum, Industry, Imbibing

1. Introduction

The discovery of oil and gas (petroleum) revolutionized and upgraded the global energy, power and transportation system. Sourcing for petroleum was an issue as it was majorly found in countries different from that of the operators; the International Oil Corporations (IOCs). Long concessional agreement was initially adopted and entered into between Governments of the producing countries and the IOCs. The producing countries at the time had little forecast on the immense wealth petroleum would bring. The petroleum market brought immense profit to the IOCs to the detriment of the producing countries and it became obvious that they were short changed by the concessional agreements. The concessional agreements were subsequently abandoned as it did not provide reasonable revenue to develop and run the production countries. The principle of sovereignty over petroleum resources was developed and canvassed in favour of the production countries. This development saw the emergence of the Organization of Petroleum Exporting Countries (OPEC). Further, the United Nations acknowledged a country's sovereignty over petroleum resources found within her territories. OPEC mandated her members to establish National oil companies that would secure and ensure the protection of the government/ nations' interest in the petroleum industry and establish mechanism to regulate the industry. Joint venture agreements (JVA), production sharing contract (PSC), and other hybrids replaced the long concessional agreements.

Regulating the petroleum industry became a focus to ensure the stable development of the petroleum industry, adequate account and transparency, securing revenue for the development of the entire economy of the country, and further promote better living conditions for the people. The rationale for the establishment of the national oil companies, in addition to securing

and protecting the nation's interest in the petroleum industry, is primarily to advance the state objectives and policy which included security of supplies, to oversee and control the activities of the domestic oil industry, and to make profits. Omorogbe observes that the primary reason for the creation of national oil companies is to ensure that producing States has constant access to oil and their energy supplies are not encumbered.¹ This move encapsulated the objective 'security of supply'. Security of supply is defined, 'as a legal measure, which guarantees adequate supplies of petroleum resources for domestic consumption in a reliable, affordable and sustainable ways.'²

The Nigeria government launched her national oil company; the Nigerian National Oil Corporation (NNOC) in 1971 in line with the directives of OPEC and subsequently joined OPEC in July of same year. The NNOC was short lived and metamorphose into the present Nigerian National Petroleum Corporation (NNPC). It is debated that the NNPC have not been able to ensure security of supply for domestic utilization. The periodic fuel scarcity and incessant increases in fuel prices are evidences for this debate. Further, uprising in the Niger Delta region, bunkering activities and environmental degradation, are issues associated with the debate. NNPC further acts as a principal regulatory body in the Nigerian petroleum industry. The other regulators include the Ministry of Petroleum Resources, Energy Commission of Nigeria, National Oil Spill Detection and Response Agency (NOSDRA), etc. This article understudies the regulators of the Nigerian petroleum industry; ascertain their achievements and weaknesses in line with their mandates. Discussion is tailored along the concept of good governance and guidelines for good governance in the oil and gas industry.

2. The Concept of Governance in Relation to the Petroleum Industry

The petroleum industry is one sector of the economy in Nigeria heavily relied upon by other sectors of the economy. The concept of governance discussed is targeted at the petroleum industry. Governance in a generic sense refers to the task of running a government or any appropriate entity. It may be further seen as the art of controlling a company or an organisation. Governance has been defined to refer to structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation. Governance also represents the norms, values and rules of the game through which public affairs are managed in a manner that is transparent, participatory, inclusive and responsive.³ The British Council declares that Governance involves interaction between formal institutions and those in civil society. Governance refers to a process whereby constituted authorities wield power, influence, and enact policies/ decisions concerning public life and societal development. The 2009 Global Monitoring Report explains governance as power relationships; formal and informal processes of formulating policies and allocating resources; processes of decision-making; and mechanisms for holding governments accountable. In effect governance centres on how power is distributed, shared and balanced; how policies are formulated, priorities set and stakeholders made accountable. In particular to this study, governance is the art of exercising administrative, political and economic control

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¹ Y. Omorogbe, *Oil and Gas Law in Nigeria* (Malthouse Press Ltd. 2001) 97.

² S. C. Dike, *Energy Security: The case of Nigeria and Lessons from Brazil Norway and the UK* (Port Harcourt: Pearl Publishers 2015) 32.

³ International Bureau of Education – UNESCO, *Concept of Governance* <<https://www.ibe.unesco.org/en/geqaf/technical-notes/concept-governance...>> accessed 8 Nov. 2019.

efficiently and effectively in an accountable manner for the purpose of achieving society's objectives.⁴

The World Bank emphasised that good governance is epitomized by predictable open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs.⁵ The World Bank's stance on good governance reflects global thrust toward political and economic liberalisation. This approach highlights the need for State accountability, political stability and economic development. An appraisal of the foregoing encapsulate a scenario of top managers of society/institutions held accountable and responsible for decisions they take or policies they enact, because said decisions/ policies are supposed to ensure the economic prosperity and development of the people, and encourage a stable political society. After all, good governance is expected to be participatory, transparent, accountable, effective and equitable, and promotes the rule of law.

Taking the concept of (good) governance expounded above from the various sources, and exporting it to the Nigerian petroleum industry, can it be said that exercise of State authority in the control and management of this sector meets the requirement of good governance? Have the regulatory institutions mandated to supervise the activities/ operations of the petroleum industry effectively tackled the problems they were established to solve? Are Nigerians satisfied with the day to day management of the petroleum industry? Has Nigeria met the expectations of international community in terms of effective utilisation of her resources? These questions emanate as a result of the reality of scarcity of petroleum products for domestic consumption; importation of refined petroleum products to argument for domestic consumption despite the existence of four refineries; shortages in electricity/ power supply; militancy and bunkering activities in the oil producing Niger Delta region; and the national debt crises.

In view that the international community is advocating conversion from fossil fuel to renewable energy, due to greenhouse gas effect, depletion of the ozone layer, acid rain, degradation/ pollution of the environment, from activities of gas flaring, gas emission, bunkering, explosions, sabotage of oil pipelines, it is imperative that good governance becomes imperative in Nigerian petroleum industry before a decline in the marketing of fossil fuel sets in. It is observed that coal, which formerly drive industrialization, due to its' intense pollution of the air was abandoned and replaced with the liquid and gaseous fuels. The London smog of old attests to the hazardous nature of coal. So also will renewable energy sources in the form of hydropower, wind, solar, and tidal energy, take over from the liquid and gaseous fuels in the nearest future. The New York Times reports that,

The fossil fuel industry is facing heightened scrutiny on several fronts. The United Nations has warned that oil and gas production must decline substantially in the coming years if humanity is to avoid the worst effects of climate change worldwide, including more severe flooding, droughts and sea level rise.⁶

⁴ D. Gberville and others, 'Corruption and Cost of Governance in Nigeria' in A. S. Akpotor and others (ed), *Cost of Governance in Nigeria: An Evaluative Analysis* (Ekpoma: Ambrose Alli University 2007) 405.

⁵ The World Bank in Governance: *The World Bank Experience, cited in Governance Barometer: Policy Guidelines for Good Governance, Understanding the Concept of Governance* <<https://www.gdrc.org/u-gov/gover...>> accessed 8 Nov. 2019.

⁶ Hiroko Tabuchi, *Government Loophole Gave Oil Companies 18 Billion Windfall* (The New York Times: 24 Oct. 2019) <<https://www.nytimes.com/2019/10/24/climate/oil-lost-revenue-guo.html>> accessed 12 Nov. 2019.

3. Regulators in Nigeria Petroleum Industry

Prior to the formation of OPEC, the IOCs virtually controlled the petroleum sector in the country they operated and dictated the oil prices in the international oil market. Marginalisation of the industry by the IOCs was made possible by the concession agreements, a product of colonial rule. At this particular period, the Nigerian government had no equity interest in any of the IOCs.⁷ Resolution 1803 of the United Nations on permanent sovereignty over mineral resources shifted the balance of power from the IOCs to the oil producing countries, coupled with the influence of OPEC. The then Nigerian Federal Military Government (FMG) seized the opportunity, took control and regulated the nations' petroleum industry. The FMG promulgated various laws and established various institutions to regulate and govern the oil and gas sector. This was the period between 1960 and 1975 and Nigeria benefited immensely from the changes in the global oil industry.

In the 1970s, under the regime of General Yakubu Gowon, Nigeria experienced oil boom and became the wealthiest country in Africa. However, the oil boom did not reflect in the lives of many Nigerians, as there was a complete economic crash in the following decade. Even today, despite being the largest exporter of crude oil in Africa and a major international exporter, the lives of majority of Nigeria citizens are still not better, and the economy is going down daily. In June 2018 it was reported that Nigeria has more people living in extreme poverty than any country in the world, and had overtaken India in the world extreme poverty ranking.⁸ 87 million Nigerians were estimated to be living on less than \$1.90 a day.⁹

Crude oil is the main stay of the Nigerian economy; over 90% of Nigeria's foreign exchange earnings are derived from the petroleum industry.¹⁰ Though, it is attributable that the core factors responsible for the dwindling state of the economy are the mismanagement of the resources, corruption, and embezzlement of public funds by Heads of State and government officials, our focus here is to examine the efforts and lapses of the regulatory bodies running the petroleum industry. This section examines the regulatory institutions exercising control over the Nigerian petroleum industry.

Regulation has several objectives, protecting the environment (including air and water quality), protecting cultural resources, protecting workers' and the public's health and safety, and reducing wasted resources.¹¹ Ensuring the economic prosperity of citizens by institutionalizing a mechanism that allows the rewards to be evenly distributed may be added to the list. The key agencies/ institutions charged with the regulation (administration, controlling, managing, supervising, maintenance of checks and balance/ law and order) of the petroleum industry include the following hereunder discussed.

i) The NNPC

The Nigerian National Petroleum Corporation (NNPC) is the State owned oil corporation. It was established in 1977 by the NNPC Act and took over from the Nigerian National Oil

⁷ L. Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (Fifers Lane Publishers 2012) 54.

⁸ World Poverty Blog, *Extreme poverty in Nigeria may increase by 2030* <<https://worldpoverty.io/blog/index.php?r=12>> accessed 12 Nov. 2019; Bukola Adebayo, *Nigeria overtakes India in extreme poverty ranking* (CNN 26 June 2018) <<https://edition-m.cnn.com/2018/06/26/africa/nigeria-overtakes-india-ex...>> accessed 12 Nov. 2019.

⁹ Bukola Adebayo, *Nigeria overtakes India in extreme poverty ranking* (CNN 26 June 2018) <<https://edition-m.cnn.com/2018/06/26/africa/nigeria-overtakes-india-ex...>> accessed 12 Nov. 2019.

¹⁰ (n7) 60.

¹¹ E. Allison and B. Mandler, *U.S. Regulation of Oil and Gas Operations* <<https://www.americangeosciences.org/geoscience-currents/us-regulation...>> accessed 12 November 2019.

Corporation (NNOC).¹² The Act which established the NNPC dissolved the NNOC and empowered the NNPC to engage in all commercial activities relating to the petroleum industry and enforce all regulatory measures relating to the general control of the petroleum sector through her inspectorate department. In effect the NNPC combines the commercial functions with the regulatory functions.

The general duties and powers of NNPC are spelt out in the NNPC Act.¹³ They include exploring, prospecting, acquiring, possessing and disposing of petroleum; refining petroleum; purchasing and marketing petroleum products; providing and operating pipelines and tankerships; maintaining tank farms; carrying out research activities in connection to petroleum; securing agreements entered into by the Federal Government with respect to participating in activities connected to petroleum; and of utmost importance, generally engaging in activities that enhances the petroleum industry in the overall interest of Nigeria.

The affairs of NNPC are handled by a Board of directors, and that board is chaired by the Minister of Petroleum Resources. In effect the Minister of Petroleum Resources obviously oversees the activities of the NNPC. Reports indicate that the NNPC and the Ministry of Petroleum Resources clashes on issues bordering on administration of the petroleum industry. To this end, one must not ignore the fact that the Minister is (most time) a politician and must of necessity seek to tow the policy beneficial to his employer; the presidency, and his ministry, which may not be on the same pedestal with the mandate of NNPC. The activities of NNPC, from the provisions of the NNPC Act, involve more of field operations, whereas the functions of the Ministry of Petroleum Resources are more of regulatory.

The duty of the NNPC to 'generally engage in activities that enhances the petroleum industry in the overall interest of Nigeria' is germane to this study.¹⁴ This provision encapsulates the concept of good governance and the issue of security of supply for domestic utilisation is captured. However, available evidence showcases a tale of energy insecurity and energy poverty. It is arguable that since the full benefits emanating from the petroleum industry has not reached the Nigerians on whose lands exploration and production activities takes place on daily basis, whose lands are left polluted and under-developed, acts of sabotage of oil facilities and bunkering activities becomes the result witnessed in the Niger Delta region. Thus, it is safe to declare that NNPC is yet to attain the realisation of this solemn duty.

NNPC is vested with the exclusive responsibility for the upstream and downstream development of the petroleum industry, which entails exploiting, refining and marketing Nigeria's petroleum products. NNPC enters into petroleum contracts/partnership on behalf of the Nigerian government with the IOCs and also award contracts. NNPC has a contractual duty to honour its obligation to the contracting parties. However, there are problems of non payment of cash calls on her part, and acceptance of payment of taxes and royalties from companies in oil instead of cash. There are further issues that NNPC focuses more on exportation of crude oil and renege in her duty to secure supply for domestic utilisation. This is blamed on the inability of the four refineries, currently vested in the NNPC, to operate at maximum capacities. Mr. Mele Kyari, the then Group Managing Director of NNPC Ltd, informed the House of Representatives Adhoc Committee that 25 years of bad management is responsible for the poor state of the refineries.¹⁵

A matter worthy of consideration under this sub-heading is gas regulation. It is estimated that Nigeria gas reserves are about three times the value of her crude oil reserves. Figures released

¹² NNPC Act 1977, as amended, ss. 1(1), 23(2).

¹³ *Ibid*, ss. 5, 6.

¹⁴ NNPC Act 1977, as amended, s 5(1) (h)

¹⁵ Udora Orizu, 'Kyari, 'Why Nigeria's Refineries Are Not Working, Says Rehabilitation Underway' *THISDAY* (Lagos, 11 May 2022), <www.thisdaylive.com> accessed 8 July 2022

by the Nigerian Upstream Regulatory Commission in line with the provisions of the Petroleum Industry Act (PIA) 2021, section 7(i), (j), (k), and (r), puts Nigeria's oil reserves at 37.046 billion barrels and gas reserves at 206.62TCF (trillion cubic feet) as at January 31st, 2022.¹⁶ It is reported that oil had an increase of 0.37% while gas had an increase of 1.01%.¹⁷ It is estimated that Nigeria's proven gas reserves is worth over \$803.4 trillion.¹⁸ According to the Minister of State for Petroleum Resources, Chief Timipre Sylva, the Federal Government has 3 major priorities when setting energy policies: security of supply, economic competitiveness and a reduction of greenhouse gas emissions. At present, only gas can meet all 3 priorities simultaneously.¹⁹

NNPC is not directly responsible for the gas regulation, one of her subsidiaries is; the Nigeria Gas Company (NGC). It is the duty of NGC to develop an efficient gas industry to fully serve Nigeria energy and gas industrial feedstock needs through an integrated gas pipeline network and also to export natural gas and its derivatives to the West African sub-region. NGC is more of a commercial entity than a regulatory institution. It appears the Nigerian government at the time did not fully consider the importance of the gas industry and made it an appendage of the petroleum industry. Gas powers the turbines for electricity generation in Nigeria, large industrial plants and platforms. Gas is one alternative source of energy to liquid fuel. A case is made for the gas industry to be upgraded to an independent industry with its own distinct laws and regulators.

It is noted that the PIA 2021, section 310 (1) (e) repeals the NNPC Act when NNPC ceases to exist in the manner specified under the PIA 2021, section 54. The PIA 2021, section 53 enacts that NNPC shall be incorporated under the Companies and Allied Matters Act as a limited liability company; a company limited by shares wholly owned by the Government and held by both the Ministry of Finance Incorporated and Ministry of Petroleum Incorporated, which may be sold or transferred at a fair market value through an open, transparent and competitive bidding process.

ii) The Ministry of Petroleum Resources

The Ministry of Petroleum Resources is the *alter ego* in petroleum industry. The Ministry of Petroleum Resources is headed by both a senior and a junior minister. Since the return to civilian rule in 1999, it has been a style for the President to take up the position of the Senior Minister, while the position of the Junior Minister is allotted to another politician. The Junior Minister is the officer actually in charge of the day to day administration of the Ministry. Most legislation regulating the petroleum industry assigns duties to the Minister of Petroleum Resources. The PIA 2021, section 3 clothes the Minister with enormous powers and assigns him with supervening authority and allocates to him key responsibilities in petroleum matters. The Ministry of Petroleum Resources supervises all other actors and participants in the petroleum industry.

Under the repealed NNPC Act the Minister of Petroleum Resources is the chairman of the board of directors of NNPC,²⁰ making him the head of two regulatory institutions. In effect the Minister controls and run both the Ministry of Petroleum Resources and the NNPC. This was the situation prior to the formation of NNPC where the domineering permanent secretary of

¹⁶ Okechukwu Nnodim, 'Nigeria Oil Reserves Hit 37.046 Billion Barrels, Gas, 208.62TCF – FG' *PUNCH* (Nigeria, 7 May 2022) <<https://punchng.com>> accessed 9 July 2022

¹⁷ *Ibid.*

¹⁸ Okechukwu Nnodim, 'Nigeria's Proven Gas Reserves Worth Over \$803.4tn – FG' *PUNCH* (Nigeria, 29 April 2022) <<https://punchng.com>> accessed 9 July 2022

¹⁹ (n18)

²⁰ NNPC Act 1977, as amended, s. 1(3).

the Ministry of Mines and Power subdued and eviscerate both NNOC and the civil servants at DPR.²¹ Apart from the issue of conflict of interest, the issue of checks and balance becomes a problem. Checks and balance is a vital element in good governance. It is conceded that the both institutions may pursue the same interest or goal, however, the tendency of imposing the will of the Ministry of Petroleum Resources on the NNPC cannot be completely ruled out. A clash of interest or an unbalance situation is likely to occur from this arrangement. With the Minister standing in-between the two regulatory bodies as the principal head, check mating, monitoring, and supervision of the petroleum industry between the two institutions is likely problematic. This unbalance structure paves the way for corruption; which is effectively institutionalized in every facet of the Nigerian system. Happily, under the PIA 2021, once the NNPC Act is repealed, the Minister can no longer be the chairman of the board of directors of NNPC.²² The powers of the Minister is clearly defined and elaborated under the PIA. They include;

- i. formulating, monitoring and administering government policy in the petroleum industry;
- ii. general supervision over the affairs and operations of the petroleum industry;
- iii. promoting an enabling environment for investors in the petroleum industry;
- iv. negotiate treatise/ international agreement on matters pertaining to petroleum;
- v. upon recommendation of the Nigerian Upstream Regulatory Commission, grant prospecting licenses and mining leases, approve the fees for services rendered by the Commission or Authority in regulation, direct the suspension of petroleum operations in any area;
- vi. order a reduction in crude oil production level in compliance to international pricing agreements supported by Nigeria;
- vii. give general policy directives to the Commission on matters concerning upstream operations and to the Authority on matters relating to midstream and downstream operations as well as matters related to cooperation between the two entities; among others.²³

iii) Energy Commission of Nigeria (ECN)

The Energy Commission of Nigeria (ECN) is the highest organ of Government that coordinates all energy sources and activities in Nigeria. It was created by the Energy Commission Act of 1979.²⁴ The objective and policy of the ECN as contained in the National Energy Policy of Nigeria (NEP) 2003 and the Renewable Energy Master Plan (REMP) is to among others to:

Guarantee adequate, reliable and sustainable supply of energy at appropriate costs and in an environmentally friendly manner, to various sectors of the economy, for national development... ensure internal self-sufficiency [of oil] together with a reliable supply of products to meet domestic consumption ... put in place necessary infrastructure and incentives to ensure adequate geographical coverage of gas transmission and distribution.²⁵

REMP was developed in collaboration with the United Nations Development Programme (UNDP) in 2005 and reviewed in 2012. REMP sets out a road map for increasing the role of renewable energy in achieving sustainable development. According to REMP, Nigeria intends to increase the supply of renewable electricity from 13% of total electricity generation in 2015

²¹ M. Thurber and others, *The Limits of Institutional Design in Oil Sector Governance: Exporting the "Norwegian Model"* (New Orleans: ISA Annual Convention 2010) 11.

²² PIA 2021, s. 59.

²³ PIA 2021, s. 3.

²⁴ (n2) 54

²⁵ (n2) 54 -55

to 23% in 2025 and 36% by 2030. Renewable electricity would then account for 10% of Nigeria's total consumption by 2025. However, the REMP have not been approved by the National Assembly to be passed into law.²⁶

The above policy statement and intentions are of worthy consideration in the petroleum industry in view of the fact that a need has arisen to shift to alternative sources of energy as the international community is set to convert to renewable energy and gradually reduce reliance on the use of fossil fuel. The policy statement further aims to promote security of supply for the State. However, these beautiful policy statement and intentions are still in the pipeline.

The ECN is majorly focused on energy development. Energy in Nigeria is majorly sourced from non-renewable sources to drive electricity/ power generation, transportation and industrialization. ECN thus qualifies as a regulatory agency for the petroleum sector as part of its objectives seeks to ensure security of the supply of oil and gas to power industrialization of the economy.

iv) National Oil Spill Detection and Response Agency (NOSDRA)

Originally, the repealed Federal Environmental Protection Agency (FEPA) Act 1988 empowered FEPA with the responsibility of protecting the Nigeria's environment against pollution. With the establishment of NOSDRA it was inevitable that conflict on jurisdiction would arise between the two, since FEPA was more like a statute of general application while NOSDRA focused specifically on the oil sector. The establishment of National Environmental Standard and Regulation Enforcement Agency (NESREA) in 2007, which took over the functions of FEPA, averted that impending crisis. NESREA is restricted by her Establishment Act from regulating the oil and gas sector.

The main objective of NOSDRA is to address the environmental degradation in the oil-producing areas, to co-ordinate oil spill management and to ensure the implementation of the National Oil Spill Contingency Plan (NOSCP) in Nigeria.²⁷ Crude oil is sourced from the Niger Delta region, south-south geopolitical zone of Nigeria. The reports of recent indicate that NNPC has discovered crude oil in the Kolmani River II Well on the Upper Benue Trough, Gongola Basin; Northern part of Nigeria.²⁸ Suffice to state that the petroleum industry is mainly operational within the Nigerian onshore and offshore environment hence engulfed by the provisions of the NOSDRA Act 2006. In 2019, the Director General of NOSDRA issued a statement that NOSDRA will establish a laboratory to determine the level of clean-up of impacted sites, stating that how clean is clean can only be determined by analysis of samples from the remediated sites.²⁹

4. International Oil and Gas Governance

This section highlights some key international organisations exerting influence in the global oil economy. They include the Organization of Petroleum Exporting Countries (OPEC), International Energy Agency (IEA), International Energy Forum (IEF), Gas Exporting Countries Forum (GECF), and the Extractive Industries Transparency Initiative (EITI).

²⁶ V. E. Nnaemeka and E. Nebedum, Policies Enhancing Renewable Energy Development and Implications for Nigeria [2016] (4)(1) *Sustainable Energy* 7 <<http://pubs.sciepub.com/rse/4/1/2>>

²⁷ (n2) 62

²⁸ Kingsley Jeremiah, NNPC discovers oil in Northern Nigeria <<https://m.guardian.ng/news/nnpc-discovers-oil-in-northern-nigeria/>>; NNPC discovers oil, gas in Northern Nigeria, Agency Report <<https://www.premuimtimesng.com/regional/nnorth-east/357186-nnpc...>>; Chika Amanze-Nwachuku and Chineme Okafor, Nigeria: At Last, NNPC Strikes Crude Oil Up North – allAfrica.com <<https://allafrica.com/stories/201910120045.html>> all accessed 12th November 2019

²⁹ Rhythm News (93.7) PH, 7.00am, 5th December 2019

Norway's experience in oil and gas governance, which is hailed as one of the best in the globe will also be examined. Much literature suggests that these organisations seek to promote security of supply for the international market rather than to extend the benefits accruing from the oil and gas resources to the producing nations. It is argued that oil and gas governance in the international scene is a game of control/power that came about as a result of active struggle over the price of crude oil in the international market. Mommer³⁰ paints the picture of struggle between the oil producing countries and the consuming countries in the formation of international petroleum cartels for the purpose of negotiating and controlling price at the international market. Mommer depicts that the period in between the First and Second World War, the IOCs set up the first governance structure. This first governance structure adopted and relied on the concession system which ultimately depended on the colonial and semi-colonial supremacy of consuming countries over producing countries. After the Second World War, the oil exporting countries formed their own cartel; OPEC, which collapsed the first governance structure. In retaliation, the Governments of consuming countries established the International Energy Agency (IEA); a third governance structure to deliver lower prices. It is still the agenda of the international cartels to stabilize the price of oil for the benefits of their members. Though, it is conceded that international stakeholders are now concerned why the oil and gas resources have not transformed the oil producing nations, particularly African countries, into entities capable of securing the basic needs of life for her people. It is hoped that the oil and gas resources would in future benefit the African oil producing nations in terms of visible development.

i) Organization of Petroleum Exporting Countries (OPEC)

OPEC was established in September 1960 by five founding countries; Saudi Arabia, Iran, Iraq, Kuwait, and Venezuela. Membership is open to any country which is a substantial net exporter of crude oil with similar interests to the existing members upon being accepted by three quarters of the full members. An existing member may withdraw her membership upon giving notice to that effect. The formation of OPEC was born out of necessity due to marginalization by the IOCs. The IOCs at the time dominated the oil industry at the expense of the oil producing nations. The IOCs dictated the oil price, paid little in terms of taxes and royalties, and adopted the concessional agreements, which was most disadvantageous to the oil producing nations. The concessional agreements have been described 'as a transaction in which the monarch unmindful of the interests of his people gave too much for too little... they were instrument of blatant economic exploitation.'³¹ OPEC came on board to challenge and successfully resisted these anomalies. Through the effort of OPEC the United Nations recognized the sovereignty of countries over their natural resources. Among the aims of OPEC is the stabilization of oil prices in the international market. OPEC's ability to control the production, sales and prices of crude oil and allied products in the international oil market earned her being referred to as a cartel by some analyst. One of the challenges faced by OPEC is that her decisions and policies on crude oil production quota, among others, are subject to voluntary compliance from the members. There are no penalties for non-compliance.

ii) International Energy Agency (IEA)

Membership to the IEA is opened to only countries that are members of the Organisation for Economic Co-operation and Development (OECD). IEA was established in 1974 in response

³⁰ B. Mommer, *The Governance of International Oil: The Changing Rules of the Game* (Oxford Institute for Energy Studies 2000)

³¹ (n7) 36-37

to the oil crises of 1973. In October of that year, an oil shipment embargo was imposed by members of the Organization of Arab Petroleum Exporting Countries (OAPEC) on countries that were said to be on the side of Israel during the Yom Kippur war. Their initial role was to help countries co-ordinate a collective response to any major disruptions of oil supply through the release of emergency oil stocks to the markets.³² By the time the embargo was lifted in March 1974, the price of oil has skyrocketed to over 400% globally and also there were shortages in oil supply. The objectives of the IEA can be summarised to include; maintaining and improving the systems for coping with oil supply disruptions; to promote rational energy policies in a global context through co-operative relations with non-member countries, industry and international organisation; to operate a permanent information system on the international oil market; to improve the world's energy supply and demand structure by developing alternative energy sources, and increasing the efficiency of energy use; to promote international collaboration on energy technology; and, to assist in the integration of environmental and energy policies.³³

iii) International Energy Forum (IEF)

IEF was founded in Saudi Arabia in 2003 with the aim of enhancing relationship between the energy industry, governments of oil and gas producing, and consumer countries. The International Energy Forum is currently the world's biggest energy group with almost all the oil producing countries on its list of subscribers.³⁴ The Forum seeks to bring about transparency in the crude oil market, though it has limited political influence as the Joint Oil Data Initiative is based entirely on voluntary self-reporting system.

iv) Gas Exporting Countries Forum (GECF)

This organisation was established in Tehran, Iran in the year 2001. However, the treaty defining it was signed by eleven-member state in the seventh session in Moscow, Russia. The members are the world's leading natural gas producers and exporters; Nigeria inclusive. The main objectives of the GECF are to:

1. Increase the level of co-ordination and strengthen the collaboration among member states;
2. Build a mechanism for a more meaningful dialogue between gas producers and gas consumers for the sake of security of supply in the global market; and
3. Support the sovereign rights of her members over their natural resources and their abilities to develop the natural resources for the benefit of their people.

One of the major challenges of the GECF is that member states hardly decide on the prices of gas.

v) Extractive Industries Transparency Initiative (EITI)

In 2002 Tony Blair announced the launch of the EITI, which was endorsed by the G8 in 2004. In 2007 EITI International Secretariat was established in Oslo. The EITI was set up by Governments, companies and civil society organisations in the shared belief that natural resource wealth should benefit citizens and that this requires high standards of transparency and accountability. These principles are at the heart of the EITI Standard, which requires countries to publish timely and accurate information on key aspects of their natural resource management, including how licences are allocated, how much tax and social contributions

³² G. K. Kato, *Oil and Gas Law: A Guide for International Practitioners* (2nd edn Lambert Academic Publishing 2018) 236

³³ *Ibid*, 235

³⁴ *Ibid* 239

companies are paying and where this money ends up in the government at the national and regional level. Through the EITI, companies, governments, and citizens increasingly know who is operating in the sector and under what terms, how much revenue is being generated, where it ends up and who it benefits.

EITI assessed Nigeria against the 2016 standard as making a meaningful progress. Nigeria had formerly subscribed to the EITI goals and enacted a law in support: NEITI Act 2007. The Act aims at ensuring transparency in the receipts and payment of oil revenue between the Nigerian government and the oil companies. It also aims at reducing corruption and ensuring the proper application of such funds for developmental objectives in line with NEITI goals.³⁵

5. The Norwegian Oil Experience

Analysts agree that the Norwegian oil policy appears to be one of the successful examples of a country which has been able to secure good governance and control of oil activities and ensure that profits are channelled towards the majority of the population. Thurber described the Norwegian system in a simplified form as follows:

Norway's administrative system assigns oil sector functions to three state-controlled institutions, each with its own distinct role. First, there is the commercial entity, NOC Statoil, which carries out extensive oil operations both in Norway and abroad. Second, there is the policy-making body, the Ministry of Petroleum and Energy. The Ministry works with (and has at various points guided) the country's political leadership in setting goals for the sector, plans for achieving these goals, and oversees the crucial licensing process. Third is the regulatory and technical advisory agency, the Norwegian Petroleum Directorate, which compiles data on all hydrocarbon activities on the Norwegian Continental Shelf, collects fees from oil operators, sets hydrocarbon regulations within its areas of responsibility, and advises the Ministry on technical matters. This separation of roles and responsibilities between commercial, policy, and regulatory bodies is the "Norwegian Model" of oil sector governance.³⁶

The success story of Norway is attributed to this policy of separation of commercial, policy making and regulatory responsibilities into three distinct institutions. The success story is further anchored on factors such as effective leadership, low corruption index, participatory democracy, an industrialised sector, good laws and concessional agreements, discovery of oil in the Ekofisk field in 1969 and Statfjord field, and self-sufficiency in electricity.

Norway had hydro powered electricity from the Norwegian waterfalls. Energy from the water falls was appropriated to the State, though operated by firms under concessions. The State subsequently managed to acquire the know-how needed to exploit hydro power itself. The experience gained in this arrangement was applied to the oil sector. Oil is held as both the State and people's property. Extraction permits were initially given for a period of 6 years. After the first 3 years, firms agreed to divest themselves of a quarter of their allocated block. If they wanted to retain a block beyond this initial 6 years period, they had to give up another quarter of their original 6 years allocation after the second 3 year period. Those parts of a block which were retained after a concession extension, however, could be held for a further 40 years. Exceptional measures were put in place which allowed reduced tax and royalties for oil

³⁵ (n2) 63

³⁶ (n21) 5.

companies... The overall goal was to get the international companies to commit themselves as fully as possible.³⁷

A committee was set up to elaborate a framework for the allocation of concessional agreements in the oil sector. The committee came up with a policy of allocating the continental shelf to various oil companies rather than giving a single company monopoly over all the area. This is in contrast to the Nigerian situation where the whole of Nigeria (357,000 square miles) was initially allocated to Shell BP in 1938. The big question for the committee was how to use foreign interests without losing control over developments.

The Norwegian oil policy was shaped by a small group of seasoned and experienced civil servants in the oil office of the Ministry of Industry. Jens Evensen, Finn Lied, Arve Johnsen and Jens Christian Hauge led Norway's oil industry in the battle against the IOCs. The discovery of Ekofisk field by Phillips created the opportunity for a more aggressive Norwegian oil policy. Norway's parliament created a State-owned oil company; Statoil in June 14th 1972. Arve Johnsen became the Director of the new State-owned oil company. Johnsen understudied international oil history and understood the strategy Rockefeller adopted to secure a share of economic rent from the Pennsylvania oil fields. Johnsen secured 50% shares in the pipeline network from the American Oil Company Phillips in the operation of the Ekofisk oil field. Johnsen further pushed Statoil to acquire ownership of 50% share in the Statfjord field, while the other oil companies; Esso, Shell, Conoco, received between 10 to 11%. Mobil being the operator in the first instance received 15%. Through the efforts of Johnsen, Norway discovered that it was only by challenging the foreign oil companies that real gains could be made.

Norway's law decreed that the ocean floor and the underground of the underwater areas off the coast of the kingdom of Norway are under Norwegian sovereign authority as regards the exploitation and research of natural deposit.³⁸ The State declared itself the proprietor; there was no private or federal/ Central Government ownership. In 1971, Parliament's Extended Industrial Committee listed points to ensure that 'natural resources in the Norwegian continental shelf are exploited in a way that benefited the whole society. These points ran as follows:

- i. National governance and control must be secured for all activities on the Norwegian continental shelf;
- ii. Securing the greatest possible share of oil rent for the State to be distributed in an egalitarian way across Norwegian societies;
- iii. Norway must become independent of others in the supply of crude oil;
- iv. A new industrial sector should be developed, based on petroleum;
- v. This development must take existing business activities and environmental protection into consideration as necessary; a political guarantee that the pace of extraction and investment would be a moderate one so that the other sectors would not be marginalised;
- vi. Useable gas should not be burnt off; a strong emphasis on extraction in an environmentally justifiable way;
- vii. Petroleum deposits should be brought ashore in Norway, as a general rule;
- viii. The State should contribute to the construction of an integrated Norwegian oil milieu;
- ix. A state oil company should be established; the establishment of a petroleum directorate with the responsibility for responsible resource administration and safety.³⁹

³⁷ Helge Ryggvik, *The Norwegian Oil Experience: A toolbox for managing resources?* (Oslo: Centre for Technology, Innovation and Culture (TIK Centre) 2010) 17.

³⁸ (n37) 16.

³⁹ (n37) 32, 33, 39, 40.

These points expressed the understanding that if Norway was to benefit from the oil industry it would not be enough to simply tax the IOCs operating within their territories.⁴⁰ Issues of environmental pollution; work and environmental safety; management of the scarce resources were further imbedded in the listed points. The Norwegian white paper No.25 'The role of petroleum activities in Norwegian society', contained provision to the effect that the wealth from oil should be used to develop a qualitatively better society. Interpreting the contents of the White paper it was understood that oil and gas were to be extracted in a defensible way. The aim was also to conserve the resources to last for a considerable longer period. The white paper envisioned Norway to aim for a moderate pace and not make itself too dependent on oil. It was important to ensure that Norway built up its own independent capacity. The creation of a national oil industry, part private and part state owned, was seen as one of the instruments to ensure 'national governance and control'. Statoil was trained into an independent oil company, acquired capabilities and technological know-how to be at par with the IOCs, and became an operator in the Norwegian oil industry.

Investigating the Norwegian strategy, Thurber warns that the Norwegian Model may indeed represent an ideal for good oil governance, but that blindly applying the model to countries that lack certain kinds of institutional capacity can be harmful.⁴¹ This warning is as a result of a study carried out on eight countries, with different political and institutional characteristics, but with significant domestic oil and gas production and state-owned oil companies. It was found that Angola and Malaysia were able to build a vibrant oil industry without the Norwegian method of separation of functions. Thurber concluded that the Norwegian Model is not the best prescription for every ailing oil industry.⁴² It is observed that the absence of corruption on the part of the Norwegian government officials/ civil servants and dedication to serve the national interest was fundamental to ensure that the oil policy survived.

6. Appraisal of Nigeria's Oil and Gas Governance

The problems associated with governance in Nigeria's petroleum industry includes poor legislations that proved non-viable in the midst of challenges; ownership/ control of petroleum resources; security of supply; environmental degradation; regulation/ funding of regulatory agencies; expertise; transparency; corruption, and so on. It is important to note that militancy and illegal oil bunkering in the Niger Delta region arose due to failure of government and the IOCs to properly address environmental issues from oil activities and underdevelopment of the region. It became the consensus of practitioners in the Nigerian petroleum industry that the 1969 Petroleum Act and other associated legislations were no longer viable in this century and needed to be retired. The 1969 Petroleum Act is now repealed and replaced with the PIA 2021. The PIA is now the principal legislation regulating the Nigerian petroleum industry.

Ownership of the petroleum resources under the repealed Petroleum Act caused grievance to the people of the Niger Delta region where the oil is located. The repealed Act vested ownership of natural resources in the Federal government of Nigeria/ State. The Constitution of the Federal Republic of Nigeria 1999 as amended also vest ownership of natural resources in the Federal government.⁴³ The PIA did not renege from this position.⁴⁴ The people of the Niger Delta region, being underdeveloped for the long years of successful oil exploration/ production, challenge the vesting of ownership of petroleum resources in the Federal government. Resource control or anything close to part ownership has been advocated. This challenge was evident in

⁴⁰ *Ibid*, 34.

⁴¹ (n21) 4.

⁴² (n21) 17.

⁴³ CFRN 1999, as amended, s. 44(3).

⁴⁴ PIA 2021, s. 1.

the Ogoni uprising, the Kiama declaration and the militant struggle. The fear is that Oloibiri; the first town where oil was discovered, the wells haven dried up, is left in a state of underdevelopment and forgotten.

Corruption in Nigeria's petroleum industry encompasses all the other issues bedevilling governance in the sector. The Military Generals that were formerly in power are accused of amassing wealth from the petroleum industry with the help of the IOCs. According to Nuhu Ribadu, 'The oil money fuelled the corruption, and the corruption took over our engine of government. It became a way of life.'⁴⁵ The leadership of the regulatory agencies are also not left out of the corruption scandal. In situations where the regulators depend on the regulated companies to fund their operations, provide logistic and assist in the performance of duties, this creates room for issues bordering on transparency, accountability, and an interaction that can only lead to corrupt practices. The law establishing these regulatory agencies never envisage such dependence. It is conceded that funding is a big problem for the regulatory agencies as the Federal Government reneges on her responsibilities to provide the funds needed to run the agencies, though that is not an excuse for relying on the IOCs as it kills the much needed checks and balances. It is only governance in the petroleum industry that will promote security of supply for domestic utilisation.

Efforts had been underway for some time to stabilize the petroleum industry. One of such efforts is the PIA 2021. The PIA 2021, at the bill stage, underwent serious deliberations, many reviews, so much controversy, and had various versions. The Petroleum Industry Bill (PIB) 2012 version was considered by many sympathetic to the plight of the Niger Delta region as part solution to the problem of underdevelopment as it provided for a Petroleum Host Community Fund (PHCF). In the PIB 2015 version the PHCF was removed, but it resurfaced in the PIA 2021 and restyled 'host communities' development trust fund' (HCDTF).⁴⁶ Chapter 3 of the PIA 2021 creates a framework to support the development of host communities.

The PIA 2021 which was first introduced in the National Assembly in 2008 finally became law in a single legal document in 2021, after reviews and opposition. Its' passage into law was not by a unanimous decision. The legislators from the Niger Delta region protested the inadequacies of some provisions. The PIA repeals a number of legislations regulating the petroleum industry.⁴⁷ The provisions of the PIA are superior and prevail over existing legislations regulating the petroleum industry.⁴⁸ The PIA 2021 is partly fashioned after the Norwegian model and is considered a panacea to the problems bedevilling the petroleum industry.

Esan and others commenting on the PIB in 2012 observed that it functioned as an umbrella legislation for the Nigerian petroleum industry.⁴⁹ This is true of the PIA 2021. It amalgamates under a single legislative instrument various legislative and regulatory instruments, policies, structures and institutions that govern the petroleum industry. The PIA 2021 establishes a comprehensive framework, clarifying the rules, procedures and institutions that will entrench focused regulation, transparency and accountability in the Nigerian petroleum industry. It introduces new operational and fiscal terms for revenue management, prescribes new

⁴⁵ Jodi Rosenstein, *Oil, Corruption and Conflict in West Africa: The Failure of Governance and Corporate Social Responsibility* (Koffi Annan International Peacekeeping and Training Centre KAIPTC Monograph, No.2, October 2005).

⁴⁶ PIA 2021, s. 240 (1).

⁴⁷ *Ibid*, s. 310.

⁴⁸ *Ibid*, s. 309.

⁴⁹ W. Esan, and others, *Oil and gas regulation in Nigeria: the Petroleum Industrial Bill 2012*

<<http://uk.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1247643766611&ssbinary=true>> accessed Sunday June 12, 2016

parameters and procedure for bidding processes and the retention of licences and leases. The PIA retains and restates to some extent the extant provisions of the law. For instance, like the CFRN 1999, as amended, it affirms ownership and federal control of the petroleum resources. The objectives of the PIA 2021 include to:

1. Create efficient and effective governing institutions, with clear and separate roles for the petroleum industry.
2. Establish a framework for the creation of a commercially oriented and profit driven national petroleum company.
3. Promote transparency, good governance and accountability in administration of petroleum resources.
4. Foster a business environment conducive for petroleum operations.
5. Deepen local content practice in Nigeria oil and gas industry.
6. Promote exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people.
7. Promote the efficient, effective and sustainable development of the petroleum industry.
8. Promote the safe and efficient operation of the transportation and distribution infrastructure of the petroleum industry.
9. Provide the framework for developing third party access arrangements to petroleum infrastructure.
10. Encourage and facilitate both local and foreign investment in the petroleum industry.
11. Promote transparency and accountability in the administration of petroleum resources.
12. Develop competitive markets for the sale and distribution of petroleum products.
13. Promote safe and affordable access to petroleum products.
14. Promote the processing of petroleum within Nigeria and the development of fuel and chemical industry.
15. Create conducive business environment for petroleum operations in the petroleum industry.
16. Ensure that petroleum operations are conducted in a manner that protects the health and safety of persons, property and environment.⁵⁰

Salient provisions of the PIA 2021 (with regards to the governance structure) include:

- i. Establishment of the Nigerian Upstream Petroleum Regulatory Commission responsible for the technical and commercial regulation of the upstream operations; promote healthy, safe, efficient and effective conduct of upstream operations in an environmentally acceptable and sustainable manner; enforce compliance of terms and conditions of licence, leases, permits issued to a company; enforce approved regulations for the elimination of natural gas flaring and venting; among others.⁵¹
- ii. Establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority responsible for the technical and commercial regulation of the midstream and downstream operations. The duties of the Authority are akin to that of the Commission only applicable to midstream and downstream operations. Other duties include ensure security of supply of natural gas and petroleum products; consumer protection measures; among others.⁵²
- iii. Establishment of the Midstream and Downstream Gas Infrastructure Fund.⁵³
- iv. NNPC is mandated to carry out petroleum operations on a commercial basis; the concessionaire of all production sharing contracts (PSC), Profit Sharing and Risk Service

⁵⁰ PIA 2021, ss. 2, 66 (1).

⁵¹ *Ibid*, chp 1, pt 3.

⁵² PIA 2021, chp 1, pt 4.

⁵³ *Ibid*, s. 52 (1).

- Contracts on behalf of the Federation; lift and sell royalty and tax oil for the Commission for an agreed fee; rights to natural gas under PSC; engage in the business of renewable and other energy investments; among others.⁵⁴
- v. Oil Exploration Licence, Oil Prospecting Licence, Oil Mining Lease are now known as Petroleum Exploration Licence (PEL), Petroleum Prospecting Licence (PPL), Petroleum Mining Lease (PML), respectively. PEL is granted for 3 years, renewable for another 3 years. PPL is granted for 3 years, renewable for another 3 years for onshore and shallow water acreages; 5 years and renewable for another 5 years for deep offshore and frontier acreages. PML is granted for a maximum period of 20 years.⁵⁵
 - vi. Introduction of environmental quality management plan. Holders of licenses and leases shall submit environmental management plan to the regulators/ authorities. The environmental management plan shall comply with the relevant legal instruments.⁵⁶
 - vii. Establishment of gas flaring penalties. Licensees / lessees producing natural gas are mandated to submit a natural gas flare elimination and monetization plan to the Commission.⁵⁷ The PIB 2012 had proposed a flare out date and that license/ lease should not be granted to an applicant that had no comprehensive programme for the utilization or reinjection of natural gas. It is noted that the IOCs prefer to pay the penalties since it cost much to convert to reinjection and it is more economical to flare.⁵⁸ The provision of PIA on gas flaring does not meet the expectation for a friendly environmental operation.
 - viii. The governor of a State may issue Certificate of Occupancy to a holder of a license or permit who has paid compensation for acquisition of land for midstream and downstream operations in accordance to the Land Use Act.⁵⁹
 - ix. Introduction of hydrocarbon tax for companies engage in upstream operations and Companies Income Tax for companies engage in upstream, midstream or downstream operations.⁶⁰

The PIA introduces several progressive practices into the regulation of Nigerian petroleum industry. Though, there are concerns over new challenges posed by some provisions. Akpata observed while the PIA was at the bill stage that while international oil companies with deep water assets are more concerned about the regulatory and fiscal provisions, others with more significant onshore assets believe the law will have adverse effect on current and future earnings as a result of reduced incentives, higher taxes and community development levies.⁶¹ The PIA is yet to be fully operational. Some legislation it is meant to repeal is still operational until certain events are concluded. It is expected that when the PIA 2021 fully becomes operational, events and acts of key players in the petroleum industry will test its viability.

7. Guidelines for Good Governance in the Oil and Gas Industry

The Royal Institute of International Affairs published 'Guidelines for Good Governance in Emerging Oil and Gas Producers 2016'. The Guidelines represent the consensus views developed among officials from emerging producing countries who participated in the New Petroleum Producers Discussion Group workshops held at Chatham House, in November 2012

⁵⁴ *Ibid*, s. 64.

⁵⁵ *Ibid*, ss. 71 (3), 77, 86 (1).

⁵⁶ PIA 2021, s. 102.

⁵⁷ *Ibid*, ss. 104, 108.

⁵⁸ (n1) 59.

⁵⁹ PIA 2021, s. 115.

⁶⁰ PIA 2021, chp 4, pt 2, s. 261; & pt 10, s 302.

⁶¹ U. Akpata, *Review of the Nigeria Oil and Gas Industry* (November 2014) <<http://www.pwc.com/ng>> accessed Sunday June 12, 2016

and May 2014, in Tanzania, in July 2015, and in Kenya, in March 2016. The statements indicate that emerging oil and gas producing nations are keen to avoid the mistakes that led to accountability failures in the more established producers, and prevented them from reaping the full economic benefits of their resources. The purpose of the Guidelines is to assist emerging producers to think critically about the policy options that are available, that would be most effective during a restructuring of the country's petroleum industry. The goal is not to produce a complete guide to governance of the petroleum industry, but rather to offer guidance on making effective decisions about the structure and rules of the industry in an imperfect context. It was noted that it would be vain to pursue the gold standards set by successful petroleum producing countries as they may be entirely inappropriate for emerging producers. Accordingly, key objectives (along with recommendations) are developed for emerging producers in the petroleum industry.

1. Elaborate a strategic vision for the sector: government policies should be guided by a clear vision for the development of the country and the role of the petroleum sector therein. The vision should be based on an analysis of available resources and capacity, as well as opportunity costs and risks associated with chosen development model. The role of each institution should be clarified in delivering that vision. Transparent leadership, consistency of purpose and dedication to implementation are crucial to success.
2. Attract the most qualified investor for the long run: Governments are advised to invest in collecting geological data before licensing to better understand the value of what they intend to license. A better understanding of the market and potential investors will enable emerging producers to target their marketing at appropriate companies. It is critical that governments set out strong prequalification criteria to weed out applicants who do not have the capacity to carry out the work programme.
3. Maximize economic returns to the State through licensing: Emerging oil producing nations are advised to design fiscal terms that aligns with the national vision and ensure clear fiscal priorities. They must also clearly articulate fiscal terms that govern upstream activities and develop simple tax structures. Tax obligations should be defined in the tax code rather than in contractual agreements.
4. New development, such as a major discovery or a rise in commodity prices, may prompt the oil producing nation to seek to change the terms of contracts with the IOCs. Similarly, low prices may prompt the IOCs to ask for revisions of terms. Governments are advised to respect existing contracts, consider amending future licensing when these situations arise, and make the licence agreements and fiscal terms flexible from the start.
5. Earn and retain public trust and manage public expectations: Trust is a key ingredient in community engagement, but it is lacking in post-conflict situations and where corruption has been endemic. Governments and oil companies should engage meaningfully with host communities. They should ensure access to information on projects carried out in the area and communicate over its potential negative impacts and related mitigation measures.
6. Governments are advised to have clear local content objectives, which are set within a broader national vision. Capacity building plans should be pursued to get the domestic producers ready and capable of supplying the skills, goods and services that the IOCs require. Governments should also require IOCs and NOCs to invest in developing local capacity in goods and services for which the petroleum industry has an immediate need.
7. Build capable national organizations to participate in and oversee the development of the resources: It is particularly important to obtain capable oversight institutions. The government should concentrate capacity building efforts in either the ministry of energy or the NOC, and task either of them with regulatory responsibilities.

8. The guideline noted that effective taxation design and collection of tax revenues are critical functions. Governments are thus advised to invest in building capacity at the revenue authority before discoveries are made. Allocating more resources to building capacity in the event of discoveries in auditing and monitoring operations is encouraged. Government must invest in its audit capabilities and introduce strong reporting and accounting standards.
9. Governments must invest in administrative capabilities and boost citizen's knowledge of the petroleum industry if discoveries reveal significant production lifespan.
10. Where the NOC is given a licensing or regulatory role, it is critical that government defines the scope and limits of the NOC's role. There should be clarity on when the State will take back the regulatory role. Government must approve an explicit financial model for the NOC that allows the NOC to build its capacity to take on the concessionaire or regulator role effectively. In the event of sufficiently large discoveries to justify the NOC developing an operational role, the NOC should transfer its regulatory responsibilities to government to avoid a conflict of interest.
11. It is important to recognize that once an actor (the NOC or the ministry of energy) has assumed responsibility of some regulatory functions, it can be difficult to take them back. A phased approach and incremental changes, continually restructuring them should be followed.
12. Government must regularly disclose information to the public. Corruption should be viewed as a costly problem, one that grows only more costly with time. Professionalism and transparency can change incentive structures and serve as critical antidotes to corruption.
13. Safeguard the environment: Governments are advised to adopt a 'goals-based' performance-focused regulatory regime, which incentivizes operators to aim for higher standards of operations, as opposed to a rules-based 'check box' regulatory framework. Regulatory mechanism should be in place from the onset before the actual activity of oil exploration and production. Anticipating and preventing flaring at an early stage of development is crucial. It is suggested that a term is included in production sharing or concession agreements which bans flaring (with cogent exceptions), with penalties for unauthorized flaring.

8. Conclusion

It is not in contention that Nigeria's petroleum industry is an ailing one that needs a turn around. The enactment of the PIA 2021 after many controversies and review is commendable. The PIA is said to be fashioned after the Norwegian model, but it was advised that the Norwegian model may not be the answer for an ailing oil industry. There were serious concerns raised over the review of some ideas in the PIA in its journey to law. For instance the review of the PHCF to HCDDTF brought much heated argument between legislators of the Southern and the Northern divide. It was argued that many overtures have been made to the Niger Delta region, such as the establishment of the NNDC, and the 13% derivation formula in favour of the oil producing States. Further, the IOCs had complained that they envisage a future of high tax regime once the PIB is enacted into law. This is evident in the introduction of the hydrocarbon tax and the application of the Companies Income Tax Act to companies engaged in petroleum production. Governance entails exercising State authority so as to provide security and justice that allows the rewards of the State to be evenly distributed. In the same vein the Norwegian white paper No.25 provides, among others, that wealth from oil should be used to develop a qualitatively better society. It is therefore suggested that the Guidelines for Good Governance in the Oil and Gas Industry itemised above be considered alongside the provisions of the PIA 2021 by the Nigerian Federal legislature for a further review of the PIA. The following are further

recommended for purposes of achieving a good governance structure in the Nigerian petroleum industry:

1. The fears of the IOCs needs to be assuage by positive assurances that the tax regime will not discourage investment. A negotiable tax regime is encouraged with an obligation on the part of the IOCs to fully develop the petroleum industry in terms of building refineries; making gas reinjection plans a reality; and reservation of products for local consumption.
2. Experienced and seasoned technocrats of good reputation in the oil and gas industry, or any relevant sector, need to be employed into sensitive position in the petroleum industry. The government should regularly send her staffs in the oil field for training to gain expertise/ knowledge on what it entails to build up a successful industry.
3. Funding of regulatory agencies by the IOCs and Nigerian companies should be criminalized. The government should in the spirit of keeping faith with the laws fund the regulatory agencies. The regulatory agencies may be allowed to engage in minor commercial activity that will supply the funds to carry out her function in case of deficit from the government. It is not out of place for a fire service department to engage in the production and marketing of fire safety guidelines/ handbook to the public.
4. Introduction of checks and balances into the system. It is suggested that the institutions that will administer and exercise control, regulate, and operate the petroleum industry should not be many. There should be quarterly joint sessions where the institutions will meet and discuss the activities of the industry with a view to assess the progress made and address other challenges. This will create room for checks and balances as all ill motivated transactions will be brought to scrutiny.