



**TOWARDS A FUNCTIONAL  
PETROLEUM INDUSTRY IN  
NIGERIA: A CRITICAL ANALYSIS  
OF NIGERIA'S PETROLEUM  
INDUSTRY REFORM**

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## **Abstract**

This thesis seeks to enquire into the role of law in the reform programme for the Nigerian petroleum industry (NPI), in order to determine the extent to which it can be utilised to actualise a functional petroleum industry. The thesis will seek to test the hypothesis that an effectively managed petroleum industry will be efficiently regulated, have a significant local content, and will invariably be dependent on how sustainable and efficient petroleum revenues are distributed.

My significant contribution to knowledge is that Nigeria should seek to develop local content and industry regulation, and aim to effectively distribute petroleum revenues, by pursuing industry reforms as an integrated whole. To that extent, it would require a coherent legal framework, and the development of policies that recognise the interconnectedness and interdependency of several factors in the petroleum industry. To that extent, a suitable and strategic legal architecture should be erected in Nigeria: one that will give room for co-operation without stifling independence and innovation.

This thesis also notes that the development of a viable National oil company is imperative and should be anchored around which other industry reforms should revolve. Such a firm should however be privatised in a manner that guarantees its performance and promotes good corporate governance, whilst limiting avenues for external interference. It advocates that Nigeria should seek a national oil company model that is deliberately tailored to restrain 'external interference' in the daily workings of the NOC.

Finally, this thesis argues that for an efficient regulation and management of the industry will require the active participation of all actors in the industry, and that the government should not have prerogative over the industry, especially in the light of past failures to effectively turn the industry around. There should thus be a deliberate effort to restrain government interference in the NOC, empower citizens in regulation and encourage the development of

indigenous petroleum exploration and production companies (PEPCs), while in utilization of petroleum resources; there should be direct citizenship participation.

## List of Abbreviations

- ANP: National Petroleum Agency
- AGRA Associated Gas Reinjection Act
- ANTAQ: National Waterway Transportation Agency (ANTAQ)
- API: American Petroleum Institute
- BPD Barrel Per Day
- BNDE National Bank for Economic and Social Development
- BPI: Brazilian petroleum industry
- CAMA Companies and Allied Matters Act
- CAC Corporate Affairs Commission
- CBN: Central Bank of Nigeria
- CITA Companies Income Tax Act
- CNPE National Council for Energy Policy
- CONAMA: National Environment Council
- CSR Corporate Social Responsibility
- DPR: Department of Petroleum Resources
- DPRA Downstream Petroleum Regulatory Authority
- EEA European Economic Area
- ECA Environmental Crimes Act
- EITI Extractive Industries Transparency Initiative
- EFCC Economic and Financial Crimes Commission
- E and P Exploration and Production
- ESREL European Safety and Reliability Association
- FIRS Federal Inland Revenue Service
- FOIA Freedom of Information Act
- FPSO Floating, Production, Storage and Offloading
- FRA Fiscal Responsibility Act
- GAAPS Generally Accepted Principles and Practices
- GIHL Global Infrastructure Holdings Limited
- HSE Health Safety and Environment
- IBAMA Brazilian Institute of the Environment and Renewable Natural Resources
- ICPC Independent Corrupt Practices Commission
- IDSL Integrated Data Services Limited
- IFC International Finance Corporation
- IMF International Monetary Fund
- IOC International Oil Company
- IPC Indigenous Petroleum Company
- ISA Investment and Securities Act
- JV Joint Ventures

• KRPC	Kaduna Refining and Petrochemical Company
• LFN	Laws of the Federation of Nigeria
• LGA	Local Government Authority
• LPG	Liquefied Petroleum Gas
• LOSFS	Local Oil Servicing Firms
• MME	Ministry of Mines and Energy
• MMS	Minerals and Management Services
• MPE:	Ministry of Petroleum and Energy
• NAFDAC	National Agency for Food and Drug Administration and Control
• NAICOM	National Insurance Commission
• NAPIMs	National Petroleum Investment Management Services
• NRC	Natural Resources Charter
• NCC	Nigerian Communications Commission
• NCD	Nigerian Content Division
• NCDMB	Nigerian Content Development and Monitoring Board
• NCM	National Council of Ministers
• NCS:	Norwegian Continental Shelf
• NDDB	Niger Delta Development Board
• NDDC	Niger Delta Development Commission
• NDR	Niger Delta Region
• NEITI	Nigerian Extractive Industries Transparency Initiative
• NEPED	National Enterprise Development Programme
• NETCO	National Engineering and Technical Company
• NHT	National Hydrocarbon Tax
• NIMASA	Nigerian Maritime Administration and Safety Agency
• NIOC:	National Iranian Oil Company
• NIRP	Nigeria Industrial Revolution Plan
• NLNG:	Nigerian Liquefied Natural Gas
• NITEL	Nigerian Telecommunications Corporation
• NMPE :	Norwegian Ministry of Petroleum and Energy
• NNOC	Nigerian National Oil Corporation
• NNPC:	Nigerian National Petroleum Corporation
• NOGICDA:	Nigerian Oil and Gas Industry Content Development Act
• NOPI:	Norwegian petroleum industry
• NOSDRA:	National Oil Spill Detection and Response Agency
• NPD:	Norwegian Petroleum Directorate
• NPDC	Nigerian Petroleum Development Company
• NPI:	Nigerian Petroleum Industry
• NSIA	Nigerian Sovereign Investment Authority
• NSE	Nigerian Stock Exchange
• OECD	Organisation of Economic Development and Co-operation

• OGIC	Oil and Gas Industry Committee
• OMPADEC	Oil Minerals Producing Development Commission
• OPEC	Organisation of Petroleum Exporting Countries
• OPTS	Oil Producers and Technology Section
• OSC	Oil servicing Company
• PAA	Petroleum Activities Act
• PEPCs	Petroleum Exploration and Producing Companies
• PHC	Petroleum Host Communities
• PIDA	Public Interest Disclosure Act
• PIL	Public Interest Litigation
• PIM	Petroleum Industry Model
• PPA	Public Procurement Act
• PPCs	Petroleum Producing Countries
• PPTA	Petroleum Profits Tax Act
• PROMINP	Mobilization Program of the National Petroleum Industry
• PSA	Petroleum Safety Authority
• PSCs	Production Sharing Contracts
• PTDF	Petroleum Technology Development Fund
• RSCs	Risk Service Contracts
• SCPMA	Supreme Council on Petroleum and Mineral Affairs
• SEC	Securities and Exchange Commission
• SERAP	Socio-Economic and Accountability Project
• SDFI	State Direct Finance Investment
• SOES	State Owned Enterprises
• UKFI	United Kingdom Financial Investments
• UPI	Upstream Petroleum Institute

For legal journal abbreviations, refer to Cardiff Index to Legal Abbreviations. For non-legal journal abbreviations, refer to Journal of Economic Literature  
<http://www.aeaweb.org/jel/abbrev.html>

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# 1 CHAPTER ONE: INTRODUCTION, PURPOSE, AND METHODOLOGY

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## 1.1 BACKGROUND TO THE STUDY

Situated on the West Coast of Africa, Nigeria is a federation of 36 states, with a federal capital territory at Abuja. With about 36 billion barrels of crude oil reserves and 5.29 trillion cubic meters of gas,<sup>1</sup> it goes without saying that Nigeria has great economic potentials.<sup>2</sup> Petroleum accounts for over 70 per cent of Nigeria's export earnings and 85 per cent of government revenues and impact the whole of the Nigerian fabric.<sup>3</sup> The management of the Nigerian petroleum Industry therefore has a significant bearing on the Nigerian economy, and on the lives of average Nigerians.

At the top of the Nigerian petroleum industry (NPI) is the president of the Federal republic of Nigeria whose powers are exercised mainly through the minister of petroleum (the minister). The minister's powers are further delegated and exercised by the main industry regulator: the Department of Petroleum Resources (DPR). Other agencies which have some other regulatory function in the NPI include National Oil Spill Detection and Response Agency (NOSDRA), and the Nigerian Maritime Administration and Safety Agency (NIMASA), the Federal Inland Revenue Service (FIRS), Central Bank of Nigeria (CBN), and the Nigerian Content Development Management Board (NCDMB).

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<sup>1</sup> Organization of Petroleum Exporting Countries (OPEC), 'Nigeria: Facts and Figures' (2011) <[http://www.opec.org/opec\\_web/en/about\\_us/167.htm](http://www.opec.org/opec_web/en/about_us/167.htm)> accessed 1 October 2012, British Petroleum, 'BP Statistical Review' (2011) <http://www.bp.com/sectionbodycopy.do?categoryId=7500&contentId=7068481> accessed 1 October 2012.

<sup>2</sup> Nigeria has had a steady economic growth since 2005. In 2011 grew by 7.2 per cent. Source: Central Intelligence Agency, 'World Fact book Nigeria' (2012) <<https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>> accessed 01/10/12.

<sup>3</sup> Alex Gboyega and others, 'Political Economy of the Petroleum Sector in Nigeria' (2011) World Bank Policy Research, Working Paper 5779 <<http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-5779>> accessed 23 June 2014, see also Musa Jibrin and others, 'Impact of Petroleum Profit Tax on Economic Development of Nigeria' (2012) Vol. 5(2) British Journal of Economics, Finance and Management Sciences

At the upstream operational level, the NPI consists of local and international oil companies. The international oil companies include Shell, Mobil, Total, Chevron, Agip, Statoil etc. The indigenous petroleum companies (IPCs) include Dubri Oil, Seplat Oil, Monipulo, and Conoil etc. Then there is the NNPC, Nigeria’s NOC, which stands at the intersection and acts as part regulator, and oil company. The NPI is relatively developed with a wide berth of petroleum infrastructure which includes four refineries, and a pipeline facility which criss-crosses the length and breadth of Nigeria. Figure 1.1 outlines the structure of the NPI.

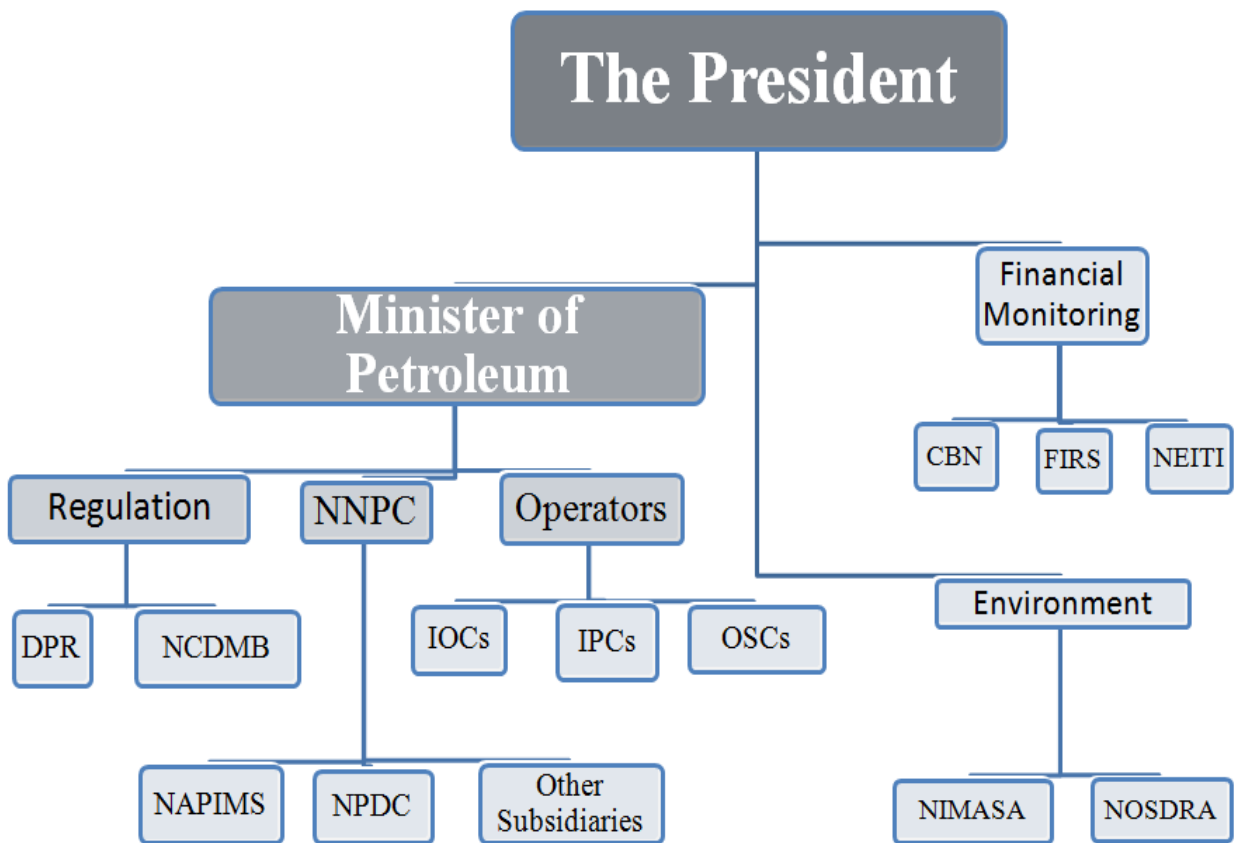


Figure 1.1: Structure of the Nigerian petroleum industry

## **1.2 PROBLEM STATEMENT AND RESEARCH QUESTIONS**

Ownership of vast resources is one thing, but good management and regulation of that industry for the benefit of the public, is another. While Norway and Brazil have had relative successes in the management and regulation of their petroleum industries, Nigeria has been known to struggle. Some consistent features that can be found in the former [countries include robust industry regulation, a significant local content spearheaded by viable NOCs, and a sustainable application of petroleum revenues.<sup>4</sup> Weaknesses in the three aforementioned factors (the triune factors), have negatively impacted Nigeria's industrialisation programme, its human environment and the general standard of living, resulting in poverty in the midst of plenty.

## **1.3 IMPERATIVE FOR A HOLISTIC AND INTEGRATED REFORM OF THE NIGERIAN PETROLEUM INDUSTRY: THE PETROLEUM INDUSTRY BILL AND OTHER LEGISLATIVE AND EXTRA LEGISLATIVE INITIATIVES**

Since 1999, Nigeria began a series of legislative and extra legislative reforms aimed at the reinvention of its petroleum industry. The reforms which have focused mainly on regulation, the national oil company (NOC) and local content are expected to culminate in the eventual passage of the Petroleum Industry Bill (PIB) 2012. The PIB 2012 which has reached committee stage at the National Assembly is a holistic reform bill which touches on the triune factors in many ways. It is hoped that the Bill will result in the birth of a petroleum industry model which is similar in some ways to Brazil's, and in other ways to Norway's. The expectations of Nigerians that the PIB 2012 will transform the industry positively, is not misplaced. Similar reforms in the telecommunications sector led to an increase in mobile

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<sup>4</sup> They include Norway, Brazil, Malaysia and Saudi Arabia.



telephony from four hundred thousand phones in 2000, to one hundred and thirteen million in 2012.<sup>5</sup>

Prior to 2001 the Nigerian telecommunications sector was monopolised by the Nigerian telecommunications company limited (NITEL), and marginally regulated by the Nigerian Communications Commission (NCC). Like most Nigerian public enterprises however, NITEL, which was poorly funded, struggled with weak corporate governance, corruption, and poor operational performance, became a drain on public funding. In order to improve the performance of the sector, Nigeria introduced market reforms which included liberalisation to attract foreign and local investors, the privatisation/liquidation of NITEL, and the strengthening of the independence of the Nigerian Communications Commission as sector regulator. The outcome of the reforms were dramatic, as Nigerian phone lines increased from 400000 in 2001, to 13000000 in 2014.<sup>6</sup>

Liberalisation allowed market forces to determine the price for subscription to telephone lines, subject to regulation aimed at preventing price fixing, and cabalised among operators.<sup>7</sup> Liberalisation, competition, and other market reforms in the telecommunications sector have also led to job creation, improvement of services and generation of revenues for the Nigerian economy. In fact by 2012 \$25 billion had been invested in the sector, up from \$500 in 2001.<sup>8</sup>

There are lessons the proposed reforms of the NPI can gain from the telecommunications sector reforms. For instance in terms of local content development in the NPI, Nigeria can

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<sup>5</sup> Yaron Assabi, 'Mobile Transformation in Nigeria' IT News Africa (11 October 2012) <<http://www.itnewsafrika.com/2012/10/mobile-transformation-in-nigeria/>> accessed 16 October 2012

<sup>6</sup> NCC, 'Subscriber Statistics: Monthly Subscriber Data' (2014) <[http://www.ncc.gov.ng/index.php?option=com\\_content&view=article&id=125:art-statistics-subscriber-data&catid=65:cat-web-statistics&Itemid=73](http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=125:art-statistics-subscriber-data&catid=65:cat-web-statistics&Itemid=73)> accessed 16 July 2014. Yaron Assabi, 'Mobile Transformation in Nigeria' IT News Africa (11 October 2012)

<<http://www.itnewsafrika.com/2012/10/mobile-transformation-in-nigeria/>> accessed 16 October 2012

<sup>7</sup> The decision of the Nigerian government to regulate the sale of petroleum products has been blamed cited as one reason why it has been unable to attract significant investors in refineries and gas markets. A factor that has also been blamed for ongoing gas flaring, which has detrimental consequences for the Niger Delta.

<sup>8</sup> Prince Osuagwu, 'Telecom Activities may keep Nigeria's Rebased GDP Green' *Vanguard* (April 23 2014) <<http://www.vanguardngr.com/2014/04/telecom-activities-may-keep-nigerias-rebased-gdp-green/>> accessed 16 July 2014

learn from the telecommunications sector, where government policy and legislation, led to the development of Globacom into an African multinational, with external operations in Ghana, Benin, Cote d'Ivoire. With its 25 million subscribers, indigenously owned Globacom, which was licensed in 2003, now competes favourably with other international telecommunications giants, notably Etisalat and MTN. Globacom firm has also generated millions of dollars for the Nigerian government in taxes, besides employing a large number of Nigerians.<sup>9</sup>

There are also regulatory and privatisation lessons to be learned from Nigeria's approach to the privatisation/liquidation of NITEL, which freed the NCC to regulate the industry and grant operational licenses to telecommunications firms, with significantly improved independence. This approach holds lessons for regulation in the NPI in terms of DPR, NOSDRA, and NIMAS in the petroleum industry, which currently struggle with independence. NCC is able to regulate the sector with reduced incidences of conflict of interest, because the FGN is no longer directly involved in the telecommunications industry other than as regulator and tax collector.<sup>10</sup> And the FGN is able to confer powers on NCC and give it some relatively high level of support, because it has no direct stake in the operations of any of the telecommunications firms, currently operating in Nigeria.

Lack of consensus on certain controversial aspects of the PIB, particularly section 116, which provides for the Petroleum Host Community Fund (PHC) Fund, is the main reason the Bill has not been enacted into law.<sup>11</sup> Section 116 of the PIB, will require petroleum companies to pay 10 per cent of their net profits to petroleum producing communities in the Niger Delta Region (NDR). Northern legislators view the proposed PHC Fund as an attempt to increase

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<sup>9</sup> See Olusegun Adeniyi, 'Globacom at ten : a Remarkable Story' *Thisday* (29 August 2013) <http://www.thisdaylive.com/articles/globacom-10-a-remarkable-story/157510/> accessed 2 August 2014

<sup>10</sup> The privatisation of NITEL has had a chequered history. In 2007, the Federal government cancelled a 2005 sale of the firm to Transcorp on the ground that Transcorp was unable to improve the performance of the firm. Similarly New Generation Telecommunications which was its preferred buyer, was unable to satisfy a series of deadlines to pay the sum of \$2.5 billion. The BPE decided to sell NITEL on a 'guided liquidation' basis, pursuant to which a liquidator was appointed in that regard. The process is ongoing.

<sup>11</sup> 'Petroleum Industry Bill: In Whose Interest' *Thisday* (06 August 2013) < <http://www.thisdaylive.com/articles/petroleum-industry-bill-in-whose-interest-/155566/>> accessed 1 August 2014

the derivation of the NDR, which already benefits from 13 per cent of all petroleum produced from that region.<sup>12</sup>

The PIB also faces significant opposition from IOCs who operate under the umbrella of the Oil Producers Trade Section (OPTS). This group, which argues that the fiscal measures as proposed by the PIB would make the Nigerian regime one of the harshest in the world, and would increase the Nigerian take from about 70 per cent to over 90 per cent, has intensified lobbying against the PIB.<sup>13</sup>

It is posited that even if the FGN chooses to ignore the objections of the OPTS, it would be almost impossible to enact the PIB without the consent of the Northern region, which has majority of seats in Nigeria's National Assembly. It is for that reason that it may be safely asserted that section 116 of the PIB will have to be expunged or further whittled down, if the PIB is to be enacted into law. It is a fact that the non passage of the Bill has stalled billions of investment funds due to the uncertainty of the proposed fiscal regime.<sup>14</sup> That the PIB will be enacted into law is almost without doubt, as government in the Northern and Southern regions of Nigeria are funded almost entirely by petroleum resources, a factor which makes it imperative for the PIB to be enacted, in order for the NPI to move forward. In what form the Bill will take however, is unclear, as it is almost certain that some of its contents will be expunged, as negotiations continue.

The core argument of this thesis is that a significant local content, vibrant regulation and an equitable framework for the distribution of petroleum revenues are imperative for an effectively managed Nigerian petroleum industry (NPI). But the attainment of these factors is often dependent on other factors which may extend beyond the province of law. And the interconnectedness of various factors which impact the NPI, make a holistic approach to legal

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<sup>12</sup> Niyi Oyebo, Fidelis Soriwe, Chukwudi Akasiwe, Success Nwogu and Etim Ekpima, 'Again, North Kicks against Derivation Fund' *Punch Newspapers* (Abuja, 28 July 2012) <<http://www.punchng.com/news/again-north-kicks-against-derivation-fund>> accessed 30th July 2012

<sup>13</sup> See Ejiofor Alike, 'PIB: FG, IOCs Feud Deepens over Fiscal Terms' *Thisday* (10 July 2013) <<http://www.thisdaylive.com/articles/pib-fg-iocs-feud-deepens-over-fiscal-terms/152953/>> accessed 2 August 2014

<sup>14</sup> Thomas Hansen, 'Nigeria: Growing away from Oil?' *Forbes* (18 November 2013) <<http://www.forbes.com/sites/riskmap/2013/11/18/nigeria-growing-away-from-oil/>> accessed 31 July 2014

reforms, necessary. For instance, a vibrant local content is often dependent on viable NOCs and indigenous petroleum exploration and production companies (PEPCs). But a viable NOC is also dependent on human capacity from which it can source professional employees, and in return create wealth for the nation. In the same vein, a capable regulator is impossible without experienced and qualified human capital, the bulk of which can be sourced from a functional NOC. And the industry itself cannot operate successfully without adequate security, which can be improved when poverty is reduced. But poverty can only be reduced when petroleum revenues are equitably distributed, and justly applied. To therefore attempt an isolated reform agenda may thwart the overall objective, which is to ensure the industry operates smoothly, for the benefit of the people. Thus the research questions in this thesis will be focused on how the triune factors can be developed in Nigeria through the use of legal and extra legal initiatives.

## **1.4 RESEARCH QUESTIONS**

Among other things, Nigeria's legal reform agenda, as embodied in the PIB, seeks to improve and develop regulation, local content, and distribution of petroleum revenues, but the extent, depth and pattern of the reform requires investigation in order to determine if the anticipated impact of the reform is feasible. If local content, industry regulation, and the application of petroleum revenues are critical to the effectiveness of the NPI, then that raises the following questions:

What factors, if any, can be used to determine if a petroleum industry is effectively managed and regulated?

And

To what extent can Nigeria combine a functional and inclusive privatised NOC, with other administrative and legal reforms, in order to develop and generate positive outcomes from the NPI?

## **1.5 OBJECTIVES OF THE THESIS**

The objectives of the thesis are:

To argue for a two-pronged approach to the development of the Nigerian petroleum industry. One that utilises and harnesses the effectiveness of the private sector with that of legislative and administrative reforms.

To show the extent to which a functionally private sector driven NOC can complement reform in regulation, local content, and develop a sustainable and equitable application of petroleum revenues.

To highlight the need for a more integrated legislative, institutional, and regulatory reform in the NPI.

In order to determine the extent to which the PIB and other reformatory strategies can lead to a functional petroleum industry, and to which extent, lessons can be drawn from experiences of petroleum producing countries like Brazil and Norway.

## **1.6 METHODOLOGY**

This study seeks to utilize a doctrinal approach. Focus will be placed mainly on the upstream sector of the NPI, although where necessary the downstream sector will also be analysed for purposes of elucidation. It critiques the reform programme for the NPI within the context of what has been found to be obtainable in Brazil and Norway. Emphasis will be placed on legal, regulatory, institutional, and other underlying factors like the investment climate, infrastructure and indigenous capacity. The role of NOCs in the development of petroleum industries will be analysed and compared. The thesis will seek to determine the indices that have made it possible for Brazil and Norway to develop relatively successful petroleum industry models.

## 1.7 WHY BRAZIL AND NORWAY?

Brazil and Norway are the primary case studies in this thesis, frequent comparisons will be made between them and Nigeria, mainly because these countries have performed relatively well in developing the triune factors in their petroleum industries. Brazil is particularly important because of its many similarities to Nigeria. For instance Brazil's population of 190 million people is comparable to Nigeria's over 160 million. And Brazil like Nigeria, is a developing economy, has some issues with corruption and poverty, while operating a federal constitution like Nigeria. Again, like Nigeria, Brazil is deeply religious, ethnically diverse, and rich in petroleum resources. From the 1940s to the late 1980s Brazil struggled with political instability due to military incursion into its political arena and weak governance, while Nigeria struggled with similar challenges from the 1960s to the 1990s. And like Nigeria also Brazil also separates industry regulation from its NOC, while leaning more on the latter to develop its petroleum industry.

Unlike Nigeria however, Brazil's NOC stands out as a model not only in South America, but also to the rest of the world, while Nigeria's NOC struggles with corruption, operational inefficiency, and board instability. In the same regard Brazil has also been able to develop a regulatory framework for the environment which operates with some level of independence and efficiency, in contrast to Nigeria, where regulation has been largely ineffective, as attested to by frequent oil spills, and the daily flaring of a huge amount of associated gas.

Unlike Brazil however, there are some notable differences between Nigeria and Norway. For instance, Norway's population of less than 6 million is in direct contrast to Nigeria's over 160 million, and Norway does not struggle with corruption, poverty, and weak governance. Norway's experience democracy and the rule of law, and its technological competence gained through its experience from its hydro and ship building industries, are also in contrast to the Nigerian scenario. Notwithstanding the differences between both countries, Nigeria still has some lessons to learn from the Norwegian experience, while making room for unique national issues. This is because the Norwegian model has been hailed by many as the 'ideal' model. For instance Norway's NOC is recognised as being largely successful, playing a

dominant role in the Norwegian petroleum industry, while operating beyond the borders of Norway. Its framework for offshore regulation generally considered robust, while its framework for the management of its petroleum revenues is equally hailed as being successful.<sup>15</sup>

Attaining to the heights of the Norwegian model should therefore be the destination of Nigeria's reforms in the NPI, especially in the area of regulation, and NOC development. And where Nigeria is unable to attain to that 'ideal' because of unique national challenges and limitations, it should more realistically aim to attain the achievements of Brazil, especially in terms of NOC development, and environmental regulation. Beyond Brazil and Norway, lessons will also be drawn where necessary from other jurisdictions like Malaysia, the United Kingdom, the United States of America, and Angola.

## **1.8 BENEFICIARIES**

As Nigeria seeks to reform the NPI for economic and environmental transformation, it is imperative that she gets it right this time. Excuses of colonialism, neo-colonialism, inexperience, and weak institutions will not avail Nigeria, 50 years after independence from Britain. Thus the thesis seeks to offer guidance to Nigeria and other African countries like Ghana, Liberia, Sierra Leone and Mozambique. Some in the latter countries are wary that their new found 'black gold'<sup>16</sup> may lead to what economists have now termed a 'resource curse', if not properly managed.<sup>17</sup> This thesis also seeks to offer guidance to legislators,

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<sup>15</sup> See Mark C. Thurber and others, 'Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance' (2011) Vol 39 Energy Policy

<sup>16</sup> The term 'black gold' is often used to refer to crude oil.

<sup>17</sup> This theory postulates that resource rich developing countries are tend to have worse economies than their relatively resource poor neighbours . See Richard Auty ' Resource Abundance and Economic Development' (2001) World Institute for Development Economics Research (Oxford University Press), Jeffrey Frankel, 'The Natural Resource Curse: A Survey' (2010) Harvard Kennedy School Faculty Research Working Paper Series <[https://www.google.co.uk/#hl=en&sugexp=les%3B&gs\\_nf](https://www.google.co.uk/#hl=en&sugexp=les%3B&gs_nf)> accessed 01/10/2012, Uwafiokun Idemudia, 'The Resource Curse and the Decentralization of Oil Revenue: the Case of Nigeria' (2012) Vol. 35 Journal of Cleaner Production, 183 -193, Marcus J. Kurtz, ' Conditioning the "Resource Curse": Globalization, Human Capital, and Growth in Oil-Rich , Nations (2011) Comparative Political Studies <<http://cps.sagepub.com/content/44/6/747>> accessed 01/10/12

policy makers, law teachers and regulatory institutions, and suggests the adoption of a holistic view in addressing the challenges of the NPI.

## **1.9 STRUCTURE OF THE THESIS**

**Chapter two** lays the theoretical framework for the thesis and presents an overview of the historical, legal, regulatory and institutional framework for the NPI. The chapter will analyse the current performance of the NPI within the context of Norway and Brazil, and to that extent, will analyse the extent of local content, regulation, and the application of petroleum revenues in the NPI. The chapter will seek to establish that in Norway and Brazil the triune factors are present in some measure, but significantly weak in Nigeria, even though the three industries began at comparatively the same period.

**Chapter three** will enquire into the legal framework for effective regulation of the NPI. It appraises Nigeria's current regulatory framework, its strengths, weaknesses and proposed reforms as contained in the PIB. It argues that as long as petroleum remains the mainstay of the Nigerian economy, independent regulation will be difficult within the current and post PIB legal framework. The chapter argues for citizen participation through a viable whistleblower regime and the encouragement of regulatory litigation, as a complementary approach to effective regulation of the NPI.

**Chapter four** examines legal strategies for local content development within the NPI and compares same with the approaches in Norway and Brazil. It notes that while Nigeria seeks to develop local content by relying virtually on a legal framework without the corresponding infrastructure required to make its objectives achievable, other jurisdictions have combined laws with industry collaboration, while providing corresponding infrastructural and economic atmosphere.

**Chapter five** seeks to determine the extent to which the proposed privatization of the Nigerian National Petroleum Company (NNPC) as contained in the PIB, can impact the



fortunes of the firm post-privatization. It argues that while the legal framework for privatization may engender greater transparency, patterning the proposed firm after Petrobras/Statoil is not suitable for Nigeria's unique challenges. To that extent, it proposes an approach under which the shareholders of the firm will be able to restrain external interference in order to ensure good governance. As an alternative to Petrobras/Statoil, it proposes that Nigeria should pattern its NOC after a model that embraces a partnership between the Nigerian government, and the private sector. The chapter will end by identifying the Nigerian Liquefied Natural Gas (NLNG) company limited, that viable alternative.

**Chapter six:** This chapter examines the need for a comprehensive legal framework for an equitable application of petroleum revenues in Nigeria. Past efforts of Nigeria to sustainably utilize petroleum revenues will be addressed. They include the Petroleum Trust Fund, Petroleum Trust Development Fund, Niger Delta Development Commission (NDDC), and the Oil Mineral Producing Areas Development Commission (OMPADEC). Nigeria's Sovereign Investment Authority (Establishment etc.) Act 2011 will be analysed in order to determine its prospects for sustainable application of wealth. The chapter also examines initiatives towards developing the Niger Delta, and petroleum host communities.

In **Chapter seven**, the study is drawn to a close by the provision of concluding remarks on the research findings. The chapter will also seek to identify how the theoretical analysis of the earlier chapters can be translated into a roadmap for the future.

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## **2 CHAPTER TWO: AN INTEGRATED ANALYSIS OF FACTORS THAT DETERMINE EFFECTIVE PETROLEUM INDUSTRY MANAGEMENT AND REGULATION**

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### **2.1 INTRODUCTION: PURPOSE AND METHODOLOGY**

The aim of this chapter is to lay a theoretical foundation for the arguments and solutions that will be proffered in this thesis. It begins by seeking to determine the factors that must be present to a reasonable degree before a country can be said to manage and regulate its petroleum industry effectively. Factoring unique national contexts, the chapter will argue that to a reasonable degree, an effective and functional petroleum industry should be robustly regulated and have a significant local content. For instance, a significant local content will link the gains from the industry to the wider segment of the society, create jobs, and transfer technology. Finally, government policy and action should be geared towards a sustainable and equitable application and distribution of petroleum revenues for the public benefit. Having identified the above factors, the rest of the chapter will seek to analyse the interplay between law, petroleum industry policy and models, in attaining development of the identified factors: Norway, Brazil and Nigeria will be used as case studies.

### **2.2 THE INTERPLAY OF VARIOUS FACTORS IN PETROLEUM INDUSTRY MANAGEMENT AND REGULATION**

It will be difficult to apply objective criteria when analysing the performance of various petroleum industries due largely to peculiar national contexts like population, technology, extent of petroleum reserves, rule of law, and democratic experience. For instance, Norway's technological capacity was already developed from its shipbuilding experience, when it discovered oil in 1969. It also had an entrenched democratic culture and a respect for rule of law. Norway also relied on experiences gained from the management of its hydropower resources in the early part of the 20<sup>th</sup> century to define its relationship with international oil

companies (IOCs).<sup>1</sup> The Norwegian experience is in contrast to Nigeria whose 1956 discovery of petroleum was on the eve of her independence from Britain. Nigeria therefore lacked democratic experience and the requisite industrial capacity to tackle the challenges of the NPI.

But while taking peculiar national contexts into consideration, this chapter argues that industry regulation, direct indigenous participation, and utilization of petroleum revenues, are reasonable criteria that can determine how effective a country manages its petroleum industry. And this criteria will be shown to cut across board, from developing Angola, to developed Norway, it remains a valid yardstick to determine and measure the extent to which a country has managed its petroleum industry.

The chapter postulates that the interconnectedness of the above factors (the ‘triune factors’)<sup>2</sup> implies that the development of one will invariably impact the other. For instance, a significant local content will produce a pool of skilled man power from which regulators and industry managers can be sourced. It will also provide jobs which will positively impact the economy. On the other hand, effective industry regulation will ensure the state gets funds due to it from the industry, promote environmental protection, and reduce regulatory burdens on petroleum exploration and production companies (PEPCs). This will lead to better government revenues, benefit the wider general economy generally, and in particular will feed Nigeria’s local content since the government will be in a better position to invest in research and fund scholarships. Similarly, a viable national oil company which is evidence of a strong local content can help monitor joint collaborations with PEPCs, and in essence promote regulation. This has been the Malaysian experience, as will be seen in paragraph 4.4.2.

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<sup>1</sup> See Tina Hunter, ‘Sustainable Socio-economic Extraction of Australian Offshore Petroleum Resources through Legal Regulation: Is it Possible?’ (2011) 29 JERNL, 215. See also Bruce Campbell, ‘Managing Oil Wealth the Alberta/Canada Model vs. the Norwegian Model’ Canadian Centre for Policy Alternatives <<http://www.policyalternatives.ca/publications/commentary/managing-oil-wealth>> accessed 14 November 2012

<sup>2</sup> The triune factors refer to the local content, industry regulation, and the application of petroleum revenues for the benefit of the public.

The gains from the petroleum industry are essentially dependent on how equitably petroleum revenues are managed for the public good: a factor that prima facie appears to be outside the core of the industry. But a closer scrutiny will reveal that the extent to which petroleum revenues are applied, is not a factor that can be divorced from the industry, but remains an integral part of it. For if petroleum revenues do not promote public welfare, and are not properly utilised in promoting research, technology, and industry, it can result in a backlash of weak local content and weak industry regulation. It can also lead to deindustrialisation, what researchers in essence refer to as the ‘Dutch disease’ which is closely allied to the resource curse phenomena.<sup>3</sup> This can also lead to societal unrest and the disruption of the petroleum industry.<sup>4</sup> For instance poverty can result in sabotage of petroleum infrastructure, illegal refineries, bunkering, and criminality as demonstrated in Nigeria. And in extreme cases the frustration of the people can result in an outright revolution (the so called Arab spring in Libya, Egypt and Syria), which will in turn make petroleum exploration and production difficult, if not impossible.

An understanding of the industry as an integrated whole is therefore imperative if any reform is to be meaningful and impactful. This chapter will be devoted to analysing and comparing the extent to which Norway, Brazil and Nigeria have used law and policy to develop the triune factors.

## **2.3 LAW, POLICY AND PETROLEUM INDUSTRY DEVELOPMENT**

A good combination of law and strategic industry policy, set within a defined developmental framework, is required for the development of the petroleum industry of any country. A policy is a firm statement of intent published by a government or organisation to guide its practices and procedures.<sup>5</sup> It states matters of principle and action, and outlines what is to be

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<sup>3</sup> This theory refers to some adverse impact of other sectors of an economy by virtue of exploitation of natural resource. See R.G. Gregory, ‘Some Aspects of Growth in the Mineral Sector’, (1976) Vol. 20 Australian Journal of Agricultural Economics, 71-91, and Jeffrey Frankel *ibid.* Frederick van der Ploeg, ‘Fiscal policy and Dutch Disease’ (2011) 8 International Economics and Economic Policy, 121 –138, Akorlie A. Nyatepe-Coo, ‘Dutch Disease’, Government Policy and Import Demand in Nigeria’ (1994) Vol. 26 Applied Economics, 327

<sup>4</sup> Nigeria for instance contends with militancy and oil thefts. In Libya’s case, it resulted in an outright revolution

<sup>5</sup> See Oxford Online Dictionary <<http://oxforddictionaries.com/>> accessed 15 November 2012

done and by whom.<sup>6</sup> Without a properly articulated policy, attaining definite criteria to measure performance will be difficult, if not impossible. Thus the extent to which a country has achieved its policy objectives is a starting point in determining how successful it is in managing its petroleum industry. A good industry policy will be clear, comprehensive and achievable in the light of in-country capacities, now and in the near future.

While policies can be instrumental in giving direction to a government on petroleum industry management, laws are required for the implementation of policy objectives and to give legitimacy. Thus laws give ‘teeth’ to policy implementation. Laws are especially important since the possible application of sanctions for default makes it a desirable vehicle for policy implementation; especially where there is the likelihood that policy implementation may be resisted. Legislating on a policy also makes industry and public officials accountable to the legislature and the public since legislation means that the policy is no more a manifesto of government intention, but a compulsory requirement which must be adhered to.

Virtually every aspect of the workings of a petroleum industry requires legal arrangements for the benefit of the state and operators. From the award of contracts, regulation of operations, utilization of resources, and the enforcement of contracts, there is either dependence on legislation, guidelines, standards or contract. It can therefore be argued that the business of petroleum cannot proceed without a viable legal framework. This is aptly demonstrated in the Nigerian petroleum industry (NPI), where billions of investment funds have been stalled until uncertainties over delays in the passage of the Petroleum Industry Bill (PIB) 2012, are addressed.<sup>7</sup> Similarly Nigeria’s NLNG could not attract foreign investment until a legal framework was erected in the form of the NLNG (Fiscal Incentives, Guarantees and Assurances) Act of 1989.<sup>8</sup> This law was used to assure investors of government’s commitment to the project, and provided for international arbitration in cases of dispute or

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<sup>6</sup> University of Sydney, ‘What is a Policy’ <<http://sydney.edu.au/legal/policy/what/index.shtml>> accessed 16 June 2013

<sup>7</sup> See Olusola Bello, ‘\$72bn investments lost as FG dithers on PIB’ Business Day (6 November 2013) <<http://businessdayonline.com/2013/11/72bn-investments-lost-as-fg-dithers-on-pib/>> accessed 19 November 2013

<sup>8</sup> Cap N 87 LFN 2004

the nationalisation of assets.<sup>9</sup> There are however various approaches to the application of law and policy in the petroleum industry, which differ from country to country. These differences are reflected in the various petroleum industry models adopted by various countries to meet their peculiar needs. The various petroleum industry models and the elements of a basic petroleum industry legal framework will be analysed next.

## **2.4 ELEMENTS OF A PETROLEUM INDUSTRY MODEL**

The above analysis argued that a successfully managed and regulated petroleum industry is usually achieved through the instrumentality of legal frameworks that implement strategic industry policy. It is now intended here to briefly clarify how a petroleum industry framework is likely to be framed and how it may be reflected in various petroleum industry models (PIM), and the standard elements of any such model.

### **2.4.1 A COMPREHENSIVE LEGAL FRAMEWORK<sup>10</sup>**

A petroleum industry legal framework may encompass local and international laws especially where petroleum is extracted offshore. Similarly, where international oil companies (IOCs) operate in a local jurisdiction, recourse to international arbitration as a dispute resolution mechanism may necessitate the application of international treaties and agreements.<sup>11</sup> A country's petroleum industry legal framework is likely to be mainly statutory, although it may be supported by a series of contracts that are executed between governments, PEPCs, and other stakeholders in the industry.

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<sup>9</sup> See U Udoma, 'Incentives For Gas ventures in Nigeria' (1998) 2 Modern Practice Journal of Law and Finance Law 1

<sup>10</sup> See William Onorato and J Jay. Park, 'World Petroleum Legislation : Frameworks that Foster Oil and Gas Development' (2001) 39(1) Alberta Law Review 70

<sup>11</sup> For example because some of Nigeria's petroleum is found offshore, it has enacted the Territorial Waters Act 1967, Ch T5 LFN 2004, Exclusive Economic Zone Act 1979, Ch E7, LFN 2004, under which it can explore for petroleum offshore. Similarly, it has entered into a joint development zone agreement with Sao Tome and Principe for joint offshore explorations.

A petroleum industry legal regime may be contained in a multi statute framework, or in a single comprehensive law that is supported by regulations made thereunder. Even in a multi statute petroleum regime like Nigeria, there is usually a principal petroleum law which will provide for administrative, economic and fiscal guidelines to guide investment in the industry. This law will additionally clarify ownership of petroleum resources and in some cases, contain the derivation formula for sharing of royalties or profits between tiers of government and host communities.<sup>12</sup>

Some petroleum laws are short, providing for a competent government authority on which will be conferred rule making powers, and authority to represent the government in negotiations with PEPCs.<sup>13</sup> The competent authority may also be authorised to act as industry regulator in some cases.<sup>14</sup> Some petroleum laws on the other hand are detailed and comprehensive, leaving out only certain details to be sorted by regulation and negotiation between the government and PEPCs.<sup>15</sup> A standard petroleum law will also address taxation, fiscal stabilisation, environmental protection, unitization, gas development and contain a definition section. A legal framework will reflect the petroleum industry model adopted by each country for the management of its industry. It is intended here to analyse some of the most widely used PIMs.

#### **2.4.2 STATES WITHOUT NATIONAL OIL COMPANIES**

Some countries like the USA, Canada, United Kingdom and Australia, manage their petroleum industries without establishing national oil companies (NOCs).<sup>16</sup>

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<sup>12</sup> For instance articles 3, 4 and 5 of the Brazilian Petroleum Law, 9478/1997 and section 1 of the Nigerian Petroleum Act, Ch. P.10, and LFN 2004.

<sup>13</sup> A prime example is Nigeria's Petroleum Act of 1969, which has only 16 sections.

<sup>14</sup> The competent authority may be a sole NOC or a different body established to administer the industry and issue petroleum contracts. Its power to award contracts may be arbitrary or regulated. Where it is regulated, contracts are awarded only after an open bidding process that guarantees fairness to all the parties. In Nigeria the competent authority is the Department of Petroleum Resources (DPR), and although rule making powers is vested in the Minister of Petroleum Resources, this power is exercised by DPR in practice.

<sup>15</sup> For instance the PIB 2012 is an example of a comprehensive petroleum law. So also is the Norwegian Petroleum Activities Act of 1996. See Bernard Taverne, *Industry And Governments: An Introduction To Petroleum Regulation, Economics And Government Policies* (Kluwer, 1999) 222-231

<sup>16</sup> In 1975 however, the UK had actually established British National Oil Corporation (BNOC) under the Petroleum and Submarine Pipelines Act of 1975 to function as the UK's NOC. The BNOC however did not enjoy the support of the Conservative government of Margaret Thatcher, which came into power in 1979, and by it ceased operations when its exploratory and production responsibilities were transferred to its subsidiary.

The role of the state in this model is to grant licences for exploration and production to PEPCs, usually after a competitive and transparent bidding process.<sup>17</sup> Thus the state limits itself to industry regulation, the management of the industry, and the collection of taxes.<sup>18</sup> Countries that adopt this model open their industries to IOCs and indigenous PEPCs, subject to government oversight and regulation. Other features of this model include deregulation of the price of petroleum products, and a heavy dependence on royalties and taxes.<sup>19</sup>

### 2.4.3 STATES WITH NOCS

Beyond regulation and collection of taxes, many petroleum producing countries (PPCs), especially in the developing world, elect to participate directly in the petroleum industry through NOCs.<sup>20</sup> These NOCs, which as direct agents of their home governments, usually enjoy preferential privileges in their petroleum industries. This model can be further divided into the traditional and the non traditional NOC sub models.

#### The Traditional NOC sub model

Here NOCs take the centre stage as policy makers, industry regulators (either totally or partially), and as petroleum companies.<sup>21</sup> Malaysia's Petroliam Nasional Berhad, (Petronas), Iran's NIOC, Angola's Sonagol, and, Nigeria's NNPC pre-1988, adopted this model.

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Between 1982 and 1985, Britoil was privatised, while BNOOC itself was formally closed in 1985, only a decade after its establishment. See generally Daintith, Willoughby and Hill (eds), *UK Oil and Gas Law* (Sweet and Maxwell, 3<sup>rd</sup> edn, 2011), paras 1-109-1.113. See also Gordon, Paterson and Usenmez (eds), *Oil and Gas Law: Current Issues and Emerging Trends* (Dundee University Press, 2<sup>nd</sup> edn, 2011) 66

<sup>17</sup> And while British Petroleum (BP) was until 1987, owned by the UK government, it is worth stating that it was not primarily established to manage the British petroleum industry, but operated like any other petroleum firm, in the Middle East and all over the world long before Britain's North Sea industry was developed. See B.P 'Our History' <<http://www.bp.com/en/global/corporate/about-bp/our-history/history-of-bp.html>> accessed 19 November 2013

<sup>18</sup> The US state of Texas allows private ownership of petroleum resources. See Bruce M. Kramer and Owen L. Anderson, 'The Rule of Capture –An Oil and Gas Perspective' (2005) 35 *Environmental Law* 899

<sup>19</sup> See Maxwell Gidado, 'Petroleum Development Contracts with Multinational Oil Corporations : Focus on the Nigerian Oil Industry', (PhD Thesis University of Warwick 2009) University of Warwick Publications Service <<http://wrap.warwick.ac.uk/4320/>> accessed 11 September 2012

<sup>20</sup> All OPEC countries and non-OPEC countries like Brazil, Norway, Malaysia and China have also employed this strategy.

<sup>21</sup> Iran and Saudi Arabia are among countries with dominant NOCs.



Traditional NOCs in most cases collaborate with PEPCs through arrangements like joint ventures (JVs), production sharing contracts (PSCs) and Risk Service Contracts (RSCs). Although some countries with traditional NOCs attempt to separate industry regulation from their NOCs, in practice, a thin line exists between the two as most NOCs in this model have been known to overshadow and side-line industry regulators. This was the case with Brazil before 1990, and remains the case in Nigeria. Such development is possible because regulators and NOCs are usually supervised by the same authority, as in Nigeria, and this factor in effect blurs the thin line between regulation and NOC.<sup>22</sup> Lack of significant competition and independent regulation however, has been the undoing of many NOCs in this sub model. This is because rather than innovate to enhance performance, most of such NOCs rely almost entirely on government patronage and continuing financial support to be kept afloat.

### **The competitive NOC sub model**

This model seeks to make NOCs competitive by establishing separate independent and capable regulatory and policy making agencies. Countries that adopt this model also subject their NOCs to competition with private firms, and ensure they operate with a strong commercial orientation. And although some privileges may still be reserved for them, NOCs in this model are encouraged to rely rather on their competitiveness for the award of petroleum concessions. This model is best epitomised in Norway, where the Norwegian Petroleum Directorate (NPD) and the Ministry of Energy are responsible for industry regulation and policy formulation, while Statoil operates as the commercial arm of the government. It can also be seen in Brazil post 1997, where a competitive Petroleo Brasileiro SA (Petrobras) works side by side with the industry regulator: National Petroleum Agency (ANP) and the National Council for Energy Policy (CNPE), which is the industry policy maker.<sup>23</sup> But no matter the model adopted by a country, the effectiveness of each model will

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<sup>22</sup>Thurber and others note that Saudi Aramco has thrived despite minimal institutional oversight. And while its petroleum industry regulator: the Supreme Council on Petroleum and Mineral Affairs (SCPMA) is relatively capable, it exerts only a light supervisory role, mainly because the Saudi monarchy and the NOC leadership share similar objectives. See Thurber and others, 'Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance' (2011) Vol 39 Energy Policy

<sup>23</sup> Malaysia adopts a hybrid between the two models. Its NOC Petronas is operated on company law principles even though it is a fully owned by the Malaysian government. It regulates the industry, formulates policies and

be determined by a variety of factors that indicate that the model a country adopts is not the only factor that can be responsible for the effectiveness of that industry. This will be demonstrated when Nigeria, Norway and Brazil are compared later in this chapter.

## **2.5 APPROACHES TO PETROLEUM INDUSTRY REGULATION AND MANAGEMENT**

There is no clear cut approach to the application of legal frameworks for industry regulation, but variances which reflect history, culture and the political structures of various countries can be seen from country to country. Some countries implement petroleum industry policies through detailed legal frameworks, while others create discretionary regimes by authorising capable administrators to determine the extent of implementation as individual contexts allow. For instance, although Brazil and Norway were very nationalistic in their approaches to petroleum, Brazil adopted a strict legal approach with little room for administrative discretion in the application of its petroleum industry policies, while Norway adopted a flexible bottom up approach.<sup>24</sup> How the various approaches have played out in the petroleum industries of Brazil, Norway and Nigeria, and their merits, will be considered next.

## **2.6 THE ROLE OF LAW AND POLICY IN THE DEVELOPMENT OF THE BRAZILIAN PETROLEUM INDUSTRY**

In 1939, Brazil discovered petroleum in commercial quantities in its Bahia oil field and adopted a policy of exclusive resource nationalism. This policy was epitomised by Law

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explores for oil as an oil company. See Leslie Lopez, 'Petronas: Reconciling Tensions Between Company and State' in David G. Victor and others (eds) David G. Victor, and others, (eds) *Oil and Governance State-owned Enterprises and the World Energy Supply* (Cambridge 2012) 809

<sup>24</sup> Top down regulation generally involves issuance of prescriptive regulations in a command fashion. Here the regulator acts as 'superior', and the regulated, as 'inferior', with breaches visited with sanctions. There is less collaboration between regulator and regulated under this approach, which has been criticized as often being reactive, cumbersome, and resource intensive. On the other hand, bottom up regulation is more conciliatory, collaborative, and often involves the issuance of flexible and relaxed regulatory standards in a manner that is almost akin to self regulation. Here the regulator the regulated are often treated as 'partners' rather than 'superior' and 'inferior'. See generally Baldwin R and Cave M, *Understanding Regulation* (Oxford, 1999) 363

2004/1954 which conferred exclusive upstream monopoly on its NOC: *Petróleo Brasileiro S.A. (Petrobras)*. The result was that for nearly 40 years, Petrobras operated without any competition in the upstream sector of the industry.<sup>25</sup> And although Brazil later allowed some foreign participation through RSCs in the 1970s, the RSCs were later abandoned for contravening Law 2004/1953 and Brazil's 1967 Constitution.<sup>26</sup> Article 177 of the 1988 Brazilian constitution banned foreign participation in the Brazilian petroleum industry (BPI) and in essence restated the nationalistic principles behind Law 2004.<sup>27</sup> It is arguable that the wisdom behind Brazil's strict monopolistic approach may have played out in the dominance of Petrobras, pre and post liberalisation of the BPI.<sup>28</sup>

And even though the BPI was liberalised in 1997, strict resource nationalism still underpins the Brazilian approach.<sup>29</sup> The Brazilian model has however undergone some changes, and has crystallised into a model that resembles the Norwegian model in many ways.<sup>30</sup> The substratum of strict petroleum nationalism is still retained however, and this as will be seen has reflected in its local content policy, its NOC, and in industry regulation.

### **2.6.1 LOCAL CONTENT DEVELOPMENT IN THE BRAZILIAN PETROLEUM INDUSTRY: X-RAYING THE ROLE OF LAW AND POLICY**

Brazil has a three pronged approach to local content development: it relies on the functionality of its NOC and combines its strengths with administrative agencies, and other government initiatives. Petrobras took advantage of the virtual absence of foreign

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<sup>25</sup> Subsequently articles 167 and 177 of the 1967 and 1988 constitutions of Brazil respectively also reiterated Brazil's commitment to an exclusively manned petroleum industry. It is pertinent to note that IOCs which were operating in refineries prior to the formation of Petrobras continued operating until they were nationalised in the 1960s. See Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance' in David G. Victor (eds) (n 22) 515

<sup>26</sup> For a discussion on Brazil's risk service contracts and their implications on Petrobras' monopoly, see João Santos Coelho Neto, 'Risk-Bearing Service Contracts in Brazil' (1985) 3 JENRL 114

<sup>27</sup> See Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance', in David .G. Victor eds, (n 22 ) 535.

<sup>28</sup> Petrobras produces over 90 per cent of Brazil's daily crude production even though it has competition from firms like Chevron and Shell.

<sup>29</sup> Between 1995 and 1997, Brazil liberalised the BPI through Law 9/1995 and Law 9478 of 1997. See Yanko Marcus de Alencar Xavier, ' Legal Models of Petroleum and Natural Gas Ownership in Brazilian Law' in Aileen McHarg and others (eds) , *Property and the Law in Energy and Natural Resources* (OUP 2010)

<sup>30</sup> Like Norway, Brazil separates policy formulation from regulation, and regulation from its national oil company. And like Norway, Brazil's NOC is partially privatized, with the government retaining controlling shares in Petrobras.

competition, to develop its technological and management capacity into a level of global competitiveness.<sup>31</sup> Currently, it controls over 90 per cent of Brazil's crude oil production and although privatised since 2000, the Brazilian government remains its controlling shareholder. This relationship with the government has ensured that Petrobras retains its influence in the BPI, as it enjoys legislative privileges over and above other privately owned PEPCs.<sup>32</sup>

In addition to Petrobras, Brazil relies on the administrative regulator of the BPI: ANP. ANP's local content requirements, as contained in Clause 20 of its model petroleum contract, is considered as being among the most stringent in the world.<sup>33</sup> These requirements vary from company to company and depend on factors like the location of the petroleum field, and the stage of operation, among others.<sup>34</sup> On a general note however, companies operating in Brazil are required to attain 55 per cent local content in areas with more than 100 meters depth and 65 per cent in development areas. ANP uses a methodology to measure compliance to its local content requirements.<sup>35</sup> It imposes fines by considering the contract amount, the level of local content required from each company, and the extent of compliance.<sup>36</sup> Even state

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<sup>31</sup> Hildegunn Kyvik Nordas, Eirik Vatne and Per Heum, 'The Upstream Petroleum Industry and Local Industrial Development: A Comparative Study' (2003) Private Sector Development in the Nigerian Upstream Industry SNF Report No. 08/03 <[http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys\\_brage\\_21925/1/R08\\_03.pdf](http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys_brage_21925/1/R08_03.pdf)> accessed 18 May 2013; [www.worldbank.org/ogmc/socialandeconomicimpact.htm](http://www.worldbank.org/ogmc/socialandeconomicimpact.htm) as cited in Wade Locke, 'Exploring Issues Related to Local Benefit Capture in Atlantic Canada's Oil and Gas Industry' (2004) <[publications.gc.ca/collections/collection.../AC5-10-2004-eng.pdf](http://publications.gc.ca/collections/collection.../AC5-10-2004-eng.pdf)> accessed 14 November 2012

<sup>32</sup> Peter Millard & Mario Sergio Lima, 'Petrobras Debt Crunch Buys Exxon's Prospects in Brazil' (Bloomberg 12 April 2013) Brazil's PSC Law, 12.351 of 2010, authorises the Brazilian Ministry of Mines and Energy to enter into PSCs with PCs under an auction system administered by the ANP. With this law, Brazil departed from its traditional RSCs and concessionary contracts. Its PSCs are for 35 year duration. Article 10 of the Act however provides that Petrobras shall be given 30 per cent in all concessions awarded to PEPCs in the presalt, and in addition, it makes Petrobras the sole operator of all such concessions. <<http://www.bloomberg.com/news/2013-04-11/petrobras-debt-crunch-buoys-exxon-s-prospects-in-brazil-energy.html>> accessed 18 May 2013

<sup>33</sup> ANP, 'The Local Content Reg for Concession Agreements' <[www.braziltexas.org/attachments/files/401/ANP-Marcelo.pdf](http://www.braziltexas.org/attachments/files/401/ANP-Marcelo.pdf)> accessed 9 June 2013

<sup>34</sup> See Magda Chambriard, 'Brazil's Regulatory Framework Challenges of a Rapidly Expanding Petroleum Industry' <[http://www.anp.gov.br/?pg=60260&m=conteúdo local&t1=&t2=conteúdo local&t3=&t4=&ar=0&ps=1&cachebust=1352472654403](http://www.anp.gov.br/?pg=60260&m=conteúdo%20local&t1=&t2=conteúdo%20local&t3=&t4=&ar=0&ps=1&cachebust=1352472654403)> accessed 13 November 2012. Concessions in Brazil are awarded for fields that are not in the Pre-Salt area, while PSCs are used in the Pre-Salt in pursuance to the PSC Act 12,351, See W. Bryan Blades, 'Production, Politics, and Pre-Salt: Transitioning To a PSC Regime' (2012) 7 Texas Journal of Oil and Gas Energy Law, 41-45

<sup>35</sup> ANP has issued the following regulations relating to Local Content regulation : Resolution No. 36 -Reg of Local Content Certification, Resolution No. 37 - Rules of Accreditation Entity for Local Content Certification Resolution No. 38 - Rules of Certification Audits, and Resolution No. 39 - Reg of Local Investment Report.

<sup>36</sup> See Velda Adilson, 'Brazil's Local Content Policy Stirs Concerns' (E and P, 21 October 2012) <[http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns\\_109056](http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns_109056)> accessed 22 November 2012. See also Alexandre Bittencourt Carmon and Cameiro Otavio Cameiro, 'Challenges of Local Content', Advogados, <[www.veirano.com.br/veirano/.../Default.aspxCached](http://www.veirano.com.br/veirano/.../Default.aspxCached)> accessed 9 November 2012

controlled Petrobras is not left out of the requirements, and was fined the sum of \$18 million for breaching local content rules in development of 44 concessions.<sup>37</sup> ANP is also involved in local content development by investments in research and the award of scholarships.<sup>38</sup>

Thirdly, Brazil relies on other collaborative initiatives to strengthen local content: they include the Mobilization Program of the National Petroleum Industry (PROMINP), and the National Bank for Economic and Social Development (BNDE). Foreign firms are encouraged to establish local subsidiaries in Brazil. In terms of research and technology promotion, article 48 of Brazil's Petroleum Law (Law 9748/1997) requires a certain per cent of royalties paid by petroleum firms to the government, be paid to the Ministry of Science and Technology. This money is to be used to finance programs to foster the scientific research and the technological development applied to the petroleum industry. Brazil also established CTPetro, a local content initiative, in 1998 as an investment fund for the development of research and innovative technologies in Brazil.<sup>39</sup>

## **2.6.2 LAW, POLICY AND PETROLEUM INDUSTRY REGULATION IN BRAZIL**

Brazil's top down approach to petroleum industry regulation is spearheaded by ANP which makes local content regulations, negotiates with petroleum firms, and awards contracts after open and competitive bidding rounds.<sup>40</sup> Brazil's regulatory structures appear to be robust, due in part to a strict approach to environmental protection, and in part to regulatory reforms introduced by Law 9478.

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<sup>37</sup> 'ANP Slaps Petrobras with \$18 million Fine' (Upstream, 1 September 2011) <<http://www.upstreamonline.com/live/article276020.ece>> accessed 22 November 2012

<sup>38</sup> Ibid

<sup>39</sup> See Andre Torsi Furtado, 'Institutional Changes and Innovation in the Brazilian Petroleum Industry' (2003) International Symposium on 'Energy Reforms and Institutional Development in Latin America, National Autonomous University of Mexico, University of Grenoble PMF Mexico City, November 2003 <[www.depfe.unam.mx/p-cientifica/.../10CbAndrefurtadoenglishLtt.pd..](http://www.depfe.unam.mx/p-cientifica/.../10CbAndrefurtadoenglishLtt.pd..)> accessed 20 November 2012

<sup>40</sup> Other relevant agencies include the Ministry of Mines and Energy (MME), the CNPE, the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), the National Environment Council (CONAMA), the National Waterway Transportation Agency (ANTAQ) and the Brazilian Navy. See BNDE, 'Studies of Regulatory, Corporate and Financial Alternatives for the Exploration and Production of Oil and Gas and the Industrial Development of the Oil and Gas Production Chain in Brazil' (2009) <[http://www.bain.com/bainweb/images/LocalOffices/BNDES\\_Consolidated\\_Report\\_BNDES\\_eng.pdf](http://www.bain.com/bainweb/images/LocalOffices/BNDES_Consolidated_Report_BNDES_eng.pdf)> Accessed 18 May 2013

Brazil's environmental regime is clearly one of the strictest in the world, with the 1988 constitution making environmental protection a duty of the state.<sup>41</sup> Environmental laws in Brazil are enforced by independent public prosecutors who are enabled to bring actions against PEPCs, individuals, and the Brazilian government, where necessary. Brazil's environmental laws include Law 5.357/1967,<sup>42</sup> Law 6938/1981,<sup>43</sup> Law 9.478/1997,<sup>44</sup> Law 7.735<sup>45</sup> of 1989 and Law 9,605 of 1998, which established a regime for environmental crimes. Brazil also relies on subsidiary legislations and standards which PEPCs are required to comply with.

### 2.6.3 APPLICATION OF PETROLEUM REVENUES IN BRAZIL

Brazil's petroleum wealth is centrally controlled.<sup>46</sup> Article 49 of Law 9478 provides for the sharing of petroleum royalties between the federal, states and municipal governments.<sup>47</sup> Unlike Norway which exported (and still exports) most of its petroleum, Brazil used its limited petroleum resources to satisfy its local population, and was thus not a petroleum exporting nation for many years. Following the 2007 offshore discoveries of an estimated 50 billion barrels of crude oil, Brazil's status as a major petroleum owning country rose significantly, and in 2009 it became a net exporter of petroleum.<sup>48</sup>

While it may be hasty to conclude that Brazil will succeed in managing expected petroleum revenues from its offshore reserves, termed 'pre-salt'<sup>49</sup> Brazil appears to be on the right

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<sup>41</sup> See Chapter 6 of the Brazilian Constitution of 1988.

<sup>42</sup> See Carlos O. Saraiva, 'Brazilian Legislation on Pollution of the Sea and Inland Waters' (1974-1975) 6 J. Mar. L. & Com. 435

<sup>43</sup> It also established a strict liability regime for environmental damage.

<sup>44</sup> Established ANP and made environmental protection one of the objects of the Act

<sup>45</sup> Established IBAMA

<sup>46</sup> Arts 20(ix), and 177 of the Brazilian Constitution. See also Arts 3, 4 and 5 of Law 9748 of 1997, which restates this principle.

<sup>47</sup> Fernando Antonio Slaibe Postali, 'Petroleum royalties and regional development in Brazil: The Economic Growth of Recipient Towns' (2009) 34 Resources Policy, 206

<sup>48</sup> See Aditya Malhotra, 'Brazil's Oil Future: The New (Big) Kid on the Block' (2012) April Issue, Journal of Energy Security <[http://www.ensec.org/index.php?option=com\\_content&view=article&id=346:brazils-bright-oil-future&catid=123:content&Itemid=389](http://www.ensec.org/index.php?option=com_content&view=article&id=346:brazils-bright-oil-future&catid=123:content&Itemid=389)> accessed 12 July 2012

<sup>49</sup> The reserves at the pre-salt are estimated to be between 50 and 100 billion barrels of crude oil. At conservative estimates however, they are said to triple Brazil's current petroleum reserves which exceed 10 billion barrels of crude oil. See Katia Cortes, 'Brazil to Auction Pre-Salt Oil Fields After Royalties', Bloomberg (7 January 2011), <<http://www.bloomberg.com/news/2011-01-07/brazil-to-auction-pre-salt-oil-fields-after-roy>

track, as legislative initiatives will indicate. Article 47 of Brazil's PSC Act 2010, (Law 12.351) established a social fund for the management and utilization of Brazil's petroleum revenues. This law provides that revenues from Brazil's pre-salt fields will be used to fund education, culture, sports, public health, science and technology and the environment.<sup>50</sup> Proceeds from the social fund will also be applied in the mitigation of price fluctuations in the Brazilian economy and to combat the so called Dutch disease.<sup>51</sup>

## **2.7 THE NORWEGIAN APPROACH TO PETROLEUM INDUSTRY REGULATION AND MANAGEMENT**

When in 1969, Norway discovered huge petroleum reserves in its Ekofisk field situated in the Norwegian continental shelf (NCS); its petroleum industry was born. After that discovery, the growth of the industry has been positively impacted by the interplay of policy, law, and good administration. Early in the 1970s, Norway's legislature, (the 'Storting') commissioned a committee to define a policy framework for the petroleum industry. The report of the committee was published in 1971, and contained the so called 'ten oil commandments' which formed the basis of Norway's petroleum industry policy.<sup>52</sup>

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Alties-updatel-.html.> accessed 17 October 2012 . See also Peter Millard, 'Brazil Oil Fields May Hold More Than Twice Estimates,' Bloomberg ( 19 January 2011) <<http://www.bloomberg.com/news/2011-01-19/brazil-oil-fields-may-hold-more-than-twice-estimated-reserves>> accessed 17 October 2012.

<sup>50</sup> By pre-salt, we refer to the giant oil fields found in the Santos Basin area, 300 kilometres off the coast of Espirito Santo, Rio de Janeiro, Sao Paulo and Santa Catarina. The petroleum found in these fields are trapped under a layer of salt about 7 kilometres under the surface of the ocean, and are estimated to contain over 50 billion barrels of crude oil, see Peter Millard, 'Brazil Oil Fields May Hold More than Twice Estimates' Bloomberg (7 January 2011), <[www.bloomberg.com/news/2011-01-19/brazil-oil-fields-may-hold-more-than-twice-estimated-reserves](http://www.bloomberg.com/news/2011-01-19/brazil-oil-fields-may-hold-more-than-twice-estimated-reserves)> accessed 18 November 2013

<sup>51</sup> See Articles 47 and 48 of the PSC Act. See W. Bryan Blades, 'Production, Politics, and Pre-Salt: Transitioning To a PSC Regime' (2012) 7 Texas Journal of Oil and Gas Energy Law 33, 44. See also Cristiano Villardo and Alexandre Campos, 'Pre-Salt and its Contribution to Sustainable Development in Brazil: a Preliminary Assessment' (2012) <[www.iaia.org/.../IAIA11%20-%20Cristiano%20Vilardo%20-%20Pre-.salt](http://www.iaia.org/.../IAIA11%20-%20Cristiano%20Vilardo%20-%20Pre-.salt)> accessed 17 October 2012

<sup>52</sup> Among other things, the policy at Norwegian dominance of operations at the North Sea Continental Shelf (NSCS). It also aimed to explore for petroleum to make Norway sufficient while taking account of environmental concerns. To that extent, gas flaring was prohibited from inception except during periods of testing. The Norwegian state was to be involved at all appropriate levels in contribution and coordination of Norwegian interests in the industry. In response to the policy, the Norwegian Legislature, in 1972 unanimously resolved that Statoil be formed as Norway's NOC. See Richard Gordon and Thomas Stenvoll, 'Statoil: A Study in Political Entrepreneurship' (2010) The Changing Role of National Oil Companies in the International Energy Market , Energy Forum, James Baker 111 <<http://bakerinstitute.org/files/3911/>> accessed 7 July 2013 Bjørn Lidar Lerøen, 'Ten Commanding Achievements' (2010) Norwegian Petroleum Directorate <<http://www.npd.no/en/Publications/Norwegian-Continental-Shelf/No2-2010/10-commanding-achievements/>>

Norway's policy thrust was geared towards prudent management of petroleum resources, robust regulation and resource nationalism, spearheaded by Statoil and other indigenous PEPCs on the one hand, and by capable administrators, on the other.<sup>53</sup> Norway erected its petroleum industry strategy/model, and supported its implementation with vibrant laws in response to that policy, which essentially bordered on resource nationalism.

Unlike Brazil however, Norway's resource nationalism policy was implemented through a largely discretionary and flexible approach. Broad powers were conferred on administrators to determine when to participate with foreign firms, monitor local content, and stipulate rules for environmental protection.<sup>54</sup> Norway entered into contractual arrangements under which operators operating in the Norwegian Continental Shelf (NCS) had to comply with its nationalistic policy. By establishing a broad and general framework for its industry administrators, Norway ensures they are able to address specific issues as they arise with flexibility and skill. This is in contrast with Brazil's iron clad rules and laws which give administrators little discretion to operate.

### **2.7.1 LOCAL CONTENT IN NORWAY: THE ROLE OF LAW AND POLICY**

Norway relied on several factors to develop its local content. They include its technological advancement at the time of its discovery of petroleum, the implementation of a nationalistic policy through a legal framework geared towards encouraging indigenous PEPCs, and local contractors, and the establishment of Statoil.

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accessed 1 November 2012 and Mark C. Thurber and Benedicte Tangen Istad, 'Norway's Evolving Champion: Statoil and the Politics of State Enterprise' in David G. Victor (eds) (n 1) 599

<sup>53</sup> Baines, 'Studies of Regulatory, Corporate and Financial Alternatives for the Exploration and Production of Oil and Gas and the Industrial Development of the Oil and Gas Production Chain in Brazil' (2009) 48 <[http://www.bain.com/bainweb/images/LocalOffices/BNDES\\_Consolidated\\_Report\\_BNDES\\_eng.pdf](http://www.bain.com/bainweb/images/LocalOffices/BNDES_Consolidated_Report_BNDES_eng.pdf)> accessed 2 April 2013

<sup>54</sup> See Geir Sverre Braut and Preben H. Lindoe (2004). "Risk Regulation in the North Sea: A Common Law Perspective on Norwegian Legislation : The Norwegian model " *Safety Science Monitor* 14(1). See also Preben H. Lindoe and others 'Robust Offshore Risk Regulation – an assessment of US, UK and Norwegian Approaches' (2012) Being a paper presented at the European Safety and Reliability Conference, 25-29 June, Helsinki. <<http://seros.uis.no/getfile.php/SEROS/Robust%20Regulation/Lindoe,%202012,%20Robust%20Offshore%20Risk%20Regulation%20%E2%80%93%20an%20assessment%20of%20US,%20UK%20and%20Norwegian%20approaches,%20ESREL%20conference.pdf>> accessed 7 August 2014



Local content in Norway is currently adjudged as one of the highest in the world. It ranges between 50-60 per cent in the development of new fields, and up to 80 per cent, if maintenance and operations are included.<sup>55</sup> Government controlled Statoil currently produces about 80 per cent of the NCS's petroleum, and champions Norway's local content policies.<sup>56</sup> Statoil developed adequate technological capabilities which were used as a launching pad for the development of Norway's domestic petroleum services industry.<sup>57</sup>

Norway did not set a specific local content target for petroleum firms in the NCS. A Royal Decree of 1972 however obligated all production companies to ensure that Norwegian suppliers were given preference in contract awards provided they were competitive in terms of price, quality and delivery reliability.<sup>58</sup> Operators were equally required to notify the Norwegian petroleum ministry of all contracts they awarded in excess of one million Norwegian Kroner (\$150,000), in order to ensure that Norwegian firms were considered in such contracts.<sup>59</sup> From an institutional level, Norway monitored compliance through Statoil's partnership with IOCs, and through formal regulators.

Section 4(11) of the Petroleum Activities Act of 1996 requires all petroleum produced from the NCS to be landed in Norway before being exported abroad. This Act in effect empowered indigenous Norwegian firms. The requirement has however been removed for breaching Norway's obligations in the European Economic Area.<sup>60</sup> Thus by a deliberate combination of policy, law and capacity, local firms in Norway benefited from the royal decree and were able to develop further capacity and make profits for the Norwegian economy.

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<sup>55</sup> Per Heum, 'Local Content Development Experiences from Oil and Gas Activities in Norway (n. 118)

<sup>56</sup> US Energy Information Administration, 'Norway' (2012) <<http://www.eia.gov/countries/cab.cfm?fips=no>> accessed 7 July 2013

<sup>57</sup> See Crain Spurn, 'Oil Regulation in 28 Jurisdictions Worldwide: Norway' (2009) <[http://www.kluge.no/arch/img.aspx?file\\_id=9084808&ext=.pdf](http://www.kluge.no/arch/img.aspx?file_id=9084808&ext=.pdf)> accessed 15 October 2012

<sup>58</sup> Royal Decree of Dec. 8, 1972, § 54

<sup>59</sup> Per Heum and others, 'Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria: A Comprehensive and Viable Policy Approach' (2003) SNF Report No. 25/03 <<http://cosmic.rz.uni-hamburg.de/webcat/hwwa/edok04/no2g/R25-03.pdf>> accessed 19 October 2012

<sup>60</sup> Leigh Phillips, 'Norway Systematically hid EU demands for Oil-law Reform' (EU Observer 31 June 2011) <<http://euobserver.com/economic/32427>> accessed 28 May 2013

Another effective local content strategy of Norway was the incorporation of Statoil in 1972 as a fully owned NOC, through a parliamentary vote. Statoil was mandated to drive Norway's policy of petroleum nationalism and benefited largely from the 1963 Petroleum Act regime. Under this regime, Statoil was given a 50 per cent stake (with an option to increase to 80 per cent), in all concessions awarded in the NCS.<sup>61</sup> When Norway joined the European Economic Area (EEA) in 1992, Statoil lost all exclusive privileges in the NCS, but by this time it had already dominated the NCS, and was able to stand on its own with little government support. Were such privileges absent in the 1970s, it is doubtful if the Statoil would have risen to the status it has now attained.

Other strategic developments in Norway's petroleum industry have also been influenced by hard or soft law. For instance, when in the early 1980s, the Norwegian government deemed it necessary to reduce Statoil's influence, it transferred some of its upstream interests to a state owned investment entity called the State Direct Finance Investment (SDFI). The SDFI was established in 1984 in pursuance to a parliamentary resolution, to operate as a cash flow-system under which the Norwegian government will hold shares directly in the petroleum industry, and not through Statoil.<sup>62</sup> With the SDFI Statoil lost some its automatic privileges and control in the NCS, but this move also positioned Statoil to develop its competitiveness, and was thus prepared for its eventual privatisation in 2001.

### **2.7.2 REGULATION OF PETROLEUM OPERATIONS IN THE NORWEGIAN CONTINENTAL SHELF**

Norway benefits from a collaborative and holistic health, safety and environment (HSE) framework which has resulted in robust regulation. It established institutional, legal and co-

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<sup>61</sup> See Tore Tonne, 'Energy Policy: A Norwegian Perspective' (1983) Vol 5(4) *Northwestern Journal of International Law & Business*, 738

<sup>62</sup> Ministry of Petroleum and Energy, 'The State Direct Financial Interest' (2014) <<http://www.regjeringen.no/en/dep/oed/Subject/state-participation-in-the-petroleum-sec/the-states-direct-financial-interest-sdf.html?id=445748>> accessed 22 March 2014

operative frameworks which were combined towards reducing accidents and environmental challenges in the NCS.<sup>63</sup>

A regulatory framework that harnesses and integrates the resources of regulators, employers, and their employees, while promoting inter-agency co-operation in HSE regulation, can be said to be collaborative. For instance in Norway, consultation is often encouraged and is carried out between regulators, employers, and employees, in order to chart ways for ensuring safety in petroleum explorations.<sup>64</sup> Generally, Norway places overall responsibility on employers to create safe working conditions, while equally creating room for employee involvement in HSE development, subject to regulatory supervision.<sup>65</sup>

In the light of the above definition, the Nigerian HSE regime cannot be said to be functionally collaborative, although some consultations occur between industry and regulators. Nigeria's almost undue reliance on administrative regulations, and top down prescriptions, have not made effective collaboration possible. Nigeria also lacks a framework for effective inter-agency co-operation, a factor that explains frictions between DPR and NOSDR.<sup>66</sup> And while some oil companies have HSE departments, there is no vital link between the regulatory agencies, employees, and their employers. In many ways, the Nigerian approach to HSE regulation is often reactionary and responsive, and rather than being geared towards accident prevention.<sup>67</sup>

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<sup>63</sup> Ishmael Setsoafia Amegah, 'Regulation of the Petroleum Industry: A Tale from the North Sea-Norway' (Ghana Oil Watch 10 February 2012) < <http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/282-regulation-of-the-petroleum-industry-a-tale-from-the-north-sea-norway-by-ishmael-setsoafia-amegah>> accessed 16 May 2013

<sup>64</sup> See Magne Ognedal, 'The Goal-Setting Approach to Regulatory Supervision: The Experience of a Safety and Working Environment Regulator' (PowerPoint presentation and transcript from the Workshop on Prescriptive vs. Performance-based Regulatory Regimes for the Canadian Offshore Petroleum Industry at the Oil and Gas Administration Advisory Council Conference (OGAAC), St. John's, Newfoundland, 16-17 October 2000

<sup>65</sup> 'HSE and Culture'

<<http://www.ptil.no/getfile.php/z/%20Konvertert/Products%20and%20services/Publications/Dokumenter/hescultureny.pdf>

<sup>66</sup> The former agency regulates oil spill prevention, while the latter regulates oil spill responses by oil companies.

<sup>67</sup> See Tochukwu Anwuyili, 'Nigeria and Efforts at Environmental Management' *Fair Observer* (2014) < <http://www.fairobserver.com/region/africa/nigeria-and-efforts-at-environmental-management-63923/>> accessed 4 August 2014

A holistic HSE regulatory approach is one which functionally combines health, safety and environmental issues as an integral whole and utilizes risk prevention, identification, and response mechanisms. In that regard, Norway integrates Petroleum Activities Act (PAA)<sup>68</sup> and its Working Environment Act (WEA) of 1977, in to integrate HSE as a single and holistic issue. Unlike the Norwegian approach however, Nigeria's approach to HSE regulation is not holistic, rather Nigeria appears only to focus on the environmental regulation, while placing less emphasis on employee health and safety.<sup>69</sup> And Nigeria has not made any significant effort to integrate the ministry of health, and the ministry of labour, into the petroleum industry as Norway has done. This factor perhaps explains why with little protection, employees in the oil industry can be fired at will, unionisation is restricted, and trade union members are routinely victimised by oil companies, again in contrast to Norway, where trade unions in the petroleum industry are an active voice.<sup>70</sup> Ironically, focus on the environment has not yielded significant success either, given frequent oil spills, accidents, and continuous gas flaring.

So successful is the Norwegian approach that it has become the subject of much study by many OECD, and non-OECD member countries.<sup>71</sup> Beyond HSE regulation, Norway is also efficient in monitoring payments to the government from petroleum firms, and in the monitoring of petroleum operations, and is regarded as one of the least corrupt countries on earth.<sup>72</sup> Farouk Al Kasim and others note that although Norway is Western Europe's largest oil producer, and the world's third largest oil exporter after Saudi Arabia and Russia, Norway

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<sup>68</sup> Section 10-1 of the Petroleum Activities Act (PAA) requires that 'petroleum activities shall take due account of the safety of personnel, the environment and of the financial values which the facilities and the vessels represent, including also operational availability'. The PAA imposes an obligation on the licensee and persons engaged in petroleum activities to comply with the Act, regulations, and individual administrative decisions. In addition the licensee is required to 'SEE TO IT' that persons acting for him, either directly or indirectly, comply with the provisions of the Act.

<sup>69</sup> See F.A. Wakilbe, 'Safety Culture in the Nigerian Oil and Gas industry: To what Extent can Organisations Influence Safety Culture to Reduce Accidents on Oil and Gas Installations?' (2013) CAR Annual Review < <http://www.dundee.ac.uk/cepmlp/gateway/index.php?news=32237>> accessed 4 August 2014

<sup>70</sup> See 'Survey of Violation of Trade Union Rights: Nigeria' (2011) < <http://survey.ituc-csi.org/Nigeria.html?lang=en#tabs-3>> accessed 31 July 2014

<sup>71</sup> Ishmael Setsoafia Amegah, 'Regulation of the Petroleum Industry: A Tale from the North Sea-Norway' (Ghana Oil Watch 10 February 2012) < <http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/282-regulation-of-the-petroleum-industry-a-tale-from-the-north-sea-norway-by-ishmael-setsoafia-amegah>> accessed 16 May 2013

<sup>72</sup> In 2014, Transparency International published its 2013 Global Corruption Perceptions Index, which ranked Norway as the 5/177, Brazil 172/177, and Nigeria as 144/177. See Transparency International, 'Corruption Perceptions Index' (2014) < <http://www.transparency.org/cpi2013/results#myAnchor1>> accessed 21 July 2014

‘...has avoided many of the political, social and economic problems associated with the resource curse, and the so-called ‘Norwegian model’ of petroleum industry management is recognised internationally as an example of how to successfully manage large natural resource endowments.’<sup>73</sup>

Although Norway is not a corrupt country, Norwegian firms are not immune from corruption scandals outside the shores of Norway. For instance, in 2004, Statoil was found guilty of offering bribes to secure contracts in the Iranian oil industry, and was fined \$2.9 million by the Norwegian regulators.<sup>74</sup> That these acts are performed outside the shores of Norway however, is testament to the effectiveness of Norway’s internal control systems in regulating the movement of petroleum revenues within its borders.

At the institutional level, the Norwegian Ministry of Petroleum and Energy (NMPE) is responsible for the management of Norway’s petroleum resources on the NCS. It ensures petroleum activities are carried out in accordance with the guidelines set by the Storting and the Norwegian government, and is also responsible for overseeing Norway’s interests in state-owned companies, Petoro AS, Gassco AS, and Statoil.

The Norwegian Petroleum Directorate (NPD) which is a technical and advisory body for the NMPE, exercises administrative authority in connection with exploration for and production of petroleum deposits on the NCS. NPD makes regulations and decisions in order to give effect to Norway’s petroleum laws.<sup>75</sup> In 1994, a Petroleum Safety Authority (PSA) was

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<sup>73</sup> Farouk Al-Kasim, Tina Søreide, Aled Williams, ‘Grand Corruption in the Regulation of Oil’ (2008) < <http://www.cmi.no/publications/file/3034-grand-corruption-in-the-regulation-of-oil.pdf>> accessed 26 March 2014, 12.

<sup>74</sup> Ibid at 9

<sup>75</sup> NPD, ‘Facts 2013: Framework and Organization’ (2013) < <http://www.npd.no/en/Publications/Facts/Facts-2013/Chapter-2/>> accessed 25 May 2013, Other laws and regulations include : Regulations relating to safe practices (1975 and 1976), Work Environment Act (1977), Principles of internal control (1981), Petroleum Act (1985 and 1996), and Revised Regulations of 2011., Statoil, ‘Applicable Laws and Regulations’ (2012) <<http://www.statoil.com/annualreport2011/en/ouoperations/applicablelawsandregulations/pages/applicablelawsandregulations.aspx>> accessed 19 May 2013

created from the NPD and placed under the Norwegian ministry of environment. It is responsible for the regulation of HSE in the NCS.<sup>76</sup>

### **2.7.3 NORWAY'S APPLICATION OF PETROLEUM REVENUES**

From inception, Norway devised strategies to link its petroleum industry to its capital market, oil rig construction, petrochemicals and other sectors of its economy.<sup>77</sup> The industry was managed in such a way as to withstand volatile petroleum prices and its petroleum wealth, was used to create one of the most sustainable welfare systems in the world.<sup>78</sup> In order to cater for future generations, Norway established a Petroleum Fund in 1990. This fund which was renamed the Norwegian Pension Fund Global in 1996 is currently one of the biggest petroleum revenue related funds in the world and returns from it are estimated to be higher than Norway's annual oil revenues.<sup>79</sup> Norway's management of petroleum revenues has been influenced by its legal framework in addition to the fact that Norway has a history in democracy, rule of law and financial transparency and integrity.

### **2.7.4 THE ROLE OF LAW IN THE DEVELOPMENT OF THE NORWEGIAN PETROLEUM INDUSTRY**

Although the role of effective administration cannot be downplayed, it is pertinent to argue that Norway's legal framework benefited its petroleum industry immensely. Norway however has combined law, policy, credible commitment and co-operation between industry, operators and labour, rather than relying exclusively on its legal framework. For instance, through its first petroleum Act of 1963, which was essentially a Royal proclamation, Norway asserted its

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<sup>76</sup> See Tina Hunter, 'Sustainable Socio-economic Extraction of Australian Offshore Petroleum Resources through Legal Regulation: Is it Possible?' (2011) 29 JERNL

<sup>77</sup> See generally Erling Røed Larsen, 'Escaping the Resource Curse and the Dutch Disease? When and Why Norway Caught Up with and Forged Ahead of Its Neighbors' (2006) Vol.65(3) The American Journal of Economics and Sociology pp.605-640

<sup>78</sup> PSA, 'Role and Area of Responsibility' (2014) <<http://www.ptil.no/role-and-area-of-responsibility/category916.html>> accessed 13 March 2014

<sup>79</sup> Bruce Campbell, 'Managing Oil Wealth: The Alberta/Canada Model vs. the Norwegian Model' <<http://www.policyalternatives.ca/publications/commentary/managing-oil-wealth>> Accessed 16 May 2013 It is estimated that the fund will be worth \$1 trillion, by 2020. See Matthew Price, 'Norway: Is World's Largest Sovereign Wealth Fund too Big?' (BBC, 13 September 2013) <<http://www.bbc.co.uk/news/world-europe-24049876>> accessed 20 November 2013.

sovereignty over all petroleum in the NCS, and created the basis for further regulatory activity.<sup>80</sup> By the issuance of regulations in the form of royal decrees, Norway defined the terms of licences that were to be granted to companies for exploration of petroleum in the NCS.<sup>81</sup> Regulations were made under the Act in the form of royal decrees, the most influential being the 1972 decree which contained more detailed requirements.<sup>82</sup> But these privileges would have not amounted to much without technical capacity, a commitment to integrity, and the 1972 establishment of Statoil.

Other legal developments in Norway's petroleum industry include the passage of the 1985 Petroleum Act which replaced the 1963 Petroleum Act and the 1972 Royal decree made under it.<sup>83</sup> The 1985 Act was equally replaced by the Petroleum Act of 1996 which was enacted to facilitate Norway's compliance with its international obligations under the EEA.<sup>84</sup>

The above analysis sought to analyse how Norway and Brazil combined laws, policies, and industrial capacity to develop their petroleum industries in the areas of local content, regulation, and application of petroleum revenues. The next segment of this chapter will seek to analyse the extent of development of the triune factors in Nigeria, and the role of law and policy in all of these.

## **2.8 THE NIGERIAN APPROACH TO PETROLEUM INDUSTRY MANAGEMENT AND REGULATION**

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<sup>80</sup> Royal Decree of 31 May 1963 No. 1 Relating to the Sovereignty of Norway over the Sea-Bed and Subsoil outside the Norwegian Coast, available at <[http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR\\_1963\\_Decree.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_1963_Decree.pdf)> accessed 26 March 2014

<sup>81</sup> Tore Tonne, 'Energy Policy: A Norwegian Perspective' (1983) Vol 5(4) *Northwestern Journal of International Law & Business*. There was also the Submarine Resources Act of June 21, 1963, No. 12, Relating to Exploration for and Exploitation of Submarine Natural Resource

<sup>82</sup> Royal Decree of Dec. 8, 1972, Relating to Exploration for and Exploitation of Petroleum in the Seabed and Substrata of the Norwegian Continental Shelf. See also Tore Tonne *Ibid*, 732

<sup>83</sup> Taverne (n 19) 223 There was also a Royal Decree of 1982 on the exploration and production of Hydrocarbons. The regulations include the Petroleum Regulations of 27 June 1997, Resource Management Regulations of 18 June 2001, and Regulations on the Use of Facilities by others, December 2005, Regulations for the Measurement of Petroleum for Fiscal Purposes and for Local Content, and Calculation of CO<sub>2</sub> Tax, November 2001.

<sup>84</sup> Especially Directive 94/22/EC

In 1956, after decades of exploratory endeavours, Shell-BP discovered oil in commercial quantities at Oloibiri, in the present day Bayelsa State of Nigeria. In 1958, Nigeria began exporting 5100 barrels of oil per day (bpd), its first shipment arriving at Rotherham.<sup>85</sup> Thus was born the NPI, which for the past four decades has been the mainstay of the Nigerian economy.

In contrast to Brazil and Norway however, Nigeria lacked any strategic legal framework for the NPI due mainly to the absence of a discernible petroleum industry policy bordering on resource nationalism, in the formative years of the industry. This perhaps explains why most of the concessions were virtually in the hands of IOCs in the early days of the industry, and such concessions were for very long terms, and very extensive.<sup>86</sup> It is arguable that most of the challenges of the NPI are traceable to this fundamental foundational flaw of the lack of a petroleum industry policy.<sup>87</sup> For had Nigeria developed a well thought out policy for the management and regulation of the NPI, and been committed to it, it would have enacted strategic laws that would have provided the framework for an effectively managed industry. This factor arguably, would have also influenced behaviour positively, for instance the ‘oil boom’ revenues of the early 1970s and 1990s may have been put to more sustainable uses.<sup>88</sup>

Due to the fact that Nigeria was under colonial rule when it discovered petroleum, it could not adopt a nationalistic approach to petroleum industry management and regulation. Rather, its initial approach favoured Britain, even to the detriment of Nigeria’s interests. For instance, in 1937, the British government granted Shell a concession which covered the whole land mass of Nigeria.<sup>89</sup> This was done pursuant to section 6(1)a of the Minerals Oils Act of

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<sup>85</sup> Phia Steyn, ‘Oil Exploration in Colonial Nigeria’ (2009) 37, *Journal of Imperial and Commonwealth History* 255, 266

<sup>86</sup> Etikenrentse G, *Nigerian Petroleum Law* (2<sup>nd</sup> edn Drewdrew 2004) 7, 16-17.

<sup>87</sup> Chika Amanze-Nwachukwu, ‘DPR Boss Identifies Lapses in Sector’ *Thisday* (Abuja, 25 September 2012) <porting the ‘Norwegian Model’> (n 2) 5366–5378

<sup>88</sup> Brian Pinto notes that following Nigeria’s oil boom <<http://www.thisdaylive.com/articles/dpr-director-identifies-lapses-in-oil-sector/125916/>> accessed 20 November 2012 see also Mark C. Thurber and Others, ‘Exam, there was a severe disruption in the agricultural sector, and a rise in inflation. See Brian Pinto ‘Nigeria during and after the Oil Boom: A Policy Comparison with Indonesia’ (1987) 1 *World Bank Economic Review* 432, 426

<sup>89</sup> The company was a consortium of the Dutch Shell and British D’Arcy Oil Exploration Company (later renamed British Petroleum). In 1979 the Federal Government nationalised the shares of British Petroleum in Shell-BP.



1914.<sup>90</sup> In 1949 Shell's concession was extended over the whole of Nigeria's territorial waters.<sup>91</sup>

Perhaps Nigeria's colonial legacy as reflected in the Minerals Act of 1914, explains why Nigeria retained a discretionary approach to the management of the petroleum industry as epitomised in the Mineral Oils Act, and the extant Petroleum Act of 1969.<sup>92</sup> Such discretionary approach means that the managers of the industry can exercise their discretion in granting petroleum contracts to PEPCs, as they deem fit. Thus the Petroleum Act authorises Nigeria's minister for petroleum to exercise broad discretions over the industry.<sup>93</sup> The federal government of Nigeria (FGN) however began to assert some authority over the industry, spurred on by its 1971 membership of the Organisation of Petroleum Exporting Countries (OPEC). Thus Nigeria began to demand better terms from IOCs which had operated under very liberal terms under the colonial era.

Currently, Nigeria participates directly in the upstream sector of its petroleum industry mainly through JVs, PSCs, and other similar collaborations.<sup>94</sup> The Petroleum Act authorises the minister of petroleum to exercise broad discretion over the industry.<sup>95</sup> It has an average of 55 per cent of all joint ventures, and about 85 per cent of PSCs. Nigeria therefore takes advantage of its discretionary regime to grant petroleum contracts to PEPCs as the context of each case requires. The FGN has also been able to utilise its discretion and flexibility to develop local content by awarding sole risk concession to indigenous PEPCs.<sup>96</sup> While the

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<sup>90</sup> Cap. 135 of the 1948 edn of the Laws of Nigeria. This section specifically reserved for British subjects and companies whose principal places of business were in Britain or its dominions and whose chairmen or majority shareholders and directors were British subjects the right to explore and win oil in Nigeria. It was removed when the Mineral Oils (Amendment) Act was enacted in 1958, paving the way for oil companies from other countries other than Britain to apply for oil concessions in Nigeria

<sup>91</sup> Etikenrentse G, *Nigerian Petroleum Law* (2nd edn Drewdrew 2004) , 7-8

<sup>92</sup> This Act was actually the first comprehensive legislation for the Nigerian petroleum industry (NPI) post independence

<sup>93</sup> See Ss 2-4 which detail her discretion over the upstream, refineries, and the distribution of petroleum products. Furthermore she is empowered to make regulations over most aspects of the ministry, s9, and to delegate some of her powers to officers under her department, s12.

<sup>94</sup> Upstream refers to all activities in the petroleum industry that involves exploration, seismic operations, extraction, and production. Downstream on the other hand refers to transportation, refining, distribution and marketing of petroleum products. CAYPC, 'Upstream, Midstream and Downstream' (2014)

<<http://wpccanada.com/yc/industry-info/about-the-industry/upstream-midstream-downstream.html>> accessed 13 March 2014

<sup>95</sup> Ss 2-4

<sup>96</sup> G Etikenrentse, *Nigerian Petroleum Law*, (2<sup>nd</sup> edn Drewdrew, 2002), 95-96

discretionary approach encourages flexibility however, in hands of a corrupt leadership, petroleum contracts can be used as a tool for patronage rather than development of public welfare.

And although the NPI has been the mainstay of the Nigerian economy for decades, Nigeria still struggles with archaic legislation,<sup>97</sup> inadequate regulatory capacity,<sup>98</sup> and conflict of interest issues. These challenges often result in financial corruption and weak regulation. Nigeria also struggles from an incoherent legal framework that is not comprehensive, nor suited to meet the current challenges of the petroleum industry.<sup>99</sup>

While Nigeria's legal regime for the NPI remains largely discretionary and flexible, there has been an increasing trend to migrate towards a detailed and strict top down approach similar in many ways to the Brazilian approach.<sup>100</sup> The latter approach has its challenges of being inflexible and sometimes unduly bureaucratic, but may be preferable in a regime like Nigeria that struggles with corruption issues. This is because, in principle, a more detailed regime will reduce opportunities for patronage, environmental degradation, and a misapplication of petroleum revenues. The extent, to which these challenges have played out in the triune factors in the NPI, will be considered next.

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<sup>97</sup> For instance most of Nigeria's extant petroleum laws are over forty years. The Petroleum Profits Tax Act was enacted in 1958, the Oil Pipelines Act, in 1956, and the Petroleum Act was enacted in 1969. Others include the Associated Gas Reinjection Act of 1984, and the NNPC Act of 1977. Most of these laws are unsuited to address developments that arise in the industry, hence the introduction of the Petroleum Industry Bill in 2012 as a comprehensive reform instrument.

<sup>98</sup> Its regulators face issues with funding, and conflicts of interests which arise by virtue of Nigeria's direct participation in the petroleum industry. See 'DPR Laments Insufficient Funds for Oil Sector Monitoring' (Sweetcrude November 7 2012) <<http://sweetcrudereports.com/2012/11/07/dpr-laments-insufficient-funds-to-drive-oil-sector/>> accessed 12 December 2012; Obinna Okafor, *The State of Environmental Monitoring in Nigeria and ways to Improve it: Case Study of Niger Delta* (Msc Thesis Wageningen University 2011) <[http://www.academia.edu/909562/The\\_State\\_of\\_Environmental\\_Monitoring\\_in\\_Nigeria\\_and\\_Ways\\_to\\_Improve\\_It\\_Case\\_Study\\_of\\_Niger\\_Delta](http://www.academia.edu/909562/The_State_of_Environmental_Monitoring_in_Nigeria_and_Ways_to_Improve_It_Case_Study_of_Niger_Delta)> accessed 11 November 2012

<sup>99</sup> For a comprehensive treatment of the challenges in the NPI, see Gilles A, 'Oil Sector Reform in Africa: The Case of Nigeria' (PhD thesis, Cambridge University, 2010)

<sup>100</sup> This is aptly demonstrated in NOGICDA which states the percentage of Local Content to be attained by PCs in the NPI and sets a definite 3 year programme for it to be attained, without leaving the minister the power to grant exemptions, as may have been done in the past. For instance a 2008 amendment to the Associated Gas Reinjection Act (AGRA) 1979, Ch A25, Laws of the Federation of Nigeria (LFN) 2004, increased the fine for the flaring of associated gas from \$0.07mmscf to \$3.50 per mmscf.

### 2.8.1 THE CHALLENGE OF WEAK LOCAL CONTENT IN NIGERIA

Many PPCs establish local content frameworks in order to maximise national economic value from their petroleum industries, and may thus require petroleum firms to patronise local man power, products, industries, and services, in the hope that this would create jobs and strengthen their economies. A significant local content has potential for the development of indigenous technology, fund retention, and may create some linkages to other sectors of the economy like shipping, fabrication, and manufacturing.<sup>101</sup> It can also ensure the dominance of the petroleum industry by a country's citizens, a factor which beyond economics can also have national security implications in time of war and international sanctions.

Independent and reliable data is essential to determine the extent of local content development in the petroleum industry. Nigeria has however struggled with producing reliable local content information because its statistics on issues like population, employment, and local content development, or sometimes viewed with suspicion for lacking in integrity, riddled with corruption, or being mere political propaganda.<sup>102</sup> Another difficulty Nigeria has had in regards to measuring its local content is with IOCs, some of which have been known to flagrantly violate Nigeria's local content requirements with the complicity of some of their Nigerian partners.<sup>103</sup>

Compared to Norway and Brazil however, local content in Nigeria is considerably low. And while there is no verifiable statistics to measure local content in Nigeria, many experts estimate

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<sup>101</sup> See Ugwushi Bellema Ihua ; Olatunde Abiodun Olabowale ; Kamdi Nnanna Eloji ; Chris Ajay, 'Entrepreneurial implications of Nigeria's oil industry local content policy; Perceptions from the Niger Delta region' (2011) Vol 5, Journal of Enterprising Communities: People and Places in the Global Economy, 223-241  
<sup>102</sup> See Chukwuma Soludo, 'Do You Believe Nigeria's Statistics?' *Thisday* (6 August 2012)  
<http://www.thisdaylive.com/articles/do-you-believe-nigeria-8217-s-statistics-/121658/> 31 July 2014

<sup>103</sup> For instance, Hyundai Heavy Industries, a South Korean company, was banned from participating in the NPI for engaging 185 Koreans on Total's Ofon 2 project without obtaining provisions of NOGICDA. See Dayo Oketola, 'Non-Enforcement, 'Nigerian Content's Greatest Threat' *Punch* ( 24 April 2014)  
<<http://www.punchng.com/business/energy/non-enforcement-nigerian-contents-greatest-threat-2/>> 29 April 2014 . See also Onwuka Nzeshi , 'House Probe IOCs over Local Content Act' *Thisday* (28 October 2014) <<http://www.thisdaylive.com/articles/house-probes-iocs-over-violations-of-local-content-act/162794/>> accessed 31 July 2014

local content in the NPI to hover between 12 and 18 per cent.<sup>104</sup> That Nigeria's local content is weak is not difficult to determine however, since its NOC currently controls only about 5 per cent of daily production, despite the fact that it was established before Statoil.<sup>105</sup> And although the number of Nigerians employed in the NPI is relatively high, weak local content is discernible from the fact that most capital and technology intensive petroleum service contracts are executed abroad. These contracts include development of floating production, storage and offloading vessels (FPSOs), rigs, tank farm developments, fabrication and equipment production, etc. In fact it is estimated that these contracts account for over 90 per cent of the estimated \$18 billion invested in the NPI annually.<sup>106</sup> It has been estimated that Nigeria lost about \$380 billion to capital flight due to the absence of a viable local content from 1956-2006.<sup>107</sup>

In contrast to the Norwegian approach, Nigeria's lack of a vibrant local content policy can be discerned from the absence of strategic local content requirements from IOCs other than for them to employ Nigerians.<sup>108</sup> In fact prior to 2010, IOCs were not required to establish local subsidiaries in Nigeria, or to patronise Nigerian firms. In fact it was only in 1991 that some form of local content policy became discernible in Nigeria, and it was only in 2010, that a comprehensive legislation was enacted in that regard.

Lacking a viable local content policy and with inadequate technological capacity, Nigeria was for a long time content with petroleum rents paid by IOCs. Its weak local content and even weaker NOC negatively impacted the NPI. NNPC played the role of a 'non-operator' in all JVs and PSCs and lost opportunities for technology transfer and development of indigenous technology. Rather than exploits opportunities for growth, NNPC was unable to develop into a viable NOC, but relapsed into the role of a 'profit collector'.

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<sup>104</sup> Ejiolor Alike, 'Nwapa: Nigerian Content in Oil Industry Hovers around 18%' Thisday (Abuja 5 June 2012) <<http://www.thisdaylive.com/articles/nwapa-nigerian-content-in-oil-industryhovers-around-18-117302/>> accessed 15 November 2012

<sup>105</sup> Although NNPC was established in 1977, its predecessor, the Nigerian National Oil Corporation, was established in 1971, one year before Statoil was established in Norway.

<sup>106</sup> Jean Balouga, 'Nigerian Local Content: Challenges and Prospects' (2012) International Association of Energy Economics [www.iaee.org/en/publications/newsletterdl.aspx?id=176](http://www.iaee.org/en/publications/newsletterdl.aspx?id=176) accessed 11 November 2012

<sup>107</sup> Chineme Okafor, 'Local Content: Nigeria Loses \$380 Billion to Expatriates' Thisday (Abuja, 21 December 2011) <<http://www.thisdaylive.com/articles/local-content-nigeria-loses-380bn-to-expatriates/105504/>> accessed 20 November 2011

<sup>108</sup> Regs 27 Petroleum Drilling and Production Regulation 1969

It is arguable that administrative discretion which was used to the advantage of Statoil in the NCS, was used to the detriment of NNPC. This is because NNPC did not have any legal obligation to develop into a viable operator and thus relapsed into its weakened state. But even though Statoil did not have any similar obligation, it was able to assert itself in the NCS within ten years of its incorporation. Lacking in any serious vision for NNPC, the government did not encourage the firm to grow in the NPI, but rather looked to IOCs to develop Nigeria's fields. Nwokeji argues that some of the challenges of NNPC stem from the fact that some fields that were successfully discovered by its upstream subsidiary, the Nigerian Petroleum Development Company (NPDC), were sold off to IOCs by successive government administrations.<sup>109</sup> Thus rather than seek to develop its operability, administrators of the industry actually weakened the firm and deprived it of opportunities to gain experience from exposure to industrial challenges. This is in contrast to Petrobras, which is legally mandated to operate all fields in the pre-salt, and to have a 30 per cent stake in all PSCs awarded by the Brazilian government. It is arguable that a legal requirement that NNPC operate a certain percentage of all concessions granted in the NPI would have helped it to develop its capacity, as is the case in Brazil. This is because NNPC, like Statoil and Petrobras, would have been 'forced' to develop strategies to pursue such statutory directives, and by so doing would have developed capacity over time.

### **2.8.2 PETROLEUM INDUSTRY REGULATION IN NIGERIA**

Nigeria's DPR and other allied regulatory agencies have struggled to effectively regulate the NPI. This has resulted in a weak and often volatile HSE. Nigeria also suffers from inefficient monitoring of petroleum resources and revenues. Industry regulation in Nigeria is weakened by inadequate finance, technology, human capacity and an undue closeness to the industry.<sup>110</sup>

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<sup>109</sup> Ugo Nwokeji 'The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions' (2007) James Baker Rice 111 Institute for Public Policy, 39 <[www.bakerinstitute.org/.../publications/energy.../NOC\\_NNPC\\_Ugo.p](http://www.bakerinstitute.org/.../publications/energy.../NOC_NNPC_Ugo.p)>. accessed 16 October 2012  
109US Energy Information Administration, 'Nigeria' (2012) [www.eia.gov/countries/cab.cfm?fips=N,I](http://www.eia.gov/countries/cab.cfm?fips=N,I)> accessed 9 April 2013

<sup>110</sup> Chika Amanze-Nwachukwu, 'Why DPR Cant Efficiently Regulate Oil Industry' Thisday (Abuja, 13 December 2012 ) <<http://www.thisdaylive.com/articles/why-dpr-can-t-efficiently-regulate-oil-sector/104909/>> accessed 16 September 2012

Beyond weak enforcement and monitoring challenges, DPR's position as regulator appears to lack any direct and specific legislative backing, as the regulator is not mentioned in any particular Act of the National Assembly. Rather DPR assumes some legitimacy from section 10 of the NNPC Act which dealt with the erstwhile Petroleum Inspectorate of the NNPC, whose duties were transferred to the DPR. It also derives some legitimacy from the delegation to it of the powers of the minister of petroleum as contained in the Petroleum Act.<sup>111</sup> The case of DPR is in contrast to NPD of Norway and ANP of Brazil which derive their legislative authority from clear statutory provisions and operate with clear legislative delineations of their jurisdiction. That the regulator of so important an industry is not mentioned in any particular statute, may be evidence of the fact that regulation is not given the priority it should have gotten in the NPI.

Environmentally, Nigeria has the second highest gas flaring record in the world and is one of the most severely impacted countries by reason of petroleum operations.<sup>112</sup> It suffers from crude oil spills which occur due to operational failures, pipeline explosions, blow outs, and of recent by reason of a rise in sabotage of petroleum infrastructure. A DPR report noted that between 1976 and 2005 there were about 9000 incidents of oil spills in the Niger Delta Region (NDR) which resulted in the release of approximately 2,662,900 barrels of crude oil into the environment.<sup>113</sup> Between 1989 and 2005 alone, a total of 1, 038, 947 spillages occurred. Out of this volume about 94,600 barrels or nine per cent was recovered. One report has concluded that the average annual crude oil spills in Nigeria is equivalent to that released in the Valdez oil spill disaster.<sup>114</sup> Nigeria also suffers environmental degradation from refining, frequent pipeline leakages, transportation of petroleum products, and failure to properly plug abandoned wells.

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<sup>111</sup> S 9 and 12 Petroleum Act. See also Role of DPR, (2014) <[www.dprnigeria.org.ng/dpr-operations/gas/roles-of-dpr-gas](http://www.dprnigeria.org.ng/dpr-operations/gas/roles-of-dpr-gas)> accessed 7 July 2013

<sup>112</sup> Federal Ministry of Environment, 'Niger Delta resource Damage Assessment and Restoration Project: Phase 1 Scoping Project (2006).

2006)<[https://docs.google.com/viewer?a=v&q=cache:Hj6QhYvS6PYJ:cmsdata.iucn.org/downloads/niger\\_delta\\_natural\\_resource\\_damage\\_assessment\\_and\\_restoration](https://docs.google.com/viewer?a=v&q=cache:Hj6QhYvS6PYJ:cmsdata.iucn.org/downloads/niger_delta_natural_resource_damage_assessment_and_restoration)> accessed 1 April 2012.

<sup>113</sup> Department of Petroleum Resources 2006, referred to by Soala Ariweriokuma, *The Political Economy of Oil and Gas in Africa: the case of Nigeria* ( Taylor and Francis 2009)

<sup>114</sup> See Anene Ejikeme, 'Oil Spills we Don't hear about' *New York Times* (June 4 2010)<[http://www.nytimes.com/2010/06/05/opinion/05iht-edejikeme.html?\\_r=0](http://www.nytimes.com/2010/06/05/opinion/05iht-edejikeme.html?_r=0)> accessed 23 March 2014

Apart from its environmental challenges, Nigeria also struggles to properly monitor the movement of petroleum funds, and corporate financial returns from the oil industry. This aspect appears even more difficult than environmental regulation. This is due in part to the complex nature of the industry which requires adequate capacity on the part of the Federal Inland Revenue Service (FIRS), NNPC, and the DPR, and in part to self dealing politicians and IOC officials.<sup>115</sup> FIRS and DPR have been said to lack adequate capacity to monitor and deter creative accounting practices by PEPCs and the result is that millions of dollars are allegedly lost annually by Nigeria to creative accounting practices.<sup>116</sup>

A 2006-2008 audit report of the petroleum industry published by the Nigerian Extractive Industries Transparency Initiative (NEITI) noted that royalties due to Nigeria were underpaid to the tune of about \$2.33 billion. The reason for this was the subjective interpretation of volume, pricing and American Petroleum Institute (API) grading variable adopted by IOCs.<sup>117</sup> In the same vein, IOCs have been repeatedly accused of shortchanging the Nigerian government annually by resorting to unethical practices, paying huge bribes to regulators and government officials.<sup>118</sup> Financial corruption is possible in the NPI partly because of a lack of transparency and accountability in the management of petroleum revenues. This is because details of transactions between the FGN and IOCs are often shrouded in secrecy, which makes the system prone to fraud and manipulation.<sup>119</sup>

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<sup>115</sup> 'FIRS are responsible for collecting petroleum profits tax from oil companies; DPR is responsible for royalties, gas flare penalties, rents, and other levies; and NNPC is responsible for revenue from crude oil sales. These institutions, however, demonstrate a persistent lack of coordination' Alex Gboyega and others, (n.3 of chapter 1) 28

in Nigeria' (2010) The World Bank Policy Research Working Paper <[http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2011/08/24/000158349\\_20110824134316/Rendered/PDF/WPS5779.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2011/08/24/000158349_20110824134316/Rendered/PDF/WPS5779.pdf)> accessed 18 November 2013

<sup>116</sup> See Alex Gboyega and others (n3, chapter 1) 26-29 'NEITI Urges Agencies to Recover 9.8 Billion Dollars from Companies' (2012 < <http://www.neiti.org.ng/news/2012/09/24/neiti-urges-agencies-recover-98-billion-dollars-companies>> (2012) accessed 19 October 2012

<sup>117</sup> NEITI '2006-2008 Reports– Final' ( 30 January 2012) <<http://www.neiti.org.ng/documents/neiti-2006-2008-reports-final-january-30-2012>> accessed 11 October 2012 , see also Jacob Segun Olatunji and Kolawole Daniel, ' No Proper Record of Crude Oil Production – CBN Gov' The Nigerian Tribune (Abuja, 4 October 2012 <<http://tribune.com.ng/index.php/lead-stories/48646-no-proper-record-of-crude-oil-production-cbn-gov>> accessed 18 October 2012

<sup>118</sup> Joe Brock, 'Exclusive: Nigeria loses Billions in Cut price Oil Deals – Report' Reuters (October 24 2012) < <http://www.reuters.com/article/2012/10/24/us-nigeria-oil-idUSBRE89N0VV20121024>> accessed 9 March 2013. See Otusanya Olatunde Julius, ' The Role of Multinational Companies in Tax Evasion and Tax Avoidance : The Case of Nigeria' (2011) 22(3) Critical Perspectives on Accounting 316-332,

<sup>119</sup> Alexandra Gillies, 'Nigeria's Chance for Reform' Huffpost ( 1 January 2012) <[http://www.huffingtonpost.com/alexandra-gillies/nigerias-chance-for-refor\\_b\\_1204853.html](http://www.huffingtonpost.com/alexandra-gillies/nigerias-chance-for-refor_b_1204853.html)> accessed 12 October 2012

### 2.8.3 THE CHALLENGE OF POOR UTILISATION OF PETROLEUM REVENUES

If Nigeria can be excused for a weak local content and poor industry regulation on the basis of lack of adequate technology and viable policies, few observers will excuse it for its poor management of petroleum revenues. Despite having earned billions of dollars from the industry within a 50 year period,<sup>120</sup> Nigeria remains a predominantly poor country with weak infrastructure, a low standard of living, inadequate power and transport, and a high maternal mortality.<sup>121</sup>

The reason for this poor state of things is largely due to weak accountability and transparency in the management of petroleum revenues in the NPI.<sup>122</sup> Although the word ‘accountability’ is subject to evolving definitions, it basically connotes responsibility for an act or the outcome of a series of acts.<sup>123</sup> The extent to which regulators, managers and operators of the petroleum industry of any country are answerable for their actions is important in preventing and dissuading financial corruption, and abuse of power. Transparency refers to openness and ease of access to understandable information.<sup>124</sup> Transparency and accountability are therefore essential if Nigeria is to succeed in the management of petroleum revenues and to that extent, are determining factors for the effectiveness of the industry. In fact the NEITI Act

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<sup>120</sup> Although there is no specific information on the amount of money Nigeria has earned from petroleum it is undisputably in 100s of billions of dollars. For instance within a 7 month period alone, NNPC earned over \$20 billion in 2013. Chika Amanze-Nwachuku and Chineme Okafor, ‘NNPC Earns \$20.9bn from Crude Oil Sales’ Thisday (27 September 2013) <<http://www.thisdaylive.com/articles/nnpc-earns-20.9bn-from-crude-oil-sales/160061/>> accessed 23 April 2014

<sup>121</sup> See Alex Gboyega and others, (n 3 of chapter 1) 7. See also Musa Jibrin and others, (n 3, chapter 1)

<sup>122</sup> Ivar Kolstad and Arne Wigg, ‘Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?’ (2009) Vol. 37 C.M.I Working Papers 521–532, Virginia Hauer Haufler, ‘Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World’ (2010) Vol 10(3) Virginia Global Environmental Politics, 53-73, Matthew Genasci and Sarah Pray ‘Extracting Accountability: The Implications of the Resource Curse on for CSR: Theory and Practice’ (2008) 11 Yale H.R. & Dev. L.J. 37, Joseph. S. Schumacher, ‘Introducing Transparency into the Oil Industry: The Quest for E.I.T.I’ (2004) Vol. 4(3) Vol 4 Global Jurist Advances, Peter. H. Eigen, ‘Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry (2007) Vol 29(2) Houston Journal of International Law, 327

<sup>123</sup> Richard Mulgan, ‘Accountability’: an Ever-Expanding Concept?’ (2002) Vol 78 Public Administration, 555–573 and Ruth W. Grant and Robert O. Keane, ‘Accountability and Abuses of Power in World Politics’ (2005) Vol 99 American Political Science Review, 29-43

<sup>124</sup> Richard A. Bernardi and Catherine C. LaCross ‘Corporate Transparency: Code of Ethics Disclosures’ (2005) Vol. 75, No. 4 CPA <<http://www.nysscpa.org/cpajournal/2005/405/essentials/p34.htm> > accessed 15 November 2012



2007 was enacted deliberately to address these challenges. The extent to which it has succeeded in its objectives will be analysed in chapter six.

## **2.9 MERITS AND DEMERITS OF THE VARIOUS APPROACHES TO PETROLEUM INDUSTRY MANAGEMENT AND REGULATION, AND THE WAY FORWARD FOR NIGERIA**

The above analysis attempted to establish how law and policy have been combined to develop the triune factors in Norway and Brazil. It established that strategies differ from country to country depending on several factors. USA, Britain, Australia and Canada did not champion local content through NOCs, but relied mainly on regulations and regulatory agencies. This was possible because of indigenous capacity and sound infrastructure in those developed economies. In fact it is arguable that the UK's privatisation of British Petroleum in 1988 is evidence that the UK did not consider an NOC an essential tool for protecting its interests in the British petroleum industry.

Some countries have developed strong NOCs, but are weak on other aspects. For instance although Angola's Sonangol is not in the class of Statoil and Petrobras, it is appreciably efficient in managing Angola's petroleum industry.<sup>125</sup> But the utilisation of petroleum revenues for the development of Angola is another thing however. Al Kasim and others note that while the Angolan regime is generally perceived to be corrupt, its petroleum industry is professionally managed.<sup>126</sup> Similarly although Iran's National Iranian Oil Company (NIOC) and Russia's GAZPROM are relatively competent operators in their own right, Iran and Russia have struggled with equitable application of petroleum revenues, and corruption issues.<sup>127</sup>

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<sup>125</sup> See De Oliveira and Ricardo Soares, 'Business success, Angola-style: Postcolonial Politics and the Rise and Rise of Sonangol' (2007) Vol 45(4) *The Journal of Modern African Studies*, 595-619

<sup>126</sup> Farouk Al-Kasim and others, 'Corruption and Reduced Production: an Additional Resource Curse Factor?' (2013) 54 *Energy Policy*, 144

<sup>127</sup> See Mark C. Thurber and Others, 'Exporting the "Norwegian Model"' (n 2) 5372, Paasha Mahdavi, 'Oil, Monarchy, Revolution and Theocracy: a Study on the National Iranian Oil Company' in David G. Victor (eds), (n 2) <sup>234</sup>

From a holistic perspective, it is arguable that the Angolan petroleum industry cannot be said to be properly managed as long as the masses reek in poverty. For it is only a matter of time before the poverty in the wider society begins to negatively impact the Angolan petroleum industry. This is the case in Nigeria, Iraq and in Libya. Any meaningful petroleum industry reform will have to seek to improve the triune factors in a significant way, and specifically ensure that petroleum revenues are properly distributed. It is therefore in the interest of IOCs and their home countries to look beyond profits, and seek to promote effective distribution of petroleum revenues. This is based on the fact that ultimately, the misappropriation of petroleum revenues will ‘haunt’ not only the government of those states, but their IOC partners. This chapter has shown that the NPI is inefficiently managed due to weak industry regulation, a comparably low local content, and poor utilization of petroleum revenues.

Cognisant of the need for change, Nigeria began a process of holistic industry reform in 1999. Of these efforts, the PIB 2012 is without doubt the most comprehensive and far reaching. First Nigeria developed policies for the various aspects of the industry, and laws in that regard.<sup>128</sup> It is however important that the reform agenda should be tailored to addressing unique and fundamental defects of the industry. It should therefore be geared towards ensuring that Nigeria is on the path to effective industry regulation, a significant local content, and a sustainable application of petroleum revenues. To that extent, Nigeria needs to combine law, policy and good administration, as was the case in Norway and Brazil within a people-focused developmental framework. For without this approach, reforms may only end up benefiting a few people and making them over-night billionaires, while the rest of the population wallow in poverty. The case of the Russian Oligarchs, who rose to immense wealth after the fall of the communist era in the early 1990s is a good example. The activities of these Oligarchs, who were accused of corruption and abuse of Russia’s privatisation

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<sup>128</sup> The National environmental policy of 1989 revised in 1989. Nigeria also enacted the Harmful Waste (Special Criminal Provisions) Act 1988, the Environmental Impact Assessment Act 1992, the National Oil Spill Detection and Response Agency Act 2006 and Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002, The Nigerian Gas Master Plan of 2008 in pursuance to which fiscal incentives to encourage investment in natural gas were set in place, The Nigerian Local Content Policy embodied in the Nigerian Oil and Gas Industry Content Development Act 2010. Policy on the deregulation of downstream petroleum products which is to be effected in phases by the PIB and the policy for sustainable utilization of petroleum revenues embodied in the Nigerian Sovereign Investment Authority Act 2011.

programmes, dashed the expectations of many Russians that the fall of communism would lead to better standards of living.<sup>129</sup>

A post PIB Nigerian social change in order to translate the proposed reforms into reality, for the benefit of petroleum model will resemble in many ways the Norwegian model, and in some other ways that of Brazil which consists of a partially privatised NOC, and separate agencies for policy, and regulation. Nigeria should however seek to make law an instrument for effective policy implementation and operators, the government, and the masses. But if law is to be an instrument for policy implementation and social change, it should be publicly accessible, general in application, and operate prospectively. Such law should have reasonable clarity, be internally consistent and be practicable to comply with. Furthermore there should be a genuine congruence between the ought of the law and the can of law, and that it should be relatively stable with a congruency between it and enforcement.<sup>130</sup> A legal regime that lacks these attributes may end up being an exercise in futility.

The state is responsible for introducing social change and should discharge this responsibility by enacting laws to define 'patterns of behaviour, and by directing officials to act in new ways with respect to sanctions'.<sup>131</sup> It is however worth noting that laws cannot by themselves solve all the problems of the NPI. Laws can be effective if they are recognised as being only one of many tools required to effectively manage and regulate the petroleum industry.<sup>132</sup> They are only tools and tools have to be properly utilized to produce desired results.

To achieve a viable petroleum industry however, Nigeria needs to determine what approach to regulation and petroleum industry management would fit its unique needs. And to that extent, one may therefore legitimately ask, would the discretionary collaborative approach of Norway suit Nigeria, or should Nigeria like Brazil, adopt strict and detailed legal regimes as

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<sup>129</sup> See Andrei Rachinsky, 'The Role of Oligarchs in Russian Capitalism' (2005) 19 *Journal of Economic Perspectives*, 131-150

<sup>130</sup> See Lon Fuller *The Morality of Law* (1969) New Haven : Yale University Press, see also Margaret Jane Radin, 'Reconsidering the Rule of Law' (1989) 69 *B.U. L. Rev* 781

<sup>131</sup> Robert B. Seidman 'Law and Development: The Interface Between Policy and Implementation' (1981)

<sup>132</sup> See Engoboh Emeseh, 'The Limitation of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria.' (2006) 24 *J.E.N.R.L* 574-606

it seeks to develop the NPI? What advantages would the above approaches hold for the NPI and what challenges would Nigeria face in adopting either? Determining which legal approach, between the flexible or the strict is better, will be difficult, since country experience and national context has to be considered. The end however justifies the means in and to that extent, an approach that works for a particular country is good for that country. The Malaysian model cannot be said to be better than that of Norway, nor the Norwegian model better than the Malaysian model. The most important thing is that the various models adopted by these countries seem to have led to effective management of their petroleum industries. Thus functionality is more important in this case than structure and form.

No country should however expect to rely entirely on one approach but rather each country should be ready to change where necessary, and to combine various measures also. This is the case with Mexico, which is about to privatise its NOC Pemex after more than 70 years of exclusively strict nationalism.<sup>133</sup> Similarly Brazil adopted a more liberal approach to its industry when its policy of exclusive resource nationalism became too burdensome for the country to continue.

The peculiar challenges of Nigeria should determine the strategy to be adopted, for instance it was shown that Norway relied on a more bottom up and discretionary approach to industry regulation and local content development because it was suitable at the time. This was possible because it already had an entrenched democratic culture by 1969 and a reasonable level of technology which it developed from its hydro power and shipping sectors. Brazil on the other hand relied on a top down and strict legal approach to industry regulation and local content development, since unlike Norway; it was desperately in need of petroleum in order to drive its local industrialisation agenda.

The discretionary bottom up approach to industry regulation is preferable where administrators are trustworthy, capable, independent, and are committed to acting in the

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<sup>133</sup> See Dolia Estev, 'Most Mexicans Oppose President Piena Neto's Plans to Open up Pemex to Private Investment' Forbes ( 26 June 2013) <<http://www.forbes.com/sites/doliaestev/2013/06/26/most-mexicans-opose-president-pena-nietos-plan-to-open-up-pemex-to-private-investment/>> accessed 27 March 2014

interests of the government and the public in general. The advantage of this approach is that administrators can address specific issues without requiring a legislative amendment every time. This implies they can act with speed, justice and equity and reasonableness, as the case determines. Again it is arguable that although the discretionary approach benefits from administrative flexibility as against the strict approach, it may have actually been the bane of the NPI. For although somewhat similar to Norway's, the NPI suffered from weak capacity and financial corruption as against the integrity and skill with which Norway managed its industry.

But a more prescriptive and strict regime may have actually benefited NNPC more than the flexible approach it assumed, since without any mandatory provisions similar to Brazil's PSC Act, NNPC remains what it has essentially been since the days of its predecessor: a debt collector and an asset manager .

The strict top down approach is preferable where there is the likelihood that administrators may be self-seeking, or are likely to be 'hijacked' by a political machinery for corrupt purposes. This approach can potentially reduce instances for conflict as it stipulates obligations in clear terms. The effect is that it will reduce opportunities for abuse of administrative discretion. Such a framework however, will have to be realistic, and seek to capture a broad range of challenges of the industry, if it is not to be frustrated, or be too rigid. Furthermore it may not work in a country that lacks adequate regulatory capacity to oversee the implementation of a broad range of issues

Again strict exclusive resource nationalism may be difficult to apply where a country's reserves are large and may require foreign input. For instance in the 1950s, Brazil could afford this approach and conferred exclusive monopoly on Petrobras because it had only about 15 million barrels of crude oil.<sup>134</sup> But Norway could not do this, because unlike Brazil, the Ekofisk field discovery ran into billions of barrels of crude oil, and in fact remains

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<sup>134</sup> Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance' in David G. Victor (eds) (n 22) 522

Norway's largest oil field to date.<sup>135</sup> Norway therefore needed foreign input, since it had no NOC in 1969, and did not have any experience in petroleum production.

Brazil's enactment of Law 2004/1953 in retrospect was a stroke of genius, since foreign competition from IOCs like Chevron, Shell and Agip may have stifled the growth of Petrobras during its fledging years. This has been the scenario where Nigeria still largely depends on IOCs, fifty years later. And a 'stifled' Petrobras would have indirectly affected Brazil's local content development since Brazil anchored the growth of the industry on the strength of the firm.

Technological advancement in 1969 also meant that Norway had reduced fears of domination from foreign firms, unlike Brazil which was reeling under economic and political instability in the 1940s and 1950s, and thus required a monopolistic protection of its industry. Another important factor remains that with a low corruption index, Norway could adopt a flexible approach by 'entrusting' its petroleum industry to administrative regulators who were expected to exercise their discretion in the interests of the state. But such 'entrusting' to regulators who struggle with integrity and commitment can result in significant abuses of power.

It may be right to say that law played a more significant role in the growth of Brazil's petroleum industry more than it has done in Nigeria or Norway. For although guided by a general legal framework, Norway relied equally on co-operation between its administrators, labour and industry, and even till date adopts a bottom up approach to industry management. But although law played a lesser role in Norway, its discretionary approach has also been very successful given that Statoil remains the dominant player in the NCS and environmental regulation in the NCS is considered very robust. A careful consideration is therefore required in the case of Nigeria before choosing to emulate a particular model. This requires an

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<sup>135</sup> Norway, 'Norwegian Oil Production through 35 Years'  
<<http://www.energybc.ca/cache/oil2/www.norway.org/ARCHIVE/business/businessnews/oilproduction/index.html>> accessed 14 March 2014

objective evaluation of the merits and demerits of the various approaches, be weighed against Nigeria's capacity, needs and objectives.

The rest of this thesis will be dedicated to analysing the reform agenda of the federal government and the extent to which such will be able to address the current challenges of the NPI. It will therefore consider what pattern of legal reform will positively impact regulation, local content, and the application of petroleum revenues to a mould comparable to Norway and Brazil but adaptable to Nigeria's particular context. This is because any disregard of current challenges and limitations in Nigeria, may make any legislative and institutional attempts at industry reform to be cosmetic.

If effective regulation is an integral part of the effectiveness of any petroleum industry as demonstrated in this chapter, then there is need for Nigeria to pay serious attention to it. The next chapter will analyse Nigeria's regulatory framework for the NPI, noting its strengths and weaknesses, and will make recommendations for reform in the light of comparisons that will be drawn from other jurisdictions.

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### **3 CHAPTER THREE: THE IMPERATIVE OF VIABLE REGULATION AS A SINE QUA NON FOR A FUNCTIONAL NIGERIAN PETROLEUM INDUSTRY**

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#### **3.1 INTRODUCTION: AIMS AND OBJECTIVES**

Chapter two identified robust regulation as being among indicators of functionality and effectiveness in any petroleum industry. It was noted that while Norway and Brazil have invested in developing vibrant regulatory systems, Nigeria has struggled to co-ordinate its various regulatory agencies. This has resulted in weak regulation which plays out in massive oil spills and continuous gas flaring. The consequence is that the Niger Delta Region (NDR), which hosts much of the NPI, is negatively impacted, environmentally. Chapter two also argued for a holistic reform of the NPI which should include a robust regulatory framework in the interest of the public, and companies operating in the industry.

This chapter will analyse Nigeria's approach to the regulation of its petroleum industry, in the light of ongoing reform initiatives. It argues that in the light of limitations of administrative regulation, Nigeria should seek complementary approaches to administrative regulation in the form of private citizen participation. To that degree, it proposes that regulatory litigation and a comprehensive whistle blower regime can complement perceived weaknesses of Nigeria's administrative regulators. Thus the chapter asks the question: in the light of Nigeria's regulatory constraints what role can private citizens play as an alternative/complement to administrative regulation? But first, it is appropriate to investigate what is meant by regulation.

#### **3.2 A SHORT DISCOURSE ON REGULATION**



Scholarly perspectives of regulation are largely dependent on disciplinary involvement. Thus legal scholars view it as legal instruments, economists as a tool to address market failures, sociologists, as control, while public administrators view regulation from an authority perspective.<sup>1</sup> The conventional view however is to see regulation as the ‘administrative policing of a private activity with respect to a rule prescribed in the public interest.’<sup>2</sup>

Regulatory activity entails the issuance of a specific set of commands to be applied by a body devoted to that purpose.<sup>3</sup> It is usually, although not exclusively, aimed at the furtherance of public interest.<sup>4</sup> In a broader sense, it could imply all forms of social control or influence, in which case ‘all mechanisms affecting behaviour whether these be state-derived or from other sources...are deemed regulatory’.<sup>5</sup> There is the legal/moral divide from which regulation may ensue, thus commitment to a deeply religious conviction may regulate behaviour beyond legislative requirements. It could also stem from moral or other social norms. For purposes of analysing the regulatory framework of the NPI, various regulatory approaches used by Norway, Brazil, and Britain, will be considered.

Government regulatory activity may entail passage of enabling or prescriptive laws. Enabling laws are used to authorise courses of action. For instance in the NPI, they are used to clothe upstream PEPCs with exclusive rights to work and win oil and gas resources found within their concession areas.<sup>6</sup> Other laws are enacted to protect the right of international oil companies (IOCs) to transfer monies outside the country without restrictions, and grant tax reliefs and tax holidays where necessary.<sup>7</sup> Prescriptive regulations on the other hand determine operational limits for purposes of environmental protection, health and safety, returns to the government, disclosure of oil resources etc. They are usually backed with sanctions which are imposed on defaulting firms.

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<sup>1</sup>See David Levi-Faur, 'Regulation and Regulatory Governance' in David Levi-Faur (ed), *Handbook on the Politics of Regulation* (Edward Elgar, 2011) 3-6

<sup>2</sup> Barry Mitnick, *The Political Economy of Regulation*, ( New York, Columbia University Press, 1980)

<sup>3</sup> Robert Baldwin and Martin Cave, *Understanding Regulation* (Oxford, 1999) 2

<sup>4</sup> Christensen JG, 'Public Interest Regulation Reconsidered : From Capture to Credible Commitment' (Regulation at the Age of Crisis: ECPR Regulatory Governance Standing Group, 3rd Biennial Conference, 2010) <<http://regulation.upf.edu/dublin-10-papers/1J1.pdf>> accessed 9 March 2013

<sup>5</sup> Robert Baldwin and Martin Cave (n 3) 2

<sup>6</sup> S 2 of the Petroleum Act

<sup>7</sup> They include the Petroleum Act 1969 and the Nigerian Investment Promotion Commission Act 1995 etc.

Although regulations are generally aimed at achieving socially desirable goals, or at preventing the occurrence of wrongful conduct, they are not always implemented efficiently, nor obeyed. This is because a regulator may lack jurisdictional, technological and financial capacity, may be ‘captured’,<sup>8</sup> corrupt, or be outrightly incompetent. Where this happens in a particular industry, the outcome is usually regulatory failure.<sup>9</sup> In contrast to regulatory failure, regulatory quality is the outcome of efficient regulatory regimes which are characterized by clarity, cost effectiveness, transparency and accountability.<sup>10</sup>

Various regulatory strategies exist and are often crucial in determining the impact of a regulatory activity. They include command and control, wealth deployment, harnessing of markets, information and education, direct interference and the conferment of protected rights.<sup>11</sup> A strategy that is successful in one industry may be unsuccessful in another. Multiple regulatory strategies are therefore often employed in the petroleum industry due to its complex nature. They range from conferring incentives, imposition of mild and stiff fines, cancellation of concessions, sanctions, imprisonment, and in extreme cases, the death penalty. For example, while Nigeria imposes the death penalty for sabotage of petroleum infrastructure, it imposes fines for gas flaring, and seeks to regulate gas flaring by granting tax incentives to operators who comply with its gas policies.<sup>12</sup>

The command and control approach appears to be the most prominent and widely used. Its effectiveness is however premised on the existence of adequate regulatory capacity, credible commitment and well thought out detailed rules which capture almost every conceivable

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<sup>8</sup> The phrase ‘regulatory capture’ refers to a situation where a regulator becomes so close to the industry that in effect it begins to regulate for the industry rather than on behalf of the state. See Christensen JG (n 4)

<sup>9</sup> Investment Climate Advisory Services, ‘Regulatory Governance in Developing Countries’ (2010) Working Paper 55645, Regulation for Better Growth <[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/07/13/000334955\\_20100713050729/Rendered/PDF/55645WP0Box0349461B0GovReg01PUBLIC1.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/07/13/000334955_20100713050729/Rendered/PDF/55645WP0Box0349461B0GovReg01PUBLIC1.pdf)> accessed 15 November 2013

<sup>10</sup> OECD, Building Capacity for Regulatory Quality, Stocktaking Paper 11 delivered at the 29th Session of the Public Governance Committee, International Energy Agency, Paris <[http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC\(2004\)11&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC(2004)11&docLanguage=En)> accessed 7 May 2013

<sup>11</sup> Robert Baldwin and Martin Cave (n 3) 34

<sup>12</sup> In 1975 the Petroleum Production and Distribution (Anti-Sabotage) Act Cap P. 12 LFN 2004 and s 3(2) of AGRA 1979, Cap A. 25 LFN 2004, see also Ibrionke T. Odumosu, ‘Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations’ (2007) 44 Alberta L. Rev. 863

risk.<sup>13</sup> Social and economic regulations are also employed in the petroleum industry. Social regulations are aimed at the protection of the citizenry, health and safety and the human environment. Economic regulations include licensing, taxation and the granting of incentives where necessary and are mainly concerned with the contractual orderings between governments and operators.<sup>14</sup>

### 3.3 THE IMPORTANCE OF REGULATION TO THE PETROLEUM INDUSTRY

Petroleum operations are complex and technical, as petroleum firms often operate in very difficult terrains like swamps, offshore, and deep offshore. Accidents may result in the loss of lives.<sup>15</sup> Furthermore oil spills and well blow outs can result in the loss of property in addition to environmental pollution.<sup>16</sup> The efficient regulation of such an industry is thus a sine qua non for high quality management.<sup>17</sup>

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<sup>13</sup>P.H. Lindøe, and others, 'Empowered Agents or Empowered Agencies? Assessing the Risk Regulatory Regimes in the Norwegian and US Offshore Oil and Gas Industry' (2011) Paper delivered at ESREL-conference 8.

<<http://www.uis.no/getfile.php/risk.uis.no/Robust%20Regulation/Lind%C3%B8e,%202011,%20Empowered%20agents%20or%20empowered%20agencies.%20Assessing%20the%20Risk%20regulatory%20regimes%20in%20the%20Norwegian%20and%20US%20offshore%20oil%20and%20gas%20industry.pdf>> accessed 7 July 2012

<sup>14</sup>Yohannes K.G. Mariam, 'Environmental Sustainability and Regulation: To-Down Versus Bottom-Up Regulation' (2001) Munich Personal RePEc Archive <[http://mpra.ub.uni-muenchen.de/413/1/MPRA\\_paper\\_413.pdf](http://mpra.ub.uni-muenchen.de/413/1/MPRA_paper_413.pdf)> accessed 2 May 2013

<sup>15</sup> In 1980, 123 persons perished in the Kieland disaster when an oil rig sunk in the North Sea, Kjell Hausken and Jun Zhuang, 'The impact of Disaster on the Strategic Interaction between Company and Government' (2012) Vol 221 European Journal of Operational Research

<sup>16</sup> They range from upstream (ultra-deep offshore, deep offshore, and onshore), midstream to the downstream, and from production to refining and distribution.

<sup>17</sup> Productivity Commission Research Report, 'Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector' (2009) 316 <[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0011/87923/upstream-petroleum.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0011/87923/upstream-petroleum.pdf)> accessed 30 April 2013, Rauf Gönenç and others, 'The Implementation and the Effects of Regulatory Reform: Past Experience and Current Issues' (2001) No. 32 OECD Economic Studies <<http://www.oecd.org/eco/reform/2731922.pdf>> accessed 30 April 2013, Preben H. Lindøe and others, 'Robust Offshore Risk Regulation – an assessment of US, UK and Norwegian approaches' (2012) <<http://www.uis.no/getfile.php/risk.uis.no/Robust%20Regulation/Lindoe,%202012,%20Robust%20Offshore%20Risk%20Regulation%20E2%80%93%20an%20assessment%20of%20US,%20UK%20and%20Norwegian%20approaches,%20ESREL%20conference.pdf>> accessed 30 April 2013, In July 2012, a fuel tanker explosion killed over 200 people in Port Harcourt, Rivers State Nigeria, see Chukwudi Akasike and Mike Odiogwu, 'tanker Fire Kills 200' Punch (July 13 2012) <<http://www.punchng.com/news/tanker-fire-kills-200/>> Accessed 30 April 2013

The risks associated with the petroleum industry are not restricted to developing countries with weak regulatory capacity. Serious accidents have occurred in developed countries known for relative regulatory efficiency. For instance the BP Gulf of Mexico 2010 incident resulted in the death of 11 oil workers, and about 4.9 million barrels of oil was spilled into the environment.<sup>18</sup> There was also the Piper Alpha oil incident in the British side of the North Sea which resulted in the loss of 167 lives, and the Exxon Valdez spill of 1989 resulted in the loss of approximately 10.8 million gallons of oil into the Gulf of Alaska.<sup>19</sup> Similarly in Nigeria, oil related pollution and accidents have led to much loss of lives, and much environmental degradation. It was pointed in chapter two that between 1976 and 2005, there were about 9000 incidents of oil spills in the NDR in which over 2,662,900 barrels of crude oil were spilled into the environment. Between 1989 and 2005 alone, a total of 1, 038, 947 spillages occurred. Out of this volume about 94,600 barrels were recovered, representing a figure of about nine per cent. One report has concluded that the average annual crude oil spills in Nigeria is equivalent to that released in the Valdez oil spill disaster.<sup>20</sup> In order to minimise these risks and ensure that petroleum is sustainably extracted, many governments establish processes and establish regulatory institutions to ensure compliance with laws and standards in line with international best practices.<sup>21</sup>

For the managers of the NPI, and in many developing countries, the challenge is how to adequately establish independent and capable administrative agencies manned by persons of integrity, who work within a proper legal framework.<sup>22</sup> This challenge is heightened by the fact that many developing countries rely heavily on petroleum resources for the running of their governments; a fact which subjects sustainable extraction and environmental protection to economic considerations.<sup>23</sup> Regulators also have to contend with the issue of a lack of

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<sup>18</sup> See Al-Maied and others, 'A sustainable Approach to Controlling Oil Spills' (2012) Vol 113 Journal of Environmental Management

<sup>19</sup> The Mariner Group, 'Oil Spill History' ( Mariner Group, 2011)<<http://www.marinergroup.com/oil-spill-history.htm>> accessed 8/04/12

<sup>20</sup> See Chapter 2, para 8.6.2. See also Federal Ministry of Environment, 'Niger Delta resource Damage Assessment and Restoration Project: Phase 1 Scoping Project (2006). 2006)<[https://docs.google.com/viewer?a=v&q=cache:Hj6QhYvS6PYJ:cmsdata.iucn.org/downloads/niger\\_delta\\_natural\\_resource\\_damage\\_assessment\\_and\\_restoration](https://docs.google.com/viewer?a=v&q=cache:Hj6QhYvS6PYJ:cmsdata.iucn.org/downloads/niger_delta_natural_resource_damage_assessment_and_restoration)> accessed 1 April 2012.

<sup>21</sup> Patrick Luff, 'Risk Regulation and Regulatory Litigation' (2011) 64 Rutgers L. Rev. 73 .

<sup>22</sup> A framework that is unequivocally clear , in line with best practices, and enacted for the benefit of operators and regulators,

<sup>23</sup> See Tina Hunter, 'Sustainable Socio-economic Extraction of Australian Offshore Petroleum Resources Through Legal Regulation: Is it Possible?' (2011) 29 J. Energy & Nat. Resources L. 209

regulatory co-operation among agencies; an issue that has weakened regulatory quality and imposed undue regulatory burdens on operators and governments.<sup>24</sup>

The attainment of that fine balance between developed legal institutional frameworks that are managed by capable individuals on the one hand, while on the other hand are regulating without being unduly burdensome on operators, is the hallmark of effective petroleum industry regulation. J. Marshall Burgess notes that ‘...an efficient regulatory system decreases investor uncertainty, reduces costs, and improves project cycle times. Thus the province's ability to attract investment capital is enhanced.’<sup>25</sup> The next segment will consider the Norwegian and Nigerian approaches to petroleum industry regulation in order to determine lessons that can be learned for Nigeria.

### **3.4 THE NORWEGIAN APPROACH TO PETROLEUM INDUSTRY REGULATION**

Norway adopts a more flexible approach to petroleum industry regulation.<sup>26</sup> In chapter two, it was shown that Norway relies on various agencies and government institutions to regulate operators in the Norwegian continental shelf (NCS). The Norwegian Petroleum Directorate (NPD) offers technical support to the Norwegian Ministry of Petroleum and Energy (NMPE).<sup>27</sup> The Petroleum Safety Authority (PSA), which is a parastatal of the Ministry of Labour and Social Inclusion), is responsible for health, safety and environment (HSE) issues.<sup>28</sup> The Oil Taxation Office in the Ministry of Finance collects revenues and taxes, while the State Pollution Control Authority of the Ministry of Environment regulates the

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<sup>24</sup> Productivity Commission Research Report, ‘Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector’ (2009) <[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0011/87923/upstream-petroleum.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0011/87923/upstream-petroleum.pdf)> accessed 30 April 2013 34

<sup>25</sup> J. Marshall Burgess, ‘Effective and Efficient Regulation in Nova Scotia’ (2003) 26 Dalhousie L.J. 303

<sup>26</sup> Productivity Commission Research Report, ‘Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector’ (2009) [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0011/87923/upstream-petroleum.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0011/87923/upstream-petroleum.pdf) accessed 27 March 2014> accessed 27 March 2014, 315

<sup>27</sup> The Norwegian Petroleum Directorate, ‘About Us’ < <http://www.npd.no/en/About-us/>> accessed 27 March 2014

<sup>28</sup> Petroleum Safety Authority, ‘About Us’ <<http://www.ptil.no/role-and-area-of-responsibility/category916.html>> accessed 27 March 2014

external environment. There is also the Ministry of Fisheries and Coastal Affairs which maintains contingency measures on pollution of the Norwegian waters.<sup>29</sup>

In contrast to Nigeria however, Norway adopts a bottom up, more integrated, principle-based approach to its petroleum industry regulation. An approach that is flexible and generalised. Thus rather than rely on detailed rules, its regulators establish industry standards and allow operators to comply by adapting flexible internal standards.<sup>30</sup> This approach which can be loosely referred to as ‘self-regulation’ or ‘enforced self-regulation’ is however dependent on the readiness of operators to comply, coupled with adequate regulatory capacity and resources. Without compliance from the regulated however, this approach may be ineffective as it relies on understanding on the part of both the regulator, and the regulated.

Norway emphasizes engagement and collaboration between labour, industry and government on an almost equal basis, and as participants in developing a problem solving approach to operational regulation.<sup>31</sup> Regulatory conflicts are resolved through mediation and recourse to higher administrative authorities, rather than through litigation.<sup>32</sup> It may appear that the bottom up approach has been successful in Norway partly due to the fact that its petroleum industry is closely compacted, with a closely knit relationship between regulators, operators and unions.<sup>33</sup>

Norway uses legal standards widely for offshore risk regulation. It issues standards signifying very explicit norms, but gives a wide linguistic berth in order to give regulators discretion as situations arise. For example, it issues industrial standards that reflect sound professional

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<sup>29</sup> Getting Jane Wesenberg and Sondre Dyrland, ‘Norway’ (2009) in Craig Spurn (ed), *Oil Regulation in 28 Jurisdictions Worldwide* <[http://www.kluge.no/arch/img.aspx?file\\_id=9084808&ext=.pdf](http://www.kluge.no/arch/img.aspx?file_id=9084808&ext=.pdf)> accessed 9th October 2012

<sup>30</sup> See Preben H. Lindoe and others, ‘Robust Offshore Risk Regulation – an assessment of US, UK and Norwegian approaches’ (2012) <<http://www.uis.no/getfile.php/risk.uis.no/Robust%20Regulation/Lindoe,%202012,%20Robust%20Offshore%20Risk%20Regulation%20%E2%80%93%20an%20assessment%20of%20US,%20UK%20and%20Norwegian%20approaches,%20ESREL%20conference.pdf>> accessed 30 April 2013, 3

<sup>31</sup> For instance see the Working Environment Act, as amended in 2012, Act of 17. June 2005 No. 62, and the Framework Regulation of the PSA < <http://www.ptil.no/framework/category408.html>> accessed 2nd February 2013

<sup>32</sup> See Preben H. Lindoe (n 30) 5

<sup>33</sup> Ibid 5

practice or ‘reasonable man standard’ in a specific field of activity. Legal standards, compared to explicit requirements, make the connection between the regulatory framework and the regulated activities more obvious.<sup>34</sup> Norway uses legislation to establish a binding framework for mutual activities, essentially relying on principles based regulatory framework.<sup>35</sup>

Mutuality between regulators and industry implies that Norway assumes that the industry is willing to co-operate with regulators to attain an effective industry. Wide regulatory discretion also implies that Norway trusts and expects regulators to work with credible commitment and to keep up with innovations in the petroleum industry.<sup>36</sup> Thus in effect, administrative regulators rather than legislators, occupy the most prominent position in the regulation of the Norwegian petroleum industry.

## **3.5 THE NIGERIAN APPROACH TO PETROLEUM INDUSTRY REGULATION**

### **3.5.1 COMMAND AND CONTROL**

Structurally, Nigeria adopts a top down command and control regulatory approach to the NPI and for that purpose, authorises compliance monitoring agencies are empowered to issue detailed regulations and enforce sanctions.<sup>37</sup> Nigeria has different rule making agencies for

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<sup>34</sup> Ibid 1

<sup>35</sup> Tina Hunter (n 66 chapter 1), 227

<sup>36</sup> Ibid, 27

<sup>37</sup> Robert Baldwin and Martin Cave (n 3), 107, A Hopkins, ‘Risk-Management and Rule Compliance: Decision-making in Hazardous Industries’ (2011) 49 Safety Science, 49, 110-120, There is currently over sixty Acts of the National Assembly that border on the petroleum industry one way or another. They include the Territorial Waters Act, Oil in Navigable Waters Act, the Offshore Revenues (Registration of Grants) Act Exclusive Economic Zone Act of 1978 The Petroleum Act 1969; and the Constitution of the Federal Republic of Nigeria (1999), the Associated Gas Reinjection Act CAP A25 LFN, 2004, the Deep Offshore and Inland Basin Production Sharing Contracts Act, Ch D3 LFN 2004 Hydrocarbon Oil Refineries Act No. 17 of 1965 Motor Spirits (Returns) Act Nigerian National Petroleum Corporation Act No. 73 of 1977 Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993; Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003 Petroleum Equalisation Fund (Management Board etc.) Act No. 9, of 1975 Petroleum (Special) Trust Fund Act; Petroleum Technology Development Fund Act

various aspects of the NPI. The Department of Petroleum Resources (DPR) remains however the principal regulator by virtue of the fact that it executes most of the minister of petroleum's (the 'minister') powers, to whom it is subservient.<sup>38</sup>

Although Nigeria has detailed laws for almost every aspect of the NPI, most laws and regulations are old and unsuited to adequately tackle current realities and challenges.<sup>39</sup> The difficulty of enacting up to date and comprehensive rules to capture industry needs and keep up with technological innovations, is a major drawback to the top down command and control approach. In this regard, Baldwin and Cave observe that:

...even if it is assumed that a regulator knows the beneficial value of particular levels of cleanliness in a river, and is clear on social objectives, setting the optimal levels of allowable pollution... would require data on the differing abatement costs of all the various polluters on the river bank. The efficient level of pollution will, indeed, be specific to each enterprise yet the regulator has usually to produce a generalised rule.<sup>40</sup>

Another limitation to the command and control approach is its inflexibility and reactivity, and sometimes outright unrealistic nature. This limitation is often evidence of a lack of wide consultation. A ready example is the Associated Gas Re-injection Act's (AGRA) 1979, which required operators stop gas flaring by 1984. This was definitely a top down command, but has been proved to be unrealistic since Nigeria lacked, and still lacks purchasers for its trapped gas, or the infrastructure to make compliance with AGRA commercially viable.<sup>41</sup>

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38 They include DPR which is the main industry regulator. DPR's rules are made in pursuance to the powers of the minister and they include: Hydrocarbon Oil Refineries Regulation 1965 Associated Gas Re-injection (Continued Flaring of Gas) Regulations 1979 Petroleum (Drilling and Production) Regulations 1969 Petroleum Regulations 1967 Oil Terminals (Terminal Dues) Regulations 1965 Petroleum Refining Regulations 1977 Crude Oil (Transportation and Shipment) Regulations 1984 Oil in Navigable Waters Regulations 1968 Mineral Oils (Safety) Regulations 1997 Oil and Gas pipelines Regulations 1995, EGASPIN. NOSDRA (oil spills), has also issued the National Guidelines and Regulations for Oil Spill Recovery; Clean-up, Remediation and Damage Assessment (CPAP 2009/2010) and the National Guidelines and Standards for Oil Spill Compensation for Nigeria (CPAP 2010/2011). NCDMB (Local Content), and NIMASA (marine environment), also have regulations bordering on the operations of oil companies.

39 For instance, the Hydrocarbon Oil Refineries Regulation 1965 and Petroleum (Drilling and Production) Regulations 1969, are over 40 years old

<sup>40</sup> Baldwin R and Cave M, (n 3), 109

<sup>41</sup> See Iboronke T. Odumosu, 'Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations' (2007) 44 Alberta L. Rev, 890



And 30 years since AGRA, Nigeria has been unable to develop the infrastructure or gas market required to stop gas flaring.<sup>42</sup>

The hard stance of the command approach can result in low, if not impossible compliance, and eventually cause a regulator to capitulate by issuing a series of exemptions in order to ensure business continues unhindered.<sup>43</sup> Since the command and control approach aims at addressing every conceivable mischief that may arise and reduce regulatory discretion, its rules are sometimes over detailed and bogus.

Additionally, the command and control approach is often adversarial and lacks the level of industry collaboration sometimes required to make compliance possible. To wriggle out of the tough stance of unbending regulators, operators sometimes resort to litigation. Litigation however frustrates regulatory activity, as injunctions and counter injunctions may be granted against the regulator while the arduous long process of litigation continues.<sup>44</sup>

### **3.5.2 COLLABORATION IN NIGERIA**

Although formally, Nigeria adopts a top down approach, in practice its various regulators adopt different approaches. For example, DPR and the Nigerian Content Development Monitoring board (NCDMB),<sup>45</sup> adopt a more ‘collaborative’ approach. On the other hand,

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<sup>42</sup> Ibiroke T. Odumosu, ‘Transferring Alberta’s Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations’ (2007) 44 *Alberta L. Rev.* 865

<sup>43</sup> See G. S. Braut and P.H. Lindoe (n 53). For instance NOGICDA’s requirement that Nigeria attain an average of 70 per cent Local Content within three years is unrealistic and may lead to an amendment of the law in order for the minister to be able to legally grant waivers to operators to continue business. Until such amendment is made, the minister may have to rely on the doctrine of necessity in order to allow operators to utilize foreign capital, technology and foreign human resources.

<sup>44</sup> For instance in 2012, NOSDRA imposed a \$5 billion fine on Shell for a 2011 oil spill in the Bonga offshore oil field. Clara Nwachukwu, ‘Bonga Oil spill: Presidency Approves \$5bn Fine against Shell’ *Vanguard* (Abuja, 24July2012) <<http://www.vanguardngr.com/2012/07/bonga-oil-spill-presidency-approves-5bn-fine-against-shell/>> accessed 1 September 2012

<sup>45</sup> Which regulates local content

NOSDRA and NIMASA adopt a more top down approach. Neither approach has been effective however.<sup>46</sup>

From the collaborative stance, operators in the NPI are sometimes given some discretion to apply industry standards that reflect ‘good oil field practice.’<sup>47</sup> They are also expected to ‘adopt all practicable precautions including the provision of up-to-date equipment’, in order to prevent pollution, and if pollution does occur they must take, ‘prompt steps to control and, if possible, end it’.<sup>48</sup>

Nigeria’s selective application of the collaborative approach has nevertheless been ineffective, as will be shown presently. For rather than apply the ‘best available technology’ in complying with regulatory directives, operators in the NPI have been known to employ sub standards for economic reasons.<sup>49</sup> DPR and NCDMB are subject to the minister of petroleum (the minister), who doubles as chairman of NNPC (a majority owner of JVs/PSCs). These relationships make some collaboration between DPR/NNPC and invariably IOCs, inevitable. The drawback to this is that rather than collaborate as ‘equals’ for the benefit of both parties, this arrangement appears tilted to the advantage of the industry more than to the Nigerian people. The result is weak and half hearted enforcement of regulatory requirements.

While a less adversarial approach has led to robust regulation in Norway, it has resulted in ‘capture’ in Nigeria, as DPR is seen more as a regulator for industry than regulator of industry.<sup>50</sup> DPR is not surprisingly, often viewed as the ‘weaker’ and ‘captured’ party in its relationship with industry since it lacks independence, capacity, funding and expertise, which

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<sup>46</sup> Inadequate regulation of the NPI results in negative impact on the human environment, loss of funds for the government and financial corruption. These factors ultimately affect the quality of the industry as a whole.

<sup>48</sup> Reg 25 Petroleum Drilling and Production Regulations of 1969

<sup>49</sup> See Richard Steiner , ‘Double Standard: Shell Practices in Nigeria Compared With i-International Standards to Prevent and Control Pipeline Oil Spills and the Deepwater Horizon’ , (2010) <[www.milieudefence.nl/publicaties/rapoten/double-standard](http://www.milieudefence.nl/publicaties/rapoten/double-standard)> accessed 11 May 2012

<sup>50</sup> In its website, DPR lists NNPC as its industry partner, although it is meant to regulate NNPC. Invariably, IOCs are also to be regarded as ‘industry partners’ of DPR. While this approach is not inherently defective, collaboration can lead to capture in the event that there are not sufficient checks on regulatory activity. DPR, ‘Industry Partners’ (2013) <<http://www.dprnigeria.com/>> accessed 1 May 2013

have made impossible any ‘equal’ collaboration with industry.<sup>51</sup> The effectiveness of a collaborative approach to regulation is dependent on the capacity and credibility of the regulators.

The more adversarial, top down approach adopted by NIMASA and NOSDRA,<sup>52</sup> has not been very effective either, due at least in part to the fact that regulators are often restricted by inadequate funding and human capacity, coupled with a lack of regulatory independence. Furthermore, although NOSDRA has shown some zeal at regulation of petroleum spills, its jurisdiction appears to be limited to response to oil spills, and not to prevention of spills.<sup>53</sup> Accordingly, various strategies have not resulted in effective regulation of the NPI. This may indicate that factors beyond ‘strategy’ may be responsible for the current state of things. Thus the factors responsible for weak regulatory quality in the NPI will be considered in the next segment.

## **3.6 FACTORS RESPONSIBLE FOR WEAK REGULATION IN THE NPI**

### **3.6.1 INADEQUATE GOVERNMENT SUPPORT AND POLITICAL WILL**

Government support for effective regulation of such a capital intensive industry is invaluable. Nigeria’s strong central government and relatively weak regulatory institutions means that effective regulation is heavily reliant on a committed political will. For most of Nigeria’s history as a petroleum producing country (PPC) however, regulation appears to have been relegated to the background in favour of the Nigerian National Petroleum Company (NNPC),

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<sup>51</sup> In contrast to the credible commitment theory, capture theorists argue that as regulators and regulatees operate in a confined space, overtime, their closeness reaches an extent where regulators consciously or unconsciously begin to regulate in the interests of regulatees rather than that of the public. One reason why effective regulation of Nigeria’s oil and gas resources has been crippled is due to the extent to which IOCs have entrenched themselves in Nigeria’s politics. In 2010, Ann Pickard of Shell was quoted as saying that Shell had staff in every vital Government office in Nigeria. Rose M, 'Shell had "Access to Everything" in Nigeria: WikiLeaks' (2010) <<http://www.reuters.com/article/2010/12/09/us-nigeria-shell-idUSTRE6B80HL20101209>> accessed 13/06/12

<sup>52</sup> These agencies are not under the ministry of petroleum, but environment,

<sup>53</sup> Ss 5,6 and 7 NOSDRA Act

and PEPCs. This may be underscored by the fact that the latter produce petroleum which funds the Nigerian government machinery.

Inadequate regulation of an NOC and other operators can result in a situation where operators become too big to control and express irritation at regulatory efforts. This in fact was the position in Brazil's petroleum industry before 1997, where Petrobras was given a preferred status when compared to the erstwhile regulator, the National Petroleum Council.<sup>54</sup> Where an NOC, and PEPCs become uncontrollable however, regulatory capture becomes easy and the result can be weak management of the industry. For instance, if the directors of NNPC or IOCs in Nigeria feel they can bypass zealous regulators, and have direct access to the Minister or the political class, they are likely to express disdain and impatience with regulators who insist that things be done properly.

Government support for industry regulation is therefore imperative either through preventive measures or in the enforcement of fines where necessary. In the wake of the 2010 BP Gulf of Mexico oil spill, the United States government required BP to set aside \$20 billion in a compensation fund, even before the issue of fault was determined.<sup>55</sup> And BP complied. The Nigerian government however has been unable to take a strong stance with IOCs for most of its history and has rather feted with them, even where there are clear violations of environmental and safety standards.

IOCs operating in Nigeria have been indicted by Nigerian courts,<sup>56</sup> and national and international organisations for involvement in gross environmental violations. And the legal defence of sabotage which is mainly relied upon by IOCs has not always availed them.<sup>57</sup> For instance, the operations of Shell which is a joint venture partner with NNPC are said to have resulted in substantial environmental damage to Ogoniland. This was the finding of a 2011

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<sup>54</sup> In fact Ernesto Geisel made freedom from interference from Brazil's ministry of Mines, a precondition to becoming head of Petrobras in 1968. See Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance' in David G. Victor (eds) (n 22, chapter 2) 525

<sup>55</sup> Julia Baird, 'Oil's Shame in Africa' Newsweek (26 July 2010) Vol 156 (04), p.27<

<http://mag.newsweek.com/2010/07/18/oil-s-shame-in-africa.html>> accessed 9 August 2012

<sup>56</sup> Frynas JG, 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria' (1999) 43 Journal of African Law 121.

<sup>57</sup> *Shell v. Enoch* (1992) 8 NWLR 335.

UNEP report which also indicated that the environmental remediation of Ogoniland will require over \$1 billion, within a 25 year period.<sup>58</sup> Another report alleged that Shell uses double standards in its application of technology that can be used in reducing oil spills in Nigeria.<sup>59</sup> If IOCs and other PEPCs are known to violate Nigeria's environmental laws, it goes without saying that political commitment, as in the case of the USA and BP, is required, to address some of these challenges. Thus government will have to require firms to operate not only within the confines of the law, but also with a high standard of ethics.

### **3.6.2 INADEQUATE REGULATORY CAPACITY**

Bertelli and Whitford argue that independent regulatory institutions are indication of a country's regard for the rule of law, and integrity, and can benefit a country through increased foreign direct investments.<sup>60</sup> And although independent regulation does not always guarantee better industry performance, the lack of it can impact performance negatively. For instance, the now disbanded Minerals Management Service (MMS) of the USA was reported to have lost its independence by unduly relying on BP. This factor was partly blamed for regulatory lapses that led to the 2010 spill in the Gulf of Mexico.<sup>61</sup>

Nigeria's ruling class perceive NNPC as the 'basket of the nation' and have paid more attention to it than to DPR. Consequently the regulator is effectively denied the backing required to discharge its duties effectively.<sup>62</sup> DPR and other regulators struggle from inadequate funding,<sup>63</sup> and what little is allocated to it, is not always released to it timeously. For example, of the 35.7 billion naira appropriated for DPR in 2012, only 26.02 billion naira

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<sup>58</sup> UNEP, 'Environmental Assessment of Ogoni Land' (2011) <<http://www.unep.org/nigeria/>> accessed 12/04/12

<sup>59</sup> Richard Steiner (n 48) 4

<sup>60</sup> Bertelli AM and Whitford AB, 'Perceiving Credible Commitments: How Independent Regulators Shape Elite Perceptions of Regulatory Quality' (2009) 39 *British Journal of Political Science* 517, 522

<sup>61</sup> 'Shared Failure' in BP Spill Cited in Panel Report: Reforms Needed Since 'Oversight Utterly Failed,' Says Co-chair of Obama Commission', MSNBC.com (1 November 2011), <[http://www.msnbc.msn.com/id/41020738/ns/us\\_news-environment/t/shared-failure-bp-spill-cited-panel-report/](http://www.msnbc.msn.com/id/41020738/ns/us_news-environment/t/shared-failure-bp-spill-cited-panel-report/)> accessed 12 October 2012`

<sup>62</sup> See Alex Gboyega and others (n 3, chapter 1 ), 26.

<sup>63</sup> 'DPR Says it can't Function Because of Inadequate Funding, Under-staffing' Premium Times(6 November 2012) <<http://premiumtimesng.com/business/106050-dpr-says-it-cant-function-because-of-inadequate-funding-under-staffing.html>> accessed 9 December 2012

had been released by the third quarter of the year.<sup>64</sup> Lack of funding weakens DPR's equipment base, required for such a technology intensive industry. As at 2012, it still relied on equipment acquired over forty years ago, and uses paper data collection systems in a computer age.

Weak funds means DPR is unable to effectively train and retrain its staff in order to be professionally competent and to regulate innovatively and effectively. Currently, it lacks adequate metering equipment to monitor production output, and up-to-date equipment to determine the amount of crude oil produced daily in Nigeria.<sup>65</sup> This gives PEPCs a knowledge based edge over DPR which ordinarily should be giving instructions to operators. The current director of DPR, Osten Olorunsula, commenting on this challenge aptly asked '...how can you regulate those who know more than you?'<sup>66</sup>

Funding challenges also means that DPR has to depend on PEPCs and NNPC for logistics and funding of regulatory operations. Such dependence has rendered independent and effective regulation of the NPI, difficult if not impossible.<sup>67</sup> Summing up the challenges of DPR in this regard, Gboyega and others observe that in reality:

'DPR has been treated just like another arm of the NNPC subject to its directives, those of the Ministry, and the presidency. It also is hampered by human and financial capacity constraints. As a result, DPR often fails to perform its functions effectively.'<sup>68</sup>

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<sup>64</sup> 'DPR Laments Insufficient Funds for Oil Sector Monitoring' (Sweetcrude November 7 2012) <<http://sweetcrudereports.com/2012/11/07/dpr-laments-insufficient-funds-to-drive-oil-sector/>> accessed 12 December 2012; Obinna Okafor, *The State of Environmental Monitoring in Nigeria and ways to Improve it: Case Study of Niger Delta* (Msc Thesis Wageningen University 2011) <[http://www.academia.edu/909562/The\\_State\\_of\\_Environmental\\_Monitoring\\_in\\_Nigeria\\_and\\_Ways\\_to\\_Improve\\_It\\_Case\\_Study\\_of\\_Niger\\_Delta](http://www.academia.edu/909562/The_State_of_Environmental_Monitoring_in_Nigeria_and_Ways_to_Improve_It_Case_Study_of_Niger_Delta)> accessed 11 November 2012

<sup>65</sup> Nigeria's petroleum revenues are sourced from the sale of crude oil, signature bonuses, petroleum profits tax, royalties, upstream gas sales, Nigeria liquefied natural gas, flared gas and pipeline fines and domestic crude, the most significant being crude oil sales and PPT, see Alex Gboyega and others (n 3 of chapter 1) 28

<sup>66</sup> Chika Amanze-Nwachukwu, 'Why DPR Can't Efficiently Regulate Oil Sector' Thisday (13 December 2011) <<http://www.thisdaylive.com/articles/why-dpr-can-t-efficiently-regulate-oil-sector/104909/>> accessed 9 SEPTEMBER 2012, See Ugo Nwokeji (n 97, chapter 2), see also Mark C. Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem', in David G. Victor (eds) *Oil and Governance State-owned Enterprises and the World Energy Supply* (Cambridge 2012) 701.

<sup>67</sup> See generally Ugo Nwokeji (n 97) , see also Mark C. Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem', in David G. Victor (eds) *Oil and Governance State-owned Enterprises and the World Energy Supply* (Cambridge 2012) 701.

<sup>68</sup> Alex Gboyega and others, (n 3 of chapter 1), 39. See also Chika Amanze-Nwachukwu, 'Why DPR Cant Efficiently Regulate Oil Industry' Thisday (Abuja, 13 December 2012 )

### 3.6.3 INADEQUATE MONITORING OF CRUDE PRODUCTION AND PETROLEUM REVENUES RECEIPTS

Flowing from the above noted challenges is weak accounting for the amount of petroleum produced in the NPI which has been said to have given rise to oil theft, fraud and loss of billions of dollars.<sup>69</sup> DPR and the National Petroleum Investment Management Services (NAPIMS), and the Federal Inland Revenue Service, often struggle to determine with certainty, the amount of crude oil Nigeria produces daily and has to rely almost exclusively on data from IOCs.<sup>70</sup> This is due to the fact that the financial system in the petroleum industry is often complex and requires adequate human resources to monitor. This weakness has resulted in alleged sharp practices on the part of IOCs and other operators, and has also given room for internal corruption in NNPC. The result is that Nigerians do not know with certainty how much petroleum it produces daily.<sup>71</sup>

### 3.6.4 REGULATORY OVERLAPS

The NPI struggles with inadequate regulatory co-ordination, co-operation, and frequent regulatory overlap. DPR which is responsible for regulation of oil spills (at least prevention), often conflicts with NOSDRA which regulates clean up of spills after the fact.<sup>72</sup> Similarly, NNPC's Nigerian Content Division attempts to regulate local content compliance (in part),

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<<http://www.thisdaylive.com/articles/why-dpr-can-t-efficiently-regulate-oil-sector/104909/>> accessed 16 September 2012

<sup>69</sup> NEITI, 'NEITI Urges Agencies to Recover 9.8 Billion Dollars from Companies' (2012 <<http://www.neiti.org.ng/news/2012/09/24/neiti-urges-agencies-recover-98-billion-dollars-companies>> accessed 19 October 2012

<sup>70</sup> Dele Sobowale, 'NNPC Versus Auditors and NEITI' – 'Vanguard (13 February 2012) <<http://www.vanguardngr.com/2012/02/nnpc-versus-auditors-and-neiti-1/>> accessed 1 May 2013

<sup>71</sup> Jacob Segun Olatunji and Kolawole Danied, 'No Proper Record of Crude Oil Production – CBN Gov' The Nigerian Tribune (Abuja 4 October 2012 <<http://tribune.com.ng/index.php/lead-stories/48646-no-proper-record-of-crude-oil-production-cbn-gov>> accessed 18 October 2012

<sup>72</sup> S 5 NOSDRA Act

although the burden for that rests squarely with the NCDMB.<sup>73</sup> The consequence of such overlaps is regulatory friction which frustrates effective regulation, and makes compliance unduly burdensome.<sup>74</sup> Operators are sometimes faced with multiple taxes, fines and sanctions which reduces regulator quality in Nigeria.<sup>75</sup> For instance in 2012 NOSDRA imposed a \$5 billion fine on SNEPCO for a 2011 offshore oil spill at Bonga, even and NIMASA additionally imposed a \$6 million fine for the same spill.<sup>76</sup>

Cost cutting measures, negligence, and recklessness on the part of IOCs, has often resulted in oil spills and accidents, which have harmed the NDR environment. And financial sanctions imposed on them for environmental failures are often tampered with caution, because the FGn is directly involved in petroleum operations. It is proposed that Nigeria should seek to impose deterrent fines on firms with consistently poor safety records, and where necessary, terminate their concessions/contracts. Currently, the impact of administrative sanctions imposed on IOCs for oil spills, are significantly whittled down because the FGn pays about 55 per cent of all such sanctions (even where the spill was due to the fault or negligence of the IOC). In that regard, it is proposed that Nigeria should by law, make IOCs solely responsible for damages caused to the environment by virtue of their negligence and recklessness. In such cases, the FGn should not be made to shoulder the burden with IOCs. This will position the FGn better, to regulate with less conflict of interest issues, while IOCs, will be equally motivated to invest further in environmental protection.

In order to improve regulatory quality, the NPI requires a legal framework that will ensure clarity, and is tailored to specific areas of the industry. A specific law will reduce regulatory overlaps and undue regulatory burden on operators. In April 2012, a presidential committee recommended the winding up of NOSDRA, on the ground that its functions are also

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<sup>73</sup> Levi Ajuonoma, 'NNPC Still in Firm Grip of Local Content Project' <<http://www.nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/147/NNPC-Still-in-Firm-Grip-of-Local-Content-Project--Ajuonuma.aspx>> accessed 17 October 2012

<sup>74</sup> See Robert B. Ahdieh, 'Dialectical Regulation' (2006) 38 CONN. L. Rev. 863, 864

<sup>75</sup> Marginal field operators recently complained of being subject to multiple taxes from the federal, states and local governments much which they claim to hinder their operations . See Kunle Kalejaye, 'Marginal Field Operators Decry Multiple Taxes' Vanguard (March 26 2013) <<http://www.vanguardngr.com/2013/03/marginal-field-operators-decry-multiple-taxes/>> accessed 25 April 2013

<sup>76</sup> Terhemba Daka, 'Reps Wade into \$11.5b Charges on SNEPCO over Spill' Guardian ( April 2 2013) < Reps wade into \$11.5b charges on SNEPCO over spill> accessed 26 April 2013



performed by DPR and has resulted in undue economic burden for the government.<sup>77</sup> While there is some merit in streamlining regulation of oil spills to one principal agency, it is rather proposed that the arm of DPR currently responsible for oil spill regulation, be taken over by NOSDRA. The reason is because NOSDRA appears to have shown greater commitment in sanctioning operators for oil spills. Secondly it is more separated from the industry and NNPC, being that it is supervised not by the minister of petroleum, but by the minister of environment.<sup>78</sup>

With increasing global competition for investment capital, a country's legal certainty and respect for the rule of law, have come to feature prominently in informing choices of investors.<sup>79</sup> This fact is actually responsible for the stalling of billions of investment funds into the NPI, pending the passage of the PIB.<sup>80</sup> It is therefore proposed that Nigeria should seek the creation of a viable and certain legal and regulatory framework, one in which sanctions and fines are imposed across board, and where the opportunities for corruption and undue bureaucracy are significantly reduced.

In keeping with modern trends, there may be a need to explore a one stop shop for all operators seeking to process permits, make payments, and seeking approvals for local content, environmental impact assessment, environmental permits, technical permits, environmental impact assessment permits, and budgetary approvals.<sup>81</sup> A recent government

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<sup>77</sup> 'Oronsaye Committee Recommends Abolition of 32 FG Agencies' Business Day (17 April 2012) <<http://www.businessdayonline.com/NG/index.php/news/76-hot-topic/36052-oronsaye-committee-recommends-abolition-of-32-fg-agencies-merger-of-53-others>> accessed 19 April 2013

<sup>78</sup> FOSTER, 'Fixing the Legal and Operational Frameworks for Niger Delta Oil Spills' (November 2011) Policy Brief, <[http://www.opml.co.uk/sites/opml/files/OPM\\_Foster%20Fixing%20the%20legal%20and%20operational%20frameworks%20for%20Niger%20Delta%20oil%20spills.pdf](http://www.opml.co.uk/sites/opml/files/OPM_Foster%20Fixing%20the%20legal%20and%20operational%20frameworks%20for%20Niger%20Delta%20oil%20spills.pdf)> policy brief accessed 12 November 2012

<sup>79</sup> See Esteban Garcia-Canal and Mauro F. Guillen, 'Risk and the Strategy of Foreign Location Choice in Regulated Industries' Strategic Management Journal (2008) 29 Strategic Management Journal, 1097–1115

<sup>80</sup> See Thomas Hansen, 'Nigeria: Growing away from Oil?' *Forbes* (18 November 2013) <<http://www.forbes.com/sites/riskmap/2013/11/18/nigeria-growing-away-from-oil/>> accessed 31 July 2014

<sup>81</sup> One stop shops have been used to reduce regulatory burdens, costs, time, and to promote administrative simplification. And while they are not without their unique challenges, they have been applied by Nigeria's Investment Promotion Commission (NIPC), and the governments Finland, Hungary, Greece, Italy, and the Netherlands, and in the EU. For instance the EU Merger Control Regulation of 2004 provides for a one stop shop mechanism to address merger deals which satisfy certain conditions. In the same vein, in 2013, the Council of the European Union declared express support for the one stop shop mechanism in its draft General Data Protection Regulation. See P Balboni, E Pelino and L Scudiero, 'Rethinking the One-stop-shop Mechanism: Legal Certainty and Legitimate Expectation'(2014) 30 Computer Law and Security Review) 392, See OECD, '

sponsored report called for the amendment of extant laws, the scrapping of some of the agencies, and for more collaboration among operators.<sup>82</sup> There is also need for some consolidation of fiscal regimes in order to prevent multiple taxes, while efforts should be geared towards promoting inter agency co-operation.

Certainly, some level of co-operation and regulatory overlap is inevitable in the NPI, but there is a need to delineate jurisdictional boundaries of agencies in order to prevent undue regulatory burden. An undue regulatory burden reduces Nigeria's attractiveness as an investment destination, and can slow the pace of production in Nigeria.<sup>83</sup> With companies having to comply with directives of various regulatory agencies, there is the tendency that the same may lead to undue regulatory burden and induce them to offer bribes in order for business to proceed smoothly. Stern and Holder note that 'regulatory effectiveness can be attainable where there is clarity of roles and objectives, autonomy, accountability and its processes should be participatory, transparent and predictable.'<sup>84</sup>

Nigeria also struggles with undue bureaucracy, delays, corruption and inefficiency. For example, in 2010, Halliburton, an international oil servicing firm, agreed to pay a fine of \$35 million to the Nigerian government. The fine was in settlement of a criminal charge brought against it for offering bribes to Nigerian officials in order to gain lucrative oil contracts.<sup>85</sup> Nigeria's contracting process (from the allocation of oil blocks to granting of approvals for various outsourced jobs) in the NPI takes between 18 and 36 months, in contrast to Saudi

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<<http://www.oecd.org/mena/governance/37026688.pdf>> accessed 13 November 2012, See also NIPC, 'One Stop Investment Centre' <<http://www.nipc.gov.ng/onestop.html>> accessed 29 July 2014

<sup>82</sup> Recently DPR canvassed the signing of a memorandum of understanding between regulators as the means to resolve conflicts among them Stanley Opara, 'DPR Canvasses Collaboration Among Oil Industry Regulators' Punch(3 January 2013) <<http://www.punchng.com/business/energy/dpr-canvasses-collaboration-among-oil-industry-regulators/>> accessed 12 April 2013

<sup>83</sup> See Eugene Bardach and Robert A. Kagan, *Going by the Book : the Problem of Regulatory Unreasonableness* (Transaction Publishers 2002) 6, see also Timothy A. Slating and Jay P. Kesan, 'Making Regulatory Innovation Keep Pace with Technological Innovation' (2011) *Wisconsin Law Review* 1109 at 1115

<sup>84</sup> Jon Stern and Stuart Holder, 'Regulatory Governance: Criteria for Assessing the Performance of Regulatory Systems: an Application to Infrastructure Industries in the Developing Countries of Asia' (1999) Vol 8(1) *Utilities Policy* 42

<sup>85</sup> Halliburton Settles Nigeria's Bribery Claims for \$35 Million' CNN( 22 December 2010)

<<http://edition.cnn.com/2010/WORLD/africa/12/21/nigeria.halliburton/>>accessed 27 March 2014

Arabia, Kazakhstan and Argentina which take 3-6 months.<sup>86</sup> All of these give room for self-dealing and back hand deals which harm the economy and the industry.

The above analysis has noted that regulation is weak in the NPI due to weak legislations, lack of regulatory capacity and a weak government will. But what is the way out? How Nigeria can overhaul years of regulatory ineffectiveness in order to attain robust and effective regulation like Norway's, will be the focus of the next segment of the chapter. ▭

## **3.7 TOWARDS ROBUST REGULATION IN NIGERIA AND THE DESIRABILITY OF REFORMS**

### **3.7.1 THE IMPERATIVE OF REGULATORY AUTONOMY**

Regulatory autonomy is imperative for impartial regulation. In principle, a regulator should be able to impose stiff fines, shut down platforms and production processes, in order to ensure laws and guidelines are complied with, without fearing economic or other consequences. And even if such regulator is affiliated to a particular ministry, it should enjoy some autonomy, subject to oversight supervision.

Furthermore, promotion, remuneration and tenure of executives of regulatory agencies should not be subject to the political process to an extent that will cripple regulatory initiative. The recruitment process for regulators is therefore crucial to securing viable and independent regulators. For instance, as head of Nigeria's financial industry, the Governor of the Central Bank of Nigeria (CBN) enjoys a secured tenure and independence, subject to good behaviour.<sup>87</sup> He can only be removed from office by the president, if his removal is supported by a two thirds majority of the Nigerian senate.<sup>88</sup>

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<sup>86</sup> Femi Asu, 'Nigeria Behind in Contract Approvals' Business Day (4 March 2013) <<http://www.businessdayonline.com/NG/index.php/news/76-hot-topic/52490-nigeria-behind-in-contract-approvals-among-oil-peers>> accessed 3 May 2013; Mark C. Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem', in David G. Victor (eds) (n 22, chapter 2) 701, 722

<sup>87</sup> S. 11(2) CBN Act

<sup>88</sup> S 11(2) of the CBN Act

When in December 2013, the president of Nigeria asked the governor of the CBN, Lamido Sanusi, to turn in his resignation over conflict of interest's issues, the governor refused on the ground that he could only be removed by the Senate.<sup>89</sup> The president however sought to bypass the statutory protection of the governor by suspending him pending investigations.<sup>90</sup> Lamido Sanusi has however challenged the legality of his suspension in court although his replacement has been confirmed by the Nigerian senate.<sup>91</sup>

Similarly, Nigeria's judges enjoy a secured tenure except in cases of inability to discharge their duty. They are only removable by the president in certain instances, on the recommendation of the National Judicial Council.<sup>92</sup> It is proposed that such protection be applied to executives in DPR, NOSDRA, NCDMB and other regulators in the NPI, given the importance of regulation to human lives, the economy and the environment.

There is also need for adequate funding in order to attain professionalization and adequate equipment required to keep up with industry innovations. DPR's funds should be released on time and not be delayed by much government bureaucracy. Furthermore, regulators need a legal framework that confers adequate legislative authority in order to authorize regulators to impose fines, enforce laws, and if possible, institute legal action. DPR's jurisdiction should be clearly written in order for it to operate with legitimacy in a manner similar to those of Brazil's ANP, and Norway's NPD, which enjoy legislative backing.<sup>93</sup>

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<sup>89</sup> 'Nigeria Bank Chief Sanusi told to Resign by Goodluck Jonathan' *BBC* (9 January 2014) > accessed 7 April 2014

<sup>90</sup> 'Trouble at Nigeria's Central Bank' *The Economist* (21 February 2014)

<<http://www.economist.com/blogs/baobab/2014/02/trouble-nigerias-central-bank>> accessed 28 March 2014

<sup>91</sup> Adelanwa Bamigboye, 'Court Fixes April 8 to Hear Sanusi's Suit on Suspension' *Daily Trust* (20 March 2014) <<http://dailytrust.info/index.php/news/19528-court-fixes-april-8-to-hear-sanusi-s-suit-on-suspension>> accessed 7 March 2014

<sup>92</sup> S. 292 of the Constitution of the Federal Republic of Nigeria 1999

<sup>93</sup> ANP was established by art 7 of Brazil's Petroleum Act, Law 9748/1997, while the NPD of Norway derives its legitimacy from section 10 of Norway's Petroleum Activities Act, 1996.

It was noted earlier that DPR is directly subordinate to the minister, who also chairs NNPC. This invariably makes DPR an indirect partner of the IOCs.<sup>94</sup> But to guarantee regulatory independence, there is clearly need to ensure that the minister does not have overarching authority over regulators, since this can lead to conflict of interests.

Direct government involvement in petroleum operations is largely responsible for the absence of regulatory autonomy in Nigeria. By operating through the JV/PSC system, the federal government of Nigeria (FGN) has a direct interest in the profits of IOCs, besides taxes. It owns an average of 55 per cent in all JVs executed with IOCs. Furthermore, the FGN has an 85 per cent stake in all PSCs, a factor that perhaps explains why the minister and the departments under her are not just concerned about operational regulation, but about economic realities and the outcomes of strict enforcement.<sup>95</sup>

And although Nigeria does not own equity in IOCs, the implication of its ownership of an average of 55 per cent stake in JVs/PSCs, currently means that NAPIMS' input is required for virtually every major internal decision IOCs take, as the costs are calculated as part of the JVs/PSCs. And it would appear that the PIB intends to continue with the JV/PSC tradition.<sup>96</sup>

The advantage of direct government participation is that it gives the government a say in virtually every aspect of the industry. There is the prospect of employment, better regulation, and better financial intake. But the adverse effect on regulation can negate any such prospects due to the likelihood of conflicts of interests. Strict enforcement of laws bordering on the NPI can be interpreted as regulation of the FGN and can be easily addressed politically. For instance, in May 2013, NIMASA prevented the Nigerian Liquefied Natural Gas Company

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<sup>94</sup> See Chapter 3, para 3.5.2

<sup>95</sup> See W. Bryan Blades, 'Production, Politics, and Pre-Salt: Transitioning To a PSC Regime' (2022-2012) 7 Texas Journal of Oil and Gas Energy Law 33 at 44

<sup>96</sup> S 125 PIB

Limited's (NLNG) vessels from leaving Bonny by blocking the Bonny channel. It grounded its action on breaches of Nigeria's maritime laws by the NLNG.<sup>97</sup>

Ordinarily, the issue should have been resolved through the courts or on compliance by NLNG with the NIMASA Act 2007, but this was not the case. The blockade was lifted within three days following the 'intervention' of the minister of petroleum, and the minister of transport.<sup>98</sup> The quick resolution of the dispute was possible because the FGN has 49 per cent of the NLNG and would suffer financially by such blockades.

The NIMASA case is one in a series of government interference with regulatory activity, owing to the fact that the government is a direct party in most petroleum operations. Direct government participation in itself is not always wrong, as the cases of Norway and Brazil have demonstrated. It is however prone to lead to regulatory weakness in countries where there is an undue reliance in petroleum revenues.

In the USA, Britain and Canada, the role of the state was limited to regulation and industry management without direct involvement in production. But this may have been possible because these countries' economies are not entirely dependent on petroleum but have developed other sectors like manufacturing, agriculture, and services. This is in contrast to Nigeria where petroleum accounts for nearly 80 per cent of government revenues.<sup>99</sup>

It is arguable that an arm's length from the industry, subject to the granting of licenses, and collection of taxes will free Nigeria to confer independence on regulators. For example, as Nigeria has no stake in concessions operated by indigenous PEPCs and marginal field operators, it is in a better position to regulate these firms with reduced risk of conflict of

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<sup>97</sup> The Nigeria LNG Limited is jointly owned by Nigerian National Petroleum Corporation (NNPC) (49 per cent), Shell (25.6 per cent), Total LNG (15 per cent) and Eni (10.4 per cent).

<sup>98</sup> Ejiofor Alike, 'NIMASA Lifts Blockade on NLNG Loading Bay' Thisday (6 May 2013) <<http://www.thisdaylive.com/articles/nimasa-lifts-blockade-on-nlng-loading-bay/146877/>> accessed 10 May 2013

<sup>99</sup> Rethinking Nigeria's Overdependence on Oil' ( 17 June 2013) <[http://businessdayonline.com/2013/06/rethinking-nigerias-over-dependence-on-oil/#.UyHMM\\_1\\_uSo](http://businessdayonline.com/2013/06/rethinking-nigerias-over-dependence-on-oil/#.UyHMM_1_uSo) > accessed 13 March 2014

interests.<sup>100</sup> Clearly there is need for regulatory reform in Nigeria. Such reforms should target Nigeria's regulatory agencies and should promote transparency in petroleum industry management. The PIB does not leave out regulatory reform, but has some salient provisions in that direction. The extent of the PIB reforms and their potential for regulatory impact will be considered next.

### 3.7.2 THE PIB AND REGULATORY REFORMS IN THE NPI

The PIB 2012 seeks to reform the Nigerian Petroleum Industry by repealing nine out of about fifty statutes that provide a legal framework for the industry.<sup>101</sup> It provides significantly for regulatory reforms in the NPI and proposes to restructure regulatory institutions, and make provisions to improve transparency, taxation, and environmental protection.

In terms of institutional reforms, the PIB seeks to establish an Upstream Petroleum Institute (UPI) and a Downstream Petroleum Regulatory Agency (DPRA), to cater for upstream and downstream regulation.<sup>102</sup> Both institutions will be supervised by two separate boards,<sup>103</sup> and both boards will in turn be subject to the Minister.<sup>104</sup> For the first time, Nigeria seeks to clarify the objectives and powers of its regulatory institutions.<sup>105</sup> It also seeks to provide a

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<sup>100</sup> In its website, DPR lists NNPC as its industry partner, although it is meant to regulate NNPC. Invariably, IOCs are also to be regarded as 'industry partners' of DPR. While this approach is not inherently defective, collaboration can lead to capture in the event that there are not sufficient checks on regulatory activity. DPR, 'Industry Partners' (2013) <<http://www.dprnigeria.com/>> accessed 1 May 2013

<sup>101</sup> There are also subsidiary legislations and bye laws, orders and guidelines, some of which are very influential. They legislations include: Territorial Waters Act Ca T.5, Oil in Navigable Waters Act, Cap O6, Oil Offshore Revenues (Registration of Grants) Act Cap O4, Exclusive Economic Zone Act of 1978 Cap E.17, The Petroleum Act 1969, Cap P.10, Constitution of the Federal Republic of Nigeria (1999) Cap. C23, The Associated Gas Reinjection Act CAP A25 LFN, 2004, The Deep Offshore and Inland Basin Production Sharing Contracts Act, CAP D3 LFN 2004 Hydrocarbon Oil Refineries Act No. 17 of 1965 Cap. H.5, Motor Spirits (Returns) Act Cap. M20, Nigerian National Petroleum Corporation Act. No. 73 of 1977, Cap. N. 123, Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, Cap. N.124, Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003, Cap. P. 43, Petroleum Equalisation Fund (Management Board e.t.c.) Act No. 9, of 1975, Cap P.11, Petroleum (Special) Trust Fund Act Cap. P.14, Petroleum Technology Development Fund Act, Cap. P15.

<sup>102</sup> S.13(3) and 43

<sup>103</sup> Sections 18 and 48

<sup>104</sup> Collins Olayinka, 'How New PIB will Promote Graft in Industry' Guardian (Abuja 15 August ) [http://www.ngrguardiannews.com/index.php?option=com\\_content&view=article&id=95643:how-new-pibll-promote-graft-in-oil-industry&catid=1:national&Itemid=559](http://www.ngrguardiannews.com/index.php?option=com_content&view=article&id=95643:how-new-pibll-promote-graft-in-oil-industry&catid=1:national&Itemid=559) accessed 16 August 2012

<sup>105</sup> 14-16 and 44-46

fixed tenure for their boards,<sup>106</sup> and provides for their funding.<sup>107</sup> There is some hope that an improved tenure will translate into some regulatory autonomy with its implications for better industry regulation. But by subjecting these agencies to the control of the minister, the independence of these boards may be weakened.<sup>108</sup>

The PIB proposes some far reaching reforms to the regulation and management of the NPI. It seeks to professionalise regulation and to adopt transparent and merit based procedures in the award of petroleum contracts.<sup>109</sup> It prohibits discretionary award of petroleum contracts,<sup>110</sup> but nonetheless retains the president's powers to grant concessions discretionarily.<sup>111</sup> By placing no conditions on the exercise of his powers, the PIB essentially retains petroleum power in the president.<sup>112</sup>

The PIB also has copious provisions geared towards environmental protection from petroleum operations. It seeks to ban gas flaring in Nigeria by requiring the Minister to set a flare out date,<sup>113</sup> and to that extent, seeks to integrate the help of private citizens in reporting of continuous gas flaring.<sup>114</sup> And to address the devastating effect of environmental pollution, requires operators to contribute a certain percentage of their earnings to an environmental remediation fund.<sup>115</sup> The PIB also requires operators to submit detailed environmental management plans,<sup>116</sup> and to apply internationally accepted principles for environmental protection, for the benefit of present and future generations.<sup>117</sup> Operators are required to apply precautionary approaches, adopt environment friendly technologies, and are to comply with relevant guidelines and regulations.<sup>118</sup> The PIB also provides for 'fair and adequate'

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<sup>106</sup> 17-27 and 47-57

<sup>107</sup> 32 and 62

<sup>108</sup> S. 5

<sup>109</sup> S.190

<sup>110</sup> S 191(3)

<sup>111</sup> S 191

<sup>112</sup> S.191(3). The term 'petroleum power' refers to the wide discretion conferred on the executive to award petroleum contracts to companies and individuals. Ordinarily such discretion should be exercised in the interests of the Nigerian people, and not for selfish interests. In practice however, this is not always the case.

<sup>113</sup> Ss 275-279,

<sup>114</sup> S 280

<sup>115</sup> S 203

<sup>116</sup> S 200

<sup>117</sup> 291

<sup>118</sup> S.292



compensation for persons whose lands are affected by petroleum operations,<sup>119</sup> and authorises the UPI to determine amount of compensation payable, after due consultation.<sup>120</sup>

The PIB seeks to overhaul the present tax regime by integrating the operations of upstream PEPCs into the Companies Income Tax Act regime<sup>121</sup> while imposing a resource tax called the Nigerian Hydrocarbon Tax (NHT) on all upstream PEPCs irrespective of whether they produce crude oil, gas, bitumen or condensate.<sup>122</sup> It also seeks to repeal the Petroleum Profits Tax Act, amend portions of the CITA, and tax all oil and gas operations under the PIB and the CITA.

Most of the reform initiatives in the PIB are decisively timely, if not overdue. Effective implementation of the environmental reforms for instance, can potentially reduce the amount of pollution suffered by the Niger Delta. And the tax regulations have the potential of generating greater earnings for the FGN. The PIB reforms however fall short of conferring independence on regulators. The Minster is retained as industry coordinator,<sup>123</sup> and will be responsible for policy formulation, determination, and monitoring of the industry. She will be responsible for advising the government on all matters pertaining to the Industry and shall have direct access to information about the industry.<sup>124</sup> She may grant, amend, renew, revoke, or extend licences and leases, on the advice of the UPI, and DPRA.<sup>125</sup> While the boards of these institutions are to enjoy some tenure security, Nigeria needs to do more to confer them with greater autonomy with a view to promoting regulation. To that extent, Nigeria should seek to apply examples learned from its other agencies that have had some measure of regulatory success. One agency that stands out is the National Agency for Food and Drug Administration and Control (NAFDAC).

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<sup>119</sup> S 296

<sup>120</sup> S 101

<sup>121</sup> S. 353

<sup>122</sup> S.299

<sup>123</sup> Sections 5-6

<sup>124</sup> S.5

<sup>125</sup> Sections 5-7

### 3.7.3 THE NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL STORY AND LESSONS FOR REGULATORY EMPOWERMENT

The NAFDAC story illustrates how capable regulation can impact an industry. In the 1990s, Nigeria was a popular destination for unsafe foods and drugs, which were smuggled in from outside the country. With the support of president Olusegun Obasanjo, Dr. Dora Akunyili was appointed head of Nigeria's food and drug regulator: the NAFDAC in 2001.<sup>126</sup> In what became known as the 'war' on fake drugs, Nigeria waged an intense campaign against importers of fake drugs, which was killing Nigerians by their thousands. Dr Dora Akunyili and her team took advantage of extensive regulatory powers contained in the NAFDAC Act to wage an intense campaign against importers of fake drugs in Nigeria.<sup>127</sup> The campaign got so intense that an attempt was made on the life of Dr. Dora Akunyili in 2003.<sup>128</sup>

The impact of NAFDAC under Dr. Dora Akunyili was almost immediate: from 1999-2007, the extent of fake drugs dropped drastically in Nigeria. This was because NADFAC, by asserting its legislative powers, frequently raided factories where fake drugs were produced, and prosecuted offenders to the delight of Nigerians and the international community.<sup>129</sup> The success of Nigeria's campaign against fake drugs became internationally recognised by various bodies, and Professor Dora Akunyili received local and international awards and recognitions for her doggedness in pursuing the NAFDAC mandate.<sup>130</sup>

Although NAFDAC still faces its own challenges, its impact on the Nigerian psyche is strong. Manufacturers of foods and drinks are cautious and aware of the fact that there is need

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<sup>126</sup> See Olike Chinwendu, 'The Fight against Fake drugs by NAFDAC in Nigeria' (2008) 44th International Course in Health Development (ICHHD) <<http://apps.who.int/medicinedocs/documents/s18405en/s18405en.pdf>> accessed 23 July 2013

<sup>127</sup> The Act empowers NAFDAC to investigate and prosecute offenders with the Attorney General of the Federation's consent. S 26 NAFDAC Act. NAFDAC is also authorised to issue guidelines, inspect food and drugs, and to carry out such activities as are necessary or expedient for the performance of its functions under the Act. Section 5 generally.

<sup>128</sup> Olenka Frenkiel, 'One Woman's War with Fake Drugs' BBC (29 August 2006) <file:///C:/Users/Subai/Downloads/one-womans-war-with-fake-drugs.pdf> accessed 13 March 2014

<sup>129</sup> Olike Chinwendu, 'The Fight Against Fake Drugs by NAFDAC in Nigeria' (Royal tropical Institute 2008)

<sup>130</sup> Apart from numerous international and national awards, Dora Akunyili was awarded by the Nigerian government with the "International Active Woman Trophy" for her work in NAFDAC, even after leaving office nearly seven years ago. See ; 'Nigerien Government Honours Akunyili' Thisday (11 March 2013) <<http://www.thisdaylive.com/articles/nigerien-govt-honours-akunyili/141808/>> accessed 21 November 2013

to acquire NAFDAC approval before embarking on food production. In fact it is now common for the average Nigerian to demand to see the NAFDAC registration number before consuming processed foods or drugs in Nigeria.

NAFDAC's powers as contained in the Act appears to be in direct contrast to the powers of NOSDRA, and the NCDMB, which regulate oil spills clean ups, and local content respectively. This is because the latter institutions are not empowered by their respective Acts to enforce fines imposed on defaulting firms, through the court process. This lack of adequate legislative authority has led to the raising of fundamental jurisdictional questions on their ability to impose and enforce fines.<sup>131</sup>

As in the case of NADFAC, it is obvious that the NPI needs independent regulators which will be able to monitor not only PEPCs, but should also be able to impose adequate fines with reduced political interference. There are however significant challenges to the attainment of this ideal, as will be discussed below.

### **3.8 PETROLEUM POWER AND THE IMPERATIVE OF COMPLEMENTARY REGULATORY STRATEGIES FOR THE NPI**

Some level of regulatory independence should be a starting point for the attainment of effective regulation. Functionally, regulatory independence will require the conferment of clear and adequate regulatory authority, protected in a legislative document. It will also require statutory protection for the tenure of the executives who manage regulatory agencies. Such executives should however be appointable and removable by the Nigerian president, through a transparent process, subject to confirmation by the Nigerian senate. And although a part of the executive, the regulator itself should enjoy some autonomy from the ministry of

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<sup>131</sup> NOSDRA's administrative fine on Shell for the Bonga oil spill is being resisted by Shell on grounds of jurisdiction, and to some extent this may be rightly so, sad as it may seem.

petroleum, and not be directly subordinated to it. And it should have the power to impose sanctions on defaulting firms without recourse to the minister of petroleum. The executives of the regulatory agency should be removeable only on the commission of an offence, misconduct, or are clearly unable to execute the duties of their office due to mental or physical infirmity. And in order to prevent abuse of their powers, the exercise of regulatory discretion should be subject to administrative review by the judiciary, and on a practical basis, be subject to some oversight (but not control) by the minister of petroleum, and be accountable to the National Assembly (Nigeria's legislature).

While independent regulation is desirable in principle, it appears that Nigeria is not yet sufficiently mature for same. The reason for this assertion is that petroleum is not only an economic asset, but also a tool for patronage and for holding the fragile central government together.<sup>132</sup> Independent regulation will entail the erosion of the president's powers to use petroleum as a tool for patronage, and Nigeria may not be ready for such approach yet in practice. The reduction of the president's petroleum powers should be gradual and be directly proportional to Nigeria's economic diversification. This perhaps explains why far reaching reforms proposed by the PIB hardly reduced the president's powers in the industry, especially the absolute discretion to grant oil licences to companies.<sup>133</sup>

It is arguable that vesting presidential control of such a strategic asset is not a bad thing in itself, if politicians and the government can be trusted to act in the best interests of the Nigerian people. This has unfortunately not been the case in Nigeria, and ineffective regulation has impacted the economy and the industry negatively. The truth remains that 'petroleum power' is required to maintain the co-existence of the country since the political elite often have to make decisions that sometimes transcend meritocracy and bureaucracy.

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<sup>132</sup> Petroleum controls over 80 per cent of government revenue in Nigeria. CIA 'The World Fact Book: Nigeria' (2013) <<https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>> accessed 1 May 2013

<sup>133</sup> S 191(3) PIB See Ernst and Young, 'Nigeria Petroleum Industry Bill — 2012' (2012) <[http://www.ey.com/Publication/vwLUAssets/Nigeria\\_Petroleum\\_Industry\\_Bill\\_%E2%80%94\\_2012/\\$FILE/Nigeria\\_Petroleum\\_Industry\\_Bill\\_26Oct12\\_lowres.pdf](http://www.ey.com/Publication/vwLUAssets/Nigeria_Petroleum_Industry_Bill_%E2%80%94_2012/$FILE/Nigeria_Petroleum_Industry_Bill_26Oct12_lowres.pdf)> accessed 30 April 2013

The case of Bayelsa state, in the Niger Delta Region will illustrate the extent to which petroleum power can be used to address grievances, and keep the industry going. Bayelsa state accounts for over 30 per cent of Nigeria's petroleum resources, but is one of the most undeveloped states in the country.<sup>134</sup> Since 1999 Bayelsa became the hotbed of militant activities as the aggrieved youths took to arms in protest of continued marginalisation. In order to pacify the people, the government of Olusegun Obasanjo took a political decision when DPR was instructed to award the Atala marginal field to Bayelsa state. This was done to gratify the people's desire for greater participation in the oil industry and ensure peaceful transition of petroleum products. The Atala marginal field award was clearly a political decision that required wide discretions and transcended ideal principles of meritocracy. Similarly in 2012, repentant Niger Delta ex-militants were given a contract to secure NNPC's pipelines. Although this political decision has been criticised by some commentators, the contract was awarded in order to ensure production continued unabated and keep repentant militants on the side of the government. These are clearly political decisions that a formal administrator will be unable and unwilling to make.<sup>135</sup>

But while petroleum power has its benefits, it is proposed that there should be some qualifying conditions under which such powers should be exercised. For example it is hardly debatable that petroleum power should not be used to encourage the local industry, or host communities. Clearly there is need for either a reduction of petroleum power, or the 'hold' of petroleum on the Nigerian economy, if Nigeria is to confer regulatory autonomy on regulatory institutions. But this will require the exploration of other options which will make it practicable for Nigeria to do so. And those options will be the subject of the next segment.

### **3.8.1 ECONOMIC DIVERSIFICATION AND REGULATORY QUALITY**

The premise of the above argument has been that regulatory autonomy is very unlikely as long as petroleum remains the mainstay of the Nigerian socio-political fabric. Apart from the

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<sup>134</sup> By Alaziagha 'Bayelsa Repositions Economy Via BDIC' Thisday (1 December 2014) <http://www.thisdaylive.com/articles/bayelsa-repositions-economy-via-bdic/165583/> accessed 4 March 2014

<sup>135</sup> Olusola Fabiyi, 'Presidency Defends Billions Paid to Ex-Militant 'Generals' 'Punch (27 August 2012) < <http://www.punchng.com/news/presidency-defends-billions-paid-to-ex-militant-generals/>> accessed 10 May 2013

impact which petroleum power has on the Nigerian socio-political structure, it also places IOCs in a stronger position as they relate with the FGN which depends heavily on petroleum revenues. Threats to stop work by IOCs can therefore lead to major economic disruptions in Nigeria, and thus the FGN is to an extent held to ‘ransom’ by IOCs. The result is that the government is often willing to refrain from enforcing the letter of laws in the industry, even in cases of apparent breaches; as such enforcement may lead to economic disruptions.

A deliberate economic diversification with the aim of reducing petroleum dependence will not only limit petroleum power on the part of the president, but will also position the government to regulate IOCs without fear. For instance, Norway’s robust regulation of its petroleum industry may have been impacted from the fact that petroleum accounts for only about 20 per cent of government revenues, unlike Nigeria where it accounts for about 80 per cent.<sup>136</sup> That Nigeria readily conferred extensive regulatory powers on the NAFDAC board, may be explained from the fact that food and drugs have minimal economic or strategic importance when compared to petroleum. Thus the FGN may, in a case like NAFDAC, more readily cede regulatory power to a more independent and capable regulator, where petroleum loses its strategic place in the country’s economy.

Currently Nigeria’s manufacturing sector is hardly able to compete with those of other countries due to infrastructural challenges like power, security and weak transport networks. Although there has been some reform in the power sector, the gains of the process are yet to materialise fully.<sup>137</sup> It is hoped that the successful power sector reform privatization will lead to an improvement in the Nigerian economy and boost the non oil sector of the economy. Admittedly there has been some increase in Nigeria’s non oil revenues, due to investments in agriculture and telecommunications, but much remains to be done.<sup>138</sup>

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<sup>136</sup> CIA ‘The World Fact Book: Norway’ (2013) < <https://www.cia.gov/library/publications/the-world-factbook/geos/no.html> > accessed 1 May 2013 ; Paul Bang, ‘The Characteristics of Robust Regulation’ (2013) < <http://regulationforum.org/docs/presentations/2013/Symposium-march-12-e.pdf> > accessed 1 May 2013

<sup>137</sup> In 2013, Nigeria successfully privatised its power holding company, and appointed Canadian firm Manitoba, to manage the Transmission Company of Nigeria on a management contract. Oxford Business Group, ‘Landmark Power Privatisation to Drive Nigeria’s Economy’ (2 December 2013) < [http://www.oxfordbusinessgroup.com/economic\\_updates/oxford-business-group-landmark-power-privatisation-drive-nigeria%E2%80%99s-economy](http://www.oxfordbusinessgroup.com/economic_updates/oxford-business-group-landmark-power-privatisation-drive-nigeria%E2%80%99s-economy) > accessed 28 March 2014

<sup>138</sup> Yemi Akinsuyi, ‘Non-oil Export’s GDP Contribution ’ll Increase to 20% in 3yrs’ Thisday (12 March 2012) < <http://www.thisdaylive.com/articles/-non-oil-export-s-gdp-contribution-ll-increase-to-20-in-3yrs-/111235/> > accessed 5 September 2013, Non oil exports contributing only about 4 per cent of Nigeria’s GDP in 2012. See Crusoe Osagie, ‘Manufacturing in Nigeria: Rising from the Doldrums?’

The ‘transformation agenda’ of President Goodluck Jonathan has sought to encourage large scale industries, small and medium Enterprises in the manufacture of goods. In February 2014, the government launched the Nigeria Industrial Revolution Plan (NIRP) and the National Enterprise Development Programme (NEPED) in order to promote industrialization and manufacturing.<sup>139</sup> Nigeria has also sought to revitalise ailing industries, local content and information technology communication.<sup>140</sup>

Already, current reforms have led to a reduction in the impact of petroleum in Nigeria’s overall GDP.<sup>141</sup> The National Bureau of Statistics noted that oil contributed only about 12.5 per cent to Nigeria’s GDP in the third quarter of 2013, while the economy was sustained by the non oil sector.<sup>142</sup> It is safe to conclude therefore that if current reform strategies are sustained, they will enable the growth of the non oil sector, and reduce petroleum power in the long term. Until then however, petroleum will continue to remain more than an economic asset. The result is that the government will keep the industry close to its ‘chest.’

### **3.9 THE CHALLENGE OF REGULATORY CREDIBILITY AND A CALL FOR ALTERNATIVE AND COMPLEMENTARY REGULATORY APPROACHES IN THE NPI**

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Thisday (18 June 2013) <<http://www.thisdaylive.com/articles/manufacturing-in-nigeria-rising-from-the-doldrums-/150749/>> accessed 22 November 2013

<sup>139</sup> Ben Agande, ‘We Will Leave a Better Nigeria’ *Vanguard* (12 February 2014)

<<http://www.vanguardngr.com/2014/02/well-leave-a-better-nigeria-jonathan/>> accessed 9 March 2014

<sup>140</sup> John E. Gyong, ‘Social Analysis of the Transformation Agenda of President Goodluck Ebele Jonathan’ (2012) Vol 16(18) *European Scientific Journal*, See also Socrates Chime, ‘Jonathan’s Transforming Agenda and Diversifying Nigeria’s Economy’ *Thisday* (1 March 2013) <<http://www.thisdaylive.com/articles/jonathan-8217-s-transformation-agenda-and-diversifying-nigeria-8217-s-economy/140873/>> accessed September 4 2013

<sup>141</sup> Thomas Hansen, ‘Nigeria, Growing Away from Oil?’ *Forbes* (18 November 2013)

<<http://www.forbes.com/sites/riskmap/2013/11/18/nigeria-growing-away-from-oil/>> accessed 28 March 2014

<sup>142</sup> National Bureau of Statistics, ‘2012 and Estimates for Q1- Q3, GDP Estimates for Nigeria’ (November 2013)

<[file:///C:/Users/Subai/Downloads/Q3%202013%20GDP%20Report%20\(1\).pdf](file:///C:/Users/Subai/Downloads/Q3%202013%20GDP%20Report%20(1).pdf)> accessed 28 March 2014, 5

The case for regulatory autonomy and improved capacity is premised on the assumption that it will in principle, transcend into public interest regulation of the NPI. In reality however, there is still need for credible commitment on the part of regulators, for without this factor, the threat of capture and complicity/complacency will remain a significant problem in the NPI. The credible commitment theory of regulation assumes regulators are committed to their jobs and are not subject to capture either by industry or by other interests.<sup>143</sup> The likelihood of capture exists even in the most advanced economies like America.<sup>144</sup> The implication of the capture of Minerals Management Service (MMS) by BP was highlighted earlier as being partly responsible for the Gulf of Mexico oil disaster.<sup>145</sup> Credible commitment has been a challenge in Nigeria due to the high level of public sector corruption.

The possibility that regulators of a multi-billion dollar petroleum industry will compromise their integrity remains a major limitation in the NPI, even if they are properly paid and enjoy security of tenure. This has played out in Nigeria's judiciary and worse still in the National Assembly. Although the National Assembly is one of the most independent and properly funded institutions in Nigeria, lack of credible commitment has weakened its performance. It has been embroiled in one financial scandal after another since 1999. In 2012, the House of Representatives set up a committee to investigate a \$6.8 billion fuel subsidy fraud. Unfortunately, the head of the committee Mr Farouk Lawan later admitted to collecting over \$500,000 dollars as a bribe from Mr. Femi Otedola, owner of Zenon oil, in order to clear Zenon oil from the probe report.<sup>146</sup>

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<sup>143</sup> See Bertelli AM and Whitford AB, 'Perceiving Credible Commitments: How Independent Regulators Shape Elite Perceptions of Regulatory Quality' (2009) 39 *British Journal of Political Science* 517

<sup>144</sup> In the wake of the BP oil spill, it was reported that the now disbanded industry regulator the Minerals Management Service (MMS) was inattentive in its implementation of safety and environmental requirements and relied almost entirely on industry to develop standards, coupled with a complacent monitoring and enforcement of the industry Alyson Flournoy and others, 'Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence' (2010) Centre for Progressive Reform White Paper <[http://www.progressivereform.org/articles/BP\\_Reg\\_Blowout\\_1007.pdf](http://www.progressivereform.org/articles/BP_Reg_Blowout_1007.pdf)> accessed 1 May 2013

<sup>145</sup> 'Shared Failure' in BP Spill Cited in Panel Report: Reforms Needed Since 'Oversight Utterly Failed,' Says Co-chair of Obama Commission', MSNBC.coM (1 November 2011), <[http://www.msnbc.msn.com/id/41020738/ns/us\\_news-environment/t/shared-failure-bp-spill-cited-panel-report/](http://www.msnbc.msn.com/id/41020738/ns/us_news-environment/t/shared-failure-bp-spill-cited-panel-report/)> accessed 12 October 2012

<sup>146</sup> 'I took Otedola's Bribe to Expose Him-Lawan' Punch (12 June 2012) <<http://www.punchng.com/news/i-took-otedolas-n96m-bribe-to-expose-him-lawan/>> accessed 1 May 2013



The risk that regulators and government officials will be compromised by IOCs and other PEPCs is a problem all over the world. This prompted the ‘publish what you pay’ movement which will be treated in chapter six, and the adoption of directives and laws in the USA and Europe.<sup>147</sup> Bribery of regulators by IOCs is a major problem all over the world, and the conviction of Statoil for bribery of Iranian officials is just one of many such instances all over the world.<sup>148</sup> But the risk of regulatory corruption is even higher in Nigeria, and in fact may have justified the erosion of regulatory autonomy in Nigeria. Nwokeji observes that the first multi-billion dollar fraud in the NPI was perpetuated by officials of NNPC at a time when the firm still enjoyed some reasonable level of autonomy as an oil company, and industry regulator.<sup>149</sup>

Nigeria therefore requires alternative strategies to address regulatory gaps that may arise from inadequate regulatory capacity or from outright complacency or complicity.<sup>150</sup> These ‘alternative’ strategies may include encouraging citizens’ participation in regulation, especially those whose lives are directly affected by petroleum operations and ineffective regulatory activity. The justification for this position is that Nigerian citizens (especially those in the Niger Delta), bear the brunt of environmental degradation and unsustainable extraction of petroleum. Should not this group of stakeholders be entitled to participate in what affects their daily existence? This is more so as experience has shown that the regulator/operator position of the FGN means that it cannot be relied on entirely for independent regulation of its IOC partners and NNPC, without considering the economic impact of such regulatory activity.

The argument can be put forward that important stakeholders should not be made to watch from the stands, as regulatory laxity, capture, and lack of independence, affect their daily existence. A multi regulatory approach which engages the resources of the government,

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<sup>147</sup> The USA enacted the Sarbanes Oxley Act of 2002 in the US, and the EU’s Accounting and Transparency Directive of 2013. On issues of corruption and bribery in the international oil industry, see Al-Kasim Farouk, Soreide Tina, and Williams Aled., ‘Grand Corruption in the Regulation of Oil’ (2008) <<http://www.cmi.no/publications/file/3034-grand-corruption-in-the-regulation-of-oil.pdf>> accessed 28 March 2014

<sup>148</sup> See chapter 2, para 2.7.2

<sup>149</sup> Nwokeji (n 97, chapter 2), 79

<sup>150</sup> On regulatory gaps and limitations of regulation, see Patrick Luff (n 21), 87

citizens, NGOs and trade unions is not only imperative if the industry is to be effectively regulated, but sensible.

The debate for citizen participation in regulation is not new to Europe and the USA.<sup>151</sup> Citizens can play important roles in the attainment of transparency, accountability, and even in operational regulation. Firstly, they enjoy some advantage over administrative regulators in that they will not be constrained by capture and political constraints. For instance while DPR has been unable to constrain IOCs to stop gas flaring for political and economic reasons, private citizens in Nigeria have been able to seek permanent injunctions by relying on human rights laws. Thus far, much of the clamour for citizen participation in the NPI is however limited to resource control by petroleum host communities.<sup>152</sup>

The PIB falls short of making use of citizen participation in environmental regulation, other than encouraging them to report cases of illegal gas flaring by companies to the UPI.<sup>153</sup> In the light of regulatory constraints in the NPI, this thesis proposes that Nigeria should seek to establish a comprehensive whistleblower/disclosure protection framework, and encourage regulatory litigation. The potential benefits of such alternative complementary approaches will be explored next.

### **3.9.1 HARNESSING THE REGULATORY POTENTIAL OF A VIBRANT WHISTLE-BLOWER PROTECTION REGIME**

Most whistleblowers are employees and insiders of organizations who disclose information concerning breaches of the law and unethical practices. Because they complement

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<sup>151</sup> D S. Grant, 'Allowing Citizen Participation in Environmental Regulation: An Empirical Analysis of the Effects of Right-to-sue and Right-to-know Provisions on Industry's Toxic Emissions' (1997) Vol 78(4) Social Science Quarterly; Bettina Lange and Andy Gouldson, 'Trust-based Environmental Regulation' (2010) vol 408(2) Science of the Total Environment pp.5235-5243; and Rich Richard and others, 'Citizen Participation and Empowerment: The case of Local Environmental Hazards' (1995) vol 23 American Journal of Community Psychology, 1995, Vol23 (5), pp.657-676 ; Mark Seidenfeld and Janna Satz Nugent, 'The Friendship of the People": Citizen Participation in Environmental Enforcement' (2005) 73 Geo. Wash. L. Rev. 269 (2005)

<sup>152</sup> See Idemudia Uwafiokun, 'The Resource Curse and the Decentralization of Oil Revenue: the case of Nigeria' (2012) Vol 35 Journal of Cleaner Production

<sup>153</sup> S 280

administrative regulators, their potential has been harnessed by many developed countries. By virtue of being insiders, whistleblowers regularly have privileged access to information which regulators may be unable to access. Commenting on the detection of organisational fraud, Maryam Hussain observes that whistleblowers are the first line of fraud detection.<sup>154</sup>

In the NPI, whistleblowers can aid the curbing of operational violations by PEPCs. IOCs have been accused of resorting to creative accounting and remitting less to the FGN in taxes than they are legally required to do.<sup>155</sup> A motivated whistleblower can release detailed information in cases of deliberate concealment of the amount of oil produced daily, or where activities of petroleum firms undermine the environment, health and safety or unsustainable extraction of petroleum.<sup>156</sup> In the NNPC, and the ministry of petroleum, whistleblowers can also aid the regulation of the fraudulent mismanagement of petroleum revenues in Nigeria and thus undermine corruption.<sup>157</sup>

Potential whistleblowers in Nigeria nevertheless, lack adequate legal protection from unjust employer victimization for disclosures made in good faith. This leaves them open to victimisation and sometimes personal harm.<sup>158</sup> What limited protection they enjoy covers only employees of listed firms and capital market operators.<sup>159</sup> Given the wide scope of

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<sup>154</sup> Maryam Hussain, *Corporate Fraud, the Human Factor* (Blumsbury, 2014)50

<sup>155</sup> Chineme Okafor, '\$9bn Oil Revenue Unremitted to Govt, Says Asobie' Thisday (Abuja, 4 September 2012) <<http://www.thisdaylive.com/articles/-9bn-oil-revenue-unremitted-to-govt-says-asobie/123996/>> accessed 3 December 2012

<sup>156</sup> See Pereowei Subai, 'Whistle-blower Protection and Environmental Corporate Responsibility' in Festus Emiri and Gowon Deinduomo (eds), *Law and Petroleum Industry in Nigeria : Current Challenges* (Malthouse 2009)327.

<sup>157</sup> Abdulsalam Ajetunmobi, 'Whistle-blowing as a Potent Anti-Corruption Tool' Punch (Abuja, 10 February 2012) <<http://www.punchng.com/opinion/whistle-blowing-as-a-potent-anti-corruption-tool/>> accessed 2 December 2012

<sup>158</sup> This is despite the fact that Nigeria is signatory to article 5 of the African Union Convention on Preventing and Combating Corruption and 33 of the UN Convention against Corruption (UNCAC) , it generally does not have a whistle-blower protection regime, There has been a whistle-blower protection bill in the NASS since 2011but it is yet to be passed into law, see Abdulsalam Ajetunmobi *ibid.* Sections 64 and 39(1) of the Independent Corrupt Practices and Other Related Offences Act of 2000 and The Economic and Financial Crimes Commission (Establishment) Act of 2004 , S 12 (1a (iv) of the FOIA 2011 respectively, however provide for the protection of the identity of the informants are protected, although no protection from victimization at work or outside is offered. See generally Joseph E. O. Abuju, 'ILO Standards and the Nigerian Law of Unfair Dismissal' (2009) 17*African Journal of International and Comparative Law* 181-212

<sup>159</sup> See 306 of the ISA under which SEC is authorised to order listed firms and capital market operators to reinstate employees who were unjustly sacked for making such disclosures in good faith, and pay adequate compensation to the employee, while subjecting the employer to a fine not exceeding 5 million naira. Sections 64 and 39(1) of the Independent Corrupt Practices and Other Related Offences Act of 2000 and The Economic

corruption in Nigeria, there is need to extend protection to every scope of employment in Nigeria (public and private firms and government employment).<sup>160</sup> Currently, many employees remain silent in the face of wrongdoing in order to preserve their jobs in an economy rife with unemployment.

Although there are several arguments against whistle-blowing, which range from breach of confidentiality and loyalty and malicious reporting,<sup>161</sup> its merits far outweigh its demerits.<sup>162</sup> This is more so in Nigeria where regulators face many limitations.<sup>163</sup> Encouraging insiders to release vital information will limit the impunity and recklessness with which managers of the NPI, and operators violate the laws of the country. For instance, a whistleblower was responsible for the 2004 conviction of Nigeria's former Inspector General of Police, Tafa Balogun for theft of over \$150 million of public funds.<sup>164</sup> The conviction would have been almost impossible by conventional means, given the high office of Tafa Balogun as head of Nigeria's police. The extent, to which other jurisdictions have enacted laws to protect whistleblowers, will be considered in the next segment.

### 3.9.2 WHISTLE-BLOWER PROTECTION IN OTHER JURISDICTIONS

#### The United Kingdom

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and Financial Crimes Commission (Establishment) Act of 2004 , S 12 (1a (iv) of the FOIA 2011 respectively, provide for the protection of the identity of the informants are protected, although no protection from victimization at work or outside is offered.

<sup>160</sup> About 23.9 per cent of Nigeria's population is currently unemployed, see 'Nigeria's High Unemployment Rate' Thisday (18 September 2013) <<http://www.thisdaylive.com/articles/nigeria-s-high-rate-of-unemployment/159317/>> Linda Eroke, '20.3m Nigerians Currently Unemployed, Statistics Reveal' Thisday (8 October 2012) <<http://www.thisdaylive.com/articles/20-3m-nigerians-currently-unemployed-statistics-reveal/127112/>> accessed 1 May 2013

<sup>161</sup> Rachel Beller, 'Whistleblower Protection Legislation of the East and West: Can it really reduce Corporate Fraud and Improve Corporate Governance? A Study of the Successes and Failures Whistleblower Protection Legislation in the USA and China' (2011) 7 N.Y.U. J. L. & Bus. 873

<sup>162</sup> See generally Robert G. Vaughn and others 'The Whistleblower Statute Prepared for the Organisation of American States and the Global Legal Revolution Protecting Whistleblowers' (2003) 35 Geo. Wash. Int'l L. Rev. 857

<sup>163</sup> Chineme Okafor, 'Concerns over Hydrocarbon Metering Technology' Thisday (20 August 2012) <<http://www.thisdaylive.com/articles/concerns-over-hydrocarbon-metering-technology/122802/>> accessed 26 April 2013

<sup>164</sup> Tobs Agbaegbu and Joseph Onyekwere 'Tafa goes to Jail' ( 29 November 2005) <<http://www.newswatchngr.com/editorial/allaccess/nigeria/11129203353.htm>>

The United Kingdom's Public Interest Disclosure Act (PIDA) 1998, confers protection on employees who make qualifying disclosures. A qualifying disclosure under the PIDA is one that is made in the reasonable belief of a worker, tending to show that there has been, is being or is likely to be, the commission of an offence. It also includes the breach of a legal obligation, a miscarriage of justice, or damage to the environment, or the endangering of the safety of an individual, or information as regards the deliberate concealment of any of the above.<sup>165</sup>

## **The United States of America**

Investigations after the Enron and WorldCom financial scandals showed that the inadequate protection for insiders prevented disclosure of information which could have arrested monumental fraud.<sup>166</sup> Consequently, the Sarbanes-Oxley Act 2002 and Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) 2010 were enacted. Section 806 of the Sarbanes Oxley Act confers protection on employees of listed firms who provide information or assist in investigations regarding any conduct which the employee reasonably believes constitutes an offence or fraud. Such employees are protected from demotion, threats of suspension, harassments, or any form of discrimination, and where such occurs, are entitled to be reinstated, compensated and paid their entitlements, with interest.

Similarly section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>167</sup> confers protection and financial rewards on whistleblowers in deserving cases. Under that section, employees can be awarded between 10 to 30 per cent of monetary

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<sup>165</sup> S 1 of PIDA which amends section 43 of the Employment Rights Act (ERA) 1996 by inserting section 43B. See also Ss 2 and 3 which in amending S47B of the ERA provides that 'A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure,' and confer on the worker the right to complain to the Employment Tribunal that he has been subject to unfair treatment. S 5 which inserts S 103 A of the ERA

<sup>166</sup> See Rachel Beller, 'Whistleblower Protection Legislation of the East and West: Can it Really Reduce Corporate Fraud and Improve Corporate Governance? A Study of the Successes and Failures of Whistleblower Protection Legislation in the US and China' (2011) 7 N.Y.U. J. L. & Bus 876. Section 806 of the Sarbanes-Oxley Act confers civil remedy on employees who are victimized for releasing information to regulators about acts of corruption

<sup>167</sup> H. R. 4173, 2010

sanctions imposed on defaulting companies by the Securities and Exchange Commission, or other regulatory agencies, if the sanctions are up to \$1 million.

In order to qualify for reward under the Dodd Frank Act, a disclosure must be made on a reasonable belief that a possible violation of a federal securities law has occurred, is occurring or is likely to occur. The Act further protects the identities of whistleblowers from disclosures under the USA Freedom of Information Act 1967. It also gives employees direct access to SEC without necessarily exhausting internal disclosure procedures.<sup>168</sup> The strategy has generated some success in the regulation of corporate firms, as whistleblowers reportedly helped in the detection 18.3 per cent of corporate fraud cases from 1996-2004.<sup>169</sup>

It is proposed that Nigeria enact a whistleblower law which imposes significant deterrent fines in order to protect employees from unjust victimisation, and such employees should be duly compensated. It is further proposed that Nigeria should seek to reward whistleblowers if their disclosures result in positive and significant economic impact. This may include money, promotion, and national honours, where necessary.<sup>170</sup> A 2012 report on occupational fraud noted that companies that reward whistleblowers and implement other fraud protection strategies, detected fraud twice as faster than those that did not.<sup>171</sup>

### **3.9.3 HARNESSING THE REGULATORY POTENTIAL OF LITIGATION FOR A BETTER NPI**

Regulatory gaps in the NPI can be further filled by regulatory litigation. Private citizens, independent government prosecutors, and non government organisations can institute actions to enforce a substantive law or address wrongdoing in the industry. Where such litigation alters behaviour, it becomes regulatory, even if action was not motivated by a desire to

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<sup>168</sup> S 922. See also Barry Scholl and Kevin Timken, 'Blow the Whistle: The Dodd-Frank Act Creates New Incentives for Whistleblowers –and Compliance Issues for Utah Businesses (2012) 25 Utah Bar Journal 36

<sup>169</sup> Alexander Dyck and others 'Who Blows the Whistle on Corporate Fraud?' (2010) 65 The Journal of Finance

<sup>170</sup> See Yuval Feldman & Orly Lobel, 'The Incentives Matrix: The Comparative Effectiveness of Rewards, Liabilities, Duties, and Protections for Reporting Illegality' (2010) 88 Texas Law Review

<sup>171</sup> Report to the Nations, On Occupational Fraud and Abuse, '2012 Global Fraud Study' (2012) <[http://www.acfe.com/uploadedFiles/ACFE\\_Website/Content/rtnn/2012-report-to-nations.pdf](http://www.acfe.com/uploadedFiles/ACFE_Website/Content/rtnn/2012-report-to-nations.pdf)> accessed 28 March 2014, 37

regulate behaviour.<sup>172</sup> For example a court may award substantial punitive damages against an oil company which may deter future recklessness or negligence, compensate victims of the spill and at the same time complement administrative regulation.<sup>173</sup>

Regulatory litigation can also come in the form of suits which may be used to challenge government policy, or seek to enforce a substantive law. For instance a litigant may seek declaratory or injunctive reliefs, or to enforce some fundamental rights. In March 2013, a Federal High Court banned the FGN from deregulating the downstream petroleum sector in a suit filed by Mr Bamidele Aturu.<sup>174</sup> The outcome of this suit and its far reaching implications can regulate government behaviour in respects to the deregulation of the petroleum sector.

In the USA, private lawyers have been referred to as ‘private attorneys general’ because of the resonating impact of their actions on the polity.<sup>175</sup> In the same vein, administrative regulation of the environment from petroleum pollution is complemented in Brazil by independent public prosecutors,<sup>176</sup> private individuals, and not for profit organisations.<sup>177</sup>

Private-citizen public interest litigation can be filed in lieu of regulatory complacency or complicity. For example, although gas flaring is illegal in Nigeria, it continues unabated due to regulatory complacency for political and economic considerations, despite inimical impact

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<sup>172</sup> Some actions are instituted in order to seek compensation for damages, while others may seek the disclosure of vital information to the public and others may seek an injunction against the government. See Patrick Luff, ‘Risk Regulation and Regulatory Litigation’ (2011) 64 Rutgers L. Rev. 73, 87, see also Sean Farhang, Public Regulation and Private Lawsuits in the US (Princeton 2010) at 8

<sup>173</sup> See Farhang (ibid) 32-54. For instance in 2012, NOSDRA filed an action against the PPMC, for failing to clean up spills which occurred between 2009-2011, in Delta State, following which a 64.2 million naira fine was imposed on PPMC. Nnena Ezeah, ‘Oil Spill: Court Imposes N62.5m fine on PPMC’ Vanguard (10 April 2012) <<http://www.vanguardngr.com/2012/04/oil-spill-court-imposes-n62-5m-fine-on-ppmc/>> accessed 12 October 2012

<sup>174</sup> Ikechukwu Nnochiri. ‘Court declares Deregulation of Downstream Sector Illegal’ Vanguard <<http://www.vanguardngr.com/2013/03/court-declares-deregulation-of-downstream-sector-illegal/>> accessed 30 April 2013

<sup>175</sup> Carl W Hittinger and Jarod M Bona, ‘The Diminishing Role of the Private Attorney General in Antitrust and Securities Class Action Cases Aided by the Supreme Court’ (2009) 1 Journal of Business and Technology Law, 168

<sup>176</sup> Leslie K. McAllister, Making Law Matter, *Environmental Protection and Legal Institutions in Brazil* (Stanford University Press 2008)

<sup>177</sup> See Antonio Gidi, ‘Class actions in Brazil: a Model for Civil Law Countries’ (2003) Vol 51 American Journal of Comparative Law. 311-408.

on the environment. Government laxity and complicity in continued gas flaring necessitated the institution of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and two others*.<sup>178</sup> In that case, the applicant sought, and obtained, a perpetual injunction from the Federal High Court which restrained Shell from flaring associated gas within the applicant's community on the ground that it contravened the 1999 Constitution of the FRN, and the African Charter on Human and People's Rights Ratification and Enforcement Act 1983.

In *Oronto Douglas v. Shell Petroleum Development Company Limited and 3 others*,<sup>179</sup> the applicant challenged the commissioning of the NLNG project in Bonny Rivers State Nigeria. The ground for the action was an alleged failure to comply with the 1992 Environmental Impact Assessment Act's requirement for an environmental impact assessment, before the project could commence. The *Oronto's* case was dismissed by the trial court on procedural grounds. The appeal court overturned the judgement of the trial court and ordered a retrial, but by this time, the NLNG plant had been commissioned, and was overtaken by events.

Had *Oronto* been successful, it would have set a precedent for future operations in the Niger Delta and to that extent would have been regulatory. *Gbembre* and *Oronto* illustrate the yearnings of the Niger Delta people to address regulatory complacency and complicity through litigation. It is a fact that regulatory impact of litigation in Nigeria has been minimal in comparison to the USA. This is due in part to the absence of a comprehensive class action procedure, and a rigid application by the courts, of the locus standi rule, in addition to adherence to conservative principles of statutory interpretation by the Nigerian courts.<sup>180</sup>

There is need therefore, to confer substantive rights on citizens to complement regulatory activity in the NPI since regulatory litigation is dependent on such rights. For instance,

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<sup>178</sup> Heard in the Federal High Court of Nigeria, Benin Judicial Division, Suit No. FHC/B/C/153/05 delivered on 14 November, 2005. For an incisive commentary on the case, see Kaniye Ebeku, 'Human Rights Approaches To Environmental Protection in Nigeria: Gbemre V. Shell Revisited' (2007)16 REICEL 312

<sup>179</sup> Suit No. FHC/2CS/ 573.

<sup>180</sup> See Okere B. Obinna, 'Judicial Activism or Passivity in Interpreting the Nigerian Constitution (1987) Vol 36(4) International and Comparative Law Quarterly, see also K.S.A. Ebeku, 'Locus Standi in Environmental Nuisance Actions: A Perspective from the Commonwealth' (2005) 17 ELM 14, and K.S.A. Ebeku, 'Judicial Attitudes to Redress for Oil-Related Environmental Damage in Nigeria' (2003) 12 REICEL,199



although oil spills are very injurious to human life and the environment,<sup>181</sup> victims of such spills in the Niger Delta Region (NDR) are often required to rely on the codified version of the rule in *Rylands v Fletcher*,<sup>182</sup> in their quest for compensation for injurious affection to their lands by oil spills.<sup>183</sup> With a barrage of exceptions to the rule however, PEPCs easily escape liability in Nigeria, and G.J Frynas observes that in the past, oil companies in Nigeria have used false claims of sabotage to avoid compensation payments.<sup>184</sup> A more balanced substantive right which provides for adequate compensation for oil spills, will encourage class actions in cases of negligence and recklessness on the part of PEPCs. If such actions are successful and instituted frequently, they are likely to compel operators to apply more careful procedures for environmental protection, or face possible liquidation.

Currently however, litigation in Nigeria against petroleum firms faces many limitations from locus standi issues, inordinate delays, and conservative award of damages. These challenges have led to a trend where claimants file environmental actions against IOCs in English, Dutch and American courts in the belief that their chances for justice are higher. A comprehensive class action procedure and a revision of the locus standi rule are therefore required in Nigeria, to align with modern trends. Class actions and their regulatory potential will be considered next.

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<sup>181</sup> In 2011 a UNEP report established that fifty years after Shell began exploring for oil in Ogoni land, the environment has become so devastated that it would take between 25-30 years of deliberate effort to restore the environment. The report also found that the Nisisioken Ogale community was at an immediate risk since the well water they drank was contaminated with benzene, a known carcinogen,<sup>181</sup> at levels over 900 times above the World Health Organisation guideline. The report found that Shell's standards in oil and gas exploration was far below what was expected while its remediation efforts were ineffective. Shell and the Federal Republic of Nigeria were blamed for the devastation of Ogoni land, and noted that an estimated one billion dollars will be required to restore Ogoni land UNEP, 'Environmental Assessment of Ogoniland' (2011) <<http://www.unep.org/nigeria/>> accessed 12/04/12

<sup>182</sup> L.R. 3 H.L. 330

<sup>183</sup> See Damfebo Derri, 'Legal Basis for Compensation for Oil and Gas Operations in Nigeria' in Festus Emiri and Gowon Deinduomo (eds) *Law, Oil and Contemporary Development Issues in Nigeria Essays in Honour of Late Honourable Justice Emmanuel Joel Igoniwari* (Malthouse 2008) 77. By providing for the defence of negligence, section 11(5) OPA has placed a burden on the citizens of the NDR to prove the fault of IOCs in cases of oil spills from their pipelines, but this is inconsistent since a claim for compensation is not a claim for damages and the fault issue need not arise. All the plaintiff should be required to prove should be that he has suffered injury.

<sup>184</sup> Frynas JG, 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria' (1999) 43 *Journal of African Law* 121. One report said that in some cases, Shell apparently alleged sabotage as the cause of spills, even before carrying out investigation on the site.<sup>184</sup> A United States Non-Governmental Delegation Trip Report, 'Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta' (1999) <[http://www.essentialaction.org/shell/Final\\_Report.pdf](http://www.essentialaction.org/shell/Final_Report.pdf)> accessed 8 September 2013

### 3.9.4 HARNESSING THE REGULATORY POTENTIAL OF CLASS ACTIONS IN THE NPI

Class actions have been said to ‘present an evolutionary response to the existence of injuries unaddressed by the regulatory action of government’.<sup>185</sup> A class action is a suit that is filed by a number of plaintiffs in pursuit of a common or similar cause.<sup>186</sup> Their regulatory potential stems from the fact that in the event of success, the amount of damages awarded can be significant enough to alter behaviour.<sup>187</sup> Class actions have been successfully exploited in the USA in environmental and tort cases, pursuant to Rule 23 of the Federal Civil Procedure Rules 2010.<sup>188</sup> The concept of class actions is however virtually absent from Nigeria’s civil procedure.<sup>189</sup> Lawyers seeking to file class actions often have to rely on ingenious interpretations of the rules of court. But whether a class action will be allowed to proceed in a particular court is largely dependent on the disposition of the trial judge.<sup>190</sup>

The closest the Nigerian civil procedure rules have to a class action is the representative action but this is limited in scope and more technical in nature. Under the representative action, all the representees must be ascertained and expressly consent to the action being filed in their interest.<sup>191</sup> On the other hand, class actions in the USA can be filed even where all the parties are not ascertainable and even if the action will bar further litigation from other

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<sup>185</sup> *Deposit Guaranty National Bank v. Roper* (1980) 445 U.S. 326, 339

<sup>186</sup> Jenna G. Farleigh, ‘Splitting the Baby: Standardizing Issue Class Certification’ (2011) 64 *Vand. L. Rev.* 1585. Some class actions are also public interests litigation. For instance, in 2012 a PIR was filed by the oil workers union that sought to ban Chevron and Transocean from operating in Brazil, due to their alleged lack of environmentally viable practices. See ‘Brazil’s union files lawsuit against Chevron and Transocean over oil spill’ *Marco Press* (30 March 2012) <<http://en.mercopress.com/2012/03/30/brazil-s-union-files-lawsuit-against-chevron-and-transocean-over-oil-spill>> accessed 26 April 2013

<sup>187</sup> See S.I. Strong, ‘Regulatory Litigation in the European Union: Does the U.S. Class Action Have a New Analogue’ (2012) 88 *Notre Dame L. Rev.* see also Deborah Hensler, How Economic Globalisation is Helping to Construct a Private Transnational Legal Order, in Sam Muller and others (eds) in *The Law of the Future and the Future of the Law* 250-59 (2011) ; George A. Bermann, ‘US. Class Actions and the "Global Class’ (2009) 19 *Kan. J.L. & Pub. POL’Y* 336, Luff at 113 .

<sup>188</sup> (As amended to December 1, 2010)

<sup>189</sup> Order 9 Rules 1-4 of Nigeria’s Federal Civil Procedure Rules 2009 , contains some provision on class actions but limits it to intellectual property, Order 9 Rules 1-4 4, See also Tochukwu Onyiuke ‘Class Action lawsuits: A global trend for accountability & better service delivery (2)’ *Business Day* (3 November 2010)<<http://www.businessdayonline.com/NG/index.php/component/content/article/133-insight-from-outside/15955-class-action-lawsuits-a-global-trend-for-accountability-a-better-service-delivery-2>>

<sup>190</sup> Nigerian Institute of Advanced Legal Studies, ‘Communique on the Roundtable on Class Action Litigation in Nigeria’ ( March 2013)<[nials-nigeria.org/text/n\\_comm.aspx](http://nials-nigeria.org/text/n_comm.aspx)> accessed 20 April 2013

<sup>191</sup> See for instance Order 13 Rule 13 Bayelsa State High Court Civil Procedure Rules, and Order 13 Rule 13 of the Rivers State High Court Civil Procedure Rules 2010, which are similar to the rules applicable in other states of the federation.

members of the class. And while parties to a representative action must all have exactly the same interest in the issue, class actions can be filed even if the interests of the different parties are not exactly the same.

Litigants who sue or defend a suit as a class in the USA have to establish that separate individual actions are impracticable, that the claims or defences of the representative parties are typical of the class, and that the action is meant to protect the interests of the class.<sup>192</sup> Generally, a US judge will grant leave for a class action after considering whether the time and money to be saved by the action, outweighs the cost of forfeiting personal rights to sue in the future.<sup>193</sup>

In the light of risks posed to life, the Nigerian economy and the human environment by petroleum operations, there is need for a clearer regime for class actions. This is more so as Nigeria has significant regulatory gaps. Such a regime should seek not only to compensate, but equally importantly, to regulate and deter. Class actions are easier to institute than individual actions because the cost implications are often lesser since parties contribute proportionally. The cost of prosecuting individual actions against giant oil corporations is often monumental. This is more so as the Niger Delta region is one of the poorest in the country.<sup>194</sup> Many individual actions have been defeated because oil corporations often harness the best legal representation and import experts from any part of the world.

Currently, the poverty limitation of oil bearing communities is sometimes alleviated by rich lawyers who fund and prosecute individual and representative actions, under contingency arrangements. An example of such actions is *Isaac Agbaro v Shell and 3 others*, where a federal high court awarded the sum of 15.4 billion naira (about £150 million) against Shell for environmental pollution. The plaintiffs had claimed compensation in respect of a 1970 oil spill from a field operated by Shell which affected about 256 hectares of land and water areas

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<sup>192</sup> Nigerian Institute of Advanced Legal Studies, 'Communique on the Roundtable on Class Action Litigation in Nigeria' (March 2013) <nials-nigeria.org/text/n\_comm.aspx> accessed 20 April 2013

<sup>193</sup> Rule 23

<sup>194</sup> DE Abiboa B Maiangwa, 'Corruption and the Underdevelopment of the Niger Delta in Nigeria' (2012) 5 (8) Journal of Pan African Studies

in the Ejama-Ebubu community in Tai Eleme Local Government area of Rivers State of Nigeria.<sup>195</sup> But this action was successful because the claimants were able to retain the counsel of Lucius Nwosu, a senior advocate of Nigeria under contingency arrangements. A sound class action regime similar to Rule 23 of the USA will motivate litigants to secure the best representation, hire experts, and prosecute claims against giant corporations which pollute the environment in breach of Nigeria's laws. The outcome of such actions is likely to regulate operational behaviour in the NPI and complement government activity.

### 3.9.5 THE REGULATORY POTENTIAL OF PUBLIC INTEREST LITIGATION

A public interest litigation (PIL) can also be filed in order to obtain injunctive reliefs or obtain a positive order through an order of mandamus. It has great potential in promoting accountability in the management of petroleum revenues in Nigeria, as issues of corruption in the management of Nigeria's petroleum revenues are endless.

In February 2014, the CBN governor Lamido Sanusi, was suspended by the president of Nigeria on allegations of financial misconduct. Some observers however believe his suspension is not unconnected to his allegation that \$20 billion of petroleum revenues have not be remitted to the Federation Account, by NNPC.<sup>196</sup> In response to outcries against corruption in the NPI, many committees have been set up to investigate and audit various accounts, but the reports and recommendations are hardly ever published and implemented.<sup>197</sup> To that extent, a PIL can be filed either under the freedom of information Act (FOIA) 2011 or any other similar Act in order to compel the publication of such reports, in essence promoting transparency and accountability. PILs can also be used to address environmental violations, prosecute public nuisance, oil spills, and gas flaring as the *Oronto* case illustrates.

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<sup>195</sup> Innocent Anaba, 'Oil spill: Shell to pay N15.4bn' (July 6 2010) <<http://www.vanguardngr.com/2010/07/oil-spill-shell-to-pay-n15-4bn/>> accessed 7 March 2014

<sup>196</sup> 'Trouble at Nigeria's Central Bank' *The Economist* (21 February 2014) <<http://www.economist.com/blogs/baobab/2014/02/trouble-nigerias-central-bank>> accessed 28 March 2014

<sup>197</sup> Numerous reports include the Pius Okigbo audit of the Central Bank of Nigeria in 1994, KPMG audit of NNPC between 2007-2009, and recently, the Nuhu Ribadu report of 2012.

One major limitation to the effectiveness of PILs in Nigeria has been a conservative interpretation of the locus standi rule. The locus standi rule was established to regulate access to the courts in order to shut the door of the courts from the antics of professional litigants and meddlesome interlopers.<sup>198</sup> It requires litigants to show from their pleadings that their actions are justifiable, and to prove the existence of a dispute between them and the defendant.<sup>199</sup> Under this rule, an applicant who applies for a declaratory order is required to prove the breach of a legal interest which transcend that of the larger community and that they have suffered damages more than any other person.<sup>200</sup> This is somewhat similar to the English public nuisance action.<sup>201</sup> It is however not easy to cross the procedural hurdles posed by a conservative application of the locus standi rule and this has diminished the potential of regulatory litigation in Nigeria.

In 2012, a PIL was instituted to compel the Attorney General of Nigeria, Central Bank of Nigeria and the former Military ruler, General Ibrahim Babangida. The applicants were a coalition of six civil society groups led by the Socio-Economic and Accountability Project (SERAP), which demanded an accounting by the respondents for \$12.5 billion petroleum revenues received by the Nigerian government between 1988 and 1994. The claim was grounded on a 1994 report allegedly submitted to the Nigerian government by the Pius Okigbo panel. Relying on the locus standi principle however, the FGN challenged the claimant's right to institute the action. The High Court judge agreed with the FGN, and dismissed the action for failure on the part of the applicants to establish by admissible evidence that they had a right to file the action.<sup>202</sup>

The bar of the locus standi rule means that most PILs in the NPI remain at the domain of the federal attorney general, who also doubles as the minister of justice. As minister, he is a politician and is often subject to political and economic undercurrents. This explains why the office of the attorney general is not always disposed to pursue certain courses of action which

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<sup>198</sup> Osahon O. Guobadia, 'The Relevance of the Judiciary in a Democratic Nigeria' (2012) 20 Afr. J. Int'l & Comp. L. 301 312

<sup>199</sup> *Ogbuechi v Governor of Kano State* (1995) 9 NWLR (Pt 417) 53;

<sup>200</sup> *Oronto Douglas and 3 others v S.P.D.C and 3 ors*, [1999] 2 N.W.L.R. Part 591, 466, Per Musdapher JCA

<sup>201</sup> See *Attorney General V Pya Quarries Ltd* (1957) 2 Queens Bench 169

<sup>202</sup> Toyi Soniyi, 'Court Dismisses \$12.5bn Gulf Oil Windfall Suit' Thisday (Abuja, 30 November 2012) <<http://www.thisdaylive.com/articles/court-dismisses-12-5bn-gulf-oil-windfall-suit/132119/>> accessed 30 November 2012

can result in environmental protection and industry regulation. There have been calls in Nigeria for the separation of both offices, but these have not been implemented so far.<sup>203</sup> Thus public interest litigation by the government remains subject to political considerations and this has implications for regulatory quality. In contrast to Nigeria, Brazil has independent public prosecutors who are able to institute actions against the Brazilian government, Petrobras, and private firms for environmental pollution.<sup>204</sup>

To address the limitations to PILs in Nigeria, there is need for clear, extensive and substantive rules which can empower private citizens to institute PILs. Some effort in this regard was made in 2011 with the enactment of the Freedom of Information Act (FOIA) under which Nigerians can seek the publication of information held by the government.

Although the FOIA has not been tested significantly in the courts, it has been observed that it is often replete with a barrage of exceptions which may be used to frustrate its ends in practice.<sup>205</sup> Another limitation of the FOIA regime is that it is not applicable to private firms, unless those in which the FGN is controlling shareholder.<sup>206</sup> It is proposed that the scope of the FOIA should be extended to IOCs since the FGN has over 55 per cent of the concessions they operate. This would make such firms liable to disclose the contents of agreements and payments made to and with the FGN, and further protect transparency and accountability in the NPI.

### **3.10 CONCLUSION: ALL REGULATORY OPTIONS SHOULD BE EMPLOYED IN THE NPI**

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<sup>203</sup> One Office, Dual Responsibilities' *Thisday* (16 July 2013) <<http://www.thisdaylive.com/articles/one-office-dual-responsibilities/153497/>> accessed 28 March 2014

<sup>204</sup> See Leslie K. McAllister, *Making Law Matter : Environmental Protection and Legal Institutions In Brazil* (n 172)

<sup>205</sup> For instance, although ss. 1 and 3 confer the right to public information, ss. 7, 11, 12, 14, 15, 16, 17, 18, 19 and 26 contain exemptions which can be used by unwilling public officials to make access to information very difficult.

<sup>206</sup> S. 2(7) FOIA 2011

It can be safely asserted that the best managed petroleum industries, are also adequately regulated. Any meaningful reform in the NPI should therefore seek to improve regulation. For example, Norway has significant mechanisms that enhance transparency through a set of criteria for reporting on ‘concession terms and project incomes. For example, there is public information on the tax payments from individual businesses operating in the Norwegian continental shelf. Furthermore, model contract terms are accessible to the public.<sup>207</sup> Good regulation therefore blocks loopholes for corruption and provides funds that can be effectively applied for the benefit of the people. Thus Nigeria needs to employ all options in order to promote effective regulation of the NPI. From the financial aspects, there should be adequate publication of payments made by PEPCs to the FGN, and the processes should be transparent and rigid enough to reduce opportunities for corruption.

Chapter five explores the proposed privatisation of NNPC through the Petroleum Industry Bill 2012. A privatised NOC will be imbued with a stronger commercial orientation and will be more distanced from the FGN. Such a firm will therefore require strict regulation in order to ensure it operates properly and in line with the law. Effective regulation will be imperative to check the operations of the proposed NOC, and of the industry as a whole. The allegation that NNPC withheld \$20 billion from the federation account is not good for any country. Nigeria needs to do more, and the PIB does not go far enough to confer independence on regulators, or to limit the powers of the president or minister over the industry. And in practice, it is hard for an employee to effectively regulate his employer.

Viable regulation is required for all the sectors of the NPI, ranging from local content, monitoring of operations and revenues, and environmental protection. In fact the success of the reform programme as contained in the PIB, is heavily dependent on viable regulation on the one hand, and a functional NOC, on the other. This requires improvement in regulatory quality, by enlisting the help of the private sector as a complementary regulatory strategy. On the part of administrative regulation, there is need to shore up much needed capacity, independence, funding, and a properly defined legal framework.

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<sup>207</sup> See Productivity Commission (n 17 chapter 3) 315

One aspect where effective regulation can help the NPI is in local content development. For without viable regulation, a local content regime can be easily circumvented by self dealing individuals and their foreign collaborators. The limits and potential of a local content regime however needs closer investigation, and this will be done in chapter four.



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## **4 CHAPTER FOUR: TOWARDS A SIGNIFICANT NIGERIAN CONTENT IN THE NIGERIAN PETROLEUM INDUSTRY: AN ANALYSIS OF NIGERIA'S REFORM STRATEGIES, LEGISLATION, AND CURRENT CHALLENGES**

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### **4.1 INTRODUCTION: AIMS AND OBJECTIVES OF THE CHAPTER**

In chapter two, it was argued that a significant local content is a valid criterion for measuring how functional a country's petroleum industry is. It was also shown that the Nigerian content is relatively weak, when compared with that of Norway and Brazil. This chapter seeks to determine the extent to which legislative, contractual and institutional reforms can be utilised in developing local content in the NPI. And to that extent, it will analyse the Nigerian content policy as embodied in the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010 and will compare same with the Norwegian and Brazilian local content regimes.

This chapter argues that a country's local content regulation can be for either a protectionist, or a developmental purposes. A protectionist approach is required where a country already has some level of industrial capacity to protect, while the developmental approach can be resorted to where a country has weak industrial capacity and needs to develop same. It argues that the regulatory strategies required in a country that needs to protect its local content, should not be the same as those of a country that seeks to develop its local content. And that as NOGICDA is protectionist in nature, it may be unsuited to Nigeria's developmental needs. To that extent the chapter argues that Nigeria may need to amend NOGICDA in line with its developmental needs.

## 4.2 WEAK LOCAL CONTENT IN PETROLEUM PRODUCING COUNTRIES

Local content within the context of this thesis refers to the extent to which a country is directly or indirectly involved in its domestic petroleum industry.<sup>1</sup> Section 106 of NOGICDA defines it as the ‘quantum of value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian Oil and Gas Industry’.<sup>2</sup>

It is a fact that many petroleum producing countries (PPCs) rely on American and European based IOCs to manage, extract and develop their petroleum resources.<sup>3</sup> And until recently, most were content with the corporate taxes and minor social initiatives provided by these firms. While some PPCs have increased state participation in their petroleum industries,<sup>4</sup> dependence on IOCs remains high in developing countries, when compared to western countries like Norway and Canada.<sup>5</sup>

Many IOCs operating in developing countries like Nigeria and Angola, in turn patronise foreign oil service firms to execute petroleum related contracts. This patronage is due in part to the highly technology intensive nature of petroleum operations, and to financial incapacity of most home based firms.<sup>6</sup> But the outsourcing of relevant and crucial contracts deprives many PPCs of much needed funds, experience, employment, and opportunities for transfer of technology. For example, it is estimated that of the \$18 billion spent annually for petroleum

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<sup>1</sup> See Accenture, ‘Developing Local Content Programs’ (Accenture 2009) <[http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture\\_Energy\\_Developing\\_Local\\_Content\\_Programs\\_EiaB5.pdf](http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture_Energy_Developing_Local_Content_Programs_EiaB5.pdf)> accessed 9 January 2013

<sup>2</sup> No 2 of 2010

<sup>3</sup> OPEC, ‘OPEC Share of World Crude Oil Reserves by 2011’ (2011)<[http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm)> accessed 12 November 2012

<sup>4</sup> Charles McPherson, ‘State Participation in the Natural Resource Sectors: Evolution, Issues and Outlook’ (2008) IMF Conference on Taxing Natural Resources: New Challenges, New Perspectives’ <<http://www.imf.org/external/np/seminars/eng/2008/taxnatural/pdf/mcpherson.pdf>> accessed 19 March 2013

<sup>5</sup> Some of these countries include Nigeria, Algeria, Venezuela, Mexico, Iraq, and Kuwait.

<sup>6</sup> A company is in production if it is awarded contracts for exploration and production, as against service companies which are involved in various stages of the production process like seismic operations, pipelines fabrication, construction of storage facilities and tank farms, etc. See generally, Martin S. Raymond, William L. Leffler, *Oil & Gas Production in Nontechnical Language*, (3rd edn Penwell Books 2006)

contracts in Nigeria, less than 20 per cent is retained internally.<sup>7</sup> It was also shown earlier that Nigeria lost \$380 billion to capital flight due to absence of a viable local content in the petroleum industry, from 1956-2006.<sup>8</sup>

Retaining a significant portion of petroleum related jobs internally has many benefits for a national economy.<sup>9</sup> Manufacturing sectors are likely to benefit from the linkages that exist with the petroleum industry, which includes investment in research, and transfer of technology.<sup>10</sup> Other sectors that stand to benefit include shipping, transportation, insurance, banking and construction besides tax benefits for a government.<sup>11</sup> A significant local content<sup>12</sup> will also result in the establishment of viable indigenous PEPCs and local oil service firms (LOSFs), a pool from which industry regulators and policy makers with hands on experience can be sourced. This will in turn address regulatory gaps, which were identified in chapter three to include inexperienced regulatory personnel.<sup>13</sup>

It is the position of this chapter, and which experience in some countries has proved, that there exists a direct link between the extent to which a country directly participates in its petroleum industry, and the management and regulation of that industry. For instance, Norway and Brazil which have significant local content also have better regulatory and management records.<sup>14</sup> In Nigeria, a weak local content may indirectly have impacted Nigeria's regulatory quality, and the general benefits Nigeria derives from the industry.

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<sup>7</sup> See Jean Balouga , 'Nigerian Local Content: Challenges and Prospects' (2012)International Association of Energy Economics [www.iaee.org/en/publications/newsletterdl.aspx?id=176](http://www.iaee.org/en/publications/newsletterdl.aspx?id=176) accessed 11 November 2012

<sup>8</sup> See chapter 2, para 2.8.1. See also 'Nigerian Content Act: Stakeholders Share their Experience 3 Years On' (2012) NCDMB <<http://www.ncdmb.gov.ng/index.php/public-relations/news-updates/134-nigerian-content-act-stakeholders-share-experience-3years-on>> accessed 21 November 2012

<sup>9</sup> For purposes of this work, a significant Local Content in the petroleum industry is that which is able to capture at least 50% of the annual expenditure in the industry.

<sup>10</sup> Shirley Neff, 'Memorandum on International Best Practice in Development of Local Content in the Energy Sector' (2005)Presented to the Nigeria National Stakeholders Working Group <<http://www.neiti.org.ng/sites/default/files/page/uploads/local-content-5-9-051.pdf>>

<sup>11</sup> See Jesse Salah Ovidia, 'The Making of Oil-backed Indigenous Capitalism in Nigeria' (2012) Vol 18 New Political Economy at 19

<sup>12</sup> In this thesis, a significant Local Content for any country will be pegged at 50 per cent.

<sup>13</sup> See chapter two, para 3.6.2. See also Chika Amanze-Nwachukwu, 'Why DPR Cant Efficiently Regulate Oil Industry' Thisday (Abuja, 13 December 2012 ) <<http://www.thisdaylive.com/articles/why-dpr-can-t-efficiently-regulate-oil-sector/104909/>> accessed 16 September 2012

<sup>14</sup> See Mark Thurber and others' 'Exporting the Norwegian Model' (n 21 chapter 2), 5366-5378, where Norway, Malaysia and Brazil, countries which relatively high Local Content were shown to have better managed their petroleum industries; and Nigeria, Angola and Algeria, countries with weak Local Content were also shown to

A growing discontent with minor social initiatives of IOCs has led to increased clamour for a greater 'chunk' of the petroleum industry by many petroleum exporting countries. And this has resulted in the formulation of local content policies which are implemented through various strategies. For instance, some countries rely on NOCs to spearhead their local content development, while others stipulate a minimum local content requirement for all PEPCs and establish regulators to monitor compliance.<sup>15</sup> Others endeavour to create an enabling environment for the domiciliation of foreign subsidiaries by IOCs and service firms, while granting them huge tax incentives for the patronage of local goods and services.<sup>16</sup> And still other countries seek to encourage local content by awarding petroleum exploration contracts to indigenous firms, on liberal and favourable terms.<sup>17</sup>

The remainder of this chapter will analyse the reasons behind Nigeria's weak local content, and the legal and non legal initiatives Nigeria has erected to improve and develop same. In the light of the analysis and comparison from other jurisdictions, this chapter will enquire if Nigeria is on track to developing a significant local content, and the implications of same for the wider petroleum industry.

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have either weak or poor management of their petroleum industries. See also Paul Stevens, 'Kuwait Petroleum Corporation (KPC) : an Enterprise in Gridlock' in David G. Victor and others (eds) (n 22 chapter 2), at 334 and David R. Hults 'Petroleos de Venezuela, S.A. (DDVSA): from Independence to Subservience', in David G. Victor (n 22 chapter 2), 418

<sup>15</sup> Chineme Okafor, 'FG Insists on Nigerian Content for Oil Bid Rounds, Licences', Thisday (Abuja, 25 June 2012) <<http://www.thisdaylive.com/articles/fg-insists-on-nigerian-content-for-oil-bid-rounds-licences/118677/>> accessed 19 November 2012

<sup>16</sup> All member states of the Organisation of Petroleum Exporting Countries (OPEC) have established NOCs, See OPEC, 'Member Countries' < [http://www.opec.org/opec\\_web/en/about\\_us/25.htm](http://www.opec.org/opec_web/en/about_us/25.htm)> accessed 8 November 2012 Others non OPEC members that have NOCs include : include Norway, Malaysia, Brazil and Mexico. See also **Accenture (n. 19) . See also** Kingson, Jeorge, 'Towards An Effective Local Content Law' (GhanaWeb , 4 October 2012) <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=252121> accessed 12 November 2012. Ghana aspires to a 90 per cent local by 2020. See Van Gyampo and Ransford Edward, 'Saving Ghana from Its Oil: A Critical Assessment of Preparations so Far Made'(2011) Vol. 57 (4) Africa Today, pp.49-69, See also Joseph Nwaokoro, 'Beyond Legislation: A Contract Alternative to Legislating Local Content in Nigeria' (2009) 18 Currents Int'l Trade L.J. 42

<sup>17</sup> S. 48 NOGICDA

### 4.3 HISTORICAL PERSPECTIVES OF LOCAL CONTENT IN THE NIGERIAN PETROLEUM INDUSTRY

The NPI has largely remained dominated by IOCs for the past five decades of Nigeria's foray into petroleum production. This is largely because Nigeria did not assert its authority significantly other than to seek to promote employment for its citizens, and to collect minor taxes from petroleum firms. For instance, the Mineral Oils Act of 1914 which was Nigeria's first local content legislative initiative only required concessionaires to train Nigerian technicians and craftsmen, and to recruit Nigerians within a reasonable time, as supervisors and senior managers.<sup>18</sup> The Act did not however require IOCs to domesticate their operations in-country or patronise local firms. Like its predecessor, the Petroleum Act of 1969 also focused on employment and training of Nigerians, with only slight improvements to the Mineral Oils Ordinance. Under paragraph 38 (a) i of the first schedule to the Act, the grantee of an oil mining lease is required to have 75 per cent representation in managerial, professional and supervisory grades in connection with their concessions. Paragraphs 38(a) ii provides that Nigerians in any particular job group must not be less than 60 per cent of the total number of employees, while sub paragraph provides that all skilled, semi skilled, and unskilled workers are required to come from Nigeria. Regulation 26 of the Petroleum (Drilling and Production) Regulations 1969 requires holders of oil prospecting licences to submit a detailed programme for the recruitment and training of Nigerians for the approval of the Minister, within 12 months of the grant of their concessions.

That Nigeria focused on securing employment for Nigerians in the NPI, rather than to develop indigenous PEPCs as was the case in Norway and Brazil, perhaps explains why the first indigenous concessions were awarded only in 1991, more than 30 years after the industry began.<sup>19</sup> This is in contrast again to Norway, where indigenously owned Norsk Hydro began to play significant roles in the North Sea as far back as the early 1970s, just a few years after the Norwegian petroleum industry began in earnest.<sup>20</sup> In fact prior to its

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<sup>18</sup> See Clause 17(1) of OML 92, see also . Ike Oguine, 'Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues' (2011) Vol. 29, JENRL at 408

<sup>19</sup> They include Dubri Oil, Con Oil and Solgas Nigeria Limited.

<sup>20</sup> NorskHydro 'A History of Innovation' (2014) <<http://www.hydro.com/en/About-Hydro/Our-history/>> accessed 13 March 2014

merger with Statoil, Norsk Hydro developed its capacity to a level where it could compete with Statoil and other IOCs in the North Sea.<sup>21</sup> In addition to indigenous PEPCs, Norway was able to develop some of the best service firms in the world, a factor that contributed to the significant growth of its local content in the North Sea.

Other legislative initiatives that had a bearing on local content include regulation 2(3) of the Oil and Gas Pipelines Regulation 1995. The regulation provided that licences for the construction of pipelines are not to be awarded to bidding firms unless a list of construction companies to be considered for the work have been submitted to, and approved by the DPR. Also section 5 (1) (h) of the NNPC Act mandates NNPC to generally engage in activities that would enhance the petroleum industry in the overall interest of Nigeria. Item 5 of the guidelines for the oil and gas industry of the National Insurance Commission also contains provisions geared towards encouraging insurers in the petroleum industry. In order to develop viable human resources, Nigeria enacted the Petroleum Trust Development Fund (PTDF) by Act No. 25 of 1973.<sup>22</sup> Over the past four decades, the PTDF has been able to train thousands of Nigerians in various aspects of the petroleum industry by granting scholarships, and collaborating with research institutions.<sup>23</sup>

When eventually Nigeria began to assert some authority over the NPI, it focused more on revenue collection and sharing rather than local content. It established the Nigerian National Oil Corporation (NNOC) in 1971 via a decree No 18, and the NNPC via decree No 33 of 1977 as successor to NNOC. Through NNOC and later NNPC, Nigeria acquired majority stakes in concessions operated by IOCs, and thus had unique and greater opportunities to increase its local content, but this was not the case. It will be recalled that Statoil developed by utilising similar opportunities when it was conferred with 50 per cent stakes in all concessions operated by IOCs in the Norwegian Continental Shelf (NCS).<sup>24</sup> With its unique position, Statoil was able to pursue Norway's local content policies and to enable the

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<sup>21</sup> Hydro, '1969: Ekofisk - a Christmas surprise' (2014) <<http://www.hydro.com/en/About-Hydro/Our-history/1946---1977/1969-Ekofisk---a-Christmas-surprise/>> accessed 30 March 2014

<sup>22</sup> Ch P.14 LFN 2004, see PTDF, 'History' (2012) <[http://www.ptdf.gov.ng/index.php?option=com\\_content&view=article&id=40&Itemid=54](http://www.ptdf.gov.ng/index.php?option=com_content&view=article&id=40&Itemid=54)> accessed 13 November 2012

<sup>23</sup> PTDF, 'Local and Overseas Scholarship Scheme' (2013) <[http://www.ptdf.gov.ng/index.php?option=com\\_content&view=article&id=105](http://www.ptdf.gov.ng/index.php?option=com_content&view=article&id=105)> accessed 18 March 2013

<sup>24</sup> See chapter two, para 2.7.1

development of local businesses in the NCS. As majority holder of all concessions operated by IOCs, NNPC was thus in a position to require its IOC partners to execute some contracts within Nigeria through local subsidiaries, and to patronise Nigerians in other respects.<sup>25</sup> This was not done however, perhaps due in part to infrastructural and capacity challenges, and in part to the absence of visionary leadership.

#### **4.4 ANALYSIS OF FACTORS RESPONSIBLE FOR WEAK NIGERIAN CONTENT IN THE PETROLEUM INDUSTRY**

The Nigerian content is considered low when compared to those of Norway and Brazil which began producing petroleum about the same period as Nigeria. In fact as at 2002, the Nigerian content was estimated at being less than 5 per cent.<sup>26</sup> And while recent legislative initiatives have resulted in some increase, most industry observers currently agree that the Nigeria content currently hovers between 12 to 18 per cent.<sup>27</sup> This is largely because while a reasonable number of Nigerians are employed in the industry, IOCs and their foreign partners still dominate about 90 per cent of the petroleum produced in Nigeria.<sup>28</sup> The various reasons why this situation has continued will be examined next.

##### **4.4.1 THE ABSENCE OF A COMPREHENSIVE LOCAL CONTENT POLICY PRE 1999**

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<sup>25</sup>Ike Oguine 'Nigerian Content (n 18)

<sup>26</sup> See Jean Balouga , 'Nigerian Local Content: Challenges and Prospects' (2012)International Association of Energy Economics [www.iaee.org/en/publications/newsletterdl.aspx?id=176](http://www.iaee.org/en/publications/newsletterdl.aspx?id=176) accessed 11 November 2012 , Per Heum and others, 'Enhancement of Local Content in the upstream Oil and Gas Industry In Nigeria' (2003) SNF Report NO 25/03, SNF : Institute for Research in Economics and Business Administration <[http://brage.bibsys.no/nhh/handle/URN:NBN:no-bibsys\\_brage\\_21973](http://brage.bibsys.no/nhh/handle/URN:NBN:no-bibsys_brage_21973)> accessed 12 November 2012 which puts Nigerian content development at 25 per cent in 2003 while the Nigerian Content Division put it at 20 per cent in 2005. See Ike Oguine , 'Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues' (n. 18) at

NCDMB, 'Nigeria Content Support Fund Hits \$100' (October 9 2012 ) <<http://www.ncdmb.gov.ng/index.php/public-relations/news-updates/127-nigeria-content-support-fund-hits-100-million>> accessed 19 November 2012

<sup>27</sup> Ejiofor Alike, 'Nwapa: Nigerian Content in Oil Industry Hovers around 18% 5 June 2012' Thisday (Abuja 5 June 2012) <<http://www.thisdaylive.com/articles/nwapa-nigerian-content-in-oil-industryhovrs-around-18-117302/>> accessed 15 November 2012

<sup>28</sup> See Segun Adeniyi, 'Real Ownership of Oil Blocks Revealed' Thisday (14 March 2013) <<http://www.thisdaylive.com/articles/real-ownership-of-indigenous-oil-blocks-revealed/142113/>> accessed 14 March 2013

It was demonstrated earlier that while Norway and Brazil had strategic petroleum industry policies geared towards resource nationalism, Nigeria lacked a similar policy or objective.<sup>29</sup> In order to encourage the development of indigenous PEPCs Norway developed a strategy of awarding a single petroleum concession to two and sometimes three firms. These firms were thus able to pool resources in order to develop their offshore concessions.<sup>30</sup> A lack of viable policies, coupled with the virtual absence of in-country capacity, may have informed why Nigeria's earliest local content legislations which as demonstrated earlier, were focused on job creation, rather than on a viable NOC, or indigenous PEPCs.<sup>31</sup>

#### **4.4.2 THE ABSENCE OF A VIBRANT NATIONAL OIL COMPANY AND INDIGENOUS PRIVATE PEPCS**

A consequence of the absence of a viable Nigerian content policy was the lack of a vibrant and operational NOC in the mould of Statoil, Petronas, or Petrobras. NNPC's upstream subsidiary, the Nigerian Petroleum Development Company (NPDC) produces only about 130 barrels of crude oil daily (about 5.65 per cent of Nigeria's daily crude oil production), and is not in a position to influence local content development from a practical standpoint. Vibrant and functional NOCs generate billions of dollars for their home countries and are able to fund technological research, patronise local industry, and monitor IOCs in order to ensure they comply with local content stipulations.<sup>32</sup> For example, Petrobras of Brazil which controls over 90 per cent of Brazil's crude oil production, is in a position to support the implementation of Brazil's local content policies by monitoring the operations of its IOC partners.<sup>33</sup>

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<sup>29</sup> See para 2.8

<sup>30</sup> See Helge Ryggvik, 'The Norwegian Oil Experience: A Toolbox for Managing Resources?' (2010) <<http://www.sv.uio.no/tik/forskning/publikasjoner/tik-artikkelserie/Ryggvik.pdf>> accessed 13 March 2014

<sup>31</sup> See para 4.3

<sup>32</sup> Petrobras has invested billions in research and development. Currently, Petronas has a technology based university in Malaysia. See 'University Teknologi Petronas' <<http://www.utp.edu.my/>> accessed 18 March 2013

<sup>33</sup> Rodrigo Orihuela & Peter Millard, 'Petrobras First Female CEO Is Rousseff's Response to Delayed Oil' Bloomberg (2012) <<http://www.bloomberg.com/news/2012-06-01/petrobras-first-female-ceo-is-rousseff-s-response-to-delayed-oil.html>> accessed 19 March 2013



That a viable NOC can significantly protect a country's local content can be seen in Malaysia's Petronas, which also executes regulatory functions in the Malaysian upstream. Petronas monitors its PSC partners in order to ensure compliance with local content regulations. Thus from its vantage position, it is able to require its PSC partners to 'comply with the national objective of maximizing Malaysian participation in the use of local equipment, facilities, goods, materials, supplies and services in petroleum operations.'<sup>34</sup> In that regard, it is able to insist that Malaysian firms are given priority in procurements, supplies, and services. Actually, contracts can only be awarded to foreign firms where there are no Malaysian firms available to execute such jobs. Furthermore, any firm desirous of executive oil servicing contracts in Malaysia must be licensed by Petronas and fulfil specified requirements.<sup>35</sup>

Closely related to the absence of a vibrant NOC in Nigeria, was the absence of vibrant indigenous PEPCs and oil servicing firms of international reckoning. Local content requires viable indigenous petroleum operators and service firms to develop to execute incidental jobs like drilling, construction, and design. Firms like Halliburton and Schlumberger are examples of oil servicing firms of international reckoning which are able to develop offshore and onshore infrastructure for the petroleum industry.

#### **4.4.3 NIGERIA'S WEAK MANUFACTURING SECTOR AND ITS IMPACT ON LOCAL CONTENT DEVELOPMENT**

Local content in Nigeria suffered in no small measure from a weak manufacturing sector in Nigeria. The petroleum industry is technology and skill intensive. This explains why highly industrialised countries like the UK and Canada, still require input from foreign firms to develop their petroleum fields. Nigeria however is not an industrialised nation. As at 2003, manufacturing accounted for less than 5 per cent of its exports,<sup>36</sup> and by 2013 it accounted for

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<sup>34</sup> Bank Pembangunan, 'Report On Malaysia Oil and Gas Exploration and Production' (2011)<[http://www.bpmb.com.my/GUI/pdf/annual\\_report/2011/20.pdf](http://www.bpmb.com.my/GUI/pdf/annual_report/2011/20.pdf) > 63

<sup>35</sup> Ibid, 64

<sup>36</sup> See Per Heum and others, 'Enhancement of Local Content (n 58, chapter 2), 11

10 per cent of Nigeria's GDP.<sup>37</sup> For a country with over 160 million people, Nigeria's overall industrial steel consumption is about 10 kilogrammes, below the world average of 150 kilogrammes.<sup>38</sup> A strong manufacturing base is required for fabrication, construction, and the execution of other contracts in the NPI.<sup>39</sup> Weak manufacturing is often used by IOCs to justify why they outsource jobs to foreign firms.

#### 4.4.4 WEAK INFRASTRUCTURAL BASE

Closely allied to weak manufacturing is a weak infrastructural base. Nigeria's road, rail, and water transport systems are all in need of refurbishment. Vital infrastructure like power and communication, which are required for the development of a vibrant manufacturing sector, are considered very low.<sup>40</sup> Currently only about 26.5 per cent of Nigerians have access to the internet,<sup>41</sup> and Nigeria's internet connection is one of the slowest in the world.<sup>42</sup> And although home to just 50 million people as against Nigeria's 160 million, South Africans consume 55 per cent more electricity than Nigerians.<sup>43</sup> These limitations have invariably impacted Nigeria's local content, since infrastructure is the base upon which indigenous PEPCs can develop.

#### 4.4.5 FINANCIAL LIMITATIONS OF LOCAL OPERATORS

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<sup>37</sup> National Bureau of Statistics, 'Manufacturing' (2013)

<<http://www.nigerianstat.gov.ng/sectorstat/sectors/Manufacturing>> accessed 25 April 2014

<sup>38</sup> Ruth T. Nastha, 'Poor Funding, Bane Of Steel Sector's Growth' The Nation (Abuja, 6 October 2012)

<[http://www.leadership.ng/nga/articles/36663/2012/10/06/poor\\_funding\\_bane\\_steel\\_sectors\\_growth.html?quick\\_tabs\\_3=1](http://www.leadership.ng/nga/articles/36663/2012/10/06/poor_funding_bane_steel_sectors_growth.html?quick_tabs_3=1)> accessed 20 November 2012

<sup>39</sup> Examples: steel pipes, FPSOS, tank farms, etc.

<sup>40</sup> Roads, water and rail are all moribund. See Adibe Emenyonu, 'Business Growth: W'Bank Identifies Poor Infrastructure as Bane' Thisday (11 August 2011) <<http://www.thisdaylive.com/articles/business-growth-w-bank-identifies-poor-infrastructure-as-bane/96433/>> accessed 17 March 2013, See also Familoni, K.A. (2006), 'The Role of Economic and Social Infrastructure in Economic Development: A Global view' (2006) Vol 6(4) Journal of Economic Perspectives 11-32

<sup>41</sup> Everest Amaefule, 'Nigeria Joins top 20 Internet Nations' punch (6 may 2012)

<<http://www.punchng.com/business/nigeria-joins-top-20-internet-nations/>> accessed 17 March 2013

<sup>42</sup> Alexander Chejina, 'How Poor, Slow Connections Torment Nigerian Internet Users' Business Day (28 February 2011) <<http://www.businessdayonline.com/NG/index.php/analysis/features/18539-how-poor-slow-connections-torment-nigerian-internet-users>> accessed 17 March 2013

<sup>43</sup> Electricity in Nigeria: Let there be Light' Economist (Abuja, ) <<http://www.economist.com/node/17312103>> accessed 18 March 2013

Difficulty in accessing financial facility on the part of indigenous PEPCs and LOSFs is currently one of the biggest impediments to the development of local content in Nigeria.<sup>44</sup> The petroleum industry is capital intensive and entails more than the average business risk. Banks therefore demand higher interest rates and sureties before granting loans to the industry.<sup>45</sup> Funding is however not just a Nigerian problem, for even Brazil also liberalised its petroleum industry primarily to tackle funding challenges.<sup>46</sup> In 1986, a study in the University of Aberdeen indicated that of the over 1000 petroleum-related firms in Aberdeen, many were subsidiaries, or affiliates of American firms. The study also noted that most of the British owned firms in Aberdeen were involved in insurance and catering, and not in core petroleum operations.<sup>47</sup> Commenting on the study, Wade notes that it demonstrated that ‘...the barriers to entry for local firms in such a capital-intensive (and more recently, technologically intensive) industry are significant, even with an aggressive local preference policy and a significant pool of producing facilities.’<sup>48</sup>

Besides charging high interest rates, few Nigerian banks have the capacity to fund major projects in the NPI, when compared to their Western counterparts. In some instances, entrepreneurs have had to rely on syndicated loans to fund certain projects in the Nigerian economy.<sup>49</sup> For example, in Nigeria’s ongoing power sector privatization, successful bidders of Nigeria’s 11 distribution companies have struggled to meet financial requirements of the Bureau of Public Enterprises.<sup>50</sup>

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<sup>44</sup> Chika Amanze-Nwachukwu and Ejiofor Alike, ‘Capacity Building ’ll Enhance 100% Local Content’ Thisday (10 August 2010)

<<http://www.thisdaylive.com/articles/-capacity-building-ll-enhance-100-local-content-/81350/>> accessed 9 July 2013

<sup>45</sup> See Obioma Chima, ‘Multinationals Shun Nigerian Banks over High Interest Rates’ Thisday (7 September 2012) <<http://www.thisdaylive.com/articles/-multinationals-shun-nigerian-banks-over-high-interest-rates-/124326/>> accessed 17 March 2013. See also Michael E Humphries, ‘The Competitive Environment for Oil and Gas Financing’ (1995) Vol. 23 Energy Policy, 991-1000

<sup>46</sup> See Yanko Marcius De Alencar Xavier, ‘Energy for the Future: Brazilian Law and Policy’ in Donald N. Zillman and others (eds), *Beyond the Carbon Economy: Energy Law in Transition* (Oxford 2008) at 399

<sup>47</sup> Paul Hallwood, *The Offshore Oil Supply Industry in Aberdeen: The Affiliates - Their Characteristics and Importance* (1986 University of Aberdeen)

<sup>48</sup> Wade Locke *Exploring Issues Related to Local Benefit Capture* n 30, chapter 2),7

<sup>49</sup> See Obinna Chima, ‘Nigeria Leads Africa’s Syndicated Loans Mkt with \$10bn Deals’ Thisday (30 April 2014) <<http://www.thisdaylive.com/articles/nigeria-leads-africa-s-syndicated-loans-mkt-with-10bn-deals/146336/>> accessed 10 March 2014

<sup>50</sup> Chika Amanze-Nwachukwu, ‘Investors Struggle to Raise Funds for Acquisition of Power Assets’, Thisday (1 March 2013) <<http://www.thisdaylive.com/articles/investors-struggle-to-raise-funds-for-acquisition-of-power-assets/141821/>> accessed 9 March 2013, See also Terje I. Vaaland and others, ‘Local Content and Struggling

There have however been certain initiatives established to address the funding challenge and to encourage local contractors. In 2012, Shell partnered with some Nigerian banks to establish a \$5 billion to support local oil and gas firms.<sup>51</sup> And in 2013, the NLNG also set up a \$1 billion fund to support its local contractors in the industry.<sup>52</sup> The FGN also established a Nigerian Content Development Fund in pursuance to NOGICDA. The Fund is supported mainly by PEPCs which are required to contribute 1 per cent of their profit to it.<sup>53</sup> Currently the fund is valued at \$350 million.<sup>54</sup>

#### 4.4.6 INADEQUATE HUMAN CAPACITY

Although Nigeria has a sizeable number of engineers and geologists in the petroleum industry, it still struggles with a shortage of skilled manpower. Institutions of learning are the source for recruitment of manpower to meet the local content targets. And although Nigeria has an appreciable number of universities and polytechnics offering engineering, geology, technical and science based courses, the level of education is relatively weak.<sup>55</sup> With frequent strikes, poor funding, weak infrastructure, and corruption, Nigeria's universities are consistently rated low among global universities.<sup>56</sup> And this decline in education is reflected

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Suppliers: A Network Analysis of Nigerian Oil and Gas Industry' (2012) Vol 16 African Journal of Business Management 5399-541, <<http://www.academicjournals.org/AJBM>> accessed 20 November 2012

<sup>51</sup> Ernest Chinwo, 'Local Content: Shell, Banks Creat \$5 billion for Contractors' *Thisday* (17 September 2012) <<http://www.thisdaylive.com/articles/local-content-shell-banks-create-5bn-fund-for-contractors/125153/>>

<sup>52</sup> Chika Amanze-Nwachuku and Ejiofor Alike, 'NLNG Floats \$1bn Financing Scheme for Contractors' *Thisday* (5 December 2013) <<http://www.thisdaylive.com/articles/nlng-floats-1bn-financing-scheme-for-contractors/165960/>> accessed 30 March 2014

<sup>53</sup> S 104(2) fund, see S 104. See also NCDMB

<sup>54</sup> Dayo Oketola, 'Operators urged to access \$350m Nigerian Content Fund' *Punch* (28 November 2014) <<http://www.punchng.com/business/energy/operators-urged-to-access-350m-nigerian-content-fund/>> accessed 30 March 2013

<sup>55</sup> The PTDF fund sponsors Nigerians to study within and outside Nigeria in strategic areas relative to the needs of the petroleum industry. In 2007, the Petroleum Training Institute was upgraded to the Federal University of Petroleum Resources with the vision of training capable Nigerians to play significant roles in the industry, the university is at its fledgling stages. See Ugwushi Bellema Ihua, 'Local Content Policy and SMEs Sector Promotion: The Nigerian Oil Industry Experience' (2010) Vol 5 International Journal of Business and Management

<sup>56</sup> In the 2012/2013 world ranking of Universities, no Nigerian university was among the first 400 in the world. See Times Higher Education 'The World University Ranking' <<http://www.timeshighereducation.co.uk/world-university-rankings/2012-13/world-ranking>> accessed 17 March 2013. In the world ranking, the best Nigerian university, the University of Lagos, was ranked 2668 in the world. Ranking Web of Universities

in the petroleum industry, where Nigerian graduates are unable to meet requirements in the industry, a situation that further justifies IOCs' employment of foreign expatriates.<sup>57</sup>

#### **4.5 ANALYSIS OF NIGERIA'S POLICY AND LEGISLATIVE INITIATIVES FOR LOCAL CONTENT DEVELOPMENT**

In 2001 the FGN commissioned a study on the extent of local content in the NPI. Another study was undertaken by a Norwegian firm, INTSOK in 2003. The recommendations from both studies formed the basis of Nigeria's local content policy. The policy was first embodied in the Nigerian Content Development Bill 2003. Pending the enactment of the Nigerian Content Development Bill 2003, NNPC took a proactive stance by establishing a Nigerian Content Division (NCD).

The NCD published local content guidelines in 2006 and sought to monitor compliance by its JVs/PSC partners.<sup>58</sup> Commenting on the guidelines, Atsegbua notes that although they '...did not have the force of law, it had far reaching effects with NNPC as senior partner in most oil and gas projects, and aimed to increase local content value in the provision of materials, services and equipment to the local oil and gas industry to 70 per cent by 2010. It therefore required compliance by tenderers seeking to execute contracts with NNPC participation.'<sup>59</sup>

Seven years after the Nigerian Content Bill 2003 was submitted to the National Assembly, it was passed into law and renamed the Nigerian Oil and Gas Industry Content Development

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<<http://www.webometrics.info/en/search/Rankings/university%20of%20lagos%20type%3Amundial>> accessed 17 March 2013

<sup>57</sup> Emmanuel Edukugho, 'Challenge of Producing Unemployable Graduates', Vanguard (21 July 2012) <<http://www.vanguardngr.com/2012/07/challenge-of-producing-unemployable-graduates/>> accessed 17 March 2013

<sup>58</sup> The directives required the domestication of engineering designs, project management, fabrication, and integration of fixed platforms weighing up to 10,000 tons, fabrication of all piles, decks, anchors, buoys, and jackets. See Joseph E .Nwaokoro, 'Signed, Sealed but will it Deliver? Nigeria's Local Content Bill and Cross-Sectoral Growth' (2011) Vol 4 J.W.E.L.B

<sup>59</sup> Lawrence A. Atsegbua, 'The Nigerian Oil and Gas Industry Content Development Act 2010: an examination of its Regulatory Framework' (December 2012) OPEC Energy Review at 485, 494

Act (NOGICDA) 2010. The contents of NOGICDA, its strengths, weaknesses, and prospects for local content development will be analysed next.’

#### **4.5.1 NOGICDA: STRENGTHS, WEAKNESSES AND PROSPECTS FOR LOCAL CONTENT DEVELOPMENT**

NOGICDA is Nigeria’s first comprehensive legal framework for local content in Nigeria.<sup>60</sup> Among other things, it established the Nigerian Content Development and Monitoring board (NCDMB) as local content regulator.<sup>61</sup> The Act requires all PEPCs operating in Nigeria to give first consideration to Nigerian firms in their award of contracts relating to the NPI.<sup>62</sup> There are provisions relating to technology transfer,<sup>63</sup> and requirements for operators to patronise Nigerian lawyers, banks, insurers and media practitioners.<sup>64</sup> Under NOGICDA, the submission of a Nigerian content to the NCDMB is a pre-condition for the award of petroleum contracts.<sup>65</sup>

Under NOGICDA a petroleum contract is required to be awarded to Nigerian firms if the sum in their contract bid does not exceed the lowest bid of foreign firms, by 10 per cent.<sup>66</sup> It gives

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<sup>60</sup> By virtue of s 1 of NOGICDA, the Act supersedes all prior legal provisions relating to Local Content in the petroleum industry. See also Ayodele Oni, ‘Nigerian Local Content Act: A Status Report’ BusinessDay (28 July 2012) <<http://www.businessdayonline.com/NG/index.php/law/legal-culture/41722-the-nigerian-local-content-act-a-status-report>> accessed 7 August 2013

<sup>61</sup> S. 4. The functions of the NCDMB includes: the implementation of NOGICDA for Local Content enhancement

<sup>62</sup> See Ss 3, 12, 10 and 28. S 55 provides for the establishment of the Joint qualification system (JQS). Joint Qualification System will ensure a safe and verified pool of information about Service providers, their products, capacities, capabilities, quality approach, HSE and experience; it will also provide a huge source of skilled and qualified workforce that can serve as a pool of expertise for required jobs in the industry. Functions of the NCDMB include: to increase indigenous participation in the oil and gas industry, build local capacity and competencies, create linkages to other sectors of the national economy and to boost industry contributions to the growth of Nigeria’s GDP.

<sup>63</sup> Ss 43, 45 and 46.

<sup>64</sup> Ss 49, 51 and 52. Jean Balouga notes that ‘Even the local media has been denied the much desired opportunity to advertise the activities of upstream companies in Nigeria. Some of these companies, including Nigeria LNG prefer to spend huge media budgets running into millions of dollars on foreign media like CNN, upstream journals and magazines. They hardly spend 20 per cent of such annual budget on Nigeria media. See Jean Balouga ’Nigerian Local Content: Challenges and Prospects’ Nigerian Compass (Abuja, 27 August 2012) <<http://compassnewspaper.org/index.php/special-desk/business-news/7000-nigerian-local-content-challenges-prospects>> accessed 21 November 2012

<sup>65</sup> Ss 8 and 69

<sup>66</sup> S 16

Nigerians the first option in employment,<sup>67</sup> and requires all PEPCs to submit ‘employment and training’ plans within a given time frame.<sup>68</sup> Furthermore, the Act authorises the minister of petroleum to require PEPCs to invest in, or set up facilities, factories, and production units. The purpose of this requirement is to ensure that such firms manufacture services otherwise imported into Nigeria, and to provide for tax incentives to compliant firms.<sup>69</sup> NOGICDA also requires PEPCs to establish project offices at places where project and procurement decisions are to be made.<sup>70</sup>

NOGICDA further requires operators to comply with minimum specifications for Nigerian content as listed in the schedule to the Act.<sup>71</sup> And to ensure compliance, PEPCs are required to submit annual performance reports to the NCDMB, detailing the extent of compliance.<sup>72</sup> Under the Act, defaulting firms will pay a fine of five per cent of the contract sum in which the breach occurred.<sup>73</sup> In order to encourage the employment of Nigerians in the industry, section 34 of NOGICDA provides that ‘all projects or contracts whose total budget exceeds \$100 million (USD) shall contain a "Labour Clause" mandating the use of a minimum percentage of Nigerian labour in specific cadres as may be stipulated by the board.’<sup>74</sup> But while section 11(1) and (3) of NOGICDA requires all operators to comply with the minimum Nigerian content, sections 32 and 33 provide for a five per cent expatriate work force to cater for shareholders’ interests.<sup>75</sup>

Without doubt, NOGICDA’s provisions are extensive and in-depth and provide ‘...great opportunities for growth and expansion of Nigerian companies involved in the oil and gas industry,’ and it is set ‘to ensure skills development and capacity building within the Nigerian oil and gas sector.’<sup>76</sup>

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<sup>67</sup> S 28

<sup>68</sup> Ss 28 and 29

<sup>69</sup> S. 48

<sup>70</sup> Ss 25 and 47

<sup>71</sup> S 11

<sup>72</sup> S 7

<sup>73</sup> S 68

<sup>74</sup> S 34

<sup>75</sup> Ss 32 and 33

<sup>76</sup> Lawrence A. Atsegbua, (n 60) at 490

In addition to NOGICDA, the Petroleum Profits Tax Act (PPTA) 1959 disallows PEPCs from claiming capital allowances for the importation of certain goods which could have been purchased in Nigeria.<sup>77</sup> And PIB proposes to prohibit concessionaires from commencing operations without an approved Nigerian content plan.<sup>78</sup> The PIB also seeks to encourage indigenous PEPCs. It provides that the FGN shall not have the right to participate in concessions owned by Nigerian firms, where daily crude oil production or its natural gas equivalent, is less than twenty five thousand barrels per day.<sup>79</sup>

Without doubt, NOGICDA is a landmark step towards local content development in the NPI. As elaborate as NOGICDA is however, it is at its infancy stage and requires time for a more elaborate evaluation of its impact on the industry and the economy. The next segment will however seek to determine if there has been any significant impact since NOGICDA, its challenges, and the way forward.

#### **4.5.2 AN ASSESSMENT OF THE IMPACT OF NOGICDA ON THE NIGERIAN CONTENT**

Without doubt Nigeria has recorded some improvement in local content since NOGICDA, even though it is often difficult to ascertain the extent of the impact of the Act. Since NOGICDA, Nigeria has however sought to develop in-country value addition by seeking to create value from activities in the NPI. The Act has promoted the use of local resources and has shifted from the revenue focused option under which goods and services were obtained from Europe and America off the shelf. As administrator of NOGICDA, the NCDMB has aimed to ensure that all projects executed in the NPI leave behind a ‘...big legacy, a fabrication yard, an integration yard or an asset that will continue to run even after the project is completed.’<sup>80</sup> Ernest Nwapa, the chief executive of the NCDMB observed recently that

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<sup>77</sup> See s. 13 (i) of the PPTA, cf with 306 (n) of the PIB

<sup>78</sup> S 178(18), ..See also S.179(3)

<sup>79</sup> Ss 285 and 288. See also Charles Okonji, ‘PIB to Boost Local Production Capacity’ Nigerian Compass (Abuja, 8 August) <<http://www.compassnewspaper.org/index.php/special-desk/energy/6391>> accessed 16 August 2012

<sup>80</sup> Emma Okonji, ‘Nigerian Local Content Development Attracts Foreign Interests’ *Thisday* (24 February 2014) <<http://www.thisdaylive.com/articles/nigerian-local-content-development-attracts-foreign-interests/172252/>> accessed 31 March 2014



about 90 per cent engineering in the NPI is done in Nigeria, and fabrication of all field development facilities now has 50 per cent of the tonnage done in Nigeria.<sup>81</sup>

In 2012 Ernest Nwapa had noted that \$4 billion out of the estimated \$20 billion for 2012, was retained in Nigeria.<sup>82</sup> In its website, the NCDMB notes that the implementation of NOGICDA has led to a rise of Nigeria's local content, from five per cent in 2004 to 35 per cent in 2010.<sup>83</sup> The NCDMB also claims that between 2010 when NOGICDA was enacted and 2012, about 2.8 billion dollars have been invested in the NPI.<sup>84</sup> In February 2013, the minister for petroleum resources who also doubles as chairperson of NCDMB told journalists that implementation of NOGICDA has led to the creation of 30,862 jobs in the NPI, increasing the man-hours performed by Nigerians by 350 per cent.<sup>85</sup> While the reports from the NCDMB and the government appear to reflect a positive outlook in the development of the Nigerian content, other industry argue that that NOGICDA has not had significant impact on local content, citing frequent breaches of the Act by IOCs.<sup>86</sup>

One major contribution to Nigeria's local content development is that it has placed the onus on Nigerians to innovate and develop capacity in order to qualify for jobs in the NPI. And

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<sup>81</sup> Ibid

<sup>82</sup>Collins Olayinka, 'Local Content Implementation Retains \$4b, says Nwapa' Guardian (Abuja, 14 November 2012), see also NCDMB, 'Nigeria Content Support Fund Hits \$100' (October 9 2012) <<http://www.ncdmb.gov.ng/index.php/public-relations/news-updates/127-nigeria-content-support-fund-hits-100-million>> accessed 19 November 2012. See also Charles Okonji, 'Local Content: Nigeria Records \$2.8b Investment Inflow' Nigerian Compass (Abuja, 3 September 2012) <<http://www.compassnewspaper.org/index.php/special-desk/maritime/7218-local-content-nigeria-records-28b-investment-inflow>> 2 September 2012

<sup>83</sup> NCDMB Ibid

<sup>84</sup> Charles Okonji (n 81) see also Clara Nwachukwu, 'Nigerian Content: Appreciable Success, Greater Challenges still Ahead' Vanguard (Abuja, 28 February 2012) <<http://www.vanguardngr.com/2012/02/nigerian-content-appreciable-success-greater-challenges-still-ahead/>> accessed 20 November 2012

<sup>85</sup> Udeme Akpan, 'Local Content Initiative Creates 30,862 Jobs for Nigerians' National Mirror (27 February 2013) <<http://nationalmirroronline.net/new/local-content-initiative-creates-30862-jobs-for-nigerians/>> accessed 10 March 2013

<sup>86</sup> See 'PENGASSAN calls for Appropriate Compliance with Nigerian Content Act' Leadership (Abuja, 29 October 2012) <[http://www.leadership.ng/nga/articles/38668/2012/10/29/pengassan\\_calls\\_appropriate\\_compliance\\_nigerian\\_content\\_act.html](http://www.leadership.ng/nga/articles/38668/2012/10/29/pengassan_calls_appropriate_compliance_nigerian_content_act.html)> accessed 20 November 2012, See also Hygenius Onuegbu, 'Nigerian Content Act: Issues and Workers Concerns' (2012) Petroleum and Natural Gas Senior Staff Association of Nigeria, in the Port Harcourt International Oil and Gas Conference and Exhibition <<http://www.tucrivers.org/The%20Nigerian%20Content%20Act%20-%20Issues%20and%20Workers%20Concerns.pdf>> accessed November 2012. See also PENGASSAN urges Total Enforcement of Local Content Act' (Sweet Crude, October 30 2012) <<http://sweetcrudereports.com/2012/10/30/pengassan-urges-total-enforcement-of-local-content-act/>> accessed 20 November 2012

guarantees qualified Nigerians that they would be awarded jobs provided they are able to rise to the occasion. Also it now requires PEPCs, to comply, not negotiate, as was the case with NNPC and its joint venture partners. The removal of the negotiation element may lead to inflexible impositions of local content requirements, even where compliance may not be easy. This option may however be preferable to the option of leaving such an important aspect of the economy at the hands of NNPC, given its peculiar challenges.

With NOGICDA, the NCDMB has become the first independent and separate regulator and monitor of the Nigerian content, a strategy that has some merits. The NCDMB on the other hand has defined terms of reference, a wide jurisdiction over the petroleum industry, and operates with some level of independence from the industry. Beyond the administration of NOGICDA, NCDMB is also responsible for developing initiatives aimed at local content development in Nigeria and assessing Nigeria's capacity needs. Therefore it is able to focus on monitoring local content compliance in order to prevent breaches and loss of revenues for the Nigerian economy. The NCDMB is also able to impose sanctions on defaulting firms and where necessary, ban some firms from operating in Nigeria, where such firms flagrantly breach NOGICDA.<sup>87</sup> The establishment of NCDMB also frees DPR and NNPC to focus on their core objectives.

It will be recalled that even though the NCD partnered with DPR and National Insurance Commission (NAICOM) in local content promotion, it did so without any direct legal backing. And although the NCD could be arguably said to have midwived the NCDMB, its jurisdiction did not extend to indigenous PEPCs, oil service firms and other IOCs which did not did not execute PSCs or JVs. It will also be recalled that DPR was already struggling with a shortage of personnel and funding in the execution of its core mandate of monitoring petroleum operations.

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<sup>87</sup> Recently the NCDMB banned Saipem Contracting Nigeria Limited for breaching the 70(h). Enforcement has prevented many breaches and has helped the Nigerian economy reap funds that would otherwise have been diverted. For instance, Hyundai Heavy Industries, a South Korean company, was banned from participating in the NPI for engaging 185 Koreans on Total's Ofon 2 project without obtaining provisions of NOGICDA. See Dayo Oketola, 'Non-Enforcement, 'Nigerian Content's Greatest Threat' *Punch* ( 24 April 2014) <<http://www.punchng.com/business/energy/non-enforcement-nigerian-contents-greatest-threat-2/>> 29 April 2014 .

In terms of industry exposure, there have also been some improvements locally and some oil servicing firms in Nigeria are beginning to make their mark in the industry, but they still appear few, and far between. In 2013, a local content feat was achieved when Niger Dock, and Dorman Long Engineering Limited<sup>88</sup> (both indigenous firms), fabricated two major well heads for Mobile Producing Nigeria. This project is a land mark achievement as it is the largest fabrication contract executed in-country for Nigeria's joint venture operations.<sup>89</sup> Also Fenog Limited which was named the 'indigenous oil and gas company of the year' has made significant strides in drilling and the use of world class technology.<sup>90</sup>

It is intended to consider certain aspects of NOGICDA which deserves special attention.

#### **4.5.3 CHALLENGES TO THE IMPLEMENTATION OF NOGICDA**

A careful analysis of NOGICDA indicates that its requirements are quite ambitious, this is more so in the light of prevalent challenges to local content development in the NPI.<sup>91</sup> This may be a direct response to the unacceptably low Nigerian content, 57 years after the NPI began in earnest. This is in contrast to the more flexible and collaborative approaches adopted by Norway and the UK in the 1970s. The Norwegian and UK approaches may have been informed by the fact that their petroleum industries in were in infancy and required a more collaborative rather than rigid approach. But how can NOGICDA be successfully implemented without being a hurdle in way of progress has been the concern of many commentators.<sup>92</sup> For instance, section 41(2) of the Act requires IOCs working through their Nigerian subsidiaries to demonstrate that a minimum of 50 per cent of the equipment

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<sup>88</sup> Although this firm was originally a subsidiary of a British firm, it is now 100 per cent Nigerian owned following Nigeria's indigenisation policy of 1977. See Dorman Long Engineering, 'History' (2014) <<http://www.dormanlongeng.com/Content/viewcontent.aspx?linkLv1Id=7&linkId=37>> accessed 7 April 2014

<sup>89</sup> 'Nurturing Nigerian Content to Reality' *Thisday* (17 September 2014)

<http://www.thisdaylive.com/articles/nurturing-nigerian-content-to-reality/159163/> accessed 10 March 2014

<sup>90</sup> See Festus Akanbi, 'Local Content: Indigenous Oil Firms now Making their Mark' *Thisday* (30 March 2014) <<http://www.thisdaylive.com/articles/local-content-indigenous-oil-firms-now-making-their-marks/174846/>> accessed 30 March 2014

<sup>91</sup> See generally Jesse Salah Ovidia, (n 11) 6, see also, Joseph E . Nwaokoro, 'Signed, Sealed but will it Deliver?' (n. 53) and Lawrence Atsebgua (n 60).

<sup>92</sup> See generally J.E. Nwaokoro, 'Signed, Sealed but will it Deliver?' (n. 53) and Lawrence Atsebgua (n. 60), and Ike Ike Oguine, 'Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues' (2011) Vol. 29, JENRL

deployed for execution of work are owned by their Nigerian subsidiaries. And section 11(4) provides that:

‘Notwithstanding the provisions of subsection (1) of this section, where there is inadequate capacity to any of the targets in the Schedule to this Act, the Minister may authorize the continued importation of the relevant items and such approval by the Minister shall not *exceed 3 years from the commencement of this Act.*’<sup>93</sup>

A strict application of the above provision would imply that the powers of the minister to grant waivers ended in 2013. Many observers acknowledge however that satisfying the requirements of NOGICDA which on the average is 67 per cent Nigerian content would be difficult to attain.<sup>94</sup> Nwaokoro notes that NOGICDA ignores Nigeria’s lack of capacity, and its requirement that PEPCs use Nigerian financial and insurance services ‘...ignores systemic problems in Nigerian banks.’<sup>95</sup>

It will be recalled that an industrialised country like the UK depended heavily on American firms in order to exploit petroleum on its side of the North Sea. And even with significant technological advancement, Norway and Brazil still require the input of British, Dutch and American firms in order to exploit their petroleum fields.

It is either that the framers of NOGICDA ignored Nigeria’s unique challenges, or were very optimistic that they could be addressed within a very short period. This however has not been the case, as Nigeria’s infrastructural reforms are still ongoing. And although there are prospects that reform will lead to a higher Nigerian content over time, the three year requirement appears unrealistic. To that extent, there may therefore be need to amend section 11(4) of NOGICDA, or for the government to refuse to apply the section strictly, if doing so would hinder the progress of the industry.

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<sup>93</sup> Emphasis supplied

<sup>94</sup> The Schedule to NOGICDA itemizes the required Nigerian content for about 280 separate aspects of the NPI. They include the required local man hours, finance/tonnage/usage of services etc. While NOGICDA requires a 100 per cent Nigerian content in some aspects of the industry, in other aspects it requires less, depending on the extent of local capacity and expertise. See also Lawrence A. Atsegbua, (60) at 491

<sup>95</sup> Joseph E .Nwaokoro, ‘Signed, Sealed but will it Deliver? (n 59) 56

An ambitious piece of legislation is acceptable provided there are sufficient inbuilt mechanisms to prevent rigidity and ensure smoothness of operations. Nigeria may therefore need to temper ambition with reality. Between local content and development. As Nigeria seeks to develop its petroleum industry after other functional models like Norway and Brazil, it is also important to appreciate the difference between local content protection and local content development. For an appreciation of the circumstances that distinguish both strategies, is important for an informed local content strategy.

Local content protection is required where a country's industries are threatened by foreign competition. Some countries have been known to mass produce and to flood the markets of other countries with cheap products. As such dumping can cripple local industries a country may ban or restrict foreign services or goods by imposing prohibitive taxes on imported products. Alternatively, it may grant tax reliefs and subsidies for locally produced goods and services etc. But such a strategy is used on the premise that there is local capacity that is threatened. For example Brazil adopted a protectionist local content regime to limit foreign competition, which arose after the liberalisation of the petroleum industry in 1997. But this approach is justified on the basis that Brazil has developed in country capacity to a significant extent, and has a viable NOC.

Like Brazil, Nigeria's NOGICDA appears to reflect a protectionist regime, even though it is described as a developmental strategy in its long title. The question however is whether there is much to protect. A development strategy is resorted to where a country admits its lack of in-country capacity and technology, and seeks to develop same in order to address industry demands. In such case, the country will adopt a less aggressive and adversarial stance. It will seek to develop capacity through a gradual and slow process, by implementing policies that are geared towards that objective. For instance, a country may invest in technology research, award scholarships, sign agreements for technology transfer and ensure IOCs do not outsource jobs that can be locally performed.

The question is, can Nigeria afford to adopt a protectionist stance when it does not have adequate in-country capacity? It has been observed that Nigeria struggles with weak manufacturing, weak educational institutions, poor infrastructure and funding. These have meant that while it has made some strides in fabrication, it remains weak in manufacturing. In fact the few oil servicing firms that have made some mark in the industry still outsource most of their manufacturing jobs to foreign firms. For instance Fenog's seven Horizontal Directional Drilling fleet were manufactured in Germany to the specifications of Fenog. Hence although Fenog was named indigenous company of the year for 2013, the truth remains that it was not the manufacturer of the product for which it was awarded. In the same vein, Ernest Nwapa also noted that Nigeria's major limitation remains manufacturing.<sup>96</sup>

Nigeria may therefore require a more developmental and gradual process similar to that of Norway in the North Sea, rather than an aggressive protectionist approach. But the question is: how gradual should this approach be, given that Nigeria has over 50 years of petroleum industry experience? It is conceded that Nigeria's approach should not be as mild and collaborative as was the case with Norway, or is the case with new entrants to the petroleum industry like Ghana and Uganda. But neither can it take an approach which is too aggressive due to current limitations. Rather, Nigeria should seek a hybrid between protectionist and developmental approaches. On the one hand, NOGICDA should serve as a guide and catalyst at least in the interim, while on the background, Nigeria should seek to address the underlying issues of weak education, manufacturing, infrastructure and funding.

Poor implementation of ambitious laws is a recurring challenge in Nigeria. Since 1999, Nigeria has enacted far reaching legislations in a bid to overturn nearly three decades of neglect, occasioned by military dictatorship. Laudable and promising as most of these laws are, implementation has been difficult due to capacity challenges. Unless Nigeria creates the right atmosphere for a successful implementation of NOGICDA, the Act may be obeyed more in breach. Some of such ambitious laws with weak impact and implementation will be considered next.

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<sup>96</sup> See Emma Okonji (n 81)

#### 4.5.4 ASSOCIATED GAS RE-INJECTION ACT (AGRA) 1979

AGRA is an example of an ambitious legislation which was enacted without creating a proportional atmosphere for its successful implementation. When enacted in 1979, it stipulated 1984 as the year in which all gas flaring would become illegal in Nigeria, but 35 years on, gas flaring continues in Nigeria, almost unabated.<sup>97</sup>

Currently, 1.4 billion cubic feet worth of gas, estimated at \$4.9 million, is flared daily.<sup>98</sup> IOCs which together flare more than ninety percent of Nigeria's associated gas, have repeatedly indicated their willingness to invest in trapping or utilizing same should the FGN provide a viable market for same. It is estimated that between 1961 and 1998 about 704,461.6 million cubic meters of associated gas was produced in Nigeria representing an average of 82.02 per cent of the total production.<sup>99</sup>

AGRA however provided for adequate waivers until such a time as Nigeria develops adequate infrastructure and a gas market to support the eradication of gas flaring. The waivers ensured that the Act did not hinder petroleum production.<sup>100</sup> It may be argued on the one hand that the AGRA waivers may have actually hindered the abolition of gas flaring in Nigeria. It is possible that without them, the FGN and IOCs may have forged a strategy to eradicate gas flaring, which poses a serious threat to the Nigerian environment. On the other hand, without these waivers, AGRA may have posed a stumbling block to economic development in the face of weak infrastructure.

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<sup>97</sup> S 3

<sup>98</sup> Nigeria Loses over N735m Daily to Gas Flaring – Official' *Vanguard* (9 July 2013) <<http://www.vanguardngr.com/2013/07/nigeria-loses-over-n735m-daily-to-gas-flaring-official/>> accessed 31 March 2014

<sup>99</sup> Okoh RN (ed), 'Cost-Benefit Analysis of Gas Production in Nigeria (Ibadan, 2001). (Natural Resource Use, the Environment and Sustainable Development, Nigerian Economic Society 2001), as referred to by Emeseh in Emeseh E, 'The Limitations of Law in Promoting Synergy between Environment and Development Policies In Developing Countries: A Case Study of the Petroleum Industry in Nigeria. ' (2006) 24/4 JERNL, Law 574

<sup>100</sup> S. 2

AGRA has however portrayed that legislation alone, without the necessary commitment to implementation and the availability of the relevant resources for implementation, cannot produce desired results. Therefore while there is need to ensure NOGICDA is not obeyed more in breach, as has been the case with AGRA, waivers should be grantable in deserving cases.

#### **4.5.5 THE COASTAL AND INLAND SHIPPING CABOTAGE ACT 2003**

In response to a dismally low Nigerian content in the shipping industry, Nigeria enacted the Coastal and Inland Shipping Cabotage Act (Cabotage Act) 2003. The Cabotage Act established the Nigerian Maritime Administration and Safety Agency (NIMASA) and made far reaching provisions for the development of a significant Nigerian content in the shipping industry.<sup>101</sup> Many Nigerians were hopeful the Act would usher in a new era of ship building, create employment and improve economic performance. The difficulty with the Cabotage Act however, came with implementation and enforcement as section 3 requires all cabotage vessels to be built in Nigeria. This requirement has been almost impossible to comply with since Nigeria is not a ship building nation, and lacks sufficient human capacity to man all internally used vessels.<sup>102</sup>

Eleven years after the Cabotage Act was enacted, it is now widely acknowledged that its impact has been negligible.<sup>103</sup> According to Louis Mbanefo, a senior advocate of Nigeria, the Cabotage Act has failed for being

“...badly thought out and fundamentally flawed. Whilst the object may be laudable, the foundation of the Act was faulty... As a policy statement of future aspiration it is fine but to make it applicable with almost immediate effect was most ill-advised. The Act then provides

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<sup>101</sup> See Lazarus O. Ukpere and Wilfred I Ukpere, ‘A Strategic Reposition of the Maritime Industry for Economic Recovery and Sustainability: "The Cabotage Act"’ (2011) Vol 5(14) African Journal of Business Management, 5658-5663. See also Damachi, B. B and Zhaosheng, Yang, ‘The Nigerian Shipping Industry and Indigenous Shipping Companies’ (2005) Vol. 32 Maritime Policy & Management, 2005, p.31-38

<sup>102</sup> S 23, Cabotage Act 2003

<sup>103</sup> Samson Echenim, ‘Success Of The Cabotage Act, Still A Major Concern To NIMASA —Zailani’ Leadership (18 May 2012)

<[http://www.leadership.ng/nga/articles/25024/2012/05/18/success\\_cabotage\\_act\\_still\\_major\\_concern\\_nimasa\\_zailani.html](http://www.leadership.ng/nga/articles/25024/2012/05/18/success_cabotage_act_still_major_concern_nimasa_zailani.html)> accessed 12 November 2012



that waivers may be granted by the Minister to foreigners to operate cabotage vessels and foreigners continue to operate as before by virtue of waivers. It seems to me that the reasoning is flawed. You set targets that Nigerians cannot reach and then you grant foreigners the waivers to continue to operate! I think a radical restructuring is called for, not cosmetic amendments.”

Nigeria still relies largely on foreign ships and vessels even though this violates the requirements of the Cabotage Act. That the Act has largely failed to meet its objectives was recently acknowledged by Ibrahim Zailani, executive director of Maritime Labour and Cabotage Services in NIMASA. Zailani, who was a member of the National Assembly when Cabotage Act was enacted into law, noted that:

‘Now that I am in charge of implementing Cabotage, I have seen the *practical difficulties of implementing the Act*<sup>104</sup>. The Cabotage Act, I will say, was virtually built on almost nothing; and, to me, you cannot build on nothing.’<sup>105</sup>

In order to remove obstacles to progress which the Act represents, NIMASA recently tabled a draft bill for its amendment in order to bring it in line with current realities.<sup>106</sup>

#### **4.5.6 NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (NEITI) ACT 2007**

When the Nigerian Extractive Industries Transparency Initiative (NEITI) Act was enacted in 2007, its transparency and disclosure requirements exceeded those of the global Extractive Industries Transparency Initiative (EITI).<sup>107</sup> The NEITI Act raised expectations that decades

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<sup>104</sup> Emphasis supplied

<sup>105</sup> Samson Echenim (n 106)

<sup>106</sup> The essence of the amendment Bill which has passed the second reading at the National Assembly, is to amend certain provision of the Cabotage Act and ‘expand its scope to cover all offshore operations in the Nigerian coastal and inland shipping waters.’ The amendment will also address some gaps in the Cabotage Act which make violation of Nigeria’s cabotage regime possible. See Ken Etim and Adedoyin Afun, ‘Nigerian Cabotage Tides Are Turning – Good Or Bad?’ (2014) Nigeria Shipping Bulletin <<http://www.mondaq.com/x/292776/Marine+Shipping/SHIPPING+BULLETIN+Nigerian+Cabotage+Tides+Ar+e+Turning+Good+Or+Bad>> accessed 23 April 2014

<sup>107</sup> See also, Nicholas Shaxson, ‘Nigeria’s Extractive Industries Transparency Initiative Just a Glorious Audit?’ (2009) Chatam House, Royal Institute of International Affairs, <<http://eiti.org/document> to amend Cabotage

of secrecy and corruption in the NPI would soon be over and that there would be transparency and accountability. Some industry observers however cautioned against over excitement, and waited to see the extent to which the Act would and could be implemented.

The NEITI board initially showed some promise by publishing in 2006 the first and most comprehensive audit of the industry at the time which covered the period from 1999-2004. The NEITI report exposed for the first time the intricate workings of the industry and revenue flows between the government and PEPCs and was greeted with zest and enthusiasm. The initial zest of the board and its impact on the NPI has however slowed down, partly due to a lack of political patronage, funding problems and capacity problems, and internal corruption.<sup>108</sup>

Today the NEITI board is regarded by many Nigerians as a dog that barks but cannot bite. Corruption, lack of accountability and secrecy in petroleum revenues remains a challenge. Summing up their findings on the impact assessment of the NEITI Act, Osaretin and Atsegbua noted that although the Nigerian government introduced the NEITI reform with zeal and enthusiasm, there has been a ‘...lack of will power to implement them to a logical conclusion.’ The effect is that ‘...reform measures introduced through these legal provisions have not had any substantial impact in curbing corruption in the respective sectors covered by them.’<sup>109</sup> There is therefore need to ensure that NOGICDA does not go the way of the AGRA, NEITI, or Cabotage Acts. And this will require erection of structures that make implementation realisable.

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Act’ Thisday (28 January 2012 <http://www.thisdaylive.com/articles/yuguda-denies-links-with-sect/108027/> accessed /shaxson-neiti-glorious-audit> accessed 20 November 2012

<sup>108</sup> In November 2012, a petroleum revenue special task force submitted its report which noted that unethical practices may have cost Nigeria over \$29 billion in gas deals while over \$180 million paid as signature bonuses by oil companies was unaccounted for. See

Ademola Adeyemo ‘Ribadu Panel’s Controversial Report’ Thisday (Abuja, 6 November 2012) <<http://www.thisdaylive.com/articles/ribadu-panel-s-controversial-report/129753/>> accessed 22 November 2012, but see NLNG Press Release, ‘Ribadu’s Report on NLNG is Inaccurate’ (6 November 2012) <<http://www.nlng.com/pressreleases.aspx?id>> accessed 18 March 2013

<sup>109</sup> See Osaretin Aigbovo, ‘Nigerian Anti-corruption Statutes: an Impact Assessment’(2013) 62 *Journal of Money Laundering Control*, 1

Without doubt, NOGICDA's 67 per cent Nigerian content requirement is high. How to attain this objective though, is the current challenge of the NCDMB, in the face of current challenges in the industry in terms of capacity. It is therefore important that policy makers consider other equally important factors necessary for the successful implementation of Nigeria's local content policy as law making is entirely different from application. It may be conceded that a viable Nigerian content is essential for a functional NPI, but care should be taken to avoid NOGICDA going the way of past laudable but ineffective legislative efforts. Nigeria requires in-country capacity to meet the demands of the NPI, but till then high foreign input will still be required for some time.

From another perspective, an ambitious local content target may spur development and to that degree, NOGICDA itself could be viewed as a challenge to Nigeria's developmental endeavours.<sup>110</sup> For example Brazil's Law 2004/1953 which excluded foreign input in the Brazilian petroleum industry spurred the development of Petrobras. This was due however to correlative and aggressive investment in the development of Petrobras which was thus enabled to rise to the challenge. But when the needs of the growing industry could not be met solely by local capacity, the BPI was liberalised to make room for foreign participation.

#### **4.5.7 BETWEEN CONTRACTUAL AND LEGISLATIVE APPROACHES TO LOCAL CONTENT DEVELOPMENT**

Most countries combine contractual and legislative approaches to local content development. For instance Brazil relies mainly on ANP's local content regulations, and combines same with clauses in contracts executed with PEPCs. Norway relied more on collaboration and contracts than it did on legislation. The success of that approach is premised on regulatory capacity and integrity.

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<sup>110</sup> See Ss 3, 19, 11 and 34 of NOGICDA. Front End Engineering Design (FEED) and Detailed engineering on Onshore facilities 90%, Terminal/Oil Movement Systems 80%, Utilities module/packages, 50% , Fire and Gas Protection System Services 50%, depending on the type of service to be performed.

The current Nigerian approach is legislative, although in the past, reliance was placed more on contractual clauses executed with NNPC's JV/PSC partners. The latter approach however resulted in violations of local content agreements which actually occurred with the consent of NNPC.<sup>111</sup> This may have necessitated the current legislative approach in the form of NOGICDA, and the establishment of a local content independent regulator with a defined scope and terms of reference. The advantage of the legislative approach is that it is open, binding and applicable to all PEPCs in the NPI, local or foreign. Additionally, the local content regulator may be compelled by the courts to implement the contents of the Act in certain cases.<sup>112</sup> Legislation is permanent until repealed while contracts are variable, and company specific.<sup>113</sup>

Nigeria needs a hybrid between the contractual and legislative approach. Regulators should require PEPCs to comply with the Nigerian content, but within a framework that allows for flexible negotiations. This will ensure that foreign input can be utilised in order to address gaps that are identified in-country. It is however proposed that local content legislation should be made by the regulator and not the National Assembly, in keeping with the tradition of the Petroleum Act.<sup>114</sup> The advantage of this approach, which Brazil also adopts, is that regulations can be easily amended where they become 'impossible' to enforce.

## **4.6 LESSONS FROM BRAZILIAN, NORWEGIAN, AND BRITISH APPROACHES TO LOCAL CONTENT DEVELOPMENT**

### **4.6.1 BRAZIL**

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<sup>111</sup> See Joseph N.E. Nwaokoro, 'Nigeria's National Content Bill: The Hype, the Hope and the Reality' (2011) Volume 55 / Issue 01 Journal of African Law, 128 at 155. See also Joseph Nwaokoro, 'Beyond Legislation: a Contractual Alternative to Legislation Local Content in Nigeria' (2009) Vol 18 Currents: Int'l Trade L.J 42

<sup>112</sup> S.143 of the constitution

<sup>113</sup> See Jill Rutter and William Knigton, 'Legislated Policy Targets' (2012) Institute for Government < [www.instituteforgovernment.org.uk/.../...](http://www.instituteforgovernment.org.uk/.../...) > accessed 20 November 2012

<sup>114</sup> The Petroleum Act authorizes the Minister of petroleum to makes regulations for the functioning of the industry. Ss 9 and 12

As home to Petrobras, a globally recognised NOC, and a host of other indigenous PEPCs, Brazil has been able to develop a sizeable level of infrastructural and technological capacity. Prior to the liberalisation of the BPI in 1997, scant attention was paid to local content regulation given that there was a virtual absence of foreign competition/participation in Brazil.

Brazil's approach to the development of its natural resources has always been strict and protectionist. Even with limited internal capacity, Brazil closed its petroleum industry to foreign participation.<sup>115</sup> But this may have been realisable in 1953 when Brazil only had 15 million barrels of oil and Petrobras produced only 2700 barrels of oil per day.<sup>116</sup> The same approach would have been almost impossible for Norway, where the 1969 Ekofisk field accounted for billions of crude oil. Consequently, reliance on foreign input was inevitable for Norway which sought to develop indigenous content in the face of vast petroleum reserves while Brazil could afford to dispense with same since its reserves were small at the time.<sup>117</sup>

It has been noted that clause 20 of ANP's model contract requires PEPCs to recognise and comply with Brazil's local content targets which averages about 65 per cent.<sup>118</sup> The minimum local content required from firms in the BPI is 70 per cent for onshore operations, and 51 for offshore and shallow waters of up to 100 metres, and 37 per cent for deep water operations, of 100 and 400 metres depth. During the development phase, the minimum local content required is 77 per cent for onshore, 63 per cent for offshore in shallow water of up to 100 metres and 55 per cent for deep water between 100 and 400 metres.<sup>119</sup>

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<sup>115</sup> In the 1960s Brazil proceeded to close most of the downstream in addition to the upstream aspects of its petroleum industry. Oliveira Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance' in David G. Victor (eds) (n 22, chapter 2), 525

<sup>116</sup> See Erjia Joy Guan, 'Understanding Brazil's Oil Industry: Policy Dynamics and Self Sufficiency' (2010) Vol. 2 *Journal of Emerging Knowledge of Emerging Markets* at 80

<sup>117</sup> R.M. Sulak 'Ekofisk Field: The First 20 Years' (1991) 43(10) *J Pet Technol* 1265-1271

<sup>118</sup> See chapter two, para 2.6.1. See also André Magnabosco, ANP, 'The Local Content Reg for Concession Agreements' <[www.braziltexas.org/attachments/files/401/ANP-Marcelo.pdf](http://www.braziltexas.org/attachments/files/401/ANP-Marcelo.pdf)> accessed 30 November 2013.

<sup>119</sup> Scottish Development International 'Doing Business in Brazil: Oil and Gas/Subsea Focus' <<http://www.sdi.co.uk/~media/SDI/Files/documents/energy/Reports/doing-business-in-brazil-subsea-focus.pdf>> accessed 18 March 2013

Brazil's ANP has a methodology for measuring local content compliance, and is authorised to impose fines on defaulting firms.<sup>120</sup> The fines vary from firm to firm, depending on the contract amount, the level of local content compliance expected from a firm, and the extent of compliance.<sup>121</sup> In 2011, ANP fined state controlled Petrobras, the sum of \$18 million for breaching local content in its development of 44 concessions.<sup>122</sup>

Despite Brazil's infrastructural and technological feats in the petroleum industry, its indigenous capacity has been unable to satisfy the demands of an industry whose potential and size has more than doubled with discoveries at the pre-salt.<sup>123</sup> Brazil has a dearth of manpower, in view of which Petrobras required ANP to relax minimum local content requirements, as production targets could not be accomplished without external input.<sup>124</sup> And although ANP's strict local content requirements may slow the pace of exploration, few observers doubt the capacity of Petrobras and other Brazilian firms to meet a reasonable amount of the needs of the industry.<sup>125</sup>

#### 4.6.2 NORWAY

Norway's local content strategy in the North Sea during the 1970s was developmental. It focused on creating an environment for Statoil and other local firms to gradually develop

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<sup>120</sup> See ANP Resolution No. 36 -Reg of Local Content Certification (ii) ANP Resolution No. 37 - Rules of Accreditation Entity for Local Content Certification (iii) ANP No. 38 - Rules of Certification Audits, and (iv) ANP Resolution No. 39 - Reg of Local Investment Report.

<sup>121</sup> See Velda Adilson, 'Brazil's Local Content Policy Stirs Concerns' (E and P, 21 October 2012) <[http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns\\_10905](http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns_10905)> accessed 22 November 2012 Alexandre Bittencourt Carmon and Cameiro Otavio Cameiro, 'Challenges of Local Content', Advogados, < [www.veirano.com.br/veirano/.../Default.aspxCached](http://www.veirano.com.br/veirano/.../Default.aspxCached)> accessed 9 November 2012

<sup>122</sup> 'ANP Slaps Petrobras with \$18 million Fine' (Upstream, 1 September 2011) <<http://www.upstreamonline.com/live/article276020.ece>> accessed 22 November 2012

<sup>123</sup> Samantha Pearson, 'Skills Shortage in Brazil's Oil industry', Financial Times (8 April 2012) <<http://www.ft.com/cms/s/0/dcb3319e-7f29-11e1-a06e-00144feab49a.html#axzz2NWtSlzgp>> accessed 22 May 2014

<sup>124</sup> See Jeff Flick, 'Brazil's Oil Industry Seeks Reduction in Local Content Rules' World Oil Online (28 February 2013) <<http://riotimesonline.com/brazil-news/rio-business/petrobras-requests-local-content-changes/>> accessed 18 March 2013. Brazil seeks 65 per cent Local Content, and Norway which has one the best technology ranges between 65 and 90 per cent, Wade Locke (n 23), See also Hildegunn and others, 'The Upstream Petroleum Industry and Local Industrial Development: A comparative Study' (2003) SNF Project No. 4245 Institute for Research in Economics and Business Administration <<[http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys\\_brage\\_21925/1/R08\\_03.pdf](http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys_brage_21925/1/R08_03.pdf)> accessed 17 March 2013

<sup>125</sup> Samantha Pearson, 'Petrobras Stays Loyal to Brazil's Ideals' Financial Times (19 July 2012) <<http://www.ft.com/cms/s/0/7405dbbe-cc3c-11e1-839a-00144feabdc0.html#axzz2Nox5uPZY>> accessed 18 March 2013

capacity to compete with foreign elements in the NCS. This perhaps explains why less reliance was placed on legislation as Statoil partnered with IOCs, understudied their operations and acquired much needed capacity. And although it had local content guidelines, Norway did not stipulate minimum local content targets. By the mid-1980s, its local content had developed significantly for a protectionist approach to be adopted, but Norway's membership of the EEA in 1994 made any pretence at protectionism illegal and impossible.

#### 4.6.3 UNITED KINGDOM

In response to a study in the 1970s which indicated that UK firms were being side-lined by American firms in the UK side of the North Sea, the Offshore Supplies Office was established in order to promote the participation of UK firms in the petroleum industry<sup>126</sup> The OSO monitored and audited purchasing procedures of PEPCs in the North Sea, and required firms to submit quarterly reports of significant contracts they intended to award, along with a list of contractors used, and of firms which applied but were not chosen.<sup>127</sup> The OSO was thus able to determine if UK firms were side-lined in the contracting process. It also evaluated the UK local content and encouraged capacity building programmes to address perceived deficiencies. Through its efforts, the participation of UK firms in the North Sea grew from about 20 per cent prior to over 60 per cent in 1977 and 87 per cent by 1988.<sup>128</sup> The UK therefore used a more flexible approach to develop its local content and promote the interests of UK firms.<sup>129</sup>

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<sup>126</sup> Department of Trade and Industry, 'Study of Potential Benefits to British Industry from Offshore Oil and Gas Developments' (London, 1972), International Management and Engineering Group of Britain Limited. See also, Norman J. Smith, *The Sea of Lost Opportunity: North Sea Oil and Gas, and the Offshore Supplies Office* (2011 Elsevier) See also Paul Hallwood (n 48)

<sup>127</sup> See Ulrich H. Klueh and others, 'Policies to Improve the Local Impact from Hydrocarbon Extraction: Observations on West Africa and Possible Lessons for Central Asia' (2009) 37 *Energy Policy* 37 1128–1144

<sup>128</sup> Oxford Analytica, 'The Impact of Pre-Salt: a Long Term Perspective' (2010) Being a report prepared for Petrobras <[www.oxan.com/.../cr/.../OxfordAnalyticaPetrobrasPreSalt.pdf](http://www.oxan.com/.../cr/.../OxfordAnalyticaPetrobrasPreSalt.pdf)> accessed 19 November 2012

<sup>129</sup> Presently, the UK government is bound to comply with the European Union's Hydrocarbon's Licensing Directive, which promotes a competitive, non discriminatory and transparent procedure in the issuance of licenses for exploration for oil. Prior to the Directive however, the UK had a landing requirement, under which it stated that preferences would be shown to companies that showed a commitment to the UK economy. See Gordon, Paterson and Usenmez (eds), *Oil and Gas Law: Current Issues and Emerging Trends* (Dundee University Press, 2<sup>nd</sup> edn, 2011) 84-85

## 4.7 CONCLUSION

This chapter has sought to analyse Nigeria's framework for local content development in the petroleum industry. This is in view of the fact that local content is inextricably tied to the development of the industry as a whole, given its linkages to employment, regulation, and taxation. A strong local content is imperative for a growing economy, and necessary if the NPI is to stand on its own with limited external input. Currently, an industry which is virtually in the 'hands' of IOCs, can hardly be said to be effectively managed. IOCs divestment and withdrawal can significantly halt petroleum productions, with negative consequences for the economy.

There is however need for a carefully planned approach to developing local content. This requires a careful application of NOGICDA, taking into consideration Nigeria's strengths, potentials, and weaknesses. The truth is that for some time coming, foreign input cannot be dispensed with, as the case of Britain and Brazil indicated. What is rather required is to ensure that Nigerian content is protected, and developed overtime, as Nigeria shores up its industrial and infrastructural base.

Given that Nigeria is a developing country however, there is need for it to pursue its local content programme through an NOC rather than rely entirely on private indigenous PEPCs and on legislation. Nigeria cannot afford to toe the path of America and Canada which did not establish NOCs. Rather, it should explore the potentials of a viable NOC in local content development after the Brazilian and Norwegian models. A three pronged approach should be used: a viable NOC and indigenous PEPCs, an independent and capable regulator, and extra legal government initiatives.

Structurally, this is the approach Nigeria adopts subject however to a weak and non functional NNPC. For had NNPC been functionally operational as an upstream operator, Nigeria's local content would have benefited immensely. The restructure of NNPC into a viable and functional NOC, along with a regulatory strategy as represented by the NCDMB



should be the focus of policy makers in the industry. It is to that extent that chapter five will seek to analyse the reform structure Nigeria should adopt with its NOC if the firm is to operate in the mould of the best NOCs as a partial regulator, local content developer, and revenue generator.

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## **5 CHAPTER FIVE: IN SEARCH OF A NATIONAL CHAMPION: AN ANALYSIS OF THE PIB PROPOSALS FOR THE RESTRUCTURING OF NIGERIA'S NATIONAL OIL COMPANY AND ITS LIKELY IMPACT ON THE REFORM PROCESS**

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### Introduction

This chapter will analyse the proposed reform of Nigeria's NOC as enshrined in the PIB 2012, and the extent to which it can impact the fortunes of the Nigerian petroleum industry (NPI). Drawing comparisons from other NOCs like Statoil, Petrobras, Petronas, it will analyse the proposed privatization model of NNPC in order to determine what instruments of law can be employed to restrain and limit post privatization external interference in the firm's management. The chapter will in essence seek to determine the extent to which company law and capital market law can be employed to restrain undue external interference, while simultaneously entrenching accountability in the management in a post privatised era?

### **5.1 NATIONAL OIL COMPANIES: CHARACTERISTICS, PERFORMANCE, STRENGTHS AND WEAKNESSES**

Globally NOCs control approximately 90 per cent of hydrocarbon reserves and 75 per cent of daily crude oil production.<sup>1</sup> The establishment of the Organisation of Petroleum Exporting Countries (OPEC) in 1971 positioned NOCs to play a dominant role in the global petroleum industry, an industry that had been previously dominated by international oil companies (IOCs).<sup>2</sup>

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<sup>1</sup> See Silvana Tordo and others, 'NOCs and Value Creation' (2011) World Bank Working Paper 218 <<http://web.worldbank.org/wbsite/external/topics/extogmc/0,,contentMDK:21991336~pagePK:148956~piPK:216618~theSitePK:336930,00.html>> accessed 2 January 2013 ; Stacy L. Eller and others, 'Empirical Evidence on the Operational Efficiency

of National Oil Companies' (2007) The Changing Role of NOCs in International Energy Markets, James A. Baker Rice III Institute for Public Policy

<sup>2</sup> Wajid Rasheed, notes that prior to 1971, IOCs controlled over 70 per cent of the world's petroleum resources. This figure changed when OPEC was created, as NOCs began to dominate the industry and dominated over 79 per cent of the world's petroleum. See Wajid Rasheed, 'The Oil Curtain and the Evolution of National Oil

Although there are commercial aspects of the operations of a typical and traditional NOC, many NOCs however focus primarily on implementing the petroleum industry policies of their home states.<sup>3</sup> Many NOCs seek to maximise ‘the net present value of economic rents from production of petroleum, inter-temporal equity, the promotion of backward and forward linkages, the promotion of bilateral trade, energy security and supplies.’<sup>4</sup> And this often entails prioritising socio-economic objectives over commercial objectives.

Many developing countries use the traditional NOC as an agent of direct participation in the petroleum industry,<sup>5</sup> and in some cases, as regulators and policy makers.<sup>6</sup> The typical challenge however of many traditional NOCs is that they are often beset with board instability, and politicisation of their corporate decisions. There also issues of inadequate managerial autonomy and professionalism, corruption, and operational inefficiency brought about by their non commercial objectives.<sup>7</sup> Weak NOC corporate structures often engender lack of transparency in management.<sup>8</sup>

A major constraint in implementing national objectives through NOCs is that government pressure on their funds, limits their ability to operate competitively, expand their reserves, raise funds and operate in an efficient manner.<sup>9</sup> A 2007 study noted that fully state owned NOCs which sell petroleum products at subsidized prices operate at a 35 per cent efficiency level when compared with their private counterparts who operate without such obligations.<sup>10</sup>

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Companies’ (2009) Journal of Petroleum Technology

<[http://www.spe.org/jpt/print/archives/2009/02/JPT2009\\_02\\_11Management.pdf](http://www.spe.org/jpt/print/archives/2009/02/JPT2009_02_11Management.pdf)> accessed 26 March 2013

<sup>3</sup> Some PPCs have in recent years sought to reorganize their NOCs by making them more competitive and open to private investment. In 2000 and 2001, Brazil and Norway partially privatized states’ owned Petrobras and Norway respectively.

<sup>4</sup> Silvana Tordo (n 1) at 2

<sup>5</sup> Virtually all developing PPCs have established NOCs. They include Saudi Arabia, Iran, Iraq, Venezuela, Nigeria, Kuwait, Algeria etc.

<sup>6</sup> Amy Myers Jaffe, ‘The Changing Role of NOCs in International Energy Markets: Introduction and Summary Conclusions’ (2007) James A. Amy Baker Rice III Institute for Public Policy

<<http://www.bakerinstitute.org/programs/energy-forum/publications/docs/NOCs/Presentations/Hou-Jaffe-KeyFindings.pdf>> accessed 20 March

<sup>7</sup> Stacy L. Eller and others (n 1) 30

<sup>8</sup> Ibid at 27

<sup>9</sup> Amy Myers Jaffe (n 6) 5

<sup>10</sup> Ibid at 15

Tordo, Tracy and Arfaa also note that traditional NOCs ‘exhibit lower labour and capital efficiency, generate lower revenue, are less profitable, and produce a significantly lower annual percentage of their upstream reserves than private oil companies (POCs)’.<sup>11</sup> It is not surprising therefore that many NOCs only operate within the geographical boundaries of their home states, and depend largely on the finance and technology of private oil companies (POCs) to operate most of their concessions.<sup>12</sup> And while POCs can easily raise funds from equity or debt financing, to meet expansion requirements, NOCs are often restricted by laws and bureaucracy from raising funds internationally to fund their operations.

The more modern non-traditional NOC however strives to operate more like POCs rather than a purely statutory establishment. And although they still cater for national objectives, their strong commercial and competitive orientation often results in better market performance, and good corporate governance.<sup>13</sup> Perhaps the most notable non traditional NOCs are Statoil of Norway, Petrobras of Brazil, and Petronas of Malaysia.

Recent studies have concluded that in order to optimize NOC performance, reforms should seek to balance the need for social welfare with that of profit maximization. This view argues that although NOCs should be owned by governments, they should as much as is reasonably possible, be managed along the lines of a privately owned company.<sup>14</sup> It advocates that competition in the home industry, and in international exploration and refining will motivate NOCs to operate in a more transparent and efficient manner.<sup>15</sup> This strategy will require a synchronisation between some benefits of the private sector and of the public sector. Some other propositions for effective NOC performance include introduction of strict accounting and financial practices, partial privatization and board autonomy.<sup>16</sup>

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<sup>11</sup> Silvana Tordo and others (n 1) 38

<sup>12</sup> Nontraditional NOCs like Petronas of Malaysia, Petrobras and Statoil, currently operate outside their home states.

<sup>13</sup> Of this group, Norway’s Statoil, Brazil’s Petrobras and Malaysia’s Petronas are regularly cited as being relatively successful. See generally Mark C. Thurber and others, ‘Exporting the Norwegian Model’ (n 2, chapter 2)

<sup>14</sup> Amy Myers (n 6) 16-18

<sup>15</sup> Ibid at 18

<sup>16</sup> Ibid at 16

Desirous to enhance NOC performance, some PPCs have resorted to internal restructuring and others to privatization and commercialisation. Mexico and Nigeria are among those proposing to adopt the privatization strategy for enhanced NOC performance. Nigeria's NOC will be analysed next with emphasis placed on its history, performance and challenges.

## **5.2 THE NIGERIAN NATIONAL PETROLEUM CORPORATION: HISTORY, CHALLENGES AND PERFORMANCE**

In the years following its independence from Britain in 1960, Nigeria's role in the petroleum industry remained limited to minor regulation and collection of taxes.<sup>17</sup> But Nigeria began to assert its authority in the industry when it enacted the Petroleum Act in 1969. This Act which positioned Nigeria to directly participate in the operations of IOCs<sup>18</sup> was given greater impetus following Nigeria's 1971 membership of OPEC. OPEC made the establishment of NOCs by its member states imperative. To that extent Nigeria established the Nigerian National Oil Company (NNOC) in pursuance to decree 18 of 1971. In addition to the NNOC which was to implement Nigeria's petroleum industry policies, Nigeria also established the Department of Petroleum Resources (DPR) in 1970 to act as industry regulator.

In order to ensure greater operational efficiency and maximise limited human resources, Decree No 33 of 1977, merged DPR with NNOC into a newly formed Nigerian National Petroleum Corporation (NNPC). Following its establishment, NNPC combined the roles of regulator, policy formulator and petroleum company, and became the dominant institution in the NPI.

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<sup>17</sup> Etikenrentse (n 76) 17

<sup>18</sup> See paragraph 35 of the first schedule to the Petroleum Act, through which Nigeria embarked on joint venture agreements with international oil companies. Recent trends in Nigeria indicate a favouring of production sharing contracts (PSCs) as the contractual mode of engagement with IOCs. See Madaiki Ameh, 'The Shift from Joint Operating Agreements to Production Sharing Contracts in the Nigerian Oil Industry's: Any Benefit for the Players?' <[www.dundee.ac.uk/cepmlp/car/.../CAR10\\_ARTICLE32.PDF](http://www.dundee.ac.uk/cepmlp/car/.../CAR10_ARTICLE32.PDF)> accessed 3 June 2012

Although established as a vertically integrated petroleum company, NNPC continued with the operational pattern of its predecessor by partnering with IOCs through joint venture arrangements ('JVs'), production sharing contracts (PSCs) and risk service contracts (RSCs). While there are some differences between them, essentially PSCs, RSCs and JVs are arrangements under which IOCs produce petroleum under concessions granted exclusively to NNPC, or to both NNPC and IOCs.<sup>19</sup> All the parties to these collaborations contribute to production expenses proportionally, and share profits proportionally, after payment of tax.<sup>20</sup> Currently these collaborations account for about 90 per cent of Nigeria's daily petroleum production and are therefore the most concrete means of producing petroleum in Nigeria.<sup>21</sup>

### **5.2.1 THE STRUCTURE OF NNPC AND ITS PERFORMANCE WITHIN THE GLOBAL CONTEXT**

At the top of the NPI is the president of the federal republic of Nigeria who co-ordinates the affairs of NNPC, the ministry of petroleum resources (the 'Ministry'), and DPR, through the office of the minister of petroleum resources (the minister). DPR is the principal regulator of the NPI, while the Ministry is responsible for the formulation of industry policies and NNPC functioning as the corporate and operational arm. Structurally therefore the Nigerian model is very similar to the Norwegian and Brazilian models, but the similarity exists only in form, since in practice there is hardly any functional distinction between the three institutional arms.

The NNPC board consists of the minister as chairperson, a group managing director, and six group executive directors who oversee six directorates.<sup>22</sup> NNPC has eleven subsidiaries, each

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<sup>19</sup> See Gidado M 'Petroleum Development Contracts with Multinational Oil Corporations : Focus on the Nigerian Oil Industry', (PhD Thesis University of Warwick 2009) University of Warwick Publications Service <<http://wrap.warwick.ac.uk/4320/>> accessed 19 June 2013

<sup>20</sup> The PSCs and RSCs are somewhat different from JVs in that NNPC does not contribute financially to the operations, although the operators are entitled to deduct their costs of running such operations before profits are shared among the parties.

<sup>21</sup> The remainder is produced by NNPC's upstream subsidiary, the Nigerian Petroleum Development Company (NPDC), new IOCs from Asia, Europe and Brazil, and indigenous petroleum companies (indigenous PEPCs). See Jean Balouga , 'Nigerian Local Content: Challenges and Prospects' (2012)International Association of Energy Economics [www.iaee.org/en/publications/newsletterdl.aspx?id=176](http://www.iaee.org/en/publications/newsletterdl.aspx?id=176) accessed 11 November 2012 , at 24. See also Soala Ariweriokuma, *The Political Economy of Oil and Gas in Africa: the case of Nigeria* ( Taylor and Francis 2009) 64

<sup>22</sup> Namely: exploration and production, refineries and petrochemicals, finance and accounts, commercial and investment, corporate services and gas and power .

headed by a managing director.<sup>23</sup> It is also part owner of the Nigerian Liquefied Natural Gas Company (NLNG),<sup>24</sup> and is further subdivided into 17 divisions headed by group general managers.

In terms of performance, NNPC has struggled with upstream and downstream operations, corporate governance, and financial accountability. Compared to most of its NOC counterparts, there is a general consensus among commentators that NNPC has performed below average, in the upstream and downstream sectors of the NPI.<sup>25</sup> It relies almost entirely on its IOC partners to explore and operate JVAs/PSCs/RSAs and the impact of its upstream subsidiary the Nigerian Petroleum Development Company (NPDC) has been minimal. Currently NPDC accounts for only about 5.6 per cent of Nigeria's daily crude production of over 2 million barrels of crude oil. This is in stark contrast to Brazil, whose Petrobras controls over 90 per cent of daily crude production,<sup>26</sup> and Norway, whose Statoil controls over 80 per cent of production in the Norwegian Continental Shelf (NCS).<sup>27</sup>

In the downstream NNPC has not fared well either. Its refineries currently produce at about 25 per cent of their 450,000 daily capacity,<sup>28</sup> and were recently adjudged the worst managed among 42 refineries surveyed in Africa.<sup>29</sup> Billions of dollars, spent on turn around

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<sup>23</sup> They include Duke Oil, Hyson, National Petroleum Investment Management Services (NAPIMS), Integrated Data Services Limited (IDSL), Kaduna Refining and Petrochemical Company (KRPC), National Engineering and Technical Company (NETCO), Nigerian Gas Company (NGC), NPDC, NAPIMS, Port Harcourt Refining Company (PHRC), Pipelines and Products Marketing Company (PPMC), and Warri Refining & Petrochemical Company Limited (WRPC), NNPC, Website, Corporate Info.

<<http://www.nnpcgroup.com/NNPCBUSINESS/Subsidiaries.aspx>> accessed 12 December 2012

<sup>24</sup> Ugo Nwokeji 'The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions' (2007) James Baker Rice 111 Institute for Public Policy < [www.bakerinstitute.org/.../publications/energy.../NOC\\_NNPC\\_Ugo.p..](http://www.bakerinstitute.org/.../publications/energy.../NOC_NNPC_Ugo.p..)> accessed 16 October 2012 at 7

<sup>25</sup> See generally Ugo Nwokeji *ibid*, Mark C. Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem', in David G. Victor and others (eds) *Oil and Governance State-owned Enterprises and the World Energy Supply* (Cambridge 2012) 701, Alexandra Gilles, 'Oil Sector Reform in Africa: The Case of Nigeria' (PhD thesis, Cambridge University, 2010)

<sup>26</sup> Dayo Oketola, 'NPDC Daily Crude Production now 138,000 Barrels' *Punch* (30 April 2013) <<http://www.punchng.com/business/business-economy/npdc-daily-crude-production-now-138000-barrels/>> accessed 1 May 2013

<sup>27</sup> US Energy Information Administration, 'Norway' (2012) <<http://www.eia.gov/countries/cab.cfm?fips=no>> accessed 7 July 2013

<sup>28</sup> Fidelis Soriwei, 'Two of Nigeria's Refineries Pack up ...others Produce at 25% of Installed Capacity' *Punch* (7 July 2012) <<http://www.punchng.com/news/two-of-nigerias-refineries-pack-up-others-produce-at-25-of-installed-capacity/>> accessed 3 January 2012

<sup>29</sup> The survey was conducted on behalf of the Nigerian government by the National Refineries Special Task Force (NRSTF). Chineme Okafor, 'Nigerian Refineries Rated Worst Amongst 42 African Refineries' *Thisday*

maintenance, have failed to have significant impact in the fortunes of the refineries.<sup>30</sup> The result is that Nigeria imports most of its refined crude products and suffers almost incessantly from fuel scarcity.<sup>31</sup>

Through its asset management subsidiary, the National Petroleum Investment Management Services (NAPIMS), NNPC partly regulates IOCs by approving budgets, work programmes, schedules etc. This is to ensure that Nigeria derives maximum benefit from its upstream investments. NAPIMS has however struggled to monitor IOCs effectively, especially as regards their expenditures incurred in the course of production. Although NNPC and IOCs are jointly responsible for the funding of all collaborations, NNPC has consistently defaulted in meeting its joint venture obligations. This means that IOCs bear the cost of production in most cases, and recoup their investments after the sale of crude oil.<sup>32</sup> The PSC and RSC are also conducted along similar arrangements. IOC funding however gives them a stronger leverage over NNPC, and has weakened NAPIMS' strength, or justification to monitor production expenditures. The result has been that concerns have been raised in many quarters that Nigeria loses billions of dollars annually to creative accounting practices of IOCs.<sup>33</sup> There is also the widely made claim, that there are no verifiable data on the amount of crude oil produced in Nigeria daily.<sup>34</sup>

Another area of regulatory lapse on the part of NNPC is in the promotion of Nigeria's local content. Chapter three noted that NNPC has struggled to properly monitor IOCs in order to

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(Abuja, 13 November 2012) <<http://www.thisdaylive.com/articles/nigerian-refineries-rated-worst-amongst-42-african-refineries/130439/>> accessed 18 December 2012

<sup>30</sup> Ismaila Badmus and others, 'A Review of Performance Appraisals of Nigerian Federal Government-Owned Refineries' (2012) *Energy and Power Engineering*, 2012, 4, 47-52

<sup>31</sup> Furore over Petroleum Products Importation from Niger' *Thisday* (14 August 2012) <<http://www.thisdaylive.com/articles/furore-over-petroleum-products-importation-from-niger/122318/>> accessed 18 December 2012

<sup>32</sup> Etikenrentse (n 77, chapter 2) 44-46

<sup>33</sup> See chapter three, para 3.6.3 See NEITI, 'NEITI Urges Agencies to Recover 9.8 Billion Dollars from Companies' (2012)

<<http://www.neiti.org.ng/news/2012/09/24/neiti-urges-agencies-recover-98-billion-dollars-companies>> accessed 19 October 2012. See also Musa Abutudu and Dauda Garuba, 'Natural Resource Governance and EITI Implementation in Nigeria' (2011) *Current African Issues* 47,

<sup>34</sup> '2006-2008 Reports – Final' (January 30, 2012) <<http://www.neiti.org.ng/documents/neiti-2006-2008-reports-final-january-30-2012>> accessed 11 October 2012, see also Jacob Segun Olatunji and Kolawole Daniel, 'No Proper Record of Crude Oil Production – CBN Gov' *Nigerian Tribune* (Abuja 4 October 2012) <<http://tribune.com.ng/index.php/lead-stories/48646-no-proper-record-of-crude-oil-production-cbn-gov>> accessed 18 October 2012



ensure a significant representation of local content in JVs and PSCs.<sup>35</sup> This was despite the fact that NNPC was the majority holder of such concessions operated by IOCs.

In addition to or because of weak performance in the upstream, downstream and as part industry regulator, NNPC has been unable to attain financial sufficiency. In fact Nwokeji and Thurber observe that among its 11 subsidiaries only the Nigerian Engineering Technical Company (NETCO) and the Integrated Designs Systems Limited (IDSL) have shown some promise. The rest depend almost entirely on government subsidies and subventions to be kept afloat.<sup>36</sup> Its inability to operate profitably is partly responsible for its indebtedness to local and foreign financial firms to an extent of near insolvency.<sup>37</sup> In addition to the above challenges, NNPC also has a reputation of suffers from withholding funds from Nigeria's consolidation revenue funds, and suffers from internal mismanagement and corruption. In 2012 there was a report that NNPC withheld over 6 trillion naira from the consolidated revenue fund, as required by the Nigerian constitution, even though the NLNG has strongly denied the authenticity of the report.<sup>38</sup> On the heels of that allegation is another allegation from the immediate past governor of Nigeria's Central Bank, Lamido Sanusi, that NNPC withheld \$20 billion from Nigeria's consolidation revenues account.<sup>39</sup>

Notwithstanding the above, there are some positive sides to NNPC. It is responsible for the procurement of petroleum to Nigerians at a highly subsidised rate, and is the owner of a sophisticated network of pipelines which crisscross the length and breadth of Nigeria and its 11 subsidiaries provide employment for thousands of Nigerians. The firm is also the main foreign income earner for the Nigerian government through its sale of petroleum products on the international market. But when compared with other non-traditional NOCs like Petrobras,

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<sup>35</sup> See para 3.6.3

<sup>36</sup> See Nwokeji (n 9) 40. See also Mark C. Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem' (n 35).

<sup>37</sup> NNPC commodity trading houses, including Glencore and Mercuria, about \$3.5 billion in unpaid fuel supply <bills. See, 'Nigeria State Oil Firm NNPC Insolvent, says Minister' (13 July 2010) BBC <http://www.bbc.co.uk/news/10624427> 13>accessed 2 October 2012. The federal government however debunked the assertion of NNPC's insolvency, see Sufuyan Ojeifo, 'NNPC Not Bankrupt, says FG' Thisday (Abuja), 15 July 2010 <<http://www.thisdaylive.com/articles/nnpc-not-bankrupt-says-fg/83262/>> accessed 3 January 2013, see also Chika Amanze-Nwachuku in Lagos and Chineme Okafor, 'NNPC Gets Presidential Nod on \$1.5 billion Loan' Thisday (Abuja, 9 January 2012) <<http://www.thisdaylive.com/articles/nnpc-gets-presidential-nod-on-1-5-billion-loan/135806/>> accessed 9 January 2013

<sup>38</sup> See NLNG, 'Ribadu's Report on NLNG is Inaccurate' (6 November 2012) <<http://www.nlng.com/pressreleases.aspx?id=>> accessed 29 November 2012

<sup>39</sup> 'Trouble at Nigeria's Central Bank' *The Economist* (21 February 2014) <<http://www.economist.com/blogs/baobab/2014/02/trouble-nigerias-central-bank>> accessed 28 March 2014

Petronas, and Statoil, or even Angola's Sonangol, the weaknesses in NNPC become more apparent, and make reform imperative.

### **5.3 FACTORS RESPONSIBLE FOR NNPC'S WEAK PERFORMANCE**

This segment will highlight lack of operational focus, transparency and financial corruption, and undue government interference as the main reasons why NNPC has struggled to perform optimally. It will however argue that the first two are in reality symptoms of the third. To that extent, any reform initiative should focus at the root of the problem rather than treat the symptoms.

#### **5.3.1 UNDUE GOVERNMENT INTERFERENCE AND A LACK OF MANAGERIAL AUTONOMY**

The NNPC Act subjects NNPC to absolute government control. This may be understandable in a certain sense, since the firm is fully government owned and funded, and manages an asset that is vital to the economic stability of Nigeria. Its board is appointed by the National Council of Ministers (NCM) and is chaired by the minister who answers directly to the president.<sup>40</sup> With the NCM exercising supervision over its finances and the National Assembly approving its annual budgets, NNPC lacks financial autonomy.<sup>41</sup> And although the Act authorises NNPC to raise funds from external sources, government control has limited this option, resulting partly in NNPC's inability to fund expansion.<sup>42</sup>

Where government interference cripples managerial innovation and autonomy, such interference can be said to be undue. The positive side to it is that government interference means that NNPC, like most NOCs, enjoys state patronage in the forms of bank guarantees,

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<sup>40</sup> Ss 2 and 3

<sup>41</sup> Ss 7, 8 and 9

<sup>42</sup> S8

petroleum contracts, and the allocation of incidental assets.<sup>43</sup> The NOC can also enjoy protection which other private firms are not entitled to. For example under section 12 of the NNPC Act, an intending claimant must serve a pre-action notice to the firm,<sup>44</sup> and there is some restriction to the attachment of NNPC's assets through the court process.<sup>45</sup> Finally section 16 of the Act protects NNPC's pipelines and installations from being taxed as hereditaments and tenements of local governments and states.<sup>46</sup>

The drawback to state protection and interference is that where care is not taken, such privileges justify more interference which can negatively impact the firm's operational efficiency, managerial autonomy and professionalism. For instance a lack of managerial autonomy in NNPC has stifled innovation and creativity and enshrined nepotism, mediocrity and underperformance. Thus in the absence of discipline and vibrant checks and balances, a lucrative NOC can become a cesspool for corruption, patronage, and rent seeking activities.<sup>47</sup>

NOCs which enjoy some level of autonomy are in a better position to operate competitively. For instance Petrobras of Brazil enjoyed autonomy from the government even during Brazil's military years, even though it was fully government owned. In fact when in 1969, Ernesto Geisel was requested to take over the reins of the firm, he made autonomy from the industry regulator a precondition to his assumption of office.<sup>48</sup> This novel and radical approach of granting autonomy to Petrobras was later proved to be a wise decision as it insulated the firm from Brazil's decades of political uncertainty and military dictatorship.<sup>49</sup>

Like Petrobras, Statoil of Norway also enjoyed some autonomy from the Norwegian government and exploited this to develop into a competitive operator in the Norwegian continental shelf (NCS). Thus Statoil combined autonomy with a strong commercial

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<sup>43</sup> Petronas, Petrobras, and Statoil (until Norway's membership of the EEA in 1994) all developed with the help of state patronage.

<sup>44</sup> S. 12, see also *Amadi v NNPC* (2002) 10 NWLR, (Pt 674) 76

<sup>45</sup> S. 14 NNPC Act.

<sup>46</sup> See also Etikenrentse (n 76) at 46

<sup>47</sup> Sonatrach of Algeria, NNPC of Nigeria and PDVSA of Venezuela. See also Mark Thurber and others, 'Exporting the Norwegian Model' (n 21, chapter 2).

<sup>48</sup> Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance' in David G. Victor (eds) (n 22, chapter 2) 515, See also J Surrey, 'Petroleum Development in Brazil: The Strategic Role of a National Oil Company' (1987) Vol. 15(1) Energy Policy

<sup>49</sup> See Adilson De Oliveira, 'Brazil's Petrobras: Strategy and Performance' in David G. Victor (eds) (n 22, chapter 2) 521

orientation, given that it was not a statutory corporation, but was incorporated to operate as a private company subject to company law.

NNPC's loss of autonomy has been blamed on internal corporate failures which justified government interference. It is arguable that one reason why Statoil and Petrobras continued to enjoy managerial autonomy while NNPC did not was because they earned such autonomy by commitment to good practice. Nwokeji notes that a scandal involving \$4 billion in the late 1970s occurred at a time when NNPC had relative board autonomy.<sup>50</sup> The scandal in fact justified the erosion of NNPC's autonomy, as the government sought to assert greater control over the firm in order to prevent such fraud.

Similarly, when in 1993, the minister's office was excised from the chairmanship of NNPC, Nwokeji observes that an internal corruption scandal amounting to \$41 million justified military interference in the firm's board, and in so doing, again eroded managerial autonomy, a vital component for good management of an NOC.<sup>51</sup> The result was that NNPC became more like a government bureaucracy or public service department, in sharp contrast from its original mandate. Lack of autonomy has manifested itself in frequent leadership changes in NNPC, since each government administration constitutes new boards that are agreeable to its policy or susceptible to its whims.<sup>52</sup>

It is generally agreed that government interference in NNPC peaked during the military era of Nigeria.<sup>53</sup> Ariweriokuma blames military interference in NNPC for the breakdown of its refineries, and the erosion of the professional clout of NNPC.<sup>54</sup> But while civilian rule offers brighter hopes for improved managerial autonomy, not much has changed with Nigeria's return to democracy. NNPC's funds have allegedly been diverted by corrupt government officials and, and its discretion to grant petroleum importation licences and to award

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<sup>50</sup> Nwokeji (n 97, chapter 2) 17

<sup>51</sup> Nwokeji (n 97, chapter 2), 20

<sup>52</sup> Victoria Ahuma -Young, 'Oil Workers Lament Incessant Leadership Change in NNPC' Vanguard (2 July 2012) <<http://www.vanguardngr.com/2012/07/oil-workers-lament-incessant-leadership-change-in-nnpc/>> accessed 7 March 2013

<sup>53</sup> With the exception of about 4 ½ years, Nigeria was subject to military rule from 1966-1999

<sup>54</sup> Soala Ariweriokuma, (n 101, chapter 2) at 64

turnaround maintenance contracts has been frequently used to gratify various political interests.<sup>55</sup> Few Nigerians were surprised therefore when NNPC, which is widely seen as an appendage of the presidency, was alleged to have spent \$14 million in the purchase of a presidential helicopter.<sup>56</sup>

There is a closely knit relationship between the management of NNPC and Nigeria's political leadership and this has resulted in back hand deals that are shrouded in secrecy, and a complex interchange of monies and obligations, legally and illegally. For instance, although NNPC is said to owe the Nigerian government billions of naira, the government is also said to be heavily indebted to the firm.<sup>57</sup> The intermeddling of the government in NNPC's affairs coupled with other factors means that the firm is unable to meet its cash call obligations which are required to fund its operations, nor is able to maintain its infrastructures. According to Nwokeji, the

'Nigerian political class and senior civil service have historically viewed the oil industry as too important a source of patronage...to be left in the hands of independent managers. This tendency has always had to contend with NNPC's natural desire for autonomy and with the interests of the presidency of the day in closely controlling the industry.'<sup>58</sup>

### **5.3.2 CORRUPTION AND LACK OF ACCOUNTABILITY IN NNPC**

Corruption in NNPC is legendary and taken for granted. This 'disease', which is partly a symptom of undue government interference, has had very negative effects on the firm, and on its international reputation. Currently NNPC is rated as one of the most corrupt NOCs in the world.<sup>59</sup> It has been implicated in one corruption scandal after another, involving billions of

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<sup>55</sup> Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem' (n 29) at 701-704

<sup>56</sup> Patrick Atuanya, 'Sonangol's \$3.2bn profit shows NNPC's model as broken' Business Day (12 December 2012) <<http://www.businessdayonline.com/NG/index.php/news/76-hot-topic/48888-sonangols-32bn-profit-shows-nnpcs-model-as-broken>> accessed 3 January 2013

<sup>57</sup> NNPC is owed \$106 million by the Power Holding Company of Nigeria for gas supplied and \$124 million by a maritime security agency 'NNPC Accounts and FG Interference' Tribune (30 July 2012) <<http://sunday.tribune.com.ng/index.php/editorial/44958-nnpc-accounts-and-fg-interference> > accessed 3 January 2012

<sup>58</sup> Nwokeji (n 97, chapter 2) at 2, 42, and 74

<sup>59</sup> A combined report of Revenue Watch Institute and Transparency International found NNPC to

dollars.<sup>60</sup> From fuel subsidy fraud, to turn around maintenance of refineries, procurements of equipment, or to outright withholding of billions of naira belonging to the Federal Government, corruption in NNPC is now taken for granted in Nigeria.<sup>61</sup>

Corruption has thrived in NNPC partly because of the secrecy with which its affairs are conducted.<sup>62</sup> In 2012, a National Assembly probe of \$6.8 billion subsidy fraud noted that NNPC is 'accountable to no one'.<sup>63</sup> Its accounts and activities are conducted with such secrecy that Nigerians are hardly aware of the movement of funds within it. And even where relevant information is made public, there is continued impunity and lack of respect for the rule of law with the effect that persons involved in wrongdoing are not brought to book.

One may again argue that corruption has thrived in NNPC because of poverty and lack of structures that are erected to prevent abuse of office. In essence corruption in NNPC can be arguably said to be a product of people deficiency rather than structural deficiency. A deficiency heightened by undue external influence. For instance, Norway's Statoil has not struggled with corruption like NNPC due in part to the fact that Norway has a culture of honesty, rule of law, and does not struggle with poverty like Nigeria. When Petrobras is brought into the picture however, this position seems untenable, given that Petrobras developed without struggling with serious corruption issues even though it operated under the military for most of its years, and at a time when the Brazilian economy was still developing.

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have the lowest corruption index out of 44 countries surveyed. See David Cutler, 'Factbox Nigeria's' State Oil Company NNPC' (12 July 2012) <<http://www.reuters.com/article/2012/07/16/us-nigeria-oil-nnpcidUSBRE86F0DV20120716>> accessed 16 August 2012

<sup>60</sup> In 2011, a joint Transparency International and Revenue Watch survey placed NNPC as being among the 8th worst petroleum companies. See 'Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies' (2011)

<[http://www.transparency.org/whatwedo/pub/promoting\\_revenue\\_transparency\\_2011\\_report\\_on\\_oil\\_and\\_gas\\_companies](http://www.transparency.org/whatwedo/pub/promoting_revenue_transparency_2011_report_on_oil_and_gas_companies)> accessed 3 January 2013

<sup>61</sup> NNPC is named in numerous corruption scandals bordering on billions of dollars. Under the regime of Ibrahim Babangida, (1985-1993), \$12 billion Gulf War oil windfall were reportedly misappropriated and remain unaccounted for till date. General Sani Abacha, (1993-1998) and his family purportedly misappropriate over \$3 billion. In 2012, it was reported that over \$6 billion was misappropriated through subsidy fraud. See 'Nigeria fuel subsidy report 'reveals \$6bn fraud' (BBC, 24 April 2012) <<http://www.bbc.co.uk/news/world-africa-17823959>> accessed 9 July 2013. See also Daniel .E Agbibo, 'Between Corruption and Development: The Political Economy of State Robbery in Nigeria' (2011) Vol 108 Journal of Business Ethics

<sup>62</sup> Nwokeji (n 97, chapter 2) at 56

<sup>63</sup> House of Representatives, 'Report of the Ad-Hoc Committee to Verify and Determine the Actual Subsidy Requirements and Monitor the Implementation of the Subsidy Regime in Nigeria' (Rstn No. HR.1/2012) <[http://premiumtimesng.com/news/4747-premium\\_times\\_presents\\_the\\_full\\_oil\\_subsidy\\_probe\\_report.html](http://premiumtimesng.com/news/4747-premium_times_presents_the_full_oil_subsidy_probe_report.html)> Accessed 4 January 2012

Similarly, while many state owned companies in Malaysia are often ‘associated with financial scandals and mismanagement, Petronas is held up as a sure-footed example of an integrated approach to natural resource management’.<sup>64</sup>

With Nigeria’s return to civilian rule in 1999, there have been some efforts towards greater transparency in the petroleum industry, and the government published some information on oil revenues which were hitherto kept secret.<sup>65</sup> The impact of these efforts has however been at best cosmetic, and the much needed transparency and accountability required to address corruption in the industry and particularly at NNPC, remains a mirage to most Nigerians.

In 2011, the Freedom of Information Act (FOIA) 2011 was enacted to guarantee Nigerians the right to government information. While many hoped the FOIA would herald an era of transparency in NNPC, the firm jolted the nation by declaring that it was not bound by the provisions of the Act.<sup>66</sup> The extent of corruption in NNPC has made it virtually impossible for the firm to rise to the level of an internationally recognised NOC. It is to that extent submitted that any meaningful reform should address corruption in NNPC before it can be taken seriously.

### **5.3.3 LACK OF OPERATIONAL FOCUS IN NNPC**

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<sup>64</sup> Leslie Lipez, ‘Petronas: Reconciling Tensions between Company and State’ 808 in David G. Victor and others (eds) (n 22 chapter 2), 808.

<sup>65</sup> In 2007, the National Assembly enacted the Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007, and began publishing reports of petroleum revenues. In 2011, it enacted the Freedom of Information Act (FOIA)

<sup>66</sup> Responding to information from a media house on its employment procedures, the legal adviser of NNPC argued that NNPC was not a public institution and thus not bound to comply with the FOIA. This position was patently erroneous as the NNPC, was established by the NNPC Act of 1977 as a statutory corporation. The Group Managing Director, in response to criticisms in the media against the position of the firm, indicated that NNPC was willing to comply with the provisions of the FOIA. This double speak however gives a clear sign to Nigerians that NNPC may be unwilling to abide by the provisions of the Act. See Chineme Okafor, ‘NNPC Says it is Bound by Provisions of FOI Act’ Thisday (11 August 2012)  
<<http://www.thisdaylive.com/articles/nnpc-says-its-bound-by-provisions-of-foi-act/122090/> accessed 4 January 2012

NNPC has struggled from a lack of operational focus which has made it difficult for it to meet its founding objective of being a vertically integrated petroleum firm. This is due in part to its diverse roles in the industry. For instance from 1977-1988, NNPC combined the roles of policy maker, regulator and a petroleum firm. In the late 1980s, its policy making and regulatory duties were excised from it, in order to give the firm operational focus as an upstream and downstream firm, but this has not been the case.<sup>67</sup>

Statoil which was incorporated in 1972 had a definite mandate: to operate as a vertically operated NOC, not as a government department. Norway separated regulation from policy formulation and from industry regulation. This resulted in operational efficiency and focus which was harnessed to the benefit of the Norwegian people. Within 10 years of its incorporation, Statoil which partnered with IOCs in the NCS, began to operate sole concessions and developed its capacities as an upstream and deep water expert. Focus was thus integral to its performance.<sup>68</sup>

Similarly, Petronas was incorporated in 1974 under the Malaysian company law to operate as a petroleum firm. And while it also exercises some quasi regulatory functions, it has remained essentially what it was incorporated to do: a vertically integrated petroleum company. The same can be said for Petrobras of Brazil.

In the case of NNPC there has been a (d)evolution from a promising upstream company in the 1970s to a more or less asset manager and petroleum sales firm. It is often difficult to describe the separate roles of NNPC's subsidiaries and multiple divisions. There is often overlap of functions as subsidiaries venture into operations that are far from what they were established to do. For example, although NPDC remains NNPC's upstream subsidiary, asset managing NAPIMS is currently involved in upstream operations in Nigeria's frontiers and

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<sup>67</sup> Section 5 of the NNPC Act outlines its duties which includes E and P, refining and processing, purchasing and marketing of petroleum products, pipelines and transportation, construction and engineering, petroleum research and giving effect to agreements entered into by the Federal Government with a view to securing participation by the Government or the Corporation in activities connected with petroleum;

<sup>68</sup> See Mark C. Thurber and Benedicte Tangen Istad, 'Norway's Evolving Champion: Statoil and the Politics of State Enterprise' in David G. Victor (eds) (n 22, chapter 2) 608



inland basins;<sup>69</sup> a role that has no bearing or semblance to that of an asset manager. In the same vein, it was shown in chapter three that although NOGICDA conferred local content regulation on the Nigerian Content Development and Monitoring board (NCDMB), NNPC's NCD still performs similar tasks.<sup>70</sup>

It is arguable that rather than operate as a vertically integrated petroleum firm, NNPC is more akin to a government ministry with a semi corporate structure. The picture of NNPC that can be deduced from the NNPC Act is currently very far from what it is in reality. In describing this lack of focus, and NNPC's distorted corporate structure, Thurber, Emelife and Heller note that:

‘despite its formal organization as a vertically-integrated oil company, NNPC is neither a real commercial entity nor a meaningful oil operator. It lacks control over the revenue it generates and thus is unable to set its own strategy. It relies on other firms to perform essentially all of the most complex functions that are hallmarks of operating oil companies. Yet unlike some NOCs it also fails to fit the profile of a government agency: Its portfolio of activities is too diverse, incoherent, and beyond the reach of government control for it to function as a government policymaking instrument.’<sup>71</sup>

NNPC however remains very relevant to Nigeria not because it operates refineries or operates as an upstream firm, but because of its management of Nigeria's assets in JVA/PSCs. It is also relevant in that it manages Nigeria's fuel imports and their distribution.

Focus implies discipline, objectivity and planning. Petroleum firms like Statoil, Petrobras and Petronas have maintained their operational focus and have been able to venture into foreign waters which will make them relevant in the world stage long after petroleum resources are depleted in their home territories. In fact most of Petronas' concessions are currently outside of Malaysia, as it has ventured into other territories in its upstream and downstream

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<sup>69</sup>NAPIMS, 'About Us' <<http://www.napims.com/aboutus.html>> accessed 9 March 2014

<sup>70</sup> 'NNPC Still in Firm Grip of Local Content Project – Ajuonuma' <<http://nnpcgroup.com/PublicRelations/NNPCinthenews/tabid/92/articleType/ArticleView/articleId/147/NNPC-Still-in-Firm-Grip-of-Local-Content-Project--Ajuonuma.aspx>> accessed 7 January 2012

<sup>71</sup> Thurber and others, (n 28) at 701

operations.<sup>72</sup> It is arguable that a focused NOC operating with a well defined focus, rather than a behemoth like NNPC would have been able to meet most of its objectives.

It is posited that it is not the subsidiarisation of NNPC that have affected its focus, but rather its venturing away from core engineering and petroleum related operations, to operations that require little engineering and technical skills: asset management and sale of petroleum. These functions that can be conveniently performed by a government department, unlike drilling, design, production, and refining, which require technology, skills and capacity.

The above analysis has shown that NNPC struggles from corruption, lack of operational focus, and undue interference, and argued that government interference is actually at the root of its challenges. If indeed undue government interference is the root cause of most of NNPC's challenges, then in order to reinvent itself, Nigeria would need to devise and adopt a reform strategy that not only restrains undue interference, but in one fell swoop, addresses corruption and lack of operational focus in the firm. Tackling one without the other will not result in a significant impact, as they are so intertwined that they impact invariably on each other in the operations of the firm. The Nigerian government is not unaware of the challenges of NNPC, but has sought to restructure and reform the firm in the past, but to no significant avail.

There was the commercialisation of NNPC in 1988 by the Babangida administration which also led to the division of the firm into 11 subsidiaries. In 1993, the short lived Ernest Shonekan administration (August 1993 –November 1993) also attempted to privatise NNPC's refineries, but was overthrown in a military coup led by General Sani Abacha before it could complete the process.<sup>73</sup> The Obasanjo administration (1999-2007) privatised the Eleme Petrochemicals, (which had been a subsidiary of NNPC) to Indorama in 2006, and in 2007, the Kaduna and Port Harcourt refineries were sold off to Bluestar Consortium. However the Bluestar transaction was later cancelled by the administration of Umaru Musa

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<sup>72</sup> See Leslie Lopez, 'Petronas: Reconciling Tensions between Company and State' in David Victor and others (eds) (n 22, chapter 2) at 809

<sup>73</sup> Nwokeji (n 97, chapter 2) at 89

Yar Adua on grounds bordering on lack of transparency.<sup>74</sup> Currently the PIB 2012 intends to introduce some far reaching reforms of NNPC, and it is the proposed reforms that will be analysed in the next segment of this chapter.

## **5.4 TOWARDS A HOLISTIC RESTRUCTURING OF NNPC: THE PIB AND A POST PRIVATISED NNPC**

### **5.4.1 BACKGROUND TO THE PIB, AND THE PROPOSED PRIVATIZATION OF NNPC**

In 2000, the Obasanjo administration constituted the first Oil and Gas Sector Reform Implementation Committee (OGIC). Chaired by Dr Rilwanu Lukman, the OGIC was mandated to review the legislative and commercial framework for the petroleum industry, and in the light of international best practices, make recommendations for reform. In 2004, it published its first report which recommended a comprehensive reform of the industry, emphasising the need to separate policy making, regulation and the commercial aspects of the NPI.<sup>75</sup>

The second OGIC which was inaugurated by President Umaru Musa Yar Adua in September 2007 produced the first draft of the PIB which was submitted to the 6th National Assembly (2007-2011).<sup>76</sup> The first PIB faced serious opposition from IOCs and other stakeholders, and could not be passed into law. The administration of President Goodluck Jonathan (2010- ) submitted a revised version of the PIB to the National Assembly in June 2012.

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<sup>74</sup> Emmanuel Uffot, 'A Retrogressive Policy' (Newswatch, 6 April 2012) <[http://www.newswatchngr.com/index.php?option=com\\_content&task=view&id=4068&Itemid=32](http://www.newswatchngr.com/index.php?option=com_content&task=view&id=4068&Itemid=32)> accessed 4 January 2012

<sup>75</sup> See Wumi Iledare, 'An Appraisal of Oil and Gas Industry Reform and Institutional Restructuring in Nigeria' (2008) 4<sup>th</sup> Quarter, International Association for Energy Economics <<http://www.iaee.org/documents/newsletterarticles/408wumi.pdf>> accessed 1 April 2014

<sup>76</sup> See Emmanuel Egbogah, 'Oil and Gas Sector Reforms in Nigeria: What You Should Know' <<http://www.dregbogah.com/documents/69.html>> accessed 7 January 2013

Among other things, the PIB seeks to unbundle NNPC into an asset management firm, a gas company, and an NOC.<sup>77</sup> It seeks to privatize the gas firm and the NOC within a particular time frame while the asset managing firm will be fully state owned. The Bill which has scaled the second reading in the House of Representatives is at the committee stage in the Senate.<sup>78</sup> It is intended to analyze the PIB provisions relating to NNPC and its prospects for impact in the NPI.

#### **5.4.2 PRIVATIZATION OF STATE OWNED ENTERPRISES: PROSPECTS AND CHALLENGES**

Privatization is the deliberate sale of state owned enterprises (SOEs) to private investors. It gained global momentum in the early 1980s, following the UK's sale of its public utilities.<sup>79</sup> It is generally accepted that with few exceptions, privately managed firms are more efficiently and prudently managed than their public counterparts.<sup>80</sup> It is for that reason that attainment of operational efficiency and profitability are amongst the most consistently cited reasons for privatization of SOEs.

Governments embarking on privatization programmes have various options to choose from. An SOE can be totally or partially privatised. It may be sold to local investors or foreign investors, through either the stock market or directly to private investors.<sup>81</sup> The privatization

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<sup>77</sup> A new National Oil Company (NOC), a National Gas Company (NGC) and an asset management corporation.

<sup>78</sup> Obafemi Oredein, 'Nigeria's Petroleum Industry Bill Could Become Law By Mid-2013' (E and P, November 21 2012)

<sup>79</sup> [http://www.epmag.com/Technology-Regulations/Nigerias-Petroleum-Industry-Bill-Become-Law-Mid-2013\\_109986](http://www.epmag.com/Technology-Regulations/Nigerias-Petroleum-Industry-Bill-Become-Law-Mid-2013_109986) accessed 7 January 2013

<sup>79</sup> See William L. Megginson and Jeffrey M. Netter 'From State to Market: A Survey of Empirical Studies on Privatization' (2001) Vol.39 Journal of Economic Literature ,321 at Tony Prosee, 'Constitutions and Political Economy: The Privatization of Public Enterprises in France and Great Britain' (2011) Volume 53, Issue 3, MLR. See also James Foreman-Peck 'How Privatization has Changed Britain' (BBC, 3 December 2004) <<http://news.bbc.co.uk/1/hi/business/4061613.stm>> accessed 26 December 2012

<sup>80</sup> See Rehana Kouser and others, 'Reasons for Privatization and Consequent Role of Government: Comprehensive Study Based on Early Evidence' (2011) 2 International Journal of Contemporary Business Studies <<http://www.akpindsight.webs.com>> accessed 27 December 2012. See also W.L. Megginson and J.M. Netter, 'From State to Market: A Survey of Empirical Studies on Privatization' (2001) 39 Journal of Economic Literature 321-389.

<sup>81</sup> See Nandini Gupta, 'Partial Privatization and Firm Performance' (2002) Fondazione Eni Enrico Mattei Working Paper 110; There are various reasons why a state may decide not to fully privatize an SOE. It may need to exercise some control over the activities of the privatized firm, or the public may be unable to fund the purchase of the firm. There may be inadequate regulation for that particular industry and the government may chose partial privatization in order to exercise some regulatory oversight. The firm may also be of very strategic importance to that economy and the government may be unwilling to leave it entirely in the hands of private entrepreneurs, whose focus on profit making may affect other objectives of the government.

model eventually adopted by a country will usually be informed by various factors which includes the extent of experience of the managers of the privatization programme. The object of the scheme, the financial and technological capacity of the country, and the level of performance of the firm to be sold, are also considered by many governments.

Partial privatization may be resorted to where the market cannot absorb a total public offering, or where due to inadequate regulatory capacity, there is need for government control of a particular industry or firm, in the foreseeable future. In some other cases, states resort to partial rather than total privatization either because of the economic importance of the SOE, or its strategic importance to the country.<sup>82</sup> Other reasons include a desire for a wider share ownership structure, wealth distribution, risk diversification, and an improved national prestige, if the firm's performance improves.<sup>83</sup>

The proposed partial privatization of NNPC is premised on the expectation that it will usher in a more disciplined, professional, and commercially oriented management.<sup>84</sup> In that regard it promises Nigeria increased profitability due to the commercialisation, better human resources management, ease of raising of capital to fund projects, and better downstream integration. Privatisation may therefore result in more profits as the firm, rather than draining government resources, is expected to generate more revenues by a more stringent management of capital and human resources. It will also introduce greater flexibility and ease of taking decisions that can benefit the firm in the short and long term.

#### **5.4.3 OVERVIEW OF THE PIB PROVISIONS RELATING TO THE PROPOSED PRIVATIZATION OF NNPC**

The PIB seeks to establish an asset management company to manage Nigeria's interests in the unincorporated joint ventures currently held by NNPC, and all other upstream assets as

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<sup>82</sup> Piotr Jasinski, 'Partial Privatization: The Caveats and Experiences' (1998) 1 *Interconomics* 30 <  
<http://www.intereconomics.eu/archive/year/1998/1/>> accessed 5 April 2013

<sup>83</sup> Wael Al-Mazeedi, 'Privatising National Oil Companies in the Gulf' (1992) 29 *Energy Policy* 983–994

<sup>84</sup> Amy Myers Jaffe, (6) 16

the government may deem fit.<sup>85</sup> This company will also offer administrative services to an asset management corporation to be established.<sup>86</sup> And although the Bill is silent on the reasons for the proposed asset management company, it is possible however, that the government intends to corporatize the operations of the firm in order to give it some autonomy and bring it within the realm of company law.<sup>87</sup>

Within three months after the commencement of the PIB, the minister is required to incorporate a national oil company and a national gas company with the Corporate Affairs Commission (CAC).<sup>88</sup> The initial shares of both firms will be held by the FGN through nominees in ministries of petroleum resources, and finance.<sup>89</sup> Within six years of their incorporation, thirty per cent of the NOC and forty nine per cent of the NGC will be divested to the public through the Nigerian Stock Exchange (NSE).<sup>90</sup> The NOC will be the principal successor of the NNPC, inheriting all of its current assets and subsidiaries except interests in the unincorporated joint ventures and the Nigerian Gas Company.<sup>91</sup> Both firms are to be governed by their memorandum and articles of association, and in addition will be subject to the governance rules of the Securities and Exchange Commission (SEC).<sup>92</sup>

#### **5.4.4 IMPORTANCE OF A VIABLE NOC TO NIGERIA**

That a viable and functional NOC is pivotal to the success of Nigeria's overall reform agenda in the NPI is brought out from the fact that an NOC can impact local content, industry regulation, and implement national objectives, while generating revenues for the government. This role continues even after the firm is partially privatised as is the case in Brazil where

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<sup>85</sup> Ss 120(4) and 124

<sup>86</sup> S 138

<sup>87</sup> 1990, (Cap C.20 LFN 2004.)

<sup>88</sup> 148 and 159

<sup>89</sup> S 150 and 161

<sup>90</sup> Ss 151, 162

<sup>91</sup> Ss 152 and 163.

<sup>92</sup> S 156, 167,

Petrobras continues to implement national priorities even at the expense of profitability in some cases.<sup>93</sup>

For a developing country like Nigeria, a viable NOC can also spearhead research and development in the NPI. This has been the case in Malaysia where Petronas' University of Technology is at the forefront of developing petroleum technology which in turns develops the manpower needed to further Malaysia's local content.<sup>94</sup> It can sponsor research in petroleum technology and collaborate with universities to further deepen Nigeria's industrial exposure and experience. This will in turn impact positively on Nigeria's local content agenda which will in turn further impact the economy positively.

For the reasons deduced above, a functional NOC can be said to be the spine of the NPI reform upon which all other reform initiatives hang on a balance. Thus an NOC, stands at the intersection between the industry and the government, and plays a role that is interwoven into the downstream, upstream and local content initiatives. The appellation 'national champion' for a functional NOC is therefore very apposite.

To say the least, Nigeria is in dire need of a functional NOC, unlike developed countries like the UK and the US which dispensed with the need for an NOC. Nigeria cannot follow the British or American approach given that it lacks viable indigenous PEPCs which can cater for the interests of the nation adequately. It is for this reason that it is proposed that even on privatization, there may still be need to effectively monitor the operations of the NOC to ensure that it operates within the parameters of national priorities and goals. And to that extent, the proposals made in chapter three for an effective and adequately regulatory system,

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<sup>93</sup>The Perils of Petrobras' (Economist, 17 November 2012)  
<http://www.economist.com/news/americas/21566645-how-gra%C3%A7a-foster-plans-get-brazils-oil-giant-back-track-perils-petrobras> accessed 9 January 2013

<sup>94</sup> See Universiti Teknologi Petronas, 'About us' (2014) <[http://www.utp.edu.my/index.php?option=com\\_content&view=article&id=49&Itemid=1901](http://www.utp.edu.my/index.php?option=com_content&view=article&id=49&Itemid=1901)> accessed 8 March 2014

apply with equal force, since the NOC will become subject to regulation, like other private firms.<sup>95</sup>

#### **5.4.5 BETWEEN PUBLIC AND PRIVATE OFFERING**

It is the position of this thesis that a public offering may result in weak corporate governance of the NOC. It is conceded that a public offering will give all Nigerians the right to share in the firm rather than a few individuals and can help the firm raise much needed funds for its investment programmes. It may however erode the ability of dispersed minority shareholders' to co-ordinate and monitor the NOC's operations in order to limit the agency problem and restrain dominance by a controlling shareholder, or even a non-controlling shareholder whose shares are below 50 per cent. This is because in practice a holder of even 35 per cent can dominate a publicly listed company since many shareholders do not vote, and of those who vote, many side with the directors.<sup>96</sup> Thus actual control is the yardstick for determining the control of a publicly traded firm.

Studies have shown that there exists a nexus between dispersed ownership structures and weak corporate governance, as managers are likely to wield greater control, and may pursue interests at variance with those of shareholders.<sup>97</sup> This challenge is more likely to play out in Nigeria which is confronted with mass illiteracy, poverty, and lacks mechanisms that can enable dispersed shareholders to harness voting provisions in CAMA. Thus rather than sell the NOC through a public offering as was the case with Statoil and Petrobras, Nigeria may

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<sup>95</sup> It will be recalled that chapter three advocated for independent regulation, credible commitment, and the use of complementary regulatory approaches for the NPI. See paras 3.8 and 3.9

<sup>96</sup> *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1114 (Del. 1994).

<sup>97</sup> See Saul Estrini, 'Corporate Governance and Privatization: Lessons from Transition Economies' (2002) 11 *Journal of African Economies*, 68-104, A. Schleifer and R.W. Vishney, 'A Survey of Corporate Governance' (1997) 52 *Journal of Finance*, 737-83, and Dean W. James, and Tatiana Andreyeva. 'Privatization, Ownership Structure and Company Performance: the Case of Ukraine' (2001) 5 *Journal for Institutional Innovation, Development and Transition*, 62-72 and Laura Cabeza-Garcia and Silvia Gomez-Anson, ' Post-privatization ownership concentration: Determinants and influence on firm efficiency ' (2011) 39 *Journal of Comparative Economics*, 412-430



need to consider selling the firm to private investors, given that there is the added prospect of private input of experience, expertise, and technology.

If the desire to distribute the wealth of the nation to a wider section of the public is behind the proposed offering of the firm's shares, the FGN may consider selling firm to private institutional investors who themselves may represent the interests of the wider section of the Nigerian public. This option has the added advantage of transferring the responsibility for the monitoring of the affairs of the NOC from the hands of the ordinary Nigerian shareholder, to institutional investors which can dedicate time and resources to monitor the firm's affairs.

Again the impact of institutional investors in promoting good corporate governance is however doubtful, and may be dependent on their willingness to assert their rights to monitor the affairs of the firm. Research carried out in the UK has shown that rather than insist on good corporate governance, most institutional investors prefer a passive role, and divest where such firms operate poorly in the market.<sup>98</sup>

Sale to private investors will however not be easy in Nigeria as corruption has engendered an innate lack of trust in the political class. There are often allegations that Nigeria's privatization programme is aimed at selling off valuable assets to political companions at giveaway prices. Thus any prospect of alienating part of the NOC to strategic private investors is likely to be viewed with deep suspicion and may be resisted. In fact, one of the conditions legislators from the Northern part of Nigeria have given for their continued support of the PIB, is that the shares of the firm should be sold to the public and not to some 'friend' of the government. It was noted earlier that attempts to sell the Port Harcourt and Kaduna Refineries to Bluestar Corporation in 2006, were cancelled due mainly to allegations

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<sup>98</sup> See Helen Short and Kevin Keasey, 'Institutional Shareholders and Corporate Governance in the UK' in Kevin Keasey, Steve Thompson and Mike Wright (eds) *Corporate : Accountability, Enterprise and International Comparisons* (Wiley 2005) 68

that both firms were grossly undervalued in order to grant political favours to Aliko Dangote, chairman of Bluestar Corporation.<sup>99</sup>

In order to address these justifiable concerns, there is need for fairness, transparency and goodwill in the on-going privatization programme. Should the government resolve to sell the firm to private investors, it should consider selling it to investors representing a broader spectrum of the Nigerian public. For instance, the NOC could be sold to Nigeria's 36 federating states on equal proportion, or to institutional investors representing a wider class of Nigerians. Hopefully, this will address issues of suspicion and mistrust between the North and the South, or among politicians and legislators. Another alternative is for the firm to be sold not to Nigerians, but to strategic foreign partners, or perhaps a combination of strategic private investors, and the Nigerian public.

#### **5.4.6 ANALYSIS OF THE PROSPECTS AND CHALLENGES OF A GOVERNMENT CONTROLLED PRIVATISED NOC**

Nigeria is currently privatising most of its moribund SOEs in line with a policy erected to address failures of publicly owned firms; firms that have become a drain on the Nigerian economy.<sup>100</sup> To say the least, privatization holds greater prospects for greater transparency, better regulation and monitoring, and promises to bring the NOC within the corporate governance discourse, company law and capital market regime. This prospect for enhanced performance is related to the fact that private investors are largely concerned with profits generation. Some of these investors borrow from banks and other financial institutions and are often under pressure to ensure such investments perform optimally. This is in sharp contrast to the complacent attitudes of SOEs where directors are hardly under any pressure to perform optimally, and are more than content to keep such firms afloat and pay salaries to staff.

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<sup>99</sup> Emmanuel Uffot, 'A Retrogressive Policy' (Newswatch, 6 April 2012) <[http://www.newswatchngr.com/index.php?option=com\\_content&task=view&id=4068&Itemid=32](http://www.newswatchngr.com/index.php?option=com_content&task=view&id=4068&Itemid=32)> accessed 4 January 2012

<sup>100</sup> In 2013 it privatised its power sector. It had earlier privatised its steel industry, and its telecommunications giant. There are also plans underway to privatise Nigeria's refineries, national television, and national radio.

There is however need to structure Nigeria's proposed NOC with a well defined mandate in order to ensure that while operating within the framework of company law, the FGN will still be able to use it to address issues that border on national priorities. Herein however lies the potential for conflict, for in the execution of national objectives, the NOC is likely to be subject to the interplays of politics and national governance which may compromise its independence and objectivity.

While many welcome privatization of failed SOEs, there are routinely criticisms by socially inclined commentators that they pursue profits and ignore other vital needs of the national population. It will be recalled that petroleum resources are at the heart of the Nigerian economy, thus the government may naturally be inclined to monitor the operations of firms to ensure the availability of the product for local consumption, and to ensure firms work within a framework of specific national priorities. But privatised firms may pursue profits to the neglect of national objectives, and sack a large number of employees in their bid to restructure. These issues are however present in almost every privatization programme, and require detailed consultations and negotiations. This chapter is however concerned with the governance of the NOC post privatization in order to determine how it can avoid the mistakes of NNPC.

#### **5.4.7 LEGAL IMPLICATIONS OF PRIVATIZATION AND CORPORATISATION**

Among the many benefits of privatization and listing is that it brings an SOE within the ambit of company law and its many provisions geared towards the protection of the assets of the firm, and of the interests of shareholders. Thus the firm will be subject to Nigeria's company and capital market regimes as contained the in the Companies and Allied Matters Act (CAMA)<sup>101</sup> and the Investment and Securities Act (ISA) 2007 regimes, respectively.

The company is today the dominant form among business organisations, mainly because the law confers upon it corporate personality, and limits the liability of its members to the

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<sup>101</sup> Cap C 20 LFN 2004

amount, if any, unpaid on the shares they hold.<sup>102</sup> It can sue and be sued in its own name and in the same vein, own property, borrow money and enter into contracts.<sup>103</sup> Unlike unregistered partnerships, a company can continue beyond the lifespan of its promoters since its shares are generally transferrable.<sup>104</sup>

The full extent of the corporate personality of the company is brought out by the fact that courts have refused to treat it as an agent of its controlling shareholders.<sup>105</sup> And its individuality and separateness has been upheld even where it is a wholly owned subsidiary of another firm.<sup>106</sup> These features of the company as guaranteed by law can be harnessed by vigilant shareholders and managers in erecting a platform for enhanced managerial autonomy, transparency, and operational efficiency which were unavailable to fully owned SOEs.

The NOC is likely to enjoy a greater amount of managerial and financial autonomy after privatisation because under CAMA, boards are answerable not to shareholders, but to the company.<sup>107</sup> This means that a vibrant board can, at least in principle, design its strategic direction without being necessarily obliged to adhere to the directives of shareholders, provided such actions are done with due diligence and good faith.<sup>108</sup> And by requiring that termination of directors comply strictly with CAMA, directors of the NOC will enjoy some security of tenure in contrast to what applies under the NNPC Act.<sup>109</sup> NNPC has suffered from frequent leadership changes and in the past 10 years, has had 6 managing directors.<sup>110</sup> This is in contrast to Petrobras where Sergio Gabriella was chief executive officer from

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<sup>102</sup> See *Salomon v Salomon and Company* [1897] A.C. 22. S. 37 of CAMA. For a comprehensive treatment of the concept of corporate personality and the role of law, see John Armour and others, 'The Essential Elements of Corporate Law: What is Corporate Law?' (2009 The Harvard John M. Olin Discussion Paper Series 643 <[http://www.law.harvard.edu/programs/olin\\_center/](http://www.law.harvard.edu/programs/olin_center/)> accessed 7 March 2011, and John Birds and A J. Boyle, *Company Law* (John Birds and others eds, 8th edn, Jordans 2001)

<sup>103</sup> S. 37 of CAMA

<sup>104</sup> S 115 CAMA

<sup>105</sup> *Salomon v Salomon and Company* [1897] A.C. 22.

<sup>106</sup> See *Adams v Cape Industries* (1990) Ch. 443.

<sup>107</sup> Ss 279-283

<sup>108</sup> S 63(4)

<sup>109</sup> 262(1), *Bernard Longe v. First Bank of Nigeria PLC* [2010] 2-3 Supreme Court (part III) 67

<sup>110</sup> Victoria Ahuma -Young, 'Oil Workers Lament Incessant Leadership Change in NNPC' *Vanguard* (2 July 2012) <<http://www.vanguardngr.com/2012/07/oil-workers-lament-incessant-leadership-change-in-nnpc/>> accessed 7 March 2013

2005-2012. This kind of stability will inexorably lead to enhanced performance and continuity, if properly harnessed.

Beyond the prospect of some level of managerial autonomy which privatization will confer on the board, minority shareholders will be able to monitor board performance and restrain external interference by relying on the provisions of CAMA.<sup>111</sup> In this regard, the most prominent principle is the ultra vires doctrine. Under this principle, shareholders (and some classes of creditors),<sup>112</sup> can challenge in a court of law, acts that violate the memorandum of the firm, even if consented to by the majority.<sup>113</sup> The ultra vires doctrine which originated in the UK has been considerably whittled down in Nigeria, but is still applicable in Nigeria to some significant extent and holds promise for enhancing a more responsible management.<sup>114</sup>

By separating the firm's assets from its controlling shareholders, company law offers better protection for the NOC's assets from external interference, a challenge that recurred in NNPC to its detriment.<sup>115</sup> For company law generally prohibits firms from reducing or dissipating their assets and capital, while the firm remains a going concern.<sup>116</sup> Thus it will be difficult for any shadow director or shareholder to use the assets of the firm in a way that is contrary to the law or the firm's objects. Thus NNPC's purchase of a presidential helicopters (unless the expected outcome is of course greater than the expense), would have been very difficult, if not outright illegal.

In addition to all these, if the NOC is eventually listed as provided for in the PIB, it will be subjected to Nigeria's limited whistleblower protection regime as contained in the Investment and Securities Act (ISA) 2007. This regime protects employees who expose wrongdoing in

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<sup>111</sup> Sections 300-315 outline these rules which include derivative actions

<sup>112</sup> The protection conferred by section 39 can also be resorted to by holders of floating charges, s 39(4)b

<sup>113</sup> *Continental Chemists Ltd V. Ifeakandu* [1966] 1 All Nigerian Law Reports 1

<sup>114</sup> Ss 39, 40 and 300-315.

<sup>115</sup> Henry Hansmann and others, in their article 'Law and the Rise of the Firm' (2006) 119 HLR, refer to this protection as 'entity shielding' at 1336

<sup>116</sup> Ss 105-111 of CAMA

good faith from victimisation while providing compensation for such treatment.<sup>117</sup> Greater protection and compensation for unfair dismissal will hopefully motivate employees to expose wrongdoing in the NOC and strengthen its governance.<sup>118</sup>

A strategic board is requisite for the success of the firm post privatization. And to that extent, there is need for the board to be properly equipped to execute its mandate, while being accountable for its actions and decisions. To ensure adequate experience and capacity in the board, it is proposed that Nigeria recruit some international directors who have served in boards of firms like Petrobras, Petronas or Statoil. The experiences of these persons can contribute significantly to the development of the NOC's capacity to meet its strategic goals. It goes without saying that a proper mixture in the board has recently come to be recognised as a hallmark of good corporate governance.<sup>119</sup> In fact the relative strides attained by the administration of President Goodluck Jonathan have been attributed to technocrats with international experience in his cabinet.<sup>120</sup>

Privatisation also offers some informational advantages, given that the NOC will be required to make available access to information and to its accounts, which is a right of shareholders under CAMA.<sup>121</sup> This will be complemented by the ISA, and SEC Rules' on financial reporting and internal controls.<sup>122</sup> With these regimes, the NOC's accounts will be open to greater public scrutiny, and enhanced transparency, in contrast to NNPC, whose accounts have been for the most part shrouded in secrecy. With Nigeria as controlling shareholder, the NOC will also be subject to the Freedom of Information Act (FOIA), section two of which

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<sup>117</sup> S.306 ISA, Pereowei Subai, 'Corporate Social Responsibility and Environmental Protection: the Role of Whistle-blowers', in Festus Emiri and Gowon Deinduomo (eds) *Law and Petroleum In Nigeria: Current Challenges: Essays in Honour of Justice Kate Abiri* (Malthouse 2009)

<sup>118</sup> See generally Michael M. Ting, 'Whistleblowing' (2008) 108 *American Political Science Review*

<sup>119</sup> See Margaret McCabe, and Margaret Nowak, 'The Independent Director on the Board of Company Directors' (2009) 23 *Managerial Auditing Journal*, 545, 553

<sup>120</sup> See John E. Gyong, 'Social Analysis of the Transformation Agenda of President Goodluck Ebele Jonathan' (2012) 16 *European Scientific Journal* 95,106

<sup>121</sup> See Ss 87, 97, 345, Browning Jeffries 'Shareholder Access to Corporate Books and Records: the Abrogation Debate' (2010-2011) 59 *Drake L. Rev.* 1087

<sup>122</sup> Ss 60-65 ISA, SEC Rules 2003 as amended, and the SEC Code of Corporate Governance for Public Companies 2008

will makes access to information about the firm an entitlement not just to shareholders, but Nigerians in general.<sup>123</sup>

The full implication of privatization of the NOC as proposed in the PIB will be to effectively bring the NOC within the corporate governance discourse. For example when listed, it will be required to comply with Security and Exchange Commission's (SEC) 2011 Code of Corporate Governance under which it will be required to comply with a higher standard of accountability. It will be recalled that most of the benefits of company law are not readily available to the NNPC as it is currently constituted. For instance NNPC's assets are not legally protected from external interference, nor does it have control over its finances.

## **5.5 GOVERNMENT CONTROL AND THE APPLICATION OF COMPANY LAW: PROSPECTS AND CHALLENGES**

The benefits which company law and capital market regimes bring to a privatised NOC are largely contingent on the ability of the non-government shareholders and management to harness the law in order to bring the firm within the framework of good corporate governance. In the absence of such checks, the impact of proposed reforms may be negligible. It is to that extent that the share structure of the proposed NOC is critical to its success, as will be shown below. This segment will therefore focus on the implications of government control in a post privatised NOC.

### **5.5.1 BOARD AUTONOMY AND THE AGENCY PROBLEM**

As desirable as board autonomy is for corporate performance, it can create a principal-agent problem, if the board pursues its own interests to the detriment of the firm and the interests of shareholders. This can result in fraud and mismanagement which will weaken the share value of the NOC. In order to prevent this from happening, care should be taken to ensure the board

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<sup>123</sup> Bassey Udo, 'New Petroleum Industry Bill Outlaws Gas Flaring from December 2012, Abolishes Secrecy in Oil Business' Premium Times (1 July 2012) <[http://premiumtimesng.com/mobile/business/6019-new\\_pib\\_outlaws\\_gas\\_flaring.html](http://premiumtimesng.com/mobile/business/6019-new_pib_outlaws_gas_flaring.html)> accessed 24 July 2012

of the firm operates within a framework of checks and balances erected first through company law, capital market regulations, and through contract law. Attaining that fine balance between board autonomy, and limiting the agency problem, will require skill and careful consideration of the firm's ownership structure.

The agency problem can be mitigated by ensuring that there are credible checks on the exercise of managerial powers, by shareholders and by regulators. The NOC should additionally be subject to a higher form of accountability and transparency, given its likely impact on the Nigerian economy. In this regard, it is worrisome that sections 149 and 160 of the PIB expressly exclude the NOC from Nigeria's Fiscal Responsibility Act (FRA) 2007 and the Public Procurement Act (PPA) 2007, even though the firm will be 'government controlled'.<sup>124</sup> The extent however to which this exclusion will increase the tendency for corrupt self-dealings by the board of the firm is unknown.

Suffice to observe that if the government is the controlling shareholder, then the NOC should not be excused from anti-corruption laws which are applicable to other government institutions. This will additionally ensure that it operates with a higher standard of accountability applicable to public officials. By virtue of the fact that section 2(7) of the FOIA 2011 makes government controlled firms subject to the FOIA regime, it is comforting that the NOC will be subject to that regime.

### **5.5.2 TOWARDS THE DESIGN OF A STRATEGIC SHARE STRUCTURE FOR THE NOC**

There is clear need for Nigeria to devise a share structure for the NOC that is aimed at enabling the managers of the firm to avoid the current challenges of NNPC.<sup>125</sup> Nigeria's legislators should be well abreast with the current challenges and the circumstances which have made those challenges possible. To that extent, there should be a deliberate attempt at

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<sup>124</sup> Section 124 PIB. Both regimes are geared towards discipline in borrowing and procurement. See M.T.Ladan, 'The Role of law in Combating Public Procurement Corruption in Nigeria' (2009) National Sensitization and Enlightenment programme on the Public Procurement Act 2007. <[www.abu.edu.ng/publications/2009-07-12-134311\\_3901.docx](http://www.abu.edu.ng/publications/2009-07-12-134311_3901.docx)> accessed 4 January 2013

<sup>125</sup> Identified earlier to include undue external interference, internal corruption, and a lack of operational focus. See para 5.3



reducing external interference in the management of the firm, subject to overall government supervision in some vital strategic directions. This would give room for the firm to operate competitively, with greater accountability and operational efficiency.

What is therefore advocated for Nigeria is an effective separation of ownership from management, which is a key component of Nigerian company law. The benefits of the proposed privatization and corporatisation are dependent on a balanced ownership structure that makes shareholders dependent and responsible to each other.<sup>126</sup>

For some time now Nigeria has made no pretence that it seeks to create an NOC whose impact and effectiveness will be similar to Petrobras of Brazil, Statoil of Norway and Petronas of Malaysia.<sup>127</sup> Would the Petrobras/Statoil pattern of state control work in Nigeria, given its unique dynamics? The following segment will briefly analyse the privatization models of Statoil and Petrobras and determine the merits or demerits of importing the same model into Nigeria.

### **5.5.3 ARE THE STATOIL AND PETROBRAS MODELS SUITABLE FOR THE NIGERIAN CLIMATE?**

In 2000 and 2001, Petrobras and Norway were respectively privatised by the Brazilian and Norwegian governments on the New York Stock Exchange and on the Brazilian and Oslo stock exchanges respectively. The models adopted by both countries meant that Brazil and Norway retained over 50 per cent of the shares of Petrobras and Statoil respectively, while the rest were sold on the international capital market. Privatization brought Statoil and Petrobras within the international capital market regime, although Statoil, had operated within the EEA framework since 1992 when Norway joined the EEA. And Petrobras also has

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<sup>126</sup> See Mercel Kahan and Edward B. Rock, 'Where the Government is the Controlling Shareholder' (2011) 89 Tex. L. Rev. 1293 at 1315

<sup>127</sup> See Omolulu Ogunmade, 'Alison-Madueke: PIB Will Curtail FG, Minister's Powers' Thisday (23 February 2013) <<http://www.thisdaylive.com/articles/alison-madueke-pib-will-curtail-fg-minister-s-powers/140065>> accessed 9 January 2013

some concessions abroad, which includes Nigeria. By virtue of operations abroad, both firms were already abreast with the international corporate governance framework.

With privatization on the international scene has come increased scrutiny and greater transparency and although in the case of Petrobras, it has not necessarily separated the firm from the Brazilian government, but has given room for private participation which potentially can lead to a diminution of government interference. For sure however, privatization has increased the standing of both firms and their share values have increased after their floatation on the New York Stock Exchange.<sup>128</sup>

The 70/30 per cent share structure proposed by the PIB is in many ways similar to the Statoil/Petrobras models of privatization. This model means the FGN will control the NOC's board and strategic decisions. It is the position of this thesis that where the mischief a privatization programme seeks to address is fundamentally different from those of another firm or country, care should be taken before emulating the model of that country. Rather a customised model, tailored to improve the performance of Nigeria's NOC within a national context, should be adopted.

The Statoil/Petrobras privatisation model may not work in Nigeria for the following reasons. First neither Statoil nor Petrobras struggled with government interference, corruption or operational focus. They were privatised not necessarily to curb internal deficiencies, but to raise finance to fund expansion into foreign territories.<sup>129</sup> And unlike Statoil and Petrobras however, the funding challenge in NNPC is not as pronounced as that of corruption, government interference, and operational inefficiency. With Nigeria's current challenges it is

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<sup>128</sup> For a comprehensive treatment of post privatization performance of NOCs, see Christian Wolf and Michael G. Pollit, 'The Welfare Implications of Oil Privatisation: A Cost-Benefit Analysis of Norway's Statoil' (2009) Cambridge Working Paper in Economics 0912, <[http://www.econ.cam.ac.uk/research/repec/cam/pdf/cwpe0912.pdf.pagespeed.ce.QZnjdu-\\_QC.pdf](http://www.econ.cam.ac.uk/research/repec/cam/pdf/cwpe0912.pdf.pagespeed.ce.QZnjdu-_QC.pdf)> accessed 10 March 2014. For Brazil, see Yanko Marcus de Alencar Xavier, 'Energy for the Future: Brazilian Law and Policy' in Donald N. Zillman and others (eds), *Beyond the Carbon Economy Energy Law in Transition* (Oxford, 2008) 399 at 401

<sup>129</sup> Yanko Marcus de Alencar Xavier, 'Energy for the Future: Brazilian Law and Policy' in Donald N. Zillman and others (eds), *Beyond the Carbon Economy Energy Law in Transition* (Oxford, 2008) 399 at 401

proposed that it is better for the NOC to ‘fall’ into the hands of entrepreneurs, subject to strict government regulation and oversight, than the hands of self dealing government officials.

The FGN will have many opportunities to interfere if it has the power to hire and fire the board of the NOC without restraint and this may diminish governance. And apart from those few instances where CAMA requires a 75 per cent it can be asserted that the FGN will be able to take virtually any decision in the NOC without requiring the input of other shareholders. If this is the case, there will be a limit to the extent to which minority shareholders can rely on company law to bring in the much needed balance in the firm and to check board excesses.

Should there be abuse of the powers of the government as controlling shareholder, it will impact negatively on the quality of the board, which will hold office at the mercy of the government. This is because the board may seek to please the government at the expense of the firm and this may result in inadequate managerial autonomy and professionalism, and may engender corruption and operational laxity. Government control may also result in an unstable board, as each administration may elect to appoint a new board loyal to its policies.

The Delaware Corporation Law in the USA imposes a fiduciary duty of loyalty on controlling shareholders and subjects them to ‘an intricate set of doctrines that discourage and deter interested fiduciaries from exploiting their control for non-firm purposes’.<sup>130</sup> The implication of this is that where a controlling shareholder exercises control over the firm’s decisions, he takes on the same duties of care that other fiduciaries have.<sup>131</sup> Although CAMA contains some provisions geared at protecting minority shareholders, it does not extend to imposing a fiduciary duty on a controlling shareholder. It only subjects shadow directors to the same responsibilities as actual directors.<sup>132</sup> The implication of this is that as controlling shareholder, the FGN will be unrestrained in its exercise of its powers, provided it does not extend to illegality.

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<sup>130</sup> Kahan and Rock (n 126) ,1319

<sup>131</sup> *Cinerama, Inc v Technicolor, Inc*, 1991 Del. Ch LEXIS 105, 1991 WL 111134 at 19 (Del. Ch.)

<sup>132</sup> See ss 284 and 291

Government control may negatively impact the NOC's profitability if the firm is required to execute projects that are not commercially viable. For instance it may be required to sell petroleum at subsidised rates to the Nigerian public, or to build refineries at locations that may not be economically viable. Such requirements if unrestrained, can eventually affect the firm's profitability and ability to fund its programmes.

Many pundits are quick to note the above average performances of Statoil, Petrobras and Petronas, while deliberately ignoring Nigeria's unique challenges which may require a more radical and localised approach. It is arguable further that Brazil and Norway could afford state controlled NOCs given the pedigree of these firms pre-privatization. Additionally the implication of a rich democratic culture in Norway (Brazil is developing in this regard), is that government officials are further held accountable to the people. Nigeria's weak democratic experience, and the challenge of corruption and impunity however, does not lend itself to a government controlled NOC.

If undue external interference is the root of internal corruption and operational inefficiency in NNPC, then Nigeria requires a deliberate shift from such scenario in its NOC in order to reduce to the barest minimum, opportunities for interference. To that extent, the share structure of the firm should be designed deliberately to restrain external interference. It will be preposterous to assume that government interference can be entirely stopped in an NOC, if not naïve. This is especially as the NPI remains the back bone of the economy. Interference post privatisation will therefore likely continue.

The FGN often interferes in the affairs of IOCs in which it has zero equity ownership in order to attain the fragile balance that keeps the nation going. It has often insisted that IOCs' employment policies reflect Nigeria's 'Federal character', while ensuring they give some extra allowance for the NDR in their contracts and employment policies. For instance, from 2007-2008, the FGN encouraged Shell to apply a lower qualification criteria to the engineering graduates from the Niger Delta Region. This is because the region is educationally deficient when compared to the Eastern and Western regions of Nigeria. Also

the National Assembly has been known to direct IOCs to stay impending retrenchment of redundant employees, as this might increase the amount of unemployment in Nigeria.

With such penchant for interference, one can safely assert that even if the FGN has 10 per cent equity in the proposed NOC, the firm's board will often be subject to government interference. Rather than zero government interference, this thesis advocates that a reasonable restraint be placed on the extent to which the government can interfere in the firm's operations. Such restraint is a sine qua non for board autonomy, and accountable corporate governance.

That government control poses a risk for the NOC can be demonstrated by the case of Petrobras whose economic outlook has been negatively impacted by government interference. The privileges Petrobras enjoys under Law 12351 in the pre-salt region have justified increased government interference and control in the firm.<sup>133</sup> Petrobras has often been required to execute national programmes which have been considered by some to be unprofitable from an economic perspective.<sup>134</sup> For instance, the government capped the price of petroleum products in order to address inflationary issues, and to meet rising demand, Petrobras has been required to top up its production with imports, which it sells to the Brazilian public at a subsidised price which results in a financial loss.<sup>135</sup>

Currently Gracias Foster, the chief executive of the Petrobras, is caught between satisfying the long term aspirations of the government and making profits for its minority shareholders.<sup>136</sup> Petrobras acknowledges government interference as a business risk in its

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<sup>133</sup> See chapter 2, para 2.6. See also article 10(111) c Brazil's PSC Act 2010, and W. Bryan Blades, 'Production, Politics, and Pre-salt: Transitioning to a PSC Regime in Brazil', (2011) 7 *Tex. J. Oil Gas & Energy* 42. See also Jonathan Wheatley, 'Oil: Dominance of Petrobras may slow development' (*Financial Times*, 14 November 2010)

<sup>134</sup> 'The Perils of Petrobras' (*Economist*, 17 November 2012)

<<http://www.economist.com/news/americas/21566645-how-gra%C3%A7a-foster-plans-get-brazils-oil-giant-back-track-perils-petrobras>> accessed 9 January 2013

<sup>135</sup> *Ibid*

<sup>136</sup> *Ibid*

annual report filed before the New York Stock Exchange in 2013.<sup>137</sup> It is therefore not surprising that in 2012 Petrobras posted its first loss in thirteen years.<sup>138</sup>

In truth a fledging NOC may be unable to survive without government patronage. In fact it was argued earlier that government patronage was strategic to Statoil's growth in the early 1970s and 1980s, and remains a key component in the continuous growth of Petrobras.<sup>139</sup> If the FGN is to reduce its share ownership in the NOC, can it be expected in all sincerity to support the firm with concessions and other preferential treatments? Can government patronage be expected without interference? In fact it is posited that Statoil would have continued to enjoy heavy government patronage but for its obligations under the EEA agreement which requires Norway to grant all firms from EEA countries equal treatment and privileges.<sup>140</sup>

It will be hard to expect the Nigerian government to completely alienate itself from the NOC for the following reasons. First as noted above, the firm will be integral to the implementation of Nigeria's local content policies in ways similar to those of Norway and Brazil. Secondly given the importance of petroleum to the Nigerian economy, it may be inconceivable to leave such a strategic asset entirely in the hands of business men without some political oversight. This is moreso given that investors will be first of all concerned about profit and may not be inclined to consider other wider issues which policy framers and politicians are likely to consider in the management of the NOC.

In the light of the above discussions, it is posited that Nigeria should not seek the Statoil/Petrobras model as that would give the government too much control. But control of

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<sup>137</sup> Under the heading 'Risks Relating to Our Relationship with the Brazilian Federal Government', Petrobras noted that the 'Brazilian federal government, as our controlling shareholder, may cause us to pursue certain macroeconomic and social objectives that may have a material adverse effect on us.' Form 20 containing Petrobras' Annual Report as filed with the United States' Securities and Exchange Commission on April 26, 2013. <[www.investidorpetrobras.com.br/en/financial-results/4q12.htm](http://www.investidorpetrobras.com.br/en/financial-results/4q12.htm)> accessed 1 November 2013

<sup>138</sup> 'The Perils of Petrobras'(n 91)

<sup>139</sup> For example Petrobras benefited greatly from Law 2004 of 1953 which gave it an exclusive upstream monopoly, while Statoil benefited from the 50 per cent stake in all concessions awarded to private oil firms in 1970s and the early 1980s. See chapter two, paras 2.6 and 2.7.1

<sup>140</sup> 'Norway and the EEA Agreement' (2014) <<http://www.norway.org.uk/norwayandcountry/Current-Affairs/Business-and-Trade/Norway-and-the-EEA-Agreement-/#.Ux9oI-NdWS0>> accessed 11 March 2014

such a strategic asset remains necessary nonetheless and to that extent is a reality investors would have to live with. If control of the NOC's strategic directions is behind the adoption of the Statoil/Petrobras model, it is posited that Nigeria can attain same by using other mechanisms which fall short of majority ownership in the firm's shares. And it is those alternatives that will be considered in the paragraphs that follow.

#### **5.5.4 PRIVATIZATION ALTERNATIVES TO A GOVERNMENT CONTROLLED NOC**

##### **Reliance on regulatory agencies and ownership of petroleum concessions**

In principle, regulation should be the most viable '...instrument to safeguard the general interest and the public policy objectives.'<sup>141</sup> But even with formal regulatory structures, Nigeria has struggled to effectively regulate NNPC and other IOCs that currently dominate the NPI. This is the more so as the regulator is 'outside' the firm and does not operate from within it. The 'outside' effect means that regulatory skills have to meet international standard, supported by co-operation from the management and whistleblowers if they are to be successful.

If regulation is weak in Nigeria the FGN can leverage on its ownership of petroleum concessions to extract commitment to national petroleum policies more so as the NOC will be heavily dependent on the FGN in its fledging years. This can be done through contracts or legislative provisions without necessarily holding majority of the firm's shares. The next segment will consider other options through which the NOC can be controlled without making the FGN the controlling shareholder.

##### **NOC control through golden shares**

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<sup>141</sup> Commission of the European Communities, 'Special rights in privatised companies in the enlarged Union—a decade full of Developments', (2005) Commission Staff Working Document <Eu [http://ec.europa.eu/internal\\_market/capital/docs/privcompanies\\_en.pdf](http://ec.europa.eu/internal_market/capital/docs/privcompanies_en.pdf)> accessed 10 May 2013 at 7

Firstly the FGN can reserve special rights in the NOC (the so called ‘golden shares’) in order to ensure its management implements certain objectives that have a bearing on the Nigerian people. A golden share can be used to restrict or prevent takeovers or disposal of the firm’s assets, to ensure the government has a placement on the firm’s board, or to prevent the dominance of the firm by foreigners.<sup>142</sup>

A golden share that is worth \$10 is enough to protect certain vital aspects of the NPI, while leaving the day to day running of the firm in the hands of the board. The risk however is that the powers attached to those shares, if substantial, can be abused by politicians who may seek to interfere in the firm’s day to day affairs. To alleviate this possibility, the rights attached to those shares can be time locked or contingent on the happening of a particular event. In such cases the government will divest from the firm on the attainment of a particular objective, or in the process of time.

#### **5.5.5 THE NLNG OWNERSHIP STRUCTURE: A MODEL WORTHY OF EMULATION?**

It is proposed that Nigeria should privatise the NOC after a model that has worked relatively well within the NPI. It should seek a firm that has avoided the pitfalls of NNPC, made profits, operated within the corporate governance discourse, and is subjected to company law. What should be looked for are profitability, reduced government interference, greater operational efficiency, and minimal internal corruption. One such model, with respect, is the Nigerian Liquefied Natural Gas Company Ltd (the ‘NLNG’).

The NLNG is jointly owned by the government of Nigeria, Shell, Total and Agip. It was incorporated in 1989 as a private natural gas producing company.<sup>143</sup> The NLNG has made

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<sup>142</sup> Eamon Butler and Keith Boyfield, ‘Golden Goal: Protecting Vital Interests at Privatization’ (2002) Adams Smith Institute, <<http://www.adamsmith.org/80ideas/idea/62.htm>> accessed 2 March 2013

<sup>143</sup> The Nigerian government owns 49 per cent, Shell Gas B.V, 25.6 %, Total LNG Nigeria Limited, 15%, and Eni International (N.A) NV, 10.4%.



some notable financial and operational strides; it currently produces about 8 per cent of the world's liquefied natural gas (LNG).<sup>144</sup> The NLNG has 6 liquefied natural gas trains, with an overall capacity of 22 million tonnes per annum of LNG and 4 million tonnes per annum of liquefied petroleum gas (LPG). Currently, it is building its 7<sup>th</sup> gas train, which is expected to attract about \$12 billion in foreign direct investment into Nigeria, and generate about \$3 billion for the government and 13,000 jobs.

The NLNG has impacted the Nigerian environment favourably as its operations have contributed significantly to the reduction of gas flaring in Nigeria.<sup>145</sup> Financially, the NLNG's asset base is over \$13 billion and the firm contributes to over 4 per cent of Nigeria's GDP.<sup>146</sup> In terms of corporate social responsibilities (CSR), the NLNG has trained over 18,000 Nigerians through scholarship schemes since 1995, and over 500 sailing officers in Nigeria. Besides these, it has a relatively stable relationship with its host, the Bonny local government, supplying Bonny and Finima towns with uninterrupted power supply since 1996.<sup>147</sup> It is for these achievements that the NLNG has been described as one of the greatest success stories in the Nigerian oil and gas industry.<sup>148</sup>

With only four strategic shareholders, the NLNG's owners have maintained a vigilant watch over the conduct of its activities and employees, leading to enhanced corporate governance, efficiency and a very strict stance against corruption.<sup>149</sup> Its policies include sustainable development, integrity, teamwork, excellence, trust, openness and professionalism, and that it is responsible to its shareholders, customers, employees, and to the society.<sup>150</sup>

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<sup>144</sup> Ibid

<sup>145</sup> NLNG, 'Ribadu's Report on NLNG is Inaccurate' (6 November 2012) <<http://www.nlng.com/pressreleases.aspx?id=>> accessed 29 November 2012

<sup>146</sup> 'NLNG Train 7 to Generate N 1.89 trn FDI' Business Day (18 September 2012) <<http://businessdayonline.com/NG/index.php/news/76-hot-topic/44602-nlng-train-7-project-to-generate-n189trn-fdi>> accessed 18 October 2012

<sup>147</sup> NLNG, 'Ribadu's Report' (n 93)

<sup>148</sup> 'NLNG Train 7' (n 148)

<sup>149</sup> While internal corruption may be reduced in NLNG, it was recently fingered by a controversial report of short-changing the Nigerian government to the tune of billions of dollars. See Ademola Adeyemo, 'Ribadu Panel's Controversial Report' Thisday (12 November 2012) <[www.thisdaylive.com](http://www.thisdaylive.com)> accessed 13 January 2013

<sup>150</sup> NLNG, 'Our Company : Business Principles' (2013) <<http://www.nlng.com/PageEngine.aspx?&id=41>> accessed 6 November 2014

## NLNG's share structure: lessons for Nigeria's proposed NOC

The corporatisation of the NLNG and its unique ownership structure are decisive factors behind its performance. This structure has made possible the application of principles of good corporate governance and company law in protecting the firm's board while enabling it to focus on its corporate objectives. The implication of NLNG's strategic share structure is that the FGN as majority shareholder is made to depend on the inputs of the minority, which together have a larger stake than the FGN. Restraint of external interference in the NLNG perhaps explains why unlike NNPC, the NLNG's operational and financial decisions are taken by an independent board. The FGN cannot take unilateral decisions in the firm or sack its board at will, and this has resulted in board stability. Shepherd and Ball recount an unsuccessful attempt by a former minister for petroleum to sack the NLNG board. But this attempt was unsuccessful because Nigeria lacks complete control over the firm.<sup>151</sup>

The NLNG share structure has also enhanced its corporate governance. This is because its shareholders have adequate capacity to maintain a watchful eye over its activities and assets in order to protect massive investments.<sup>152</sup> And unlike NNPC which is often limited by bureaucratic bottlenecks, the NLNG is in a better position to finance its operations either by retaining funds internally rather than paying dividends to shareholders or by approaching local and international markets for funds.

The NLNG model holds the promise for reducing employee fraud, and promoting innovation. Although the fraud risk cannot be entirely eliminated, it can be reduced by good corporate governance and internal control.<sup>153</sup> To cater for the risk of complacency in the face of

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<sup>151</sup> 46 Rob Shepherd and James Ball 'Liquefied Natural Gas from Trinidad and Tobago: the Atlantic LNG Project,' in David G. Victor, Amy M. Jaffe, and Mark H. Hayes (eds) *Natural Gas and Geopolitics: From 1970 to 2040*. (Cambridge University Press 2006) 46

NLNG, 'Our LNG' <<http://www.nlng.com/PageEngine.aspx?&id=37>> Accessed 11 October 2012

<sup>152</sup> To that extent the NLNG which projects a \$12 billion profit in 2012, is expected to pay only half of that to shareholders, and retain the remainder. NLNG Train 7

<sup>153</sup> Corporate scandals which occurred in WorldCom and Enron, and many others after that, increased demands for good corporate governance. In the wake of most these scandals, it was shown that directors increased their rewards even when companies they directed were making losses. In essence they relegated the interests of

government patronage, it is proposed that such patronage should be dependent on continued performance in order for the proposed NOC to innovate and operate profitably, or face liquidation.

Operating strictly as a business venture, the NLNG board is able to operate professionally with a high standard of efficiency. Different members of the board are appointed to represent the various shareholder interests, and are therefore mandated not only to manage the firm, but also to ensure that the interests of specific shareholders are adequately protected. To that extent, Nigeria's interests in the NLNG remain adequately protected by its board representative, who ensures that the interests and policies of the Nigerian government are not totally subsumed by profit making programmes. The NLNG is therefore able to integrate Nigeria's gas policies into its operations while pursuing its objectives within a framework of corporate social responsibility. The NLNG's strategic share structure has also guaranteed much needed technological and financial support from Shell, Total and Agip.

For the above reasons, the NLNG remains a credible testimony of a viable partnership between the FGN and the private sector, and should be considered seriously as a privatization option for the NOC. This is more so as the Petrobras model may only lead to minimal improvement from the status quo, if the Nigerian government retains control over the affairs of the firm, post privatization.

It is conceded however that the NLNG operates within a more confined space as a gas company and has had fewer challenges than NNPC whose 11 subsidiaries traverse the length and breadth of Nigeria. It is also arguable that its profitability is partly due to the many concessions and tax reliefs it enjoyed in its fledgling years.<sup>154</sup> But the firm is nonetheless a model worthy of emulation given that it has worked in Nigeria, and can be adopted with some customised changes to suit the expectations of the FGN from the NOC.

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shareholders and customers to the background. See Shripad G. Pendse, 'Ethical Hazards: A Motive, Means, and Opportunity Approach to Curbing Corporate Unethical Behaviour' (2012) 107 J Bus Ethics 265–279

<sup>154</sup> These incentives were contained in the NLNG (Fiscal Incentives, Guarantees and Assurances) Act of 1990. See also Sola Adepetun and Kemi Segun, 'The Nigerian Liquefied Natural Gas Project' (1996) 24 Energy Policy 595

## 5.6 CONCLUSION

Privatization is no guarantee for success. Nigeria has had its own share of failed privatizations. The privatization of its steel corporation, the Ajaokuta Steel Company to Indian owned Global Infrastructure Holdings Limited (GIHL) failed and was later cancelled due to breaches of due process and lack of the requisite expertise and financial capacity on the part of the firm.<sup>155</sup> Similarly the privatisation of its telecommunications giant NITEL to Transcorp has had minimal impact on the Nigerian people. The transaction was later cancelled.<sup>156</sup> Much care is required if the proposed privatization of the NOC is to translate into a viable NOC comparable with Statoil and Petrobras. This will require commitment, integrity and expertise.

If Nigeria is to build an NOC that will take its place among the viable NOCs in the world, then restraint of government interference should be a top priority. Minority shareholders and the board of the firm should be able to rely on provisions of CAMA in order to promote good corporate governance subject to regulatory supervision. Having ‘experimented’ with the NLNG model and found it to be successful, the same should be adopted for the NOC where the stakes are higher.

Between a government controlled NOC with risks of corruption, interference and lack of good corporate governance, and a government majority but not controlled NOC, with prospects of good governance and accountability and probity, it is proposed that Nigeria should chose the latter. A functional NOC is the spine on whom all of Nigeria’s reforms in the NPI will stand or fall. If the NOC is weak, regulation and local content will be weak and this will invariably affect the distribution of petroleum revenues. No viable local content policy can be pursued without NOC support and no NOC can support a viable local content policy if it has operational deficiencies. The mutual interdependency of these salient factors

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<sup>155</sup> Matthew Green Nigeria ‘Nigeria Cancels Steel Plant Sale after Abuses Claim’ , Financial Times (April 4 2008) < <http://www.ft.com/cms/s/0/330e5de6-01e0-11dd-a323-000077b658.html>> accessed 7 March 2013. See also Odeh A. Mercy, ‘Privatization of Public Enterprises and Productivity: Nigeria’s Dilemma’ (2011) 2 Journal of Emerging Trends in Economics and Management Sciences 490-496

<sup>156</sup> Paul Okolo, ‘TransCorp Urges Reversal of Nitel Sale Cancellation’ *Bloomberg* (5 June 2009) < <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aRGg1UI2.3oI>> accessed 1 April 2014

make a careful rethink of the PIB proposed strategy imperative, if Nigeria is to take its place among the comity of countries with viable NOCs.

As Nigeria pushes for the reform of NNPC, there is also the subtle issue of utilisation of petroleum revenues for the benefit of Nigerians. For without an effective utilisation of petroleum revenues, a country can generate billions of petroleum dollars, yet its citizens will remain in poverty and impoverishment. This is the case with Angola whose NOC Sonangol has earned international reputation while most of Angolans reel in poverty. Ultimately, this neglect will catch up with the industry, since it cannot be excised from the people's standard of living. This has informed the establishment of SWFs by many petroleum producing countries. For where petroleum revenues are mismanaged, and do not benefit the people, it may result in a revolution as the case of Libya demonstrated, or in sabotage of the industry, as has been the case with Nigeria in the last decade.

The culmination therefore, of any petroleum industry reform should be the translation of revenues to the people, since neglect will eventually 'haunt' the industry. It is with that in mind that chapter six will be dedicated to analysing Nigeria's strategies for managing petroleum revenues, and the challenges encountered so far.

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## **6 CHAPTER SIX: TOWARDS AN EFFECTIVE AND SUSTAINABLE FRAMEWORK FOR THE MANAGEMENT AND DISTRIBUTION OF PETROLEUM REVENUES IN NIGERIA**

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### Aims and objectives

This chapter will analyse why the billions of dollars earned from petroleum exploration have not benefited most Nigerians significantly. It will explore the problem of corruption, lack of transparency, and weak accountability in Nigeria's petroleum revenues management. Furthermore it will seek to explore reform initiatives in the form of the NSIA Act, the NEITI Act, and in the PIB 2012. The chapter will focus on the Niger Delta and will assess the arguments for fiscal federalism and increased derivation, and the challenge of weak governance within the federating units of Nigeria. Finally, it will enquire into the role of PEPCs in the Niger Delta, and whether PEPCs can be used as proxy governments in petroleum host communities.

### **6.1 THE PROBLEM OF WEAK MANAGEMENT OF NIGERIA'S PETROLEUM REVENUES AND ITS IMPACT ON THE WIDER SOCIETY**

The constituent elements that make up the federal republic of Nigeria (FRN) are almost entirely funded by petroleum revenues generated by PEPCs from the Niger Delta.<sup>1</sup> Prudent management of petroleum revenues can lead to a significant improvement in living standards of the average Nigerian and fund infrastructural development like power, roads and rails. Petroleum revenues can also fund education, health care, and alleviate poverty significantly and positively impact other sectors of the economy. To that extent, the hilarious expectations

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<sup>1</sup> See G.N. Ogbonna and Appah Ebimobowei, 'Impact of Petroleum Revenue and the Economy of Nigeria' (2012) 7 Social Sciences, 405-411. See also Kathryn Nwajiaku-Dahou, 'Economy of Oil and 'Rebellion' in Nigeria's Niger Delta' (2010) 39 Review of African Political Economy, 295-313.

of new petroleum exporting countries is not entirely out of sync with reality, even though there is still need to manage the expectations of the citizenry.<sup>2</sup>

It will not be balanced to argue that petroleum revenues have not made any impact in Nigeria in the past fifty years. It is also worth stating that despite negative commentaries and reports, petroleum revenues have helped the development of Nigeria's infrastructure, the funding of over 50 state universities, numerous polytechnics. Petroleum revenues sustain the budgets of Nigeria's 36 states with a combined population of over 160 million people. Petroleum revenues have also been used to construct four refineries, countless road networks, Nigeria's power and telecommunications infrastructure.<sup>3</sup>

But while petroleum revenues have impacted Nigeria positively and in many ways, it is also a fact that much of Nigeria's petroleum revenues have been either misappropriated, or mismanaged by public officials.<sup>4</sup> This is largely due to nearly 30 years of military dictatorship which ended in 1999, and weak governance structures in a post military era.<sup>5</sup> It is estimated that between 1960 and 2012, about \$400 billion of Nigeria's petroleum revenues were either mismanaged or misappropriated by the ruling class.<sup>6</sup>

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<sup>2</sup> See John O. Kakonge, 'Challenges of Managing Expectations of Newly Emerging Oil and Gas Producers of the South' (2011) Vol 4 J.W.E.L. & B

<sup>3</sup> See Soala Ariweriokuma, *The Political Economy of Oil and Gas in African the Case of Nigeria* (Routledge 2008) at 34 where the author discusses the impact of oil revenues on Nigeria

<sup>4</sup> For an in-depth analysis of corruption in Nigeria's petroleum industry see : Dev Kar and Devon Cartwright-Smith, 'Illicit Financial Flows from Africa: Hidden Resource for Development' (2010) Global Financial Integrity Program of the Center for International Policy,

<[http://www.gfintegrity.org/index.php?option=com\\_content&task=view&id=300&Itemid=75](http://www.gfintegrity.org/index.php?option=com_content&task=view&id=300&Itemid=75)> accessed 19 January 2012 Marie Müller , 'Revenue Transparency to Mitigate the Resource Curse in the Niger Delta? Potential and reality of NEITI ' (2010) Bonn International Centre for Conversion,

<[http://www.bicc.de/uploads/tx\\_bicctools/occasional\\_paper\\_V\\_06\\_10.pdf](http://www.bicc.de/uploads/tx_bicctools/occasional_paper_V_06_10.pdf)> accessed 19 January 2012 and Ngozi Okonjo-Iweala and Philip Osafo-Kwaako, 'Nigeria's Economic Reforms: Process and Challenges', (2007) Working Paper No. 6, Brookings Global Economic Development, Washington DC: The Brookings Institution

<[http://www.brookings.edu/~media/research/files/papers/2007/3/23globaleconomics%20okonjo%20iweala/20070323okonjo\\_iweala.pdf](http://www.brookings.edu/~media/research/files/papers/2007/3/23globaleconomics%20okonjo%20iweala/20070323okonjo_iweala.pdf)> accessed 19 January 2012. Nigeria's National Bureau of Statistics indicated in its report February 2012 that over one hundred million Nigerians live on less than a dollar a day . Joe Brock, 'Nigeria Poverty Rising Despite Economic Growth' Reuters (Abuja, 13 February 2012) <<http://www.reuters.com/article/2012/02/13/us-nigeria-poverty-idUSTRE81C0KR20120213>> accessed 1st August 2012, A Gillies, 'Reforming Corruption out of Nigerian Oil?' (2009) U4 Brief no. 2. U4 Anti-Corruption Resource Centre. Chr. Michelsen Institute, Bergen.

<sup>5</sup> Soala Ariweriokuma (n 101, chapter 2) at 64

<sup>6</sup> Wale Adebani and Ebenezer Obadare, 'When Corruption fights back: Democracy and Elite interest in Nigeria's Anti-corruption War' (2011) 49 *The Journal of Modern African Studies* ,185-213

Misgovernance of the petroleum industry affects the broader society in many ways. First it weakens the democratic culture by creating a rentier effect under which government officials and political office holders are able to patronise the opposition with significant petroleum contracts. Secondly, an undue reliance on petroleum revenues dispenses with the need to fund government machinery through internally generated revenues. While this may be welcomed by a tax adverse population, it imposes on them a lax attitude and reduced expectations from the political class. Thus the populace in such countries are not motivated to demand better governance and accountability from political office holders. In many cases also, political actors have used state power to suppress political opposition because of the incentives they derive from getting into power.

From an economic perspective, mismanagement of petroleum revenues can lead to inflation, and adversely impact other sectors of an economy, as reliance on ‘easy petroleum revenues’, may lead to the abandonment of other equally important sectors of the economy.<sup>7</sup> For instance, increasing petroleum dependence correlates to the decline of Nigeria’s manufacturing and agricultural sectors.<sup>8</sup>

Attaining an effective management and application of petroleum revenues may in fact be the hardest part of the reform of the NPI. The successes with which Norway’s petroleum industry is hailed cannot be divorced from the fact that the industry yields have been translated into a higher standard of living for Norwegians.<sup>9</sup> Similarly, prior to its discovery of petroleum, Qatar and the United Arab Emirates were relatively unknown desert countries in the Middle East. Today, these countries are international financial hubs, due mainly to their prudent

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<sup>7</sup> Xavier Sala-i-Martin and Arvind Subramanian, ‘Addressing the Natural Resource Curse: An Illustration from Nigeria’ (2012) Vol. 22 *Journal of African Economies*, pp. 570, 596

See also J.A Robinson and others, ‘Political Foundations of the Resource Curse’ (2006) *Journal of Development Economics* 79, 447–468

<sup>8</sup> See Cyril Obi, ‘The Petroleum Industry: A Paradox or (Sp)oilier of Development?’ (2010) Vol.28(4) *Journal of Contemporary African Studies* p.443-45

<sup>9</sup> See Erling Røed Larsen, ‘Escaping the Resource Curse and the Dutch Disease? When and Why Norway Caught Up with and Forged Ahead of Its Neighbours’ (2006) 65 *The American Journal of Economics and Sociology*



application of petroleum revenues for the development of infrastructure in very harsh terrains.<sup>10</sup>

Without blocking holes for mismanagement and misapplication of petroleum revenues, it is very likely that only few Nigerians will positively benefit from other reforms in the NPI. The true test of the effectiveness of reforms in the NPI should not be the smoothness with which the industry operates, or accolades from the international community. Rather it should be the ordinary Nigerian test, whose life is positively impacted by outcomes from the industry, especially those whose lives are affected by the industry every day.

Until the industry impacts the ordinary Nigerian, ongoing reforms may end up as a cosmetic exercise, since it is likely to be negatively impacted by misgovernance in the wider context. The rise of militancy in the Niger Delta which resulted in the sabotage of petroleum infrastructure and severe environmental consequences, petroleum thefts,<sup>11</sup> kidnap of oil workers, and insecurity, has largely been blamed on years of neglect of the region by successive Nigerian governments.<sup>12</sup> Similarly recent divestments of Shell, Chevron and Total, from Nigeria's onshore have been blamed on increasing sabotage and insecurity.

If misapplication of petroleum revenues has resulted in societal ills in Nigeria, then the need to address them cannot be a side issue but must become a critical component of any reform programme if such programme is to be sustainable. Ironically, it appears that the effective application of petroleum revenues receives little attention in the PIB.<sup>13</sup> Rather the focus of the reforms appears to be towards generating more revenues for the Nigerian government. But what good will such funds do, if they are not properly managed? This is because if petroleum

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<sup>10</sup> See Gerard Butt, 'Oil and Gas in the UAE' in Ibrahim Al Abed, and Peter Hellyer (eds) *United Arab Emirates: A New Perspective*. (Trident Press 2nd edn, 2001) 231-248

<sup>11</sup> The theft of petroleum which is called illegal bunkering, has grown from being a trade of some poor disgruntled youths, into an international criminal business, which currently costs the Nation billions of dollars annually. The NEITI 2009-2011 annual audit of the NPI noted that Nigeria lost \$10.9 billion to crude oil theft in two years., see also Chineme Okafor, 'NEITI: \$10.9 billion Lost to Crude Oil Theft in 2 Years' Thisday (30 July 2013) 1

<sup>12</sup> For a detailed treatment on the Niger Delta issue, see Kathryn Nwajiaku-Dahou, (n 1)

<sup>13</sup> The PIB seeks to impose a higher fiscal terms for IOCs operating in Nigeria, has been strongly opposed for being a disincentive. See Omololu Ogunmade and Chineme Okafor, 'PIB, a Killer' Thisday (19 Jul 2013) <<http://www.thisdaylive.com/articles/pib-a-killer-say-iocs/153774/>> accessed 23 February 2013

revenues do not reach the people, those increased revenues may simply exacerbate the present tensions.

Admittedly it is not easy to monitor the application of revenues that are decentralised to over 700 local government areas. And it may in fact be argued that governance in the wider context is outside the purview of the NPI and so should be separated from ongoing reforms. In part this is true, to some extent, but where happenings outside the industry have direct ripple effects on the performance of the NPI, then such happenings should be integrated into the reforms, if they are to be impactful. In this regard, the Extractive Industries Transparency Initiative (EITI) notes that:

‘...we share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.’<sup>14</sup>

Part one of this chapter will seek to analyse the role of transparency in petroleum industry management, and analyse Nigeria’s transparency initiatives, in the light of the EITI framework. The second part will analyse Nigeria’s recent attempts to manage its petroleum revenues by the establishment of Nigeria’s Sovereign wealth fund (NSWF). It will focus on governance framework of the NSWF in the light of the Santiago principles 2008. Part three will focus on the Niger Delta Region which produces over 90 per cent of Nigeria’s petroleum, and their agitation for better treatment from the federal government. It will analyse their argument for a return to fiscal federalism, increased derivation, and explore the case for specialised agencies, and increased corporate initiatives of PEPCs.

## **6.2 ANALYSIS OF NIGERIA’S INITIATIVES FOR EFFECTIVE UTILISATION OF PETROLEUM REVENUES**

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<sup>14</sup> EITI principle 1

### 6.2.1 A SHORT DISCOURSE ON TRANSPARENCY

A system is transparent if it is open, and guarantees ease of access to information that is understandable, relevant, and reliable.<sup>15</sup> Transparency is regarded by many as a vital component of good governance.<sup>16</sup> It is a prerequisite ‘for establishing proper institutional and regulatory structures, and for creating the conditions in which abuses can be challenged’.<sup>17</sup> To that extent, it may be argued that transparency is anti corruption, at least in principle.<sup>18</sup> But it is also worth noting that increased transparency may itself stimulate corruption in certain cases.<sup>19</sup> The converse is also the case, as there can be reduced corruption even in regimes that are not transparent. This chapter will however argue that the impact of a transparency regime is equally dependent on other factors.

Although lack of transparency may not always indicate corrupt activity, it is now generally agreed that corruption thrives best in an untransparent system, since such a system creates greater opportunities for wrongdoing by reducing the risk for such activity.<sup>20</sup> An untransparent system also makes it harder to incentivise public officials and PEPCs to act rightly, and frustrates the selection of capable persons with adequate integrity and commitment. The absence of transparency breeds mistrust, undermines social norms, and creates informational advantages which create access to corrupt rents, while making cooperation more difficult to sustain.<sup>21</sup>

### 6.2.2 BACKGROUND TO NIGERIA’S EITI PROGRAMME

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<sup>15</sup> See Kaufmann, D. and Bellver, A, ‘Transparenting Transparency – Initial Empirics and Policy Applications, Presentation at the Pre-Conference on Institutional Change for Growth and Poverty Reduction in Low-Income Countries’ (2005) International Monetary Fund, Washington D.C., July 6-7, 2005

See also Richard W. Oliver, *What is Transparency* (McGraw Hill 2004)

<sup>16</sup> Thomas G Weiss, ‘Governance, Good Governance and Global Governance: Conceptual and actual Challenges’ (2000) Vol 21 (5) *Third World Quarterly*, 795, 808

<sup>17</sup> See Ivar Kolstad, Arne Wiig and Aled Williams, ‘Tackling Corruption in Oil Rich Countries: The Role of Transparency’ (2008) CMI U4 Brief

<sup>18</sup> A Brunetti and A Weder, ‘A Free Press is Bad News for Corruption’, (2003) 87 *Journal of Public Economics*, 1801-1824.

<sup>19</sup> For a discussion of some negative effects of transparency, see Ivar Kolstad and Arne Wiig, ‘Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?’ (2009) *World Development* Vol, 525-526

<sup>20</sup> Kolstad and Arne Wiig, ‘Is Transparency the Key’ (n 109, chapter 2) 524

<sup>21</sup> *Ibid*, 523

In the late 1990s there were calls for multinational companies to publish what they paid to their host governments. This was later extended to require resource rich countries (RCC) to publish what they earned. This was done in the belief that with greater transparency, civil society and citizens of RRCs would be better positioned to influence government behaviour in the management of petroleum revenues. EITI was established in 2003 as a direct result of the ‘publish what you pay’ campaign.<sup>22</sup>

EITI is a voluntary compliance mechanism geared towards promoting transparency and good governance of natural resources.<sup>23</sup> The actors in the initiative include PEPCs, host governments and civil society. EITI promotes transparency by advocating that states establish processes for the verification of payments received from PEPCs,<sup>24</sup> and the publication of reports based on a verification exercise.<sup>25</sup>

The challenges and limitations also of Nigeria’s regulatory agencies in monitoring petroleum revenues from PEPCs were discussed in chapter three.<sup>26</sup> Financial monitoring requires adequate regulatory capacity, and the requisite robust commitment of the petroleum industry is complex. The complexity is more where an NOC stands at the cross roads between IOCs, and its home government, and operates as the gatekeeper to the industry. This has been the case with NNPC.

NNPC oversees Nigeria’s purchase of imported refined petroleum products which are sold at subsidized rates to the Nigerian public. It also receives Nigeria’s take from collaborations with IOCs, which it is expected to pay to the Nigerian federation account pursuant to section 162 of Nigeria’s constitution. NNPC also retrieves monies owed to it by the federal government of Nigeria (FGN) for sale of petroleum to the public at subsidised rates. The

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<sup>22</sup> James Von Alstine, ‘Transparency in Resource Governance: The Pitfalls and Potential of “New Oil” in Sub-Saharan Africa (2014) Vol. 14 Global Environmental Politics, 20, 21

<sup>23</sup> See Ivar Kolstad and others, ‘ Tackling Corruption in Oil Rich Countries’ ( n 17)

<sup>24</sup> Although the EITI framework extends to other extractive industries, for the purpose of this thesis, discussion will be limited to the petroleum industry, and to petroleum resources.

<sup>25</sup> For a discussion on the workings of EITI, see Virginia H. Haufler , ‘Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World’ (2010) Vol 10(3) Virginia Global Environmental Politics, 53-73

<sup>26</sup> See para 3.6.3

duties of NNPC therefore involve a complex accounting and book keeping, and in that regard some NNPC staff have been accused of self dealing in collaboration with other government officials to defraud the Nigerian public.<sup>27</sup>

Prior to 2004, no comprehensive audit of the NPI had ever been made public, nor were payments and receipts in the industry accessible to the public. Most payments and the terms of contracts under which PEPCs operated were shrouded in secrecy and sequestered from the public view. This was done through the use of various confidentiality clauses which made access to such documents almost impossible.<sup>28</sup>

The abuse of such secrecy to promote corruption and mismanagement of petroleum revenues made transparency imperative for Nigeria. To that extent there was need for a framework under which transparency of petroleum industry initiatives can be promoted and monitored. This required a capable entity with requisite independence and capacity to monitor payments of funds to the FGN by PEPCs, and the further distribution of such funds to other arms of government.

From 1999 Nigeria began to introduce some transparency initiatives which, at least in principle, appear to be far reaching and extensive. The most impactful of these is the Nigerian Extractive Industries Transparency Initiative (NEITI). These initiatives and their impact in promoting petroleum revenues management in Nigeria will be examined next.

### **6.2.3 THE NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE ACT 2007 AND OTHER TRANSPARENCY INITIATIVES**

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<sup>27</sup> See Alex Gboyega and others, (n 3, chapter 1), 28

<sup>28</sup> For instance s 5 of the Petroleum Profits Tax Act (PPTA) 1959 as amended in 2007, and regulation 58 of the Petroleum (Drilling and Production) Regulation 1969 provide for confidentiality of information related to the operations and payments of petroleum exploration and production companies.

Nigeria became one of the earliest subscribers to the EITI framework when it established NEITI 2003. In 2007, it enacted the NEITI Act in order to provide a legislative framework on NEITI. NEITI is an autonomous self accounting body whose objectives include ensuring due process and transparency is observed in payments made to the FGN, by all companies operating in the extractive industry. Other objectives include the promotion of due process, and accountability in the prudent management of petroleum revenues in Nigeria. NEITI is also charged with ensuring that all payments due to the Federal Government from extractive industry companies including taxes, royalties, dividends, penalties, levies are duly paid.<sup>29</sup>

By extending its obligations to the monitoring of the application of petroleum revenues, the NEITI framework actually exceeds EITI's minimum standards.<sup>30</sup> And while EITI is concerned with the validation of government receipts from PEPCs, NEITI's audit processes also includes validation of payments, value for money audits, process audits and physical audits.<sup>31</sup> The implication is that NEITI is authorised to monitor the utilisation and application of petroleum revenues in all the sectors of the FGN. For the most part however, NEITI has focused almost entirely on monitoring receipts within the NPI. So far NEITI publishing four audited reports on government receipts from the petroleum industry.<sup>32</sup>

The status of NEITI straddles between that of an auditor and a quasi regulator. For by mandating NEITI to *eradicate corruption and to monitor expenditures* of petroleum revenues by other arms of government, Nigeria seemed to have conceived of NEITI as a regulator.<sup>33</sup> But lacking legal capacity to sanction defaulters, NEITI remains essentially a 'watchdog' with the mandate of a regulator since all it can do is to recommend that the president revoke concessions of defaulting PEPCs.<sup>34</sup>

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<sup>29</sup> S 1(2) NEITI Act

<sup>30</sup> S. 2 although NEITI's mandate extends to the extractive industries in Nigeria, this thesis will limit discussion to the petroleum industry and thus reference to the extractive industry will from henceforth mean the petroleum industry.

<sup>31</sup> Nicholas Shaxson, 'Nigeria's Extractive Industries Transparency Initiative Just a Glorious Audit?' (2009) Chatam House, Royal Institute of International Affairs, < <http://eiti.org/document/shaxson-neiti-glorious-audit> > accessed 20 November 2012, 5

<sup>32</sup> Its reports cover the years 1999-2004, 2005, 2006-2008, 2009-2011

<sup>33</sup> S 1(2) c

<sup>34</sup> S 16(4) NEITI Act

The EITI framework has been adopted mainly by developing countries, although many developed countries have also implemented EITI's principles either by legislations, or through policy directives which reflect the spirit of the EITI framework.<sup>35</sup> For instance in 2010, the USA Congress enacted section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the 'Dodd Frank's Act 2010'). This section added section 13 (q) to the 1934 US Securities and Exchange Act (SEC Act), and authorises SEC to require American firms involved in the extractive industry (including petroleum), to publish payments made to the US federal government or to foreign governments, in excess of \$100,000.<sup>36</sup> One significant difference between the NEITI regime and the Dodd Frank regime however is that unlike NEITI, the US SEC can impose significant sanctions on defaulting companies.<sup>37</sup>

Other transparency initiatives have equally been introduced in the NPI. They include monthly publication of receipts of states and local governments from Nigeria's federation account. There is the Freedom of Information Act (FOIA) 2011 which entitles Nigerians to access government information.<sup>38</sup> Others include the Fiscal Responsibility Commission Act 2007, and the Crude Oil Revenue Reconciliation Committee, and the PIB 2012.

It will be recalled that under the Petroleum Act regime, petroleum contracts are awarded at the discretion of the Minister without an open bidding system.<sup>39</sup> The PIB however aims to promote an orderly, fair, and competitive system with clear and effective legal and institutional frameworks for organising petroleum development activities and a fiscal regime that offers fair returns on investments while optimising benefits to the Nigerian people.<sup>40</sup> To the extent that transparency is a core objective of the Bill, and it contains extensive provisions to that effect.<sup>41</sup> For instance the Bill seeks to void all confidentiality clauses in production and

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<sup>35</sup> There is the EU's Accounting and Transparency Directive of 2013.

<sup>36</sup> The Rules were finally issued by SEC in August 2012. There is also the European Union's Transparency Requirements for Listed Companies contained in Directive 2004/109/EC

<sup>37</sup> For a treatment of the SEC enforcement regime, see Rebecca Flies' 'SEC Enforcement: Does Fortright Disclosure and Cooperation really Matter?' (2012) *Journal of Accounting and Economics* 53 (2012) 353–374

<sup>38</sup> Ss 1 and 3 FOIA 2011

<sup>39</sup> S 2 (1) of the Petroleum Act

<sup>40</sup> S 1 (c)

<sup>41</sup> S1 (h)

exploration contracts,<sup>42</sup> and makes information on such contracts accessible to the public.<sup>43</sup> The PIB additionally seeks to complement the NEITI Act by requiring that the management and allocation of petroleum resources be done in compliance with principles of good governance, transparency and sustainable development.<sup>44</sup> And that NEITIs' representatives are present in the award of all petroleum concessions in Nigeria.<sup>45</sup>

As laudable as Nigeria's initiatives have been in promotion of transparency, it is important to explore if these have translated into genuine transparency, and if so, whether such transparency has led to an improvement in petroleum revenue management. For without such impact, the end of the initiatives will be frustrated. The next segment will consider the impact of NEITI and other such transparency initiatives within the NPI, and outside it.

#### **6.2.4 IMPACT OF TRANSPARENCY INITIATIVES IN THE NPI: ASSESSING THE STRENGTHS AND WEAKNESSES**

In some quarters, NEITI is viewed as the epitome of the EITI initiative and this explains why NEITI won EITI's award in 2013 for exceeding minimum transparency requirements.<sup>46</sup> While the extent of its impact on the current reform initiatives in the NPI is debatable, it is undisputed that NEITI has generated unprecedented access to information on government accruals from the NPI. Such information which is published on the NEITI website is useful to states and local governments. As beneficiaries from the Nigerian federation account, states are in a better position to take advantage of NEITIs' publications in monitoring payments

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<sup>42</sup> S 174 (1)

<sup>43</sup> See 174(10) and (2). Information about proprietary industrial rights which are confidential are protected however. See also s 174 (3) and (6), under which the Upstream Petroleum Inspectorate (UPI) to publish annual summaries by Petroleum exploration and production companies of all revenues and costs on which payments are made in respect to royalties, bonus payments and taxes, along with the texts of all concessions and contracts with the proposed National Oil Company (NOC) and any side letters to them (which are currently confidential), to be published on the website of the UPI within one year after the commencement of the PIB. Where such information is not supplied to the UPI by a company, a ten thousand dollars default fine shall be paid for every day such information is not available

<sup>44</sup> S 3

<sup>45</sup> S 190 (6)

<sup>46</sup> 'The 2013 EITI Chair's Awards' (2013) <<http://eiti.org/sydney2013/awards>> accessed 24 February 2014. See also David L. Goldwyn, 'Nigeria's Struggle with Corruption: The Success of Nigeria Extractive Industries Transparency Initiative' (2006) <<http://pwydev.gn.apc.org/sites/pwydev.gn.apc.org/files/goldwyntestimonyNigeria051706.pdf>> accessed 9 July 2012



from the Federation account in order to ensure they get their due in accordance with section 162 of the constitution.<sup>47</sup> Other stakeholders like civil society, the academia and legislators, have also gotten a clearer view about the workings of the hitherto secretive industry.

NEITI has also strengthened the capacity of the FGN to monitor payments from PEPCs, including NNPC. With legislative backing and a more focused approach, NEITI has been able to improve revenue transparency in Nigeria. By adopting a value for audit process to verify the claims of PEPCs operating in Nigeria, NEITI was able to detect that over 9 billion dollars were unpaid by PEPCs.<sup>48</sup> It may be argued that NEITI may have also constrained PEPCs to comply with laws bordering on transparency, given that refusal to co-operate with NEITI's audit processes, may, beyond incurring the risk of the revocation of their concessions, also portray PEPCs disfavouredly in the eyes of the Nigerian people and the international community.

Apart from anything else, the above accounts have shown that a premium is placed on transparency in the NPI, which is the first step in the chain of good governance factors. But to place such premium on transparency without more, is to create an impression that the lack of transparency is the sole bane of the NPI, or that greater transparency equals good governance. This however is not always the case, as a government may for reasons other than corruption, operate a closed door policy. For instance, the Israeli nuclear programme remains one of the most secretive in the world, even though corruption is generally very low in Israel.<sup>49</sup> Similarly, Kuwait has not been very transparent about its petroleum reserves, but that does not necessarily imply corruption.<sup>50</sup>

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<sup>47</sup> Nicholas Shaxson, 'Nigeria's Extractive Industries Transparency Initiative Just a Glorious Audit?' (2009) Royal Institute of International Affairs, 2009 Chatham House  
[http://eiti.org/files/NEITI%20Chatham%20house\\_0.pdf](http://eiti.org/files/NEITI%20Chatham%20house_0.pdf)

<sup>48</sup> See NEITI, 'NEITI Urges Agencies to Recover 9.8 Billion Dollars from Companies' (2012 <  
<http://www.neiti.org.ng/news/2012/09/24/neiti-urges-agencies-recover-98-billion-dollars-companies>> accessed 19 October 2012

<sup>49</sup> See Stephen Lendman, 'Israel's Secret Nuclear Program' (31 January 2014) Global Research<  
<http://www.globalresearch.ca/israels-secret-nuclear-program/5366851>> accessed 24 February 2014

<sup>50</sup> Kuwait: Have its Oil and Gas Prospects been Exaggerated? (2007) 32 Oil and Energy Trends , 3 -6

And although Nigeria has earned accolades abroad for its transparency initiatives, few Nigerians will readily agree that there is still a long way to go. Transparency is only valuable and impactful if it can translate to increased accountability and better governance of the sector, and the utilisation of the resources. For example it is noteworthy that transparency in itself may not motivate persons to act properly unless their actions can be called to account. The next segment of this chapter will therefore focus on the need to combine accountability structures with Nigeria's transparency framework.

#### **6.2.5 FROM AUDITING THE INDUSTRY TO MONITORING EXPENDITURES**

NEITI's objectives remain inchoate until it can lead to accountability. To that extent, while NEITI is not a failure, it will be equally premature to label it a success, since transparency is not an end in itself but a means to an end. Beyond a viable accountability framework and strong and independent agency regulators, there is also the need for a functional electoral process in Nigeria, through which the wider public can call leaders to account. It is proposed also that Nigeria should shift from 'publish what you earn', to 'account for what you spend'. This is more, as a significant part of the problem in the NPI is not with the industry but with government expenditure and application of petroleum revenues.

Even if NEITI saves funds for the Nigerian federation, there is no guarantee that these funds will be properly applied at the government level. And even if there is transparency in the utilisation of these funds by government officials, is there adequate capacity to enforce and prosecute corrupt government officials? There is therefore need, and urgently too, to monitor the utilisation and application of petroleum revenues in order to ensure that such funds get to the people of Nigeria, and are not misapplied.

It is in recognition of the limitations of a transparency initiative that the NEITI Act requires NEITI to monitor the application of petroleum revenues by government officials, which would amount to progressing from transparency to accountability. Recently the FGND mandated NEITI to commence an audit of fiscal allocations and statutory disbursements.

Under the scheme, NEITI will begin by auditing the NDR states which have received 13 per cent of petroleum revenues, the Excess Crude Account, the Niger Delta Development Commission (NDDC), the Petroleum Trust Development Fund (PTDF), and the FGN's ecology and derivation account. This audit which will be the first of its kind in Nigeria, will effect require states' governments and other government institutions to 'publish what they expend.'<sup>51</sup>

Taking the NEITI initiative from the NPI to application of petroleum revenues, is a welcome development, as it will be the first time that governments will be called to account for their expenditures from a more independent regulator. Currently, states' governments are constitutionally subject to scrutiny by their various states legislative arms, but states legislators have been unable to enforce their mandates due to lack of adequate capacity, complicity and a structure that gives state governors greater powers over legislators.

The FGN mandate to NEITI to monitor the application of petroleum revenues by states governors however faces some constraints. First there is the risk that it may violate the Nigerian constitution, under which states legislators are empowered to monitor the acts of the executive.<sup>52</sup> There may also be capacity constraints since NEITI may lack the manpower and skill for such a more comprehensive and complex audit, given that Nigeria currently has over 700 local governments and 36 states. That may explain why the scheme is to begin only with the Niger Delta States and some select federal government agencies.

Monitoring revenues utilisation may be easier in smaller countries like Qatar and Norway which also have unitary constitutions, than in Nigeria. The truth however remains that while petroleum revenues has been the mainstay of the Nigerian economy for over four decades, a

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<sup>51</sup> NEITI, 'Fiscal Allocation and Statutory Disbursement Audit Commences' (2013) <<http://neiti.org.ng/index.php?q=news/2013/02/04/fiscal-allocation-and-statutory-disbursement-audit-commences> > accessed 9 December 2013

<sup>52</sup> Ss 125 and 128 of the 1999 Constitution

more prudent application of petroleum revenues would have impacted the Nigerian economy positively, a fact that is borne out from Norway's experience in the North Sea.<sup>53</sup>

It may be worth noting that the average Nigerian is not as concerned about greater transparency per se, but what such access to information holds: accountable and good governance in revenue utilisation. It is doubtful if most Nigerians would care much about confidentiality clauses and secret payments, if they could trust that their government was acting in their best interests.

Even if improved transparency reduces corruption and enables a country to save much petroleum revenues, there is still no guarantee same would be properly managed. It is noteworthy that Norway is not only transparent, but also prudent. For instance Norway established a Petroleum Fund from petroleum revenues and a fiscal rule through which it was able to limit public expenditure. The Fund thus 'created a buffer between net petroleum revenue and its use in the current national economy' and enable Norway to pay off its national debt in 1995.<sup>54</sup> This is in contrast to Nigeria where military president Yakubu Gowon was reported to have said that Nigeria had no financial problems, only how to spend it.<sup>55</sup> It is therefore imperative that beyond seeking petroleum industry transparency, Nigeria should promote fiscal policies that will promote good management of excess petroleum revenues. To that extent, the next part of this chapter will analyse the initiatives Nigeria has enacted to promote better management of petroleum revenues. Focus will be placed on the sovereign wealth fund strategy which has come to play a key role in many PPCs.

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<sup>53</sup> For an insider account of the management and strategies Norway used in the management of its petroleum resources, see Farouk al-Kasim's, *Managing Petroleum Resources: The 'Norwegian Mode' in a Broad Perspective* (Oxford: Oxford Institute of Energy Studies, 2006)

<sup>54</sup> Farouk Al-Kasim and others, 'Grand Corruption in the Regulation of Oil' (2008) <<http://www.cmi.no/publications/file/3034-grand-corruption-in-the-regulation-of-oil.pdf>> accessed 19 March 2014, 12

<sup>55</sup> See Onyeije Chukwudum Okoro, *Nigeria: Her Woes And Their True Remedies* (iUniverse.com 2009) 12

## **6.3 TOWARDS AN EFFECTIVE INVESTMENT FRAMEWORK FOR NIGERIA'S PETROLEUM REVENUES: THE ROAD TO THE NIGERIAN SOVEREIGN INVESTMENT AUTHORITY ACT 2011**

### **6.3.1 THE NIGERIAN APPROACH TO PETROLEUM REVENUE MANAGEMENT**

Petroleum revenues can be managed through various strategies. A country may allocate petroleum revenues to its different tiers to use as it deems fit, or may allocate a significant chunk to host states. It may use petroleum revenues for infrastructural or educational development, or to subsidise petroleum. In other cases, some countries save excess petroleum revenues, and invest same through pension funds, banks or through sovereign wealth funds (SWFs).<sup>56</sup>

The actual choice of strategy is not always easy especially where there are equally important demands from various segments of the society. For instance, a government cannot ignore current needs of its citizens because it wants to invest for future generations. And it may be difficult to pay too much attention to host communities while there are clearly present needs in other aspects of the country. Equity, justice and skill should guide policy makers who manage petroleum revenues.

Nigeria adopts a multi faceted approach to petroleum revenue management. It distributes petroleum profits to the whole federation on the basis of its revenue allocation principles which considers need, derivation, population, and land mass.<sup>57</sup> And recently it has adopted a savings and investment approach in the form of the Excess Crude Account, and the NSWF. The remaining segment of this chapter will analyse Nigeria's foray into the SWF movement, and its savings mechanism. It will consider the legality of Nigeria's SWF, its strengths, and

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<sup>56</sup> See precept 7 of the Natural Resource Charter (NRC) <<http://naturalresourcecharter.org/content/precept-7>> accessed 26 February 2014

<sup>57</sup> S 262 (2)

governance frameworks in the light of the Generally Accepted Principles and Practices (GAPPs) published in 2008 for SWFs in Santiago.

### 6.3.2 A BRIEF DISCOURSE ON THE PURPOSES OF, AND DEFINITION OF SWFS

SWFs are government owned entities which invest in shares, bonds, real estate and other profit earning projects.<sup>58</sup> Reasons for establishing SWFs are country specific, although economic stabilisation, infrastructural development and savings for future generations appear to be among the most consistent.<sup>59</sup> Others include the need to address, and reduce opportunities for waste and misappropriation of excess funds. From the first SWF which was established by Kuwait in 1953, the value of SWFs has come to account for about \$ 4 trillion.<sup>60</sup>

A country whose economy is heavily dependent on petroleum resources is vulnerable to downturn in the prices of the commodity as this may result in an economic crisis and frustrate budget implementation.<sup>61</sup> For instance, the Nigerian budget which is benchmarked to a particular price of crude oil is often positively or negatively impacted when there is a rise or fall in petroleum prices. It is to address the possibility of such occurrences that many countries save excess funds in SWFs, from which they can easily retrieve funds for economic stabilisation. In other instances, some countries use SWFs to 'bailout' crisis ridden firms in the wake of a financial crisis.<sup>62</sup>

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<sup>58</sup> Adam D Dixon and Ashby H.B. Monk, 'Rethinking the Sovereign in Sovereign Wealth Funds' (2012) Vol 37(1) Transactions of the Institute of British Geographers, pp.104, 105

<sup>59</sup> Ibid at 109

<sup>60</sup> Roland Beck and Michael Fidora, 'The Impact of Sovereign Wealth Funds on Global Financial Markets,' (2008), Occasional Paper Series No 91 < <http://www.ecb.europa.eu/pub/pdf/scpops/ecbocp91.pdf>> accessed 14 November 2013, Salar Ghahramani, 'Sovereign Wealth Funds, Transnational Law, and The New Paradigms of International Financial Relations' (2010) Yale Journal of International Affairs <<http://yalejournal.org/2013/06/12/sovereign-wealth-funds-transnational-law-and-the-new-paradigms-of-international-financial-relations/>> accessed 19 October 2013

<sup>61</sup> Uche Orji, 'The Role of SWFs as a Tool for Economic Development' (2014) Being a paper presented at the 3rd University of Port Harcourt, Founders Day Lecture < <http://nsia.com.ng/wp-content/uploads/2014/02/The-Role-of-SWFs-In-Economic-Development.pdf>>

<sup>62</sup> For instance, in the wake of the global financial crisis in 2008, many international firms relied on SWFs for financing their activities. See generally Joseph J. Norton, 'The Santiago Principles and the International Forum of Sovereign Wealth Funds: Evolving Components of the Bretton Woods in Post Global Crisis Financial Crisis

An SWF can be used to save funds for future generations in view of eventual depletion of petroleum resources which is a non renewable resource, or for such a time as petroleum may lose its importance in the world energy market. For instance, Nigeria's petroleum resources are expected to be depleted in the next 41 years.<sup>63</sup> Nigeria is also exposed to the risk that Western countries may discover alternative sources of energy, and depend less on petroleum

The future savings concept is hinged on the theory of intergenerational equity which is premised on the ground that future generations should be considered by government when making policy decisions. This is more so as they will be impacted by the outcomes of the petroleum industry, one way or another. A case in hand is Oloibiri, Nigeria's first oil well. Although the well has dried up for some time now, the current generation of the Oloibiri people are unable to farm on most of their lands which have been severely affected by petroleum operations which occurred long before they were born.<sup>64</sup>

Finally, an SWF can be used for infrastructural development, which is a vital component for economic diversification.<sup>65</sup> For instance the UAE are already preparing for a post petroleum economy and one way of doing this is to turn the UAE into an international economic and financial centre and a tourist destination. The UAE has in that regard invested heavily on infrastructural development, in the form of roads, skyscrapers, electricity, etc.<sup>66</sup> in order to support an economic diversification policy.<sup>67</sup>

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Architecture and Another Example of Ad HoC Global Administrative Networking and Related 'Soft' Rule Making? (2010) 29 Rev. Banking & Fin. L. 465, 467

<sup>63</sup> James Enejo, 'W'Bank: Nigeria's Oil Resources May Last 41 Years' Thisday (5 October 2012) <<http://www.thisdaylive.com/articles/wbank-nigerias-oil-resources-may-last-41-years/126921/>> accessed 2 April 2014

<sup>64</sup> Sonibare SO, OO and others, 'Assessment of Organochlorine Pesticides Residues in Higher Plants from Oil Exploration Areas of Niger Delta, Nigeria' (2012) 433. *Science of the Total Environment*, 2012, Vol.433, pp.169-177

<sup>65</sup> Ben Euguzozie, 'How Sovereign Wealth Fund can Drive Nigeria's Growth, Infrastructural Development' Business Day (16 May 2011) <<http://www.businessdayonline.com/NG/index.php/analysis/features/21470-how-sovereign-wealth-fund-can-drive-nigerias-growth-infrastructure-development>> accessed 8 July 2011

<sup>66</sup> See Mohammed Shibab, 'Economic Development in the UAE' in Ibrahim Abed and Peter Hellye (eds) *United Arab Emirates: A New Perspective* (Trindent 2001) 249

<sup>67</sup> See Chiazor Ezenwa, 'Nigeria's Sovereign Wealth Fund And Inter-generational Equity' Thisday (13 October 2013) <<http://www.thisdaylive.com/articles/nigeria-s-sovereign-wealth-fund-and-inter-generational-equity/161419/>> accessed 26 February 2014

### 6.3.3 SWFS, SOES AND OTHER INVESTMENT VEHICLES COMPARED

SWFs have no standard form, and differ in size, structure and capacity. For instance, while some countries manage their SWFs directly from their central banks, like Norway, other SWFs are in the form of separate legal entities conferred with authority to manage and invest their country's revenues. But most SWFs differ from other government owned investment mechanisms like state owned enterprises (SOEs), and government pension funds, principally from the fact that they are usually ring fenced from undue political and government interference.<sup>68</sup>

Again unlike SOEs, SWFs do not usually engage directly in business, but are mainly investment entities which hold a range of diversified portfolios across the globe. And while a traditional institutional investor may be partly government owned, all SWFs are solely owned by states' governments. Another important feature of SWFs is that they invest not only in their local economies, but also in the international capital market, and operate with stronger financial orientation in their investment strategies.<sup>69</sup>

'Pure economics' is not necessarily behind all SWFs' investment decisions however, since other factors also influence their investment decisions. A prime example is Norway whose SWF is governed by an ethical council which annually publishes a list of firms in which the fund will not invest in; for reasons ranging from tobacco, sale of arms, and for human rights issues.<sup>70</sup> In some other instances, religious and cultural issues may affect the investment decisions of some SWFs. For instance, the Kuwaiti' Investment Authority which manages Kuwait's SWF may be reluctant to invest in Israeli companies because of Middle East tensions between both countries.<sup>71</sup>

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<sup>68</sup> See Adam Gutin, 'Regulating Sovereign Wealth Funds in the U.S.: A Primer on SWFs and CFIUS' (2010) 5 *FIU L. Rev.* 745, 762

<sup>69</sup> GAPP 17

<sup>70</sup> See Larry C. Backer, 'Sovereign Wealth Funds as Regulatory Chameleons: the Norwegian Sovereign Wealth Funds and Public Global Governance through Private Global Investment' (2010) Vol. 41(2) *Georgetown Journal of International Law* p.425

<sup>71</sup> Currently Israel does not have diplomatic relations with Kuwait.



#### 6.3.4 THE ROAD TO NIGERIA'S SWF: THE EXCESS CRUDE ACCOUNT

In 2004 the Obasanjo administration (1999-2007) introduced an oil price based fiscal rule under which the funding of Nigeria's annual budgets was tied to a benchmark crude oil price. Petroleum revenues in excess of the benchmark were transferred to an 'Excess Crude Account' (ECA), an IMF backed initiative, established to stabilise the Nigerian economy in cases of petroleum price fluctuations.<sup>72</sup> The ECA which is essentially a savings bank account differs from an SWF in two ways. First it is not managed by an independent entity, but by Nigeria's central bank, and ministry of finance. Secondly, funds from the ECA are not invested in shares, stocks or any other form of investment.

For a country that had exported petroleum since 1958, the ECA represents the first deliberate effort to save excess petroleum revenues until such a time as there is need for economic stabilisation. The ECA, like Norway's Petroleum Fund, yielded immediate results by enabling Nigeria to pay \$12 billion owed to the Paris Club.<sup>73</sup> This payment was the platform for the negotiation of the writing off of the remaining \$18 billion debt by the Club.<sup>74</sup>

Laudable as the ECA was, it had no defined legal framework and this raised genuine concerns that the federal government was short changing states and local governments in distribution of funds from Nigeria's federation account. There were also concerns that the ECA breached some portions of the Nigerian constitution.<sup>75</sup> There was definitely need for a properly defined legislative framework in order for the FGN to save and invest excess petroleum revenues. This came in the form of the Nigerian Sovereign Investment Authority (NSIA) Act 2011, which will be analysed in the next part of this chapter.

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<sup>72</sup> Akin Iwayemi, and Babatunde Fowowe, 'Impact of Oil Price Shocks on Selected Macroeconomic Variables in Nigeria Oil Price Shocks (2011) 39 Energy Policy, 603–612

<sup>73</sup> The term refers to a group of creditors representing about 19 of the world's biggest economies.

<sup>74</sup> Eyene Okpanachi & Nathan Andrews, 'Preventing The Oil "Resource Curse" In Ghana: Lessons From Nigeria' (2012) 68 The Journal of Global Education 430-450 444

<sup>75</sup> See Tobi Soniyi, 'Excess Crude Account: Supreme Court Urges FG, States to Settle' Thisday (10 May 2013) <<http://www.thisdaylive.com/articles/excess-crude-account-supreme-court-urges-fg-states-to-settle/147163/>> accessed 26 February 2014

### 6.3.5 NIGERIA'S SWF: AN ANALYSIS OF THE NIGERIAN SOVEREIGN INVESTMENT AUTHORITY ACT 2011

The Nigerian Sovereign Investment Authority (NSIA) Act 2011 established the Nigerian Sovereign Investment Authority (the 'Authority') to manage Nigeria's SWF. The fund consists of three funds one each for economic stabilisation, future generations, and infrastructural development.<sup>76</sup> The Authority is a self-sustaining entity governed in compliance with principles of financial sustainability and with independent decision making powers that are exercised transparently.<sup>77</sup>

The NSIA Act authorises the Authority to receive excess crude revenues from the federation account and to manage and invest same in a diversified international portfolio of assets.<sup>78</sup> The Authority is further charged with obtaining the best achievable financial returns on all capital and assets, having regard to the need to protect and enhance long term economic value.<sup>79</sup>

The NSWF commenced with a \$1 billion seed capital contribution from the federal, states and local governments that make up the Nigerian federation.<sup>80</sup> From the realised profits the Authority is mandated to make distributions after a unanimous vote by its board, subject to consent by its governing council.<sup>81</sup>

Many have hailed Nigeria's SWF as a starting point for an effective management of petroleum revenues. But good management of the funds is one thing, and effective application of its profits to the Nigerian people is another. What is the guarantee that funds in the NSWF will not be mismanaged like so many other government entities as in the past?<sup>82</sup>

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<sup>76</sup> S 4 of the NSIA Act

<sup>77</sup> Ss 1 and 51 NSIA Act

<sup>78</sup> S 3, see also Nse Anthony-Uko, 'Nigeria: Investment in Sovereign Wealth Fund Starts June With U.S.\$200 Million' Leadership (21 May 2013) < <http://allafrica.com/stories/201305210120.html> > accessed 19 July 2013

<sup>79</sup> S 4(2)f

<sup>80</sup> Ss 29-32. Subsequent funding of the SWF will be derived from residual funds in the federation account which exceed the Budgetary Smoothing Amount, although this does not interfere with the 13 per cent derivation of the NDR states.

<sup>81</sup> Ss 34-36

<sup>82</sup> These institutions have been the hub for fraud, impunity and unaccountability, and they include the NNPC, OMPADEC, NDDC, and NDDB. It will be noted that most of Nigeria's SOEs have largely failed to perform

For without good and effective management, funds in the SWF may be stolen and misappropriated by self serving people, given that Nigeria's governance framework is weak and its democracy only emerging. The governance framework for the NSWF will be analysed next in the light of the Santiago principles in order to determine whether there are sufficient safeguards for effective and sound management.

### **6.3.6 GOOD GOVERNANCE AND ITS IMPLICATIONS FOR THE ATTAINMENT OF THE NSWF'S MANDATE: THE ROLE OF INTERNATIONAL SOFT LAW**

Good corporate governance has come to dominate global headlines since Enron and WorldCom, and many other corporate failures, impacted the global community. It implies compliance with the law, transparency, accountability, board independence and ethical practices, as vital components required for a healthy corporate performance.<sup>83</sup> It is arguable that good corporate governance is imperative for Nigeria's NSWF in order to attain domestic and external legitimacy.

Domestic legitimacy refers to a country wide acceptance of the NSWF which transcends its legal status. For instance, although the ECA was not a legal entity, it enjoyed domestic legitimacy because many Nigerians saw it as a welcome development to avoid the 'as usual' squandering of petroleum revenues. Its domestic legitimacy was shored up from the fact that funds from the ECA were used to obtain Nigeria's release from the Paris Club and for the stabilisation of the economy during the global financial crisis.<sup>84</sup> In fact it can be posited that a legally established entity may lose its legitimacy in the eyes of the people due to mismanagement, while one that is not established after a legal process may enjoy greater legitimacy if it serves the interests of the people. In fact good corporate governance in the

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optimally, thus informing the ongoing privatization programme in Nigeria. For example, although NNPC had great potentials of rising to become an international NOC, internal corruption and external political interference have been among its most limiting challenges.

<sup>83</sup> See the Financial Reporting Council 'UK Corporate Governance Code' (2012) < <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf> > accessed 26 February 2014. See also Jean Tirol, 'Corporate Governance' (2001) 69 *Econometrica*

<sup>84</sup> Akin Iwayemi and Babajide Fowowe, 'Impact of Oil Price Shocks on Selected Macroeconomic Variables in Nigeria' (2011) Vol 39 *Energy Policy*, 603, 610

case of Nigeria's NSWF may be the only guarantee for its continued existence, which currently hangs on the delicate balance of a Supreme Court judgement.

Nigeria's federal constitution establishes semi-autonomous states which are free to utilize their revenues within the ambit of the law.<sup>85</sup> Section 162 of the constitution requires petroleum revenues to be paid into a federation account, and to be shared between the federal states and local governments, as they accrue. A careful reading of the section would show that there is no direct authority on the federal government (a single arm of the government), to invest or save funds from the federation account. It is on the basis of this perceived violation, that states' governors challenged the constitutionality of the ECA and the NSIA Act 2011 in the Supreme Court.<sup>86</sup> The Court had in 2013, granted the parties a long adjournment to settle their differences out of court, due to the sensitive nature of the case; but the parties failed to reach any amicable settlement.<sup>87</sup>

In the light of failures of the opposing parties to settle out of court, the Supreme Court began to hear the parties to the case from March 24 2014.<sup>88</sup> Currently it has been adjourned to September 23 2014.<sup>89</sup> Should the Court find that withdrawals of funds due to states and local governments are illegal; the federal government would have to repay such funds by withdrawing same from the NSWF. The only other option would be to persuade states and local governments about the justifiability of the NSWF. Hard as this may seem, the chances that any such persuasion would work, would depend largely on an excellent governance framework of the Fund.

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<sup>85</sup> See Geske Dijkstra, 'What Did US\$18 bn Achieve? The 2005 Debt Relief to Nigeria' (2013) Vol 31(5) *Development Policy Review*, pp.553-574

<sup>86</sup> Tobi Soniyi, 'Excess Crude Account ( n 75)

<sup>87</sup> Ibid

<sup>88</sup> Tobi Soniyi, 'S'Court Fixes Hearing on Excess Crude Account' *Thisday* (3 December 2013) <<http://www.thisdaylive.com/articles/s-court-fixes-hearing-on-excess-crude-account/165769/>> accessed 26 December 2014. From March 24 2014, the Court began to hear the case in earnest.

<sup>89</sup> 'Excess Crude Account: Supreme Court Hears FG/Governors' Suit September 23' *The Nigerian Voice* (25 March 2014) <<http://www.thenigerianvoice.com/nvnews/141839/1/excess-crude-account-supreme-court-hears-fggoverno.htm>> accessed 8 April 2014

External legitimacy refers to the acceptance of the NSWF by the international community and investee countries.<sup>90</sup> Good governance of the NSWF would require Nigeria to ring fence the Authority from undue external interference while simultaneously guaranteeing that it is managed in a transparent and professional manner. But why should it matter what the international community thinks about the management of Nigeria's SWF? An understanding of globalisation and its impact on world economy is necessary to appreciate why mismanagement of an SWF can affect the global economy and the international capital market.

The importance of SWFs in the global economy grew in the wake of the global financial crisis that began in 2008.<sup>91</sup> But with this growth came concerns in western nations that SWFs could be used for ultra economic objectives, which could destabilise the world economy. This concern, real or imaginary, was underscored by the fact that many SWFs were not owned by countries that practiced the western form of democracy. And some were covertly and overtly perceived to be unfriendly to American and European interests.<sup>92</sup> There was also the concern of transfer of technology through the 'back door'.<sup>93</sup>

There was need therefore, to convince the global community that SWFs meant well, were properly governed, and had no ulterior motives. Thus good governance became a prerequisite to a global acceptance of SWFS, especially by investee nations most of which are in the West. To attain this objective the IMF in 2008 mandated an international working group on SWFs to develop internationally recognised governance standards for SWFs. The working group met in Santiago Argentina in 2008 and published 24 voluntary Generally Accepted Principles and Practices (GAPPs) which are a benchmark for the measurement of the governance structures of SWFs.<sup>94</sup> The GAPPs were adopted by all members of an umbrella

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<sup>90</sup> On the legitimacy of SWFs, see Ashby Monk, 'Recasting the Sovereign Wealth Fund Debate: Trust, Legitimacy, and Governance' (2009) Vol. 14 *New Political Economy*

<sup>91</sup> See Joseph J. Norton, (n 62)

<sup>92</sup> Some of which include the China Investment Corporation, and the Russian National Wealth Fund

<sup>93</sup> Steffen Kern, 'Sovereign Wealth Funds : New Economic Realities and the Political Responses' (2009) Vol 9, *Revue d'Économie Financière* pp. 255-269

<sup>94</sup> The GAPPs consist of 24 non-binding principles which were developed in 2008 as a product of collaboration between the IMF and the International Working Group of Sovereign Wealth Funds. The aim of the principles includes the need to maintain a stable global financial system and free flow of capital and investment. To comply with all applicable regulatory and disclosure requirements in the countries in which they invest, and to invest on the basis of economic and financial risk and return related considerations. And to set up transparent

body for SWFs: the International Federation of Sovereign Wealth Funds (IFSWFs), which was established in 2009.

The GAPPs are voluntary and states are free to vary from them as circumstances determine.<sup>95</sup> They are essentially a form of soft law, which SWFs operating in the international capital market will do well to comply with in order to attain external legitimacy. The Authority is required to implement best practices with respect to managerial independence and accountability, corporate governance, transparency and performance reporting which reflect the GAPPs, or other similar principles and conventions. The extent, to which the NSIA incorporates the principles of the GAAPs, will be considered next.

### **6.3.7 A COMPARISON OF THE NSIA AND THE GAPPs PROVISIONS THAT RELATE TO GOOD CORPORATE GOVERNANCE OF THE NSWF**

#### **Between voluntary and mandatory frameworks**

Good corporate governance of the NSWF is not only a desirable element, but a legal requirement. This approach contrasts with the UK approach which is largely voluntary and where firms are required to ‘comply or explain’.<sup>96</sup> The UK approach is based on the assumption that firms will likely and voluntarily comply or face the consequences of non compliance in their share prices.<sup>97</sup> The voluntary approach has its strengths and weaknesses however, although Finch criticises it for not being able to entrench accountable leaderships in listed firms.<sup>98</sup>

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and sound governance structures that provide for adequate operational controls, risk management and accountability.

<sup>95</sup> International Working Group, ‘Sovereign Wealth Funds Generally Accepted Principles and Practices ‘Santiago Principles’ (2008) < <http://www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf>> accessed 26 February 2014

<sup>96</sup> Marc T. Moore, ‘The End of “Comply or Explain” in UK Corporate Governance?’ (2009) Vol. 60(1) Northern Ireland Legal Quarterly, p.85-103

<sup>97</sup> Ibid, 87

<sup>98</sup> V. Finch, ‘Corporate Governance and Cadbury: Self-Regulatory and Alternatives’ (1994) Journal of Business Law 51 at 57, see also

As corruption remains a clear and present risk in Nigeria, it is not surprising that the NSIA Act makes good governance a mandatory issue. This is underscored by the fact that with so much at stake in the NSWF, there is need to apply the higher of the options between ‘mandatory’ or ‘voluntary’ compliance to effective corporate governance frameworks.

### **Board independence: GAAPs and the NSIA Act**

An independent and responsible board is a prerequisite for good corporate governance.<sup>99</sup> In that regard the NSIA Act envisages a strong board which is properly remunerated, independent and accountable. The board is expected to operate under a transparent regime with a vibrant financial orientation and sound risk management policies.<sup>100</sup> To that extent, section 1(4) of the NSIA Act frees it from the control of any other person or authority.<sup>101</sup>

In a conspicuous departure from the NNPC Act and the NDDC Act, the NSIA provides for various layers of leadership of the Authority designed to guarantee board independence and professionalism. First a board made up of a balance of executive and non executive directors is appointed to formulate policy, and to pursue the attainment of the Authority’s objects.<sup>102</sup> Secondly a governing council, consisting mainly of political and government appointees, is appointed to oversee the affairs of the board.<sup>103</sup>

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Teerooven Soobaroyen and Jyoti Devi Mahadeo, ‘Do Corporate Governance Codes Improve board Accountability? : Evidence from an Emerging Economy’ (2012) Vol. 9 *Qualitative Research in Accounting and Management*, pp.337 – 362

<sup>99</sup> Marc T. Moore (n 96) 91

<sup>100</sup> S 51 NSIA Act

<sup>101</sup> See also S 4(2)d

<sup>102</sup> 15

<sup>103</sup> It consists of the President (chairman), the Vice President, governors of the 36 states, the Attorney General of the federation, the minister of finance, the minister in charge of planning, the governor of the CBN, the chief economic adviser to the president, the chairman of the revenue mobilisation, allocation and fiscal commission. It also consists of reputable individuals representing the private sector and two representatives of civil society. S. 8

The governing council is required to observe the independence of the board and its officers, and not to require it to take or to refrain from any specified action.<sup>104</sup> This reflects GAPPs 6 and 10 which require the governance of SWFs to be sound and established on a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence.

In practice however, statutory provisions for an independent board can be easily circumvented if the board is not meritoriously appointed. Similarly arbitrary powers of removal can further erode other provisions that guarantee board independence. And it is for this reason that most corporate governance codes require that boards be appointed through a transparent and merit based selection process conducted by a nominations board manned by independent directors.<sup>105</sup> To that extent, the NSIA Act requires the president to appoint the board of the Authority on the recommendation of the minister of finance, who acts with the co-operation of a nominations committee.<sup>106</sup> This requirement reflects GAPPs 7 which requires SWF owners to appoint their boards in accordance with clearly defined procedures.

### **Balance of power in the board**

The NSWF's board composition complies with standard corporate governance principles by providing for a mixture of executive and non-executive directors. This is to ensure a balance between experience and skill, and to prevent the dominance of the board by a powerful individual.<sup>107</sup> It separates the positions of chairman and managing director, and provides for

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<sup>104</sup> Ss. 7(3) and 25

<sup>105</sup> For instance Code B.2 of the UK Combined Code states 'There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board' <<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx>> accessed 27 February 2014

<sup>106</sup> Before the current board was appointed however, a six man implementation task force was appointed, on whose recommendations an executive nomination committee was established, with representatives from Nigeria's six geo political zones, and supported by world class accounting firm KPMG. Thus the eventual appointment of the board was done in keeping with the spirit of the Act, after a rigorous, open and competitive process that lasted for nearly one year.

<sup>107</sup> See Principle B2.2 UK Combined Code 2012, and Principle 4 of Code of Corporate Governance for Public Companies in Nigeria (2003) Published by Nigeria's SEC. <



six non-executive directors, one of whom is the chairman, and three executive directors, one of whom is the managing director.<sup>108</sup>

That the number of non-executive directors (who ordinarily should be independent) exceeds the executive directors will enable independent executive monitoring in order to ensure compliance with good governance practices and the law.<sup>109</sup> But passivity and lack of informational depth of non executive directors (NEDs) has in the past been a challenge to good corporate governance.<sup>110</sup> While this risk remains even in the governance of the NSWF, the NEDs may be more inclined to be independent given that they are not appointed by the managing director (or by the president, at his prodding).<sup>111</sup> It is therefore hoped that the NEDs will be able to bring in their experience, connections, foresight and some level of independence to steer the board in the right direction.

As desirable as board independence is, board independence is only one of many factors required for good corporate governance. In fact external interference may sometimes be necessary in order for a government to ascertain that SOE and other government owned institutions are managed in way that is congruent with national priorities, and to ensure managerial accountability. But such should not be done to an extent that frustrates board independence.

Beyond board independence, there is also need for adequate professional support with international exposure, since the Authority will operate mainly in foreign territories. The NSIA Act makes provisions for that also. In practice many SWFs engage consultants like JP Morgan, State Street, City Group, etc. to act as custodians and fund managers and to advise

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[http://www.sec.gov.ng/files/CODE%20OF%20CORPORATE%20GOVERNANCE\\_web%20optimized.pdf](http://www.sec.gov.ng/files/CODE%20OF%20CORPORATE%20GOVERNANCE_web%20optimized.pdf)> accessed 27 February 2014

<sup>108</sup> S 16

<sup>109</sup> The Sarbanes Oxley Act of 2002, and major stock exchanges in the world require or mandate that audit, nominations and compensation committees of listed firms should be chaired by non executive directors. See Olubunmi Faleye and others , ‘The Costs of Intense board Monitoring’ (2011) Vol 101 Journal of Financial Economics pp 160–18

<sup>110</sup> See Sally Wheeler, ‘Non-executive Directors and Corporate Governance’ (2009) 60 NILQ 51-62

<sup>111</sup> See A. Page , ‘Unconscious Bias and the Limits of Director Independence’ (2009) University of Illinois Law Review 237 at 239

on investment in the international capital market. The NSIA Act authorises the Authority to appoint asset managers and custodians on the basis of comprehensive assessment criteria.<sup>112</sup> Currently JP Morgan has been appointed as the external manager of the NSWF. Such external fund managers will additionally bring their skills and independence to guarantee a higher standard of governance of the NSWF and further insulate the fund from external interference.

### **6.3.8 DESIRABILITY OF SUBSCRIPTION TO AN INTERNATIONAL FRAMEWORK AND ITS IMPACT ON THE GOVERNANCE OF THE NSWF**

Although the NSIA requires the Authority to be governed in compliance with standards which reflect international best practice,<sup>113</sup> it is equally important that it is subjected to an international peer mechanism like the IFSWFs.<sup>114</sup> Subscription to international good governance standards and best practices and membership of any such organisation would be an added incentive to act in line with good corporate governance standards in the management of the NSWF. This would be especially useful as the NSWF operates within the international capital market which will imply that its obligations will transcend local circumstances. Any breach of these obligations may result in entry blockages in many investee nations.

In fact it is arguable that the above average performance of the NLNG as observed in chapter five is not totally unconnected to its international affiliations.<sup>115</sup> The International Finance Corporation (IFC) had a pre funding requirement that the Nigerian government agree to hold less than a majority of the shares of the NLNG.<sup>116</sup> That requirement became one of the most

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<sup>112</sup> S. 6

<sup>113</sup> S 2(4)d

<sup>114</sup> Nigeria currently has observer status with the IFSFW, which is a precondition to its full membership.

‘Sovereign Investment Authority Swings into Action’ Thisday (26 May 2013) <

<http://www.thisdaylive.com/articles/sovereign-investment-authority-swings-into-action/148509/>> accessed 27 February 2014

<sup>115</sup> See chapter five, para 5.5.5

<sup>116</sup> Rob Shepherd and James Ball ‘Liquefied Natural Gas from Trinidad and Tobago: the Atlantic LNG Project,’ in David G. Victor, Amy M. Jaffe, and Mark H. Hayes (eds) *Natural Gas and Geopolitics: From 1970 to 2040*. (Cambridge University Press 2006)

strategic factors behind the performance of the NLNG. Without total control, the FGN has been unable to tamper with the board's composition, continuity, or the assets of the firm.

Again the performance and relative successes of NEITI in the area of industry transparency cannot be entirely disconnected from Nigeria's membership of EITI and its peer review mechanism. And although Shaxson has argued that certain improvements in petroleum revenue management are the product of internal fiscal policies, rather than its transparency initiatives,<sup>117</sup> it is also true that EITI's minimum transparency standards gave Nigeria a platform to design NEITI to promote transparency in the NPI

It is by no means the case that domestic standards are always inferior to international standards. In fact domestic standards of countries like Britain, Norway, the USA and the Netherlands are often the basis for drafting of international best standards. The NEITI requirements which exceed those of EITI, can, if successfully implemented in Nigeria, eventually create a framework for international best practices. What is argued however is that states should be free to adopt standards that exceed international best governance standards for the governance of their SWFs, or any other entity. This is especially so where the impact of that entity transcends national boundaries.

### **Why the NSWF is strategically important**

The NSWF is significant for Nigeria as a first of many reform initiatives that have been introduced in the NPI. If properly managed, it will steer a path towards sustainable management of Nigeria's petroleum revenues. Late as it may seem in coming, it represents an effort by Nigeria to effectively manage its petroleum revenues, avoid waste and enthrone good governance. Had the NSWF been established in the early 1970s, when Nigeria enjoyed an economic boom following the oil crisis in the Middle East, it is safe to assert that fund would have grown to such an extent as would have enabled it to cater for some of Nigeria's

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<sup>117</sup> Nicholas Shaxson, (n 110) 15

developmental needs, help diversify the economy and would have also improved the standard of living of Nigerians.

An earlier NSWF would have also limited the amount of money available for political profligacy. Although Algeria's crude oil reserves, estimated to be about 12 billion barrels of crude oil, are far less than Nigeria's 37 billion, Algeria's SWF, which was established in 2000 currently, manages over \$42 billion, far in excess of what Nigeria holds. There may therefore be need to aggressively save funds in the SWF especially where these revenues arise from sale of petroleum over and above the bench mark as reflected in the annual budget.

The NSIA requirements for good governance exceed those of the GAAPs in scope. By making adherence to such standards compulsory, there is another indication that the NSWF is a departure from the previous ways of managing SOEs and government backed initiatives. While it remains to be seen how the NSWF will be managed in the future, the framework for good corporate governance is promising, and not the least encouraging. The NSWF may reflect the spirit of a people who are desirous of getting things right, after getting so many things wrong in the past.

Research has shown that the risk of managerial self-dealing increase with greater independence, and in essence create the owner-agency problem.<sup>118</sup> The dilemma has always been how to strike a balance between board independence and a functional accountability framework. It is therefore important for good corporate governance that Nigeria strikes a balance between board independence and board accountability. The extent to which the NSIA Act subjects the Authority's board to a corporate accountability framework, and how that framework reflects international best practices, will be analysed in the next part.

### **6.3.9 THE PROBLEM OF ACCOUNTABILITY IN NIGERIA: AND ITS POTENTIAL IMPACT ON THE NEITI AND NSIA INITIATIVES**

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<sup>118</sup> See Clara Xiaoling Chen, and others, 'The Agency Problem, Corporate Governance, and the Asymmetrical Behaviour of Selling, General, and Administrative Costs' (2012) Vol 29 Contemporary Accounting Research 252

## What is accountability?

The linchpin of various reform initiatives in the NPI is hinged on the establishment of an accountability framework. For instance, the NSIA Act requires that after a five year period, the Authority may declare profits and make distributions to the various tiers of the Nigerian federation.<sup>119</sup> But what is the guarantee that these profits will be properly managed at states and local government levels?

Accountability implies answerability for one's actions. A person could be accountable either to the people in general, or to a government entity in particular or indeed both. Thus accountability gives 'teeth' to transparency initiatives. Andrew Keay noted that mere publication without requirement to answer and justify certain course of actions, will only lead to improved transparency without more.<sup>120</sup>

The concept of punishment, rewards, and responsibility should undergird any accountability system. For instance the managers of Nigeria's petroleum revenues, or of the Authority, should be open to sanction for managerial failures. Similarly, the management board of the Authority should be answerable to the governing council, the non executive directors, and to the people in general. Where the board exceeds performance targets, it should expect rewards either in the form of a pay rise, or tenure extension. Conversely, where directors break the law or act unethically, they should be sacked, and be subject to civil and criminal sanctions. An accountability framework is dependent largely on effective monitoring and regulatory co-operation, and regulatory capacity.

From 1999, Nigeria began introducing some anti corruption reforms. It established the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices

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<sup>119</sup> S 34 NSIA

<sup>120</sup> Andrew Keay, 'Accountability and the Corporate Governance Framework: From Cadbury to the UK Corporate Governance Code' (2012) Working Paper  
<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2143171](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143171)> accessed 19 November 2013, 29

Commission (ICPC). Other policies geared towards financial prudence like the FRA 2007<sup>121</sup> and the PPA 2007,<sup>122</sup> were also enacted. Laudable as these anti corruption initiatives are, the anti corruption agencies have largely been unable to effectively monitor the utilisation of petroleum revenues by states and local governments across the breadth of Nigeria as they struggle with lack of adequate capacity, funding, and are often subject to undue political interference.<sup>123</sup>

Nigeria also faces the issue of politicisation of the enforcement and regulatory process and this has weakened the sanctioning of corrupt individuals. The result is that influential persons who are loyal to the political class are often unlikely to face the full weight of the law even where they violate Nigeria's laws on corruption and resource management. Thus the need for an independent regulatory process complemented by a viable whistleblower and class action regime should be extended to monitoring the application of petroleum revenues in Nigeria.<sup>124</sup>

Nigeria imposes the death penalty for sabotage, armed robbery and murder.<sup>125</sup> But persons convicted for corruption are given relatively lighter sentences even though misappropriation of petroleum revenues, especially in a large scale, has more detrimental effects than robbery.<sup>126</sup> And with the back door introduction of plea bargaining into Nigeria's criminal procedure, persons convicted of stealing billions of naira are given light prison sentences in addition to forfeiting the monies they steal.<sup>127</sup> This procedure may have unwittingly emboldened persons to steal government funds, since all they have to lose is a few months in

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<sup>121</sup> No 31 of 2007

<sup>122</sup> No 14 of 2007

<sup>123</sup> See Asissi Asobie, 'Transparency in the Management of Nigeria's Oil Revenue' (2013) being an article published on the website of the Nigerian Natural Resources Charter website <<http://nigerianrc.org/blog/anonymous/transparency-management-nigeria%E2%80%99s-oil-revenue>> accessed 20 February 2014

<sup>124</sup> See chapter three, paras 3.9.1 and 3.9.4

<sup>125</sup> Petroleum Production and Distribution (Anti -Sabotage) Act 1975, imposes the death penalty for acts of sabotage in the petroleum industry, s1(2) Robbery and Firearms (Special Provisions) Act, 1984 No.5, Cap R 11, LFN 2004, and s 319 of the Criminal Code Act Cap C38 LFN 2004

1979, Cap A. 25 LFN 2004

<sup>126</sup> On the effects of corruption

<sup>127</sup> Chief Diepiriye Alamieseyigha, Tafa Balogun, Lucky Igbenidion who were accused of stealing billions of public funds were left off with very light sentences through the use of plea bargaining system in Nigeria. See Ikechukwu Nnochiri, 'Criminal Justice System: Is Plea Bargain Desirable' Vanguard (Abuja, 8 March 2012) <<http://www.vanguardngr.com/2012/03/criminal-justice-system-is-plea-bargain-desirable/>> accessed 3 December 2012

prison. It is therefore proposed that Nigeria should adopt an extensive and strict punishment regime for corrupt application of petroleum revenues. Persons who breach their offices of trust should be given at least a life sentence where the amount of money stolen is monumental. China imposes the death penalty for corruption in certain cases.<sup>128</sup> And even though corruption is still said to be endemic in China,<sup>129</sup> it is arguable that the deterring effect of such sanctions may have contributed to China's economic growth.

### **Accountability in the management of the NSIA**

The 1992 Cadbury Report on corporate governance noted that the 'most direct method of ensuring that companies are accountable for their actions is through open disclosures by boards'.<sup>130</sup> It is in that regard that the NSIA Act requires the Authority to publish reports and statements, audited according to international standards, on a regular basis.<sup>131</sup> It is also required to regularly publish its investment plans, and procedures for the appointment of its management board.<sup>132</sup> This requirement mirrors the GAPPs 2 and 4 which requires SWFs to publicly disclose their policies, objects, procedures and general approach to funding, withdrawal and spending.<sup>133</sup> Such publications will ensure the Authority is open to external and independent scrutiny.

But accountability should follow publication however, if it is to have any regulatory effect. Thus it is surprising that the NSIA Act has no sanction provisions for the board other than for disqualification of directors from office in certain cases.<sup>134</sup> The question then is how can an

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<sup>128</sup> Chinese Criminal Law of 1997. See generally T L. Hong and Zhangb Lening, 'Death Penalty in China: The Law and the Practice' (2005) Vol 33 Journal of Criminal Justice 367, 369

<sup>129</sup> Jeffrey E Michelman and others, 'The Growing Challenge of Corruption in China' (2011) Vol 22(6) Journal of Corporate Accounting & Finance, pp.17-30

<sup>130</sup> Report of the Committee on the Financial Aspects of Corporate Governance, (1992) <<http://www.ecgi.org/codes/documents/cadbury.pdf>> accessed 23 April 2014

<sup>131</sup> Ss 36-38, which corresponds with GAPP 10-12

<sup>132</sup> Ss 31, 37 and 38

<sup>133</sup> See GAPP 2 and 4, GAPP Principle 16 further requires SWFs to publicly disclose their governance frameworks, and the manner in which their management operate independently from their owners. Under GAPP 7, SWFs are required to publicly disclose relevant financial information, in the hope that this will enhance trust and contribute to the stability of the international financial market and assure investee countries of their strict financial orientation. See also GAPPs 19 and 22 under which SWFs are required to publicly disclose their investment policies and extra financial considerations behind investment decisions are to be publicly disclosed, along with reasons behind SWFs' exercise of ownership and voting rights and general approaches to risk management.

<sup>134</sup> S 18

underperforming board be brought to account? Under the Act, executive directors will remain on the board as long as their contract remains,<sup>135</sup> while non executive directors will remain in office for four years subject to reappointment for another four years.<sup>136</sup>

The power to sack non performing directors is one of the most vibrant accountability mechanisms of corporate governance, if properly utilised. Thus companies' boards are held to account by various means. Shareholders may decide not to re-elect non performing directors, refuse to give them a pay raise, or elect to vote them out even before their contract expires. But the president's powers to sack directors of the Authority appear to be limited to cases of material breach of duties of the Authority. Such directors can only be removed on the recommendation of the minister, based on a unanimous vote of the board that such a director be removed from office.<sup>137</sup> And while the board of the Authority is subject to directors' obligations and duties as provided for in CAMA, it is unsure if section 262 which regulates removal of directors, is equally applicable to them.<sup>138</sup>

Ordinarily non performing directors should be removed in pursuance to their contracts of employment, but the recent Nigerian Supreme Court decision in *Longe v First Bank of Nigeria*<sup>139</sup> however casts some uncertainty in this regard. In that case the Appellant was removed as managing director of the Respondent by a letter which alleged some financial improprieties in regard to a loan. On his appeal against his dismissal however, the Supreme Court held that being a director, he was covered by the protection of section 262 of CAMA and could not be removed like an 'ordinary' executive of the bank. And the Supreme Court agreed with him, and held that his appointment could only be terminated by the strict section 262 procedure. It is for that reason that it is proposed that the contracts regulating the appointment of executive directors should tie their continued stay to good performance.

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<sup>135</sup> S 20(1)

<sup>136</sup> S 20

<sup>137</sup> The director in question will not be present during the vote. There are other instances however under which directors of the NSWF can be removed. For instance, if they become bankrupt, are convicted for fraud, are restricted from being directors or are disqualified from the practice of their professions. Ss 18 and 19

<sup>138</sup> S 26(3)

<sup>139</sup> Bernard Ojeifo Longe V First Bank Of Nigeria PLC (2010) 2-3 SC , Part 111, 61



In contrast to companies however, the NSWF board is subject not to conventional shareholders' control, but to a governing council, to which it is obligated to render regular accounts audited according to international standards.<sup>140</sup> The governing council is not subject to the many oversight limitations of the conventional dispersed shareholder who may not have the time or expertise to understand financial reports.<sup>141</sup> With its mix of politicians and professionals, it appears to be in a better position, with the aid of its standing subcommittee, to monitor the affairs of the board, interpret its reports, compare same with those of other SWFs globally and take action where necessary. It therefore lies within the ambit of the council to effectively monitor the board of the Authority. Research has shown that traditional institutional shareholders are often passive in the monitoring of the governance of firms in which they invest.<sup>142</sup> To that extent, there should be clear incentives for the council to perform its oversight functions as a public duty

It is proposed that there should be definite targets for the executive directors of the Authority upon which they can be assessed, and called to account. Accountability should not however be required to an extent that will stifle managerial innovation and flexibility. This can occur if an over bearing governing council, or the NEDs become over intrusive on the operations of the management team of the NSWF. This can eventually break their confidence in taking decisions that may have long term benefits for the NSWF. To attain that fine balance between accountability and enterprise requires experience, commitment and integrity. For instance the Cadbury and the Greenbury codes which sought to address the accountability gap in the UK corporate governance, were said to have hindered enterprise and innovation, and had to be balanced with the Hampel report.<sup>143</sup>

Finally in the area of accountability, it was noted that company law subjects boards, not only to shareholders, but also to regulators like the Corporate Affairs Commission (CAC). Listed firms are additionally subjected to the Securities and Exchange Commission (SEC), and to

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<sup>140</sup> Ss 36-38, which corresponds with GAPP 10-12

<sup>141</sup> For an incisive analysis of the limitations of the conventional shareholder in ensuring corporate governance, see Pereowei Subai, 'Translating The Democratic Rights of Shareholders into the Concrete' in Festus Emiri and Gowon Deinduomo (eds) *Law, Oil and Contemporary Development Issues* (Malthouse, 2008)

<sup>142</sup> Mauricio Jara-Bertin and others, 'Does the Influence of Institutional Investors Depend on the Institutional Framework? An International analysis' (2012) Vol 44(3) *Applied Economics* 265,266

<sup>143</sup> Andrew Keay (n 120) at 30

the Nigerian Stock Exchange. Regulators are often empowered to sanction erring directors by imposition of fines, or outright bans either for life or for a given period.<sup>144</sup>

In the case of the NSWF, although the board is subjected to CAMA's requirements for company directors, it appears to be subjected to no other authority other than the governing council. And it appears unclear whether CAC has any authority over its activities although its board is subject to CAMA's duties for directors. Should the NSWF invest in the UK for instance, its board would however be required to comply with regulations and be subject to scrutiny by the Prudential Regulation Authority which regulates investments in the UK.<sup>145</sup> But in Nigeria it is not subject to any formal regulator. There is therefore need to subject the Authority and its officers to a formal regulator, like the CAC, or SEC, while the governing council should play the role of a conventional shareholder, or act like an institutional shareholder.

This part has analysed Nigeria's strategy for better management of its petroleum revenues as epitomised in the NSWF and the ECA. Genuine petroleum revenue management however, should be geared towards the development of the Nigerian economy in general. But there is further need to ensure that those whose lives are directly affected by the impact of petroleum explorations have a special right to the benefits accruing from the industry. It is to that extent that part three of this chapter will seek to analyse the arguments for and against greater fiscal allocation for the Niger Delta Region (NDR) on the basis of federalism, justice, and equity.

#### **6.4 THE NIGER DELTA REGION AND PETROLEUM REVENUES: A CRITICAL ANALYSIS OF THE ISSUES ARISING FROM THE CAMPAIGN FOR 'RESOURCE CONTROL'**

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<sup>144</sup> See Suzanne Lutz and others, 'Varieties of Private Self-regulation in European Capitalism: Corporate Governance Codes in the UK and Germany' (2011) Vol 9(2) Socio-Economic Review, pp.315-338

<sup>145</sup> Prudential Regulation Authority <<http://www.bankofengland.co.uk/PRA/Pages/default.aspx>>

#### 6.4.1 A SHORT DISCOURSE ON FEDERALISM

Perhaps because of the importance of petroleum to energy supplies, many federal constitutions centralise the management of petroleum resources while providing for some revenue sharing formula between the various tiers of government.<sup>146</sup> The sharing formula adopted by a country is usually undergirded by principles of equity, need, population, land mass, derivation and national interests.<sup>147</sup> But there is need for balance, equity and justice in the sharing of petroleum revenues, as this can determine if host regions are justly treated or not. This has been the case with Nigeria where the NDR has for some time now argued for a return to fiscal federalism in the sharing of Nigeria's petroleum revenues.

Fiscal federalism entails that federating units are able to either manage their petroleum resources directly, or benefit significantly from their natural resources. Currently, Nigeria's federating units lack fiscal federalism in the truest sense, as the states are disproportionately dependent on central government. It has been argued that this hinders the federating units from developing their natural resources and exploiting their economic potential to the fullest.<sup>148</sup> The next segment of this chapter will analyse the issues arising from the advocacy for greater participation in Nigeria's petroleum revenues. Other options that can be exploited to ensure justice and peaceful production of Nigeria's petroleum will also be considered.

The Natural resources charter (NRC) notes that 'failing to provide reasonable compensation as well as equitable participation in the national benefits can give rise to citizens' frustration

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<sup>146</sup> They include Brazil, Argentina, Nigeria, and Iraq. See Carlos Gervasoni, 'A Rentier Theory of Subnational Regimes: Fiscal Federalism, Democracy, and Authoritarianism in the Argentine Provinces' (2010) Vol 62(2) *World Politics*, Alberto Diaz-Caveros, *Federalism, Fiscal Authority, and Centralization in Latin America* (Cambridge, 2006) and Michael M. Gunter, 'Arab-Kurdish Relations and the Future of Iraq' (2011) 32 *Third World Quarterly*, pp 1623–1635

<sup>147</sup> See Olumide Elamide, 'The Inter-face of Ethnicity and Revenue Allocation in Nigeria's First Republic' (2012) Vol 10 *African Identities*, p.95-110, see also Akomaye V. Agba, and Ben Obi, 'Oil Rent Management and Fiscal Federalism: The Nigerian Experience' (2007)

<[http://www.networkideas.org/feathm/mar2007/PDF/Ben\\_Obi.pdf](http://www.networkideas.org/feathm/mar2007/PDF/Ben_Obi.pdf)> accessed 9 January 2012

<sup>148</sup> Apart from petroleum resources, Nigeria is rich in iron, tin, bitumen, coal and steel etc. See Jennifer Abraham, 'Harnessing Nigeria's Solid Mineral Resources' *Punch* (14 November 2013) <<http://www.punchng.com/business/am-business/harnessing-nigerias-solid-mineral-resources/>> Accessed 12 February 2014

and may lead to disruption of extractive projects or to conflict.’<sup>149</sup> And that governments ‘should pursue opportunities for local benefits, and account for, mitigate and offset the environmental and social costs of resource projects’.<sup>150</sup>

The clamour for greater participation in petroleum revenues by the NDR states is known as the struggle for ‘resource control’, and is the subject of much literature.<sup>151</sup> The struggle which has a multifaceted dimension includes litigation, interest groups, politics, and militancy. An understanding of the history of Nigeria’s constitutional development will aid an appreciation of the arguments put forward by the NDR.

#### **6.4.2 THE ISSUES AND LEGALITY BEHIND THE RESOURCE CONTROL AGITATION IN THE NDR**

Nigeria has had a chequered revenue allocation policy. Its independence and republican constitutions of 1960 and 1963 respectively, clearly favoured the principle of derivation and thus prioritised the interests of the NDR as a petroleum producing region. The 1964 Binns Commission however tilted the scales in favour of the need principle. This was based on the argument that it was imperative to provide funds to meet the minimum responsibilities of government, on the one hand, and for equal development to address imbalances.<sup>152</sup> The 1968 Dina Commission restored derivation but gave it lower significance than the 1963 constitution. From 1968 onwards however, derivation was relegated to the background in favour of population, need and land mass. The NDR states were worst hit by this change in fortune, given that over 90 per cent of Nigeria’s petroleum is produced from that region.<sup>153</sup>

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<sup>149</sup> Natural Resource Charter, ‘Overarching Domestic Governance’ <<http://naturalresourcecharter.org/sites/default/files/Natural%20Resource%20Charter%20second%20edition%200-%20DRAFT.pdf>> accessed 27 February 2014

<sup>150</sup> Precept 5

<sup>151</sup> Paul Orogun, ‘Revenue Allocation and Petroleum Politics in Nigeria: the Niger Delta Question’ (2010) Vol. 75(5) *GeoJournal*, pp.459-507

‘Citizenship and Resource Control in Nigeria: The Case of Minority Communities in the Niger Delta’ (2005) *Africa Spectrum*, 2005, Vol.40(1), pp.5-28 and Jeff Colgann, ‘Oil and Resource-backed Aggression’ (2011) *Energy Policy* 39 (2011) 1669–1676

<sup>152</sup> Olumide Elamade, (n 147). See also Ike Oguine, ‘Nigeria’s Oil Revenues and the Oil Producing Area’ (2009) <<http://www.dundee.ac.uk/cepmlp/journal/html/vol4/article4-10.html> vol 4> accessed 13 March 2012

<sup>153</sup> Rosemary Adomokai and William R. Sheate, ‘Community Participation and Environmental Decision-making in the Niger Delta’ (2004) Vol 24 (5) *Environmental Impact Assessment Review* 495-518

The NDR's clamour is not so much for the right to 'manage' as it is for the right to an increased 'derivation' along the lines of the 1963 constitution. In other words, the NDR states are not necessarily challenging the right of the federal government to manage and regulate the petroleum industry, but for a significant stake in petroleum revenues. Thus 'finance' and not 'control' underscores the struggle. This in contrast to Iraq where the Kurdish region clamours not only for the right to partake of petroleum revenues, but also for the right to manage the resource, award petroleum contracts and monitor production output.<sup>154</sup>

The NDR relies on Nigeria's constitutional history. Among Nigeria's four post independence constitutions, the first two were democratically enacted, while the 1979 and 1999 were imposed by the military. The first two constitutions recognised the right of federating units to a sum equal to 50 per cent of the proceeds of all royalties and rents received from petroleum.<sup>155</sup> Beyond 50 per cent entitlement, states were further entitled to share from a distributable account, to which 30 per cent of petroleum revenues were paid, while the remainder of 20 per cent was paid to the federal government.<sup>156</sup> It is worth noting that under the 1960 and 1963 constitutions, petroleum derived from a region's continental shelf was recognised as being a part of those regions.<sup>157</sup>

The NDR was unable however to truly enjoy the benefits of the first two constitutions, since they were enacted at a time when petroleum had not come to dominate the Nigerian economy. The Nigerian army took the reins of power in a 1966 coup and suspended section 140 of the 1963 constitution, and began to rule by arbitrary decrees. The unelected military substantially reduced the rights of the NDR states to petroleum revenues in several ways. First through section one of the Petroleum Act of 1969, ownership and control of all petroleum resources in, under or upon any lands in Nigeria were vested in the federation.<sup>158</sup>

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<sup>154</sup> See Michael M. Gunter, 'Arab-Kurdish Relations and the Future of Iraq' (146)

<sup>155</sup> 134(1) and (2) of Nigeria's 1960 Constitution and the 1963 Constitution.

<sup>156</sup> 134(2)

<sup>157</sup> Section 140 of the 1963 Republican Constitution retained the same formula similar to that of the 1960 Constitution.

<sup>158</sup> The provision is replicated in section 44 of the 1999 constitution which gives the federal government authority over petroleum in Nigeria, its territorial waters of Nigeria, its continental shelf and exclusive economic zone.

Secondly the Offshore Oil Revenues Act 1971 disentitled the NDR from all offshore petroleum revenues, in direct contrast to section 140(6) of the 1963 constitution.<sup>159</sup>

The deprivation of the NDR continued with successive regimes. For instance from 1971-1975, NDR revenues from petroleum produced onshore in the NDR were reduced to 45 per cent. Between 1975-1979, it was reduced to 20 per cent and from 1979-1981 nothing was allocated to the region. Derivation from petroleum revenues was marginally increased to one and half per cent from 1982-1992 and from 1992-1999, there was some attempt to increase derivation to 3 per cent. This level of derivation was possible because the military forcefully crushed any opposition to its authority, in the NDR.<sup>160</sup>

The NDR suffered from environmental degradation and lack of accountability in the management of petroleum revenues during the military era. This perceived injustice was furthered by the fact that the military was dominated mostly by the majority tribes of Yoruba, Hausa and Ibo, of Nigeria, which ironically do not own any significant petroleum resources. It has been noted that:

‘...by 1967 and certainly by 1969, petroleum, particularly the mineral oil, was becoming the major resource in terms of total income and foreign exchange earnings in the country. It was therefore, not difficult for the majority groups who are in control of the Federal Government to reverse the basis of revenue allocation with regard to petroleum resources from derivations to the Federal Government’s exclusive ownership.’<sup>161</sup>

This situation of things continued until 1999 when Nigeria returned to civilian rule after nearly 30 years of military rule. The 1999 constitution which was promulgated by a military decree provided for a 13 per cent derivation for onshore production from the NDR states. It

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<sup>159</sup> *Attorney General of the Federation v Attorney General of Abia State and 35 others* (2002) 6 NWLR (Pt.764), p. 542 Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation ) Act, Cap A 27 LFN 2004

<sup>160</sup> The hanging of environmentalist Ken Saro Wiwa and eight other indigenes of Ogoni land for opposing the operations of Shell brought global attention to the plight of the NDR people. See Marion Campbell, ‘Witnessing death: Ken Saro-Wiwa and the Ogoni Crisis’ (2002) Vol. 5 Postcolonial Studies, .39-49

<sup>161</sup> Idika Kalu, ‘Fiscal Federalism in Nigeria Practices and Issues’ (2011)

<[www.rmaf.gov.ng/.../PAPER.Fiscal%20Federalism%20in%20Nigeria%20](http://www.rmaf.gov.ng/.../PAPER.Fiscal%20Federalism%20in%20Nigeria%20)> accessed 27 February 2014

however did not capture offshore petroleum revenues even though such petroleum was produced from the continental shelf of the NDR states.<sup>162</sup>

With civilian rule, the clamour for resource control which had been in snippets, took a new dimension. Litigation, advocacy, and militancy were all used by communities and groups in the NDR to clamour for better treatment from the FGN. But this advocacy has not gone unchallenged from the Northern regions of Nigeria, as will be shown below.

#### **6.4.3 NORTHERN OPPOSITION TO THE RESOURCE CONTROL CAMPAIGN**

The Northern region of Nigeria, whose elite (not necessarily the masses), had benefited largely from the NDR's petroleum wealth has posed the strongest opposition to the resource control drive. They argue for even economic development among all regions on the basis of need rather than derivation.<sup>163</sup> Politicians from the Northern region also pose the strongest opposition to the passage of the Petroleum Industry Bill 2012. They oppose the proposed 10 per cent Petroleum Host Communities Fund as being a back door avenue to increase derivation for the NDR.<sup>164</sup> Furthermore, the Northern elite have argued that the NDR governors have been unable to account for their utilisation of the 13 per cent derivation they have received since 1999. The NDR governors have countered that due to the swampy nature of the region, development in the NDR is about three times what will be required in the North.

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<sup>162</sup> Section 162 (1-3) of the constitution established the Federation Account into which is to be paid all revenues collected by the government of the federation. These monies are to be distributed in accordance with a revenue distribution formula to be devised by a federal government agency, taking into cognizance principles of population, equality of states, internal revenue generation, land mass and derivation. The principle of derivation was pegged by the constitution as not being less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources. See *Attorney General, Federal Government of Nigeria v. Attorney General Abia State & 35 Ors* (2002) 6 NWLR (Pt.764), p. 542

<sup>163</sup> Onwuka Nzeshi and Dele Ogbodo , 'Why Northern Senators Are Kicking against PIB' Thisday (28 December 2012)  
<<http://www.thisdaylive.com/articles/why-northern-senators-are-kicking-against-pib/134730/>> accessed 27 February 2014

<sup>164</sup> Ibid , see also S 117 of the PIB 2012

There is admittedly some merit in the arguments of the NDR, which struggles with poverty and much environmental degradation from petroleum operations.<sup>165</sup> With increased derivation, NDR states will be in a position to build roads, bridges and the much needed infrastructure needed to connect the swampy areas of the region with the rest of the states' capital. Increased derivation may also lead to more hospitals, better education, and an increased standard of living for the NDR people.

## **6.5 ARGUMENT AND ANALYSIS: PROSPECTS AND CHALLENGES OF FISCAL FEDERALISM FOR THE DEVELOPMENT OF THE NDR**

Fiscal federalism has some advantages as it may 'force' other federating states to develop their human and natural resources and shore up their internal revenue generation rather than rely on petroleum and on the federal government.<sup>166</sup> But increased derivation can only impact the people positively where there are mechanisms to call leaders to account for their management of public funds. For instance the kingdom of Saudi Arabia, with its vast petroleum revenues, is 57<sup>th</sup> on the list in the UNDP human development index, behind Poland and Croatia which are not rich in petroleum.<sup>167</sup> One reason for this is that the Saudi monarchy which controls most of the petroleum revenues in the Kingdom is not elected, nor accountable to the people.

Admittedly, there has been some notable increase in living standards in the NDR, although there is still need for improvement. For instance Bayelsa state which was the poorest and

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<sup>165</sup> Catherine M. Banks and John A. Sokolowski , 'Modeling the Niger Delta Insurgency' (2010) Vol 47 The Social Science Journal 271, 275

<sup>166</sup> Nigeria has about thirty-four solid minerals scattered among its various states. They include coal, ksolin, barite, limestone, dolomite, feldspar, glass, sand, ganstones, gold, iron, ore, lead-zinc, tin and gypsum. But surprisingly, only 31 of these are currently being tapped, and in small quantities. Most lie untapped as the country relies significantly on petroleum. National Bureau of Statistics, 'Minning And Quarrying (Solid Minerals)' <[http://www.nigerianstat.gov.ng/sectorstat/sectors/Minning%20and%20Quarrying%20\(Solid%20Minerals\)#!>](http://www.nigerianstat.gov.ng/sectorstat/sectors/Minning%20and%20Quarrying%20(Solid%20Minerals)#!>) accessed 28 February 2014

<sup>167</sup> UNDP, 'Human Development Reports' <<http://hdr.undp.org/en/countries/profiles/SAU>> accessed 28 February 2014



least developed region in the NDR, now owns a university, a polytechnic, a hospital, and is embarking on the development of bridges to link its three senatorial districts. In the areas of education, numerous scholarships have been awarded to various citizens of the state to study within Nigeria and overseas. Most of these initiatives were absent during Nigeria's military era. But the developments in the NDR since 1999 still fall short of the amount of money it has received so far.

Without good leadership and accountability, increased derivation may result in corruption and further increase the 'resource curse'. For instance, the NDR has earned significantly more than Nigeria's other federating states since 1999, but much of this has been mismanaged, and stolen.<sup>168</sup> According to Joseph Amberkederim, the 'amount of money that has accrued to the South-South governors<sup>169</sup> in the past nine years is enough, more than enough to transform the Niger Delta... if monies are being used judiciously and religiously...'<sup>170</sup>

Rivers state (an NDR state), received 1, 053 billion naira between 1999 and 2008 in federal allocations, in contrast to the north-eastern states of Yobe and Borno which received 175 billion and 213 billion respectively. On a per capita basis, by 2008 the 18.97 million people who lived in the six states in the north-east received on average 1,156 naira per person, while in contrast, Rivers state was allocated N3,965 per capita, and on average the oil producing South- South region received on average N3,332 per capita.<sup>171</sup> Despite this amount, poverty remains an issue in Rivers State.

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<sup>168</sup> Some governors in the NDR have either been implicated in one act of corruption or another, or have been convicted in a court of law. For instance, Chief Diepreye Alamieseigha who ruled Bayelsa State for nearly 7 years (1999-2006), was arrested in London in 2005, for money laundering, and was later convicted in Nigeria in 2007 on six charges related to corruption. In 2012, Chief James Ibori, former governor of Delta state, was convicted in London for money laundering and for fraud. Chief Lucky Igbenidion of Edo State (1999-2007), was convicted in London in 2012, for the theft of over \$250 million. Similarly other governors of other states have had pending matters in court for fraud related offences.

<sup>169</sup> The phrase 'South-South' is used to refer to Bayelsa, Rivers, Delta, Ondo, Edo, Cross River, and Akwa Ibom States. These states in essence constitute the NDR and produce virtually all of Nigeria's petroleum resources.

<sup>170</sup> See Daniel Egiegba Abiboa and Benjamin Maiangwa, 'Corruption and the Underdevelopment of the Niger Delta in Nigeria' (2012) Vol. 5 (8) Journal of Pan African Studies

<sup>171</sup> William Wallis, 'Nigeria's Central Banker Calls for an End to Imbalances' Financial Times (January 26 2012) <<http://www.ft.com/cms/s/0/02ce9e7e-4837-11e1-b1b4-00144feabdc0.html#axzz2VGfBd8T8> > accessed 9 July 2013

Corruption is however not unique to the NDR but is a country wide problem, and arguably should not be the reason to disentitle the region from what is rightfully theirs. It is the position of this thesis that there is need for a deepening of Nigeria's democracy, not only in the NDR, but also in the rest of the country.<sup>172</sup> Currently major hindrances exist to better improvement of the NDR: Northern opposition and weak democratic checks and balances.

The next segment will explore other approaches that have been explored to promote the standard of living of people in the NDR, notably treating the region as a special development case, states' developmental agencies, and corporate social initiatives.

### **6.5.1 SPECIAL DEVELOPMENT STRATEGY FOR THE NDR**

One option for the development of the NDR has been to treat it as a special developmental case, and in that regard, to establish a separate agency to spearhead its development. This approach is not new however, and was proposed for the region even before Nigeria became an independent nation.

In 1958 the Willinks commission noted that there were genuine developmental challenges in the NDR, and that the region had genuine fears of marginalisation from the major tribes. In response to recommendations of the Willinks commission, the Niger Delta Development board (NDDB) was established to develop the NDR.<sup>173</sup> The NDDB was not very effective in fulfilling its mandate due to a lack of political will to develop the NDR. In fact Frynas notes that the NDDB was nothing more than a public relations programme.<sup>174</sup>

In 1992, the military government of Ibrahim Babangida (1985-1993) established the Oil Minerals Producing Areas Development Commission (OMPADEC) to perform functions similar to those of the NDDB. The OMPADEC was again unsuccessful due to a marginal

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<sup>172</sup> Idemudia Uwafiokun (n 7, chapter 1)

<sup>173</sup> See O.G.F. Nwaogu 'Anomalies of the Nigerian Federalism.' (2013) Vol. 9(4) Canadian Social Science, 31, p.116, 120

<sup>174</sup> Jędrzej Georęge Frynas, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta' (2001) Vol. 10 African Affairs, 2001, 36

allocation, and internal corruption. It was replaced by the Niger Delta Development Commission (NDDC) in 2000. NDDC however suffers typically from the same challenges of OMPADEC,<sup>175</sup> and its impact in the region, has been minimal.<sup>176</sup>

Treating the NDR as a special case can only be impactful if there is a concerted effort to ensure that the NDDC is properly empowered to execute their mandate. In that regard, there is need for adequate funding, monitoring and focus. Such agencies should not be involved in granting of scholarships, mini roads, and providing dust bins (as NDDC has been doing), but should focus almost exclusively on capital projects like roads, power and infrastructure. And such agencies should be properly monitored by the National Assembly in order to prevent corruption and diversion of funds by the political class.<sup>177</sup>

## **6.5.2 TOWARDS THE DEVELOPMENT OF PETROLEUM HOST COMMUNITIES**

Past developmental efforts in the NDR have been focused on the region as a whole with little attention paid to petroleum host communities (PHCs). Most PHCs remain significantly poor and undeveloped, with a high level of illiteracy and high maternal and infant mortality. This is also due to the fact that there is hardly any government presence in most PHCs, especially those in the very interior swampy regions. Some PHCs in the NDR like Bonny, Forcados and Brass are very close to the Atlantic Ocean and are not motorable.<sup>178</sup> But this group which actually owns the petroleum in the NDR has argued for special treatment, given that they bear the brunt of petroleum operations and loss of landed property.

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<sup>175</sup> Idemudia (n 7, chapter 1) 186, See Kaniye S.A. Ebeku, 'Critical Appraisal of Nigeria's Niger Delta Development Commission Act 2000' (2003) Vol 6 International Energy Law and Taxation Review, 203-20

<sup>176</sup> Sunday Aborisade, 'Senate Laments NDDC Poor Performance ... Confirms Adegbenro as Ondo Representative' Punch (20 December 2013) <<http://www.punchng.com/business/business-economy/senate-laments-nddc-poor-performance-confirms-adegbenro-as-ondo-representative/>> accessed 28 February 2014

<sup>177</sup> See K.S.A. Ebeku, 'Appraising Nigeria's Niger Delta Development Commission Act 2000' (2004) Vol. 25 Statute Law Review, 85-89

<sup>178</sup> For an in-depth analysis of poverty in the midst of plenty, see Catherine M. Bank and John A. Sokolowski, . See also Ifedi A.J.P, Anyu J.Ndume, 'Blood Oil, Ethnicity, and Conflict in the Niger Delta Region of Nigeria' (2011) 22 Mediterranean Quarterly

The claims of PHCs to special benefits over and above the rest of the NDR is often founded on equity, justice, and common law. On the aspect of equity and justice, it will be recalled that most of the NDR land owners whose primary source of livelihood in the NDR is fishing and farming, have suffered more than any other persons in the NDR. They have lost lands to oil pipeline, petroleum concessions, access roads, canals and bridges that are constructed to oil locations. For example the US state of Texas allows private ownership of petroleum resources, subject to government regulation.<sup>179</sup> In Nigeria however, PHCs have not been given any right to petroleum nor to petroleum revenues found on these lands in the past.

Under common law, the owner of land also benefits from all that is found under the land.<sup>180</sup> This principle has however been overridden by section one of Nigeria's Land Use Act of 1978 which vested all lands in a state in the governor, to be held on trust for the people.<sup>181</sup> But other sections of the Land Use Act recognise the deemed right of occupancy of persons who used such lands for agricultural purposes prior to the enactment of the Act.<sup>182</sup> And section 44 of Nigeria's constitution also provides for compensation in cases of compulsory land acquisition.

It is also important to recognise PHCs as providers of the platforms on which PEPCs operate. And although they do not have contractual relationships with PEPCs, they provide these firms with 'social licence' upon which to operate.<sup>183</sup> It is in recognition of their importance that virtually all the petroleum firms in the Niger Delta execute memoranda of understanding with various communities.<sup>184</sup> A hostile and uncooperative community can make petroleum production difficult, if not impossible, as has been witnessed by militancy, sabotage and recently, oil thefts in the NDR.

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<sup>179</sup> See Bruce M. Kramer and Owen L. Anderson, 'The Rule of Capture –An Oil and Gas Perspective' (2005) Vol 35 Environmental Law 899

<sup>180</sup> National Electric Power Authority vs. Mudasiru Amusa and another. (1972) 12 SC 99 at 114

<sup>181</sup> Cap L 5 LFN 2004

<sup>182</sup> S.O. Adole V. Boniface B. Gwar ler (2008) 3-4 S. C. 78

<sup>183</sup> Joseph N.E. Nwaokoro, 'Beyond Petroleum Production to Community Development: International Oil Companies as De facto Governments' (2010) Texas Journal of Oil, Gas and Energy Law 324

<sup>184</sup> Merrick Hoben, David Kovick, David Plumb, and Justin Wright, 'Corporate and Community Engagement in the Niger Delta: Lessons Learned from Chevron Nigeria Limited's GMOU Process' (2012) Consensus Building Institute <

<[http://www.cbbuilding.org/sites/default/files/field\\_expertise\\_products/Corporate%20and%20Community%20Engagement%20in%20the%20Niger%20Delta\\_Lessons%20Learned.pdf](http://www.cbbuilding.org/sites/default/files/field_expertise_products/Corporate%20and%20Community%20Engagement%20in%20the%20Niger%20Delta_Lessons%20Learned.pdf)> accessed 2 April 2014

In order to address the developmental demands of PHCs, some NDR states have established intervention agencies similar to NDDC. Secondly, PEPCs have also increased their corporate initiatives by building hospitals, awarding scholarships, and granting PHCs special employment and contractual privileges. Thirdly the FGN has sought to tackle the concerns of PHCs through the proposed establishment of the PHC fund. These initiatives and their potential for effective application of petroleum revenues will be considered next.

### **6.5.3 DEVELOPING PHCS: THE PIB AND THE PETROLEUM HOST COMMUNITY FUND**

The PIB 2012 proposes to establish a Petroleum Host Communities Fund (the PHC Fund). The fund will be funded by ten per cent of the monthly net profits of all PEPCs operating in the NDR.<sup>185</sup> In principle the PIB fund is a welcome development as it appears to be the first federal government attempt at addressing the developmental challenges of the PHCs in the NDR. It is doubtful however if the Bill will be enacted into law with the PHC fund intact, due to Northern opposition.<sup>186</sup> The PIB provisions for the PHC Fund also seem to be lacking in details on the modalities for the constitution of the Fund's management, the process for disbursement of funds to communities and the criteria for determining entitlement to the fund.

It is proposed that rather than seek to compensate communities with cash, the monies from the PHC Fund, be used to execute developmental projects within these communities, grant scholarships for educational projects and construct infrastructure. Such initiatives however should be at the instance of representatives of affected communities who should also be on hand to monitor the implementation and execution of such projects.

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<sup>185</sup> S. 117. Profits from offshore production will be paid to the littoral state adjacent to the state from which the petroleum is produced. 118

<sup>186</sup> Niyi Oyeboode, Fidelis Soriwe, Chukwudi Akasiwe, Success Nwogu and Etim Ekpima, 'Again, North Kicks against Derivation Fund' Punch Newspapers (Abuja, 28 July 2012) <<http://www.punchng.com/news/again-north-kicks-against-derivation-fund>> accessed 30th July 2012

#### 6.5.4 STATES' DEVELOPMENT AGENCIES AND THEIR IMPACT IN THE NDR

Edo, Delta and Ondo states established ESOPADEC, DESOPADEC, and OSOPADEC,<sup>187</sup> for the development of their PHCs.<sup>188</sup> Under the DESOPADEC law, 50 per cent of Delta State's 13 per cent derivation from the federation account will be paid directly to the commission. The remaining 50 per cent will be utilized by the rest of the state. This approach which is unique at state level is equitable because it seeks to reward PHCs over and above other non petroleum producing communities given that they bear the brunt of pollution and the acquisition of their lands by the FGN. If this approach is properly implemented, it will ensure that PHCs benefit from petroleum production. It will also ensure that they are compensated for their loss of farming and fishing from environmental pollution, and for the acquisition of their landed properties.

States' development initiatives are closer to PHCs than other federal government institutions like the NDDC, and are thus in a better position to identify the peculiar challenges of each of these communities. Fourthly, these agencies are more focused on PHCs and not the whole state. But in addressing specific PHC development initiatives, there are other issues that need to be addressed. First is how to determine which communities are to benefit from petroleum which straddles two or three communities.<sup>189</sup> Also with current petroleum technology, it is possible to produce petroleum from a particular acreage while operating from a neighbouring community. Would such adjacent community benefit from the fund? These issues require clarification. In order to promote peace and co-operation it is proposed that PHCs and other impacted areas be catered for, by such developmental efforts. This is because although some other communities do not own petroleum, they provide the access to PHCs and pipelines are usually constructed to pass through their lands.

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<sup>187</sup> The above acronyms represent the Edo State Oil Producing Areas Development Commission, Delta State Oil Producing Areas Development Commission, and the Ondo State Oil Producing Areas Development Commission respectively.

<sup>188</sup> Idemudia (n 7, chapter 1)186. The above acronyms represent the Edo State Oil Producing Areas Development Commission, Delta State Oil Producing Areas Development Commission, and Ondo State Oil Producing Areas Development Commission

<sup>189</sup> It is a fact that determining ownership of 76 oil wells between Cross Rivers State and Akwa Ibom State has divided both states as the Supreme Court and the Boundary Commission sought to resolve the issue. See *Attorney General of Rivers State V. Attorney- General of Akwa Ibom State*, All FWLR (pt.579)1023

It is also important that a transparent framework be developed in order to prevent corruption, ensure accountability and prevent fraud in the management of funds in the state agencies, and the PHC Fund, if be passed into law. Idemudia notes that already, there has been the challenge of lack of adequate community input, corruption, and the politicization of the appointment of their boards, and an abandonment of government responsibility to these state development agencies.<sup>190</sup> To that extent, the discussions relating to transparency in paragraph 6.2.1, apply with equal force to these states developmental agencies.

#### **6.5.5 CORPORATE SOCIAL INITIATIVES AND PHCS DEVELOPMENT IN THE NDR**

It is arguable that the most impactful PHC specific development initiatives in the NDR has been done, not by government, but by corporate social responsibility (CSR) initiatives of PEPCs, especially IOCs. In order to improve community relationships, most PEPCs in the NDR made it a point of duty to establish community relations departments through which they engage with PHCs, and execute CSR initiatives. Due in part to corruption, lack of adequate government funds and to the difficult terrains, the only ‘government’ known to many PHCs in the NDR are PEPCs which execute tasks which should ordinarily be performed by local governments. These firms construct bridges, roads, hospitals, granting of scholarships, electricity and develop schools.

The debate on whether a company exists only to make profits for its shareholders, or to accommodate the interests of other stakeholders, is not new to company law.<sup>191</sup> In the NDR however, many PEPCs have CSR programmes, to support government programmes and in other cases, for ease and security of their operations.<sup>192</sup> And PEPCs have been known to target not just PHCs, but sometimes, even specific land owners. For instance in Rivers State, the Ogba community in the Ogba/Egbema/Ndoni local government area, is specifically

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<sup>190</sup> Idemudia Uwafiokun, (n 7, chapter 1), 191

<sup>191</sup> Adolph A. Berle, ‘Corporate Powers as Powers in Trust’ (1931) 44 HLR 1049

<sup>192</sup> William T. Allen, ‘Our Schizophrenic Conception of the Business Corporation’ (1992) 14 Cardozo Law Review 261, 264

targeted by Elf and Agip for development, and is provided with 24 hour power supply, hospitals, roads, employment and contracts.<sup>193</sup>

CSR initiatives of PEPCs appear to be more effective than those of governments perhaps due to a lower corruption index, accessibility to difficult terrains, and corporate monitoring of on-going community projects. Also, companies are less polarised in their allocation of projects and are likely to channel funds to where they are needed. And since the accounts of PEPCs are monitorable under CAMA, there is more openness in the distribution of these funds. Beyond tackling PHC specific initiatives, PEPCs appear to be the only means for a family specific compensation in the NDR. For instance, in Ogba land in the Ogba/Ndoni/Egbema local government area (LGA) of Rivers State, Total gives special attention to land owning families, beyond its PHC specific development initiatives.

If PEPCs are so effective in the development of the region, when compared to LGAs, can Nigeria explore channelling the development of PHCs, and the region in general through PEPCs? This approach may have a more lasting and effective approach to the development of PHCs in the NDR, and is proposed as a viable alternative to the PHC Fund. Thus each petroleum company should be allowed to vote 10 per cent of their net profits for long term investment projects in PHCs. For instance, in collaboration with representatives of PHCs, PEPCs can be required to contribute ten per cent net profits for PHCs, in development of education, and other projects.

This proposal would imply that petroleum firms act as de facto governments in many PHCs, and complement the role of the government, as in fact they have been doing in the NDR. In fact the continued relevance of local governments in Nigeria has been questioned, given that their presence is hardly ever felt in many of the states, and this is epitomised in the NDR.<sup>194</sup> It is on record that the only LGAs that have 24 hour electricity (an essential commodity for

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<sup>193</sup> Total 'An Enduring Partnership with the Communities ' (2013) <[http://www.ng.total.com/03\\_total\\_nigeria\\_commitments/030401\\_community\\_relations.htm](http://www.ng.total.com/03_total_nigeria_commitments/030401_community_relations.htm)> accessed 28 February 2014

<sup>194</sup> See Oluwatobi O. Adeyemi, 'Corruption and Local Government Administration In Nigeria: A Discourse Of Core Issues' (2012) 1 European Journal of Sustainable Development, p.183



development) in the NDR are areas where PEPCs operate.<sup>195</sup> In these areas can be found good water, schools, hospitals and that the general standard of living of these communities are generally better than in other areas where the people depend entirely on government.

An arrangement could be made for PEPCs to contribute a certain amount of their profits for the execution of development projects in the NDR, and such expenditures should be tax deductible. This option may be more viable than the PHC Fund, since such private firms may be more transparent, professional and less political in the execution of their mandate. And this concept is not new. In fact Britain and the Netherlands vested companies with the right to govern some colonial regions before they were formally taken over by colonial governments.<sup>196</sup>

It is not however proposed that PEPCs should take the role of the local government as this would amount to a dereliction of duty. Capital projects should remain the responsibility of the government, while some collaboration is needed between government and PEPCs in order to develop PHCs.

PEPCs as ‘de facto governments’ may face some hurdles however, given first that Nigeria’s crude oil, at the current rate of production, is estimated to finish within 41 years.<sup>197</sup> What will happen after petroleum expires? Secondly, given that managers of PEPCs are not elected representatives of the people, this idea is likely to be resisted and viewed as some form of neocolonisation, even though in reality, CSR initiatives have been the mainstay of some communities in the NDR.

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195 For instance Bonny and Finima local government areas have access to 24 hour power supply due to the operations of NLNG. The Ogba/Egbema/Ndoni local government areas have access to 24 hour power supply due to the operations of Agip, and TotalFinaElf, and the some parts of Ogbia local government areas have access to 24 hour power supply due to the operations of

<sup>196</sup> For instance there was the Royal Niger Company which ‘ruled’ in Nigeria as a proxy for the British government in the 19th century. See J.P. Afam Ihedi, and Ndumbe J. Anyu, (n 178) and there was also the East India company which operated in India. See Ron Rosner, ‘The East India Company’ (2012\_ 43(3) Asian Affairs

<sup>197</sup> James Enejo, ‘W’Bank: Nigeria’s Oil Resources May Last 41 Years’(n 63)

Another way petroleum firms can complement other developmental efforts in the NDR, is to encourage a local 'local' content by giving special concessions to firms from the NDR. And just as NOGICDA gives special privileges to Nigerian firms vis a vis foreign firms, why should not firms from the Niger Delta Region be given special privileges and unique advantages over and above other Nigerian firms? To that extent IOCs should also make it their policy as part of community development initiatives, to patronise firms from the NDR and grant employment privileges to persons from these states. Thus while the government should focus on capital projects like roads and hospitals, PEPCs can be involved in patronising NDR firms, employment and in granting of scholarships.

The above argument is premised on the fact that CSR initiatives of an indigenously owned petroleum company are more likely to impact on the NDR than that of a petroleum company that is owned by indigenes from other parts of Nigeria. Currently most of the indigenous PEPCs are owned by persons from the North and West, due to the deprivation of the NDR during the military era. There is thus need for a deliberate empowerment of NDR firms in this regard.

## **6.6 CONCLUSION**

This chapter has argued that an equitable and effective management and utilisation of petroleum revenues in Nigeria should be the end of the reforms currently underway. And that it is so important that it should not be a side issue. This argument is premised on the basis of justice, equity, and exigency. It argues that not only is it just that the Nigerian people benefit from the industry, but that failure to grant the people their due, can lead to social tensions which would ultimately disrupt any gains made in the industry.

The chapter focused first on transparency in petroleum industry revenues, and argued for a more concerted effort to progress from industry transparency to transparency in expenditures. Transparency is likely to lead to the savings of funds which would have been otherwise stolen. But such savings also require effective and strategic management and to that extent

this chapter examined the NSWF, and compared its governance framework with that of the GAPPs. And while commending the initiatives introduced in the form of NEITI and the NSWF, the chapter argues for a stronger accountability framework which has been a major limitation in Nigeria. Again calls for capable and independent regulators as shown in chapters two and three, were re-echoed. And the chapter also advocated the introduction of complementary approaches in the form of private sector participation. To that extent, it re-echoes calls for a whistleblower regime and a private sector driven regulatory regime.

The third part of the chapter focused specifically on the NDR and its developmental challenges. It analysed initiatives that have been introduced to develop the region which range from 13 per cent allocation of petroleum revenues and the approach of establishing developmental agencies like the NDDB, OMPADEC, and the NDDC. Finally, the chapter also analysed the recent initiatives aimed at specifically developing petroleum host communities which include the proposed PHC Fund as contained in the PIB, initiatives of Edo, Ondo and Delta states, and the CSR of petroleum firms.

#### **6.6.1 A HOLISTIC APPROACH TO PETROLEUM REVENUES APPLICATION AND UTILISATION**

Although the Nigerian economy has been growing steadily since 1999, the impact of this growth on the population has been minimal.<sup>198</sup> This paradox portends dangers for the country. Poverty is an albatross that can destroy the fabric of the nation. The rising Islamic insurgency in Northern Nigeria which has resulted in over 1500 deaths has been blamed on poverty and illiteracy.<sup>199</sup> There has also been agitation in the Eastern and Western parts of the country. And then there is the Niger Delta insurgency.

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<sup>198</sup> See A. H Ekpo, 'Employment, Growth and Poverty Reduction in an Oil Export Economy: Evidence from Nigeria' (2012) being paper presented at the 53<sup>rd</sup> Annual Conference of the Nigerian Economic Society, 27-30 August, Nicon Luxury Hotel, Abuja.

<sup>199</sup> Death Toll in Boko Haram Attacks 1500' BBC (1 April 2014)<<http://www.bbc.co.uk/news/world-africa-26816222>> accessed 2 April 2014

Battling poverty is no more a side issue, and IOCs which partner with the Nigerian government cannot afford to smile to the bank while the communities in which they operate remain in squalor. It is high time that IOCs and their host governments require an undertaking from Nigeria that their joint partnerships will be reflected in development of the communities in which they operated.

Currently, although the NDR and PHCs still claim to be marginalised, the truth is that since the return to civilian rule in 1999, they have had improved access to revenues in comparison to other communities and states in Nigeria. For instance, the NDR benefits from the Niger Delta Ministry, NDDC, PEPCs, and from the 13 per cent derivation, but there is need for co-ordinated approach to the development of the region. Such co-ordination will make it easy to determine the extent of development programmes targeted at the region, or whether such sums are actually mismanaged either by government officials, or by community leaders.

A holistic and concerted effort is required in Nigeria coupled with detailed and long term planning. The NSWf is a step in the right direction and its Infrastructural Fund can be applied to the development of railways, roads, power, and hospitals.

There is need for an integrated approach that would combine the strengths of the federal government, state governments, local governments and the CSR initiatives of PEPCs. Such approach should however be well co-ordinated in order to actually determine the extent to which petroleum revenues are being channelled to the states, NDR, and to PHCs. It is hoped that as Nigeria's democracy deepens, it would entrench the welfare of the people above that of its elite. For it is only when the people benefit from the industry that Nigeria's reforms can be truly said to be successful.

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## 7 CHAPTER SEVEN: CONCLUSION

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### 7.1 INTRODUCTION

Through a series of law reform initiatives, the Federal Government of Nigeria (FGN) seeks to address multiple issues which have bedevilled the Nigerian petroleum industry (NPI). This thesis has analysed these initiatives in a holistic manner in order to provide policy makers with insights on how a more integrated industry reform can positively impact the Nigerian economy. First the thesis sought to establish factors that can be used to determine when a petroleum industry is effectively managed and regulated petroleum. Secondly it established that those factors are weak in the NPI when compared to Norway, and Brazil. Thirdly the thesis sought to determine the extent to which Nigeria can combine administrative and legal reforms in order to develop those factors. To fulfil its purpose comparisons have been made between the Nigerian, Norwegian, and Brazilian petroleum industry legal regimes. Lessons have also been drawn from Malaysia, the UK, and USA, where necessary.

This study is important because it is the first comprehensive attempt to comparatively analyse current legal reform initiatives in the NPI in the light of the fact that the industry has socio economic implications for the Nigerian society. It is also the first study that will seek to combine the strengths of a private sector driven NOC with those of administrative and legal reforms in order to develop the NPI.

The main body of this chapter is divided into five parts. The first part synthesises findings made in response to the research questions, and in the light of those findings, the second part argues for a strategic multi shareholder private driven NOC. The third part argues for effective and vibrant administrative reforms in the NPI as complementary to the NOC, while the fourth part addresses the limitations of the study and makes recommendations for further research. The fifth part concludes the chapter.

How far has the thesis achieved its original goals?

In order to determine the extent to which the thesis has achieved its original goals, it is important to return to the research questions:

What factors, if any, can be used to determine if a petroleum industry is effectively managed and regulated? And to what extent can Nigeria combine a functional and inclusive privatised NOC, with other administrative and legal reforms, in order to develop and generate positive outcomes from the NPI?

Chapter two which set out the theoretical framework for the thesis was devoted to the resolution of the first and second research questions, in generalised terms. Chapters three, four, five and six were specifically dedicated to addressing the specific factors identified in chapter two. Drawing comparisons mainly from Norway and Brazil and Nigeria, this thesis established in chapter two that basically, a petroleum industry will be effectively managed where to a reasonable extent, there is:

effective and efficient regulation;  
a significant indigenous participation; and  
effective frameworks to ensure an equitable application of petroleum revenues for the public good.

The rest of the discussion will be devoted to how Nigeria can attain these factors through legal and non legal reform strategies.

#### **7.1.1 A TWO PRONGED APPROACH TO PETROLEUM INDUSTRY DEVELOPMENT: AN ALL INCLUSIVE PRIVATE SECTOR DRIVEN NOC AND EFFECTIVE PETROLEUM INDUSTRY ADMINISTRATION**

Nigeria should aim to develop an NOC as efficient as Petrobras of Brazil and on the back of this firm, aim for an effectively managed NPI. It was demonstrated in chapters two, four and five that NOCs are often used to implement petroleum industry policies in various countries. It was also shown that beyond acting as gate keepers, some NOCs equally promote and develop local content, generate revenues, and enable wealth distribution through subsidisation of petroleum products. In that regard, Statoil, Petronas, and Petrobras were held out as prime examples.

Chapter five established the PIB seeks the creation of a privatised NOC in the place of the NNPC, which has struggled to perform optimally. In that regard, this thesis recommends that FGN should seek to adopt the Brazilian and Norwegian approaches to petroleum industry development: combine an effective world class NOC with vibrant and capable administrative and regulatory institutions. And the NOC should by virtue of its functionality and effectiveness, complement the efforts of other administrative and legislative reforms in the NPI in the development of the triune factors of efficient regulation, significant local content, and an equitable application of petroleum revenues. This recommendation is premised on the supposition that the financial and technical capacity and strengths of a functional private sector driven NOC in that mould, when combined with equally effective and credible administrative and legislative reforms, will improve the overall performance of the NPI. For instance, in the area of regulation, if the NOC operates as a major operator in the industry, it will be able to act as part industry regulator and monitor the operations of other IOCs. This, as was shown earlier, has been the Petronas story in Malaysia.

It was shown in chapter four that Petronas' regulatory efforts have helped in the promotion of local content in Malaysia. Similarly it will be recalled that to a certain extent, Petrobras of Brazil has positively impacted industry regulation, local content and distribution of wealth to the Brazilian people. And more importantly, it has partnered with Brazil's regulator, the ANP, to develop the industry in a sustainable and arms length manner.<sup>1</sup> Like Petrobras, Nigeria's proposed NOC should continue to enjoy government patronage and exclusive privileges in the award of contracts and execution of downstream jobs, at least during its

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<sup>1</sup> See chapter 2, para 2.4.3, and chapter 4, para 4.4.2

fledging years. And the NOC should be used to promote the restoration of Nigeria's refineries, strengthen the downstream sector of the NPI, and support the development of petroleum technology by investing in research.

Chapter five established that the managers of partially privatised NOCs often have to grapple with the challenge of satisfying non-commercial government objectives on the one hand, and the commercial objectives of private investors, on the other hand. It was also shown that this factor is partly responsible for the underperformance of many NOCs and often leads to conflict of interests, which depletes the value of such firms. And that the propensity for such conflicts to occur increases where an NOC is government controlled.<sup>2</sup>

In order to address the challenges that arise from government control, it is proposed that Nigeria should seek an NOC that will be able to navigate and steer clear from the pitfalls that NNPC has been subjected to. These challenges were identified in chapter five to include lack of operational focus, corruption, and undue external interference.<sup>3</sup> In the light of current constraints to good governance in Nigeria, the NOC should be designed to harness its advantage in the NPI and develop its potentials in a sustainable and efficient manner. This will require a skilful navigation between good corporate governance, and bureaucratic diplomacy. Figure 7.1 shows the functions of a functional NOC.

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<sup>2</sup> Chapter 5, para 5.1

<sup>3</sup> Chapter 5, para 5.3.



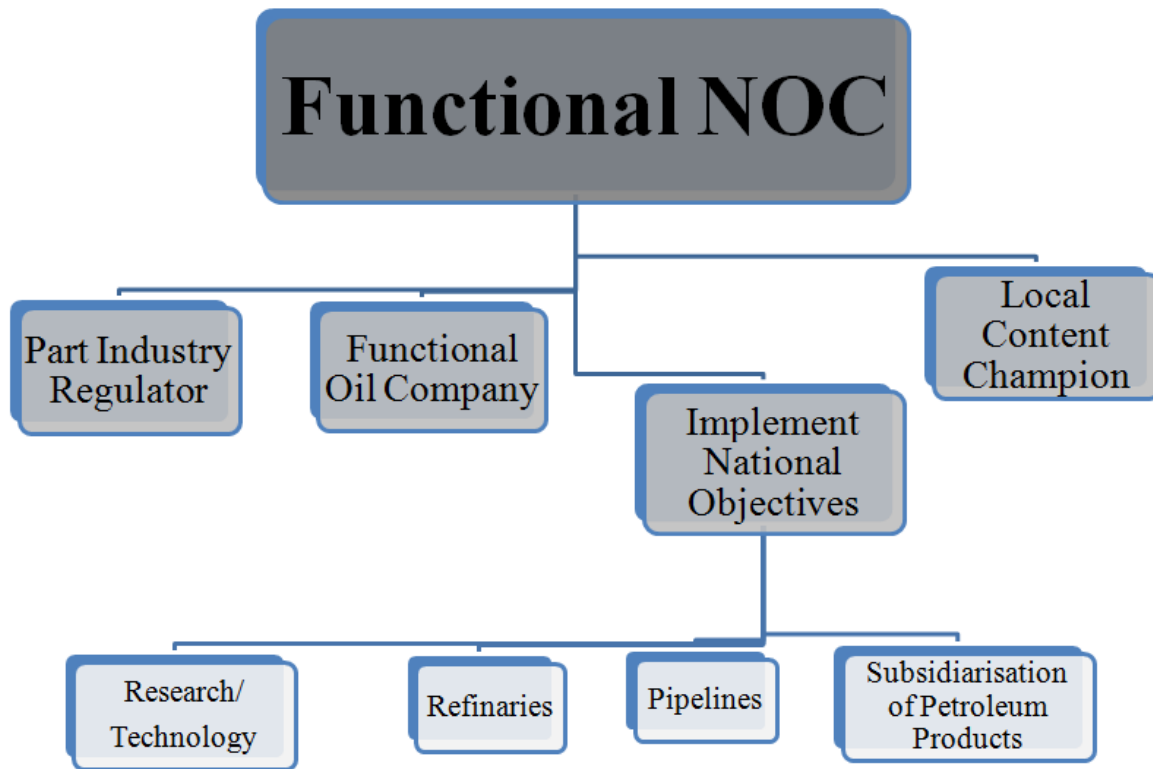


Figure 7.1 Functions of a functional NOC

**But what structure should such a firm assume?**

How can Nigeria’s NOC be able to act partly as industry regulator while at the same time operate at arm’s length from the government, and administrative regulators? What is the guarantee that the firm will not be subject to undue political interference which may negatively impact its productivity and corporate value? How can one firm be able to navigate between the problems of the Niger Delta while at the same time work strategically to garner profits for private investors? The answer to these questions is not in arm’s length subsidiarisation, but in the creation of a firm whose ownership structure is deliberately tailored to limit external interference, address the expectations of multiple stakeholders, and operate with good corporate governance at the same time. This will require some reliance on law, a shareholders’ agreement, and international dispute resolution procedures, all geared towards the promotion of transparency, good governance, efficiency and productivity.

The NLNG model was proposed as a means for achieving efficiency and limiting external interference in a partially privatised government NOC.<sup>4</sup> The merits of that model were identified to include relative board stability, protection of the firm's assets and finances, and the pursuit of corporate objectives in a professional manner, through the use of company law. It was also shown that reliant on the co-operation of its other shareholders, the FGN as a shareholder in NLNG has sought a synergy that has met the aspirations of the government to some extent, and the corporate investors in the firm. For instance, while generating profits for the government, the NLNG is also actively involved in the implementation of Nigeria's gas policies, and has managed to do this in an efficient manner. The result is that the NLNG makes profits for all its shareholders, with reduced incidences of both corruption and bad corporate governance. If nothing else the success of the NLNG model, relative to NNPC, has proven beyond doubt that a partnership between the FGN and private investors is possible in the NPI. The NLNG therefore remains a beacon of hope to many Nigerians that Nigeria can somehow 'get it right', notwithstanding the many challenges of NNPC.

It remains however that while the NLNG model may promote efficiency, and implement national objectives, NLNG's impact is limited to the gas sector, and its share structure is narrow and restricted. What is proposed for Nigeria however is an NOC whose share structure should resemble the NLNG model, the NOC should be more inclusive and target a wide variety of issues. This is because a functional NOC within the Nigerian context should be fully vertically integrated and poised to promote transparency, national objectives, the aspirations of the NDR people, and those of the Nigerian public in general. And while the NLNG/FGN partnership is often shrouded in secrecy and confidentiality due to its private ownership structure, public listing will guarantee a greater level of transparency and promote the firm as an avenue for wealth distribution.

As in the NLNG, the FGN should not hold more than 40 per cent of the NOC's shares. This is because the FGN should be able to exert some leverage over a private sector driven NOC through the use of golden shares, without necessarily owning majority of the firm's shares. Thus golden shares can be used to ensure arm's length dealings with the NOC, while

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<sup>4</sup> See chapter 5.5.5

guaranteeing that the government can intervene on matters of national importance, where necessary.<sup>5</sup> A limited government share ownership will limit the propensity for government interference in the firm's assets, its day to day operations, and in its core objectives.

Should the FGN not have some leverage over the NOC, the firm may pursue profits at the expense of other government objectives and policies. For instance IOCs operating in Nigeria have been unwilling to invest in developing other equally important aspects of the NPI on the ground that they will not make 'bumper profits'. For instance, Shell, Mobil, Total, Agip, and Chevron (the 'Big Five') have been very reluctant to invest in local refineries in Nigeria on the ground that they would not make significant profits.<sup>6</sup> Similarly, the Big Five have been unwilling to partner with the Nigerian government in the farming out of marginal oil fields to small operators, even though it was obvious that they were not developing such fields, and had not done so for nearly ten years.<sup>7</sup> In the same vein, it may be further argued that while the NLNG has partnered in the implementation of Nigeria's gas policies, it has done so because it has benefitted hugely in the process from a barrage of guarantees, tax reliefs, and assurances, but has no testimony of incurring significant expenses in the implementation of Nigeria's non commercial gas policies.<sup>8</sup>

Clearly therefore, some government leverage over the investment decisions of the NOC will be inevitable in order to align its goals with the long term objectives of the FGN, and ensure goal congruence. For instance government controlled Petrobras has continued to implement Brazil's petroleum industry policies even though such projects at times do not benefit the commercial interests of private investors. Due to the constraints of the corruption and weak democratic governance, and the propensity for undue interference however, this thesis does

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<sup>5</sup> See A Verr, Post –Privatization Appraisal of Control and Management in Privatized Banks : The Need for A Golden Share, in IA Ayua and Owasanoye (eds) Privatization of Government Owned Banks and Issues of Ownership and Control (Legal and Economic Perspectives) Proceedings of a Roundtable , NIALS , Lagos (1996) , 75-76

<sup>6</sup> Chika Amanze-Nwachuku, 'Why Int'l Oil Coys Shun Refineries in Nigeria' Thisday (5 September 2011) < <http://www.thisdaylive.com/articles/-why-int-l-oil-coys-shun-refinery-projects-in-nigeria-/97808/>> accessed 12 March 2014

<sup>7</sup> See S 16A of the Petroleum Act 1969, as amended in 1996. See also Etikenrentse G, *Nigerian Petroleum Law* (2nd edn Drewdrew 2004) 98

<sup>8</sup> Adepetun S, and Segun K, 'The Nigerian Liquefied Natural Gas Project' (1996) 24 Energy Policy 595, See also Ibronke T. Odumosu, 'Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations' (2007) 44 Alberta L. Rev, 210

not subscribe for a government controlled NOC as is the case with Petrobras and Statoil, but for a government leveraged NOC. Thus rather majority control, Nigeria can rely on golden shares to ensure that it will always be in a position to exercise some leverage over the firm on a broader scale. Thus golden shares will ensure the NOC does not pursue profits at the expense of other equally important non commercial objectives of the FGN.

The case for golden shares is strengthened by the fact that an NOC that represents the aspiration of the Nigerian people will have to be prepared to make sacrifices in order to gratify some objectives of the government as the Petrobras example demonstrates. To that extent, Nigeria should hold majority of the NOCs shares, but retain some golden shares with the clear objective of protecting national interests, and not to obtain a political leverage over the firm.

#### **7.1.2 A STRATEGIC MULTI STAKEHOLDER NOC AND POTENTIALS FOR DEVELOPING THE NPI**

It is recommended that Nigeria should identify strategic stakeholders in the NPI and give them shares in the firm: the shares should however be tied to specific responsibilities and expectations from each group of shareholders. The purpose for adopting such a structure should be for leverage, reparation, wealth distribution, guarantees, good corporate governance and efficiency. Every class of shareholder in the firm should be strategic and deliberate.

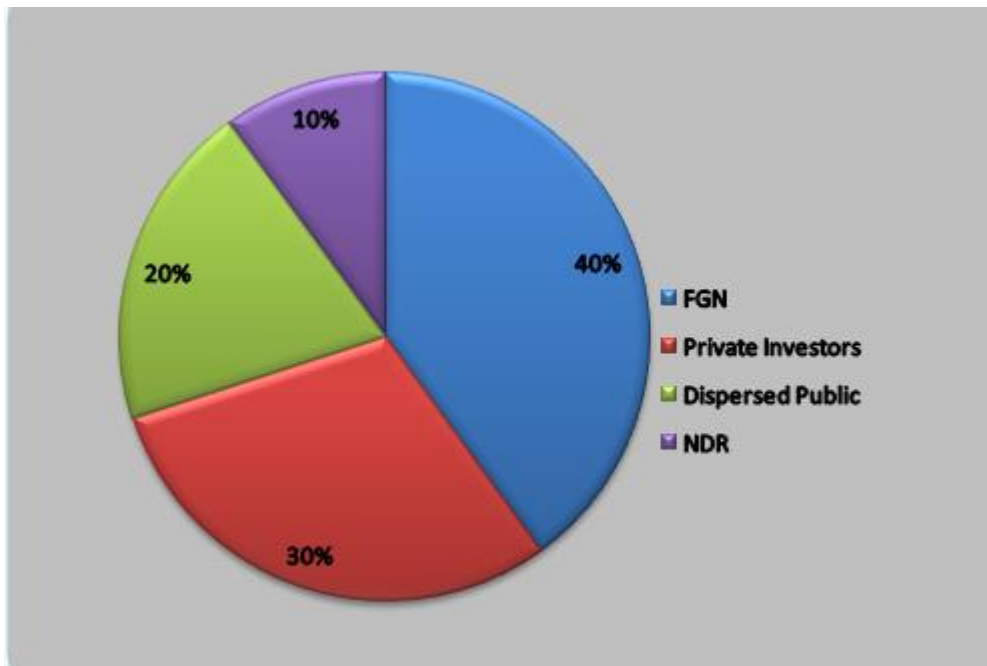
The company should have a diverse group of shareholders who should represent the FGN, the Niger Delta people, the wider Nigerian public, and strategic international investors. Each shareholder should be strategic and deliberate. For instance the FGN as shareholder will guarantee continued government patronage and exclusive privileges, as is the case with Petrobras. And as shareholder the FGN will benefit from the profits of the firm, in addition to taxes, and will be in a better position to exert some influence over its overall strategic decisions.

In order to address some of the grievances of the NDR as identified in chapter six, about ten per cent of the firm should be allocated to the region. Such share ownership may be used to obtain guarantees of positive participation by the region, in the building of an industry that requires the co-operation of the NDR to tackle sabotage and provide adequate security for PEPCs to operate. Secondly, the participation of the NDR, will give the region a greater stake in the regulation of environmental pollution from petroleum exploration activities of the firm.

In order to guarantee a ready supply of technological input, technology transfer, funding, and human capacity, thirty per cent of the NOC should be sold to strategic investors. These investors should consist of a partnership between foreign petroleum firms like Petrobras or Statoil, and locally based petroleum firms like Conoil or Seplat Plc. Since Petrobras and Statoil have managed to navigate between profit making, and non profit making objectives, they are likely to appreciate why the NOC will need to implement a wide variety of objectives, which extend beyond purely private interests of firms like Agip and Shell.<sup>9</sup> Figure 7.2 shows the structure of the firm, as proposed by this thesis.

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<sup>9</sup> It is worth mentioning that Statoil and until recently Petrobras, has operations in Nigeria, and may be more agreeable to a partnership with the NOC since they are used to the Nigerian terrain already. Statoil is involved in Nigeria's offshore Agabmi oil field, off the coast of the NDR. See Statoil, 'Nigeria' (2014) <<http://www.statoil.com/en/about/worldwide/niger/pages/default.aspx>> accessed 14 April 2014



**Figure 7.2 : The share structure of the proposed NOC**

But if Nigeria is to incorporate such firms into the share structure of the NOC, it will have to be ready to subject the firm to an international governance regime. This is because international investors will require the execution of guarantees and agreements which transcend national boundaries. For instance, they may require additional guarantees against expropriation, and will as a matter of course, require that certain disputes be resolved through international commercial arbitration.

Finally, in order to further distribute wealth and ensure transparency in a post PIB post confidentiality era,<sup>10</sup> it is recommended that some part of the firm be sold to the Nigerian public through the Nigerian stock exchange. This strategy will ensure that the firm remains in the public domain, and furthermore will prevent its sale to an oligarchy of rising entrepreneurs, but with narrow interests. Thus the firm will benefit from the ISA regime and other regimes geared towards the promotion of good corporate governance.

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<sup>10</sup> S. 174 of the PIB seeks to remove what perhaps is the greatest clog to transparency in the NPI by making void confidentiality clauses in petroleum contracts between Nigeria and any company if such clauses prevent access to information and documents by third parties in respect of royalties, bonus payments, taxes and any other financial matters that directly affect revenues derived by Nigeria from the exploration and production of petroleum.

And to ensure the firm is able to operate with the efficiency of a private firm, it is further proposed that the shares of the FGN, the diverse public, and the NDR states, should be held and managed on their behalf by institutional managers. This will insulate the NOC from direct contact with the public, the FGN, and the NDR, except through their institutional managers, who can be sacked at the will of their principals, without necessarily affecting the component structure of the NOC.

A similar approach was utilised by the UK when it intervened to aid some struggling financial institutions in the wake of the 2008 financial crisis. The UK incorporated the United Kingdom Financial Investments (UKFI) Ltd as a wholly owned UK government corporation to manage government interests in the Royal Bank of Scotland Group plc, Lloyd's Banking Group plc and in the UK Asset Resolution Limited.<sup>11</sup> The stated goal of the UKFI was to develop 'robust institutional arrangements for keeping UKFI at arm's-length from Government, centred on a heavyweight UKFI board to take all major decisions relating to UKFI's business and its management of the investments.'<sup>12</sup>

While this approach is not without its own challenges,<sup>13</sup> it has the prospect for a public firm to be managed like a private one, and can in essence further insulate the firm from being run like a statutory corporation. Such delegation of powers will equally ensure that the directors of the firm are properly monitored, given that dispersed shareholders are often unable to harness their strengths to promote good corporate governance.

### **7.1.3 CORPORATE GOVERNANCE AND MINORITY PROTECTION IN THE NOC**

There is need for a credible, open, and objective process to ensure the proposed NOC is properly structured. This is because even if the Nigerian government has 40 per cent of the

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<sup>11</sup> UKAR was formed in 2010 to integrate the activities of Northern Rock (Asset Management plc) and Bradford and Bingley plc

<sup>12</sup> <<http://www.ukfi.gov.uk/publications/>> accessed 9 March 2014

<sup>13</sup> In June 2013, the UK Commission on Banking Standards advocated for the scrapping of the UKFI on the ground that the firm cannot escape unacceptable political interference. See Hugo Duncan, 'Commission calls for UKFI to be Scrapped Due to Risk of 'unacceptable' Political Meddling' (This is Money 19 June 2013) <[www.thisismoney.co.uk/money/news/article](http://www.thisismoney.co.uk/money/news/article)> accessed 27 October 2013

firm's shares, it may be able to use the firm in a way that is contrary to its core objectives. To that extent, there is need to ensure that the minority is able to defend the company's assets and objects, through the use of the judicial process. Thus the corporate governance framework of the firm should seek the equitable treatment of all shareholders. One in which: '...all shareholders ... have the opportunity to obtain effective redress for violation of their rights. This in recognition of the fact that, investors' confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is an important factor in the capital markets.'<sup>14</sup>

Minority protection will require the entrenchment of equitable remedies that are enforceable at reasonable cost. In this regard, Adedeji Adekunle notes that many 'developing countries (Nigeria inclusive) have fairly adequate legislative provisions, but lack the institutional strength or political will to create a culture of compliance with a view to transforming the management pattern of corporation'.<sup>15</sup> For instance, CAMA provides for pre-emptive rights, equality of treatment for all shareholders of a particular class, and a qualified majority of votes for certain decisions etc, but harnessing the strengths of the minority to enforce these rights is a different thing altogether.<sup>16</sup> And in order to strengthen minority protection, the fiduciary duty of loyalty can be imposed on majority shareholders of the company through the use of contract law, since CAMA does not recognise shareholders as fiduciaries of companies they invest in. These remedies, if properly enforceable, can limit the extent to which any shareholder can use the NOC to pursue selfish interests, to the detriment of the company in general.

#### **7.1.4 A STRATEGIC BOARD IN THE NOC AND THE CASE FOR PROPORTIONAL REPRESENTATION**

Beyond a strategic share structure, the firm's board should be suited to further promote good corporate governance, and to ensure that various interests are represented and protected in the

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<sup>14</sup> Olusola A. Akinpelu, 'Corporate Governance Framework in Nigeria: An International Review' ((2011) IUniverse 151

<sup>15</sup> Adedeji Adekunle, 'Privatization and the Challenge of Corporate Governance in Nigeria' in Fiona MacMillian (ed) *International Corporate Law* (Hart 2003) 171

<sup>16</sup> Ss 106, 117, and 118



NOC. The firm's board's structure should also be deliberately designed to navigate successfully between government non economic objectives, and the commercial pursuits of private investors. And it should seek to do so with minimal impact on the firm's efficiency and performance.

Although CAMA separates ownership from management, it does not make room for proportional board representation.<sup>17</sup> Thus a shareholder who holds more than 50 per cent of the company's share can appoint or dissolve a firm's board at will, since he has a simple majority.<sup>18</sup> To address this limitation, shareholders of private firms can easily rely on a shareholders' agreement, and in the case of the NOC, Nigeria may seek a special legislative provision to that effect, or an amendment of CAMA.

A six member board consisting of two non executive directors and four executive directors, and supported by a company secretary, is proposed for the NOC. The board should be chaired by a non executive director nominated by the FGN. This individual's terms of reference should be to promote the interests of the FGN, while maintaining some distance from the executive management of the company. In order to further create some distance between management of the NOC and the FGN, its managing director should be elected by all the shareholders of the firm, but without the input of the FGN. This would ensure that the managing director does not owe any particular allegiance to the FGN, and would equally promote a wider set of interests, since he is appointed by a combination of the rest of the shareholders, rather than a single shareholder.

A director of operations should be sourced from the pool of strategic investors. This individual should be experienced in petroleum operations and would be expected to bring his experience and contacts in the operations of the firm. In order to assuage feelings of mistrust on the part of the Niger Delta, it is proposed that a director of personnel and human administration, be nominated by the NDR. This individual should be able to interface with

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<sup>17</sup> S. 63 CAMA. See also *Taiwo Okeowo v Migliore and ors* (1979) 1 SC Reports 138

<sup>18</sup> S 247 CAMA

the NDR in order to ascertain human capacity needs, and to ensure that trainings are targeted to developing human resources, to meet such identified needs.

Due to the strategic role finance plays in the running of a petroleum company, it is proposed that a director of finance be elected by the dispersed shareholders of the company. This individual should be able to protect the financial interests of the firm, and especially those of dispersed shareholders who ordinarily would be in the least position to finances of the NOC. The sixth director should be non executive, and be appointed by the rest of the shareholders, in order to create balance in the board, and to promote governance from an impartial perspective. All the directors of the firm should have equal votes, but the chairman, as a representative of the FGN, should have the casting vote in cases of conflict or deadlock in the board.

Admittedly the above board structure as proposed does not reflect conventional and established norms of corporate governance, where corporate boards are elected by the majority of a company's shareholders, and not necessarily proportionally.<sup>19</sup> Again under established norms of corporate governance, board members ordinarily owe their allegiance to the company and do not necessarily promote sectional interests.<sup>20</sup> A deviation from the norm may however be necessary in the case of the NOC, in recognition of Nigeria's unique challenges, and the importance of the NPI to the economic well being of the country. These challenges therefore necessitate the need to promote good corporate governance from a country specific perspective by developing transparency and good corporate governance, incrementally. In fact a similar board structure currently exists in the NLNG, whose management team consists of representatives of the FGN, Total, Agip, and Shell.<sup>21</sup>

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<sup>19</sup> See ss 248 and 261 of CAMA, where directors are generally appointed by a resolution of the majority of the members meeting in a general meeting.

<sup>20</sup> See s. 279(2) and (3) of CAMA

<sup>21</sup> NLNG, 'Management Team' < <http://www.nlng.com/PageEngine.aspx?id=42>> accessed 31 July 2014

The approach proposed above is quite dissimilar to that of the UKFI.<sup>22</sup> The UKFI model is unsuitable for Nigeria's NOC because while the firms the UKFI invests in appear to be purely commercial in orientation, the proposed NOC will more likely to be a socio-economic asset. Therefore 'over insulation' from the FGN, as is the case of the UKFI, may frustrate the non economic objectives of the government in the NOC. Thus Nigeria does not necessarily have to establish a separate firm to manage its interest in the NOC, rather the minister of petroleum, acting in consultation with the president, should be able to exercise the FGN's voting powers in the firm. In that regard, the minister of petroleum should be able to appoint the chairman of the firm, with a clear mandate of promoting the interests of the FGN in the firm, in a sustainable manner.

Beyond such a share structure, it is important that the board be manned by men of skill and integrity which will be required if the NOC is to be able to navigate between commercial and non commercial objectives. Furthermore compromises and concessions on the part of government and private investors will have to be made from time to time, in order for any public/private partnership to work. Thus the shareholders' agreement should be executed which would define the extent of interaction between the firm and the government.

In order to further insulate the NOC, the shareholders' agreement should provide that the firm be 'shielded' from routine legislative and executive enquiries, and its funding should be made separate from the budget of the FGN. Furthermore the firm should not be subject to special legislative provisions, for that would bring it within the scope of government control. In other words, the only avenue for government intervention should be through the agent through which it holds shares in the company. These measures would ensure that the firm will be able to generate funding either from debt capital, or from the stock market.

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<sup>22</sup> In the case of the UKFI, government sought to ensure the firms in which it invested ('investee firms') were run on commercial basis, as much as possible, a factor which made insulation from political objectives imperative. Thus barriers were erected to insulate investee firms from direct contact with the government other than through the UKFI. A two pronged relationship was established: one between the UKFI and HM Treasury, and the UKFI and investee companies on the other hand. The activities of the UKFI are governed by its Board which is accountable to the Chancellor of the Exchequer who is in turn answerable to Parliament.

## **7.2 NEED FOR VIBRANT AND STRATEGIC LEGISLATIVE AND ADMINISTRATIVE REFORMS IN THE NPI**

Beyond a functional and vertically integrated private sector driven NOC, there is need to equally reform the administrative and regulatory sector of the NPI. In fact, the success of the NOC will be determined by the effectiveness of reforms in other aspects of the industry. The remainder of this chapter will analyse how legislative and administrative reforms can be used to develop local content, regulation, and engender an application of petroleum revenues equitably.

As observed earlier in paragraph 1.7, Norway offers useful lessons than can positively impact the NPI reforms. It is however in the area of petroleum industry regulation that Nigeria stands to gain more from Norway's robust regulation. In that regard, it is proposed that Nigeria should aim for a holistic regulatory approach which integrates health, safety, and the environment, encourages inter agency co-operation, and promotes employee participation. This approach is likely to be more effective than Nigeria's current approach which focuses almost exclusively on environmental protection to the exclusion of health and safety, and fails to harness the resources of employees in HSE regulation.

But unlike Norway, Nigeria should maintain the top down approach, and collaborate with industry in a cautionary manner. The collaborative approach was shown to be dependent on an assumption that the regulated is willing to comply on the one hand, and that regulators are capable, and have credible commitment to effective regulation, factors that are lacking in Nigeria.<sup>23</sup> But with Nigeria's direct participation in the petroleum industry, the collaborative approach to regulation may lead to further erosion of regulatory independence, and may rather give room for regulatory capture. Rather Nigeria should seek to distance regulators from PEPCs, and should adopt the top down approach until such a time as credible commitment and regulatory capacity is developed.

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<sup>23</sup> See paragraph 3.4

And while some form of collaboration with industry is inevitable, Nigeria should rely on detailed regulations, adequate sanctions, and promote effective regulatory monitoring by strengthening regulatory capacity. Also it would not be realistic for Nigeria to aim for an SWF as big as Norway's, as Nigeria's population size and development needs make the diversion of petroleum revenues to other aspects of the economy, necessary. Similarly, as was demonstrated in paragraph 5.5.3, the Norwegian privatisation model of retaining controlling shares in Statoil may not be appropriate for Nigeria, as this would create room for undue interference by the Nigerian political elite; in the face of Nigeria's weak democratic institutions, this can lead to corruption which will ultimately affect the performance of the firm post privatisation.

If Nigeria is to attain truly independent and capable regulation of the NPI, it is recommended that in relation to the industry, the government should act only as regulator and policy maker, and leave the aspect of petroleum production to private players, and to the private sector driven and managed NOC. This has been the approach of the USA and the UK in the management of their petroleum industries. Nigeria should focus on how to effectively generate revenues through an up to date tax stream and from fees paid by petroleum firms on the grant of concessions. The benefit of this is that the government will be able to focus its energies and resources to a sole objective, while reducing avenues for conflict. This will however require a paradigm shift in government policy.

Effective regulation will largely depend on two factors: credible commitment from regulators, and government commitment. Credible commitment requires that regulators and administrators of the NPI change from the 'business as usual attitude', into one of professionalism and credible commitment. All administrative and regulatory institutions that impact the NPI should operate with an attitude premised on trust and legality.

On the part of the FGN there is need for adequate funding of institutions and personnel, and in addition, clear rules, under which such institutions would operate. In order to engender collaboration and avoid regulatory conflicts, laws should clarify institutional jurisdiction, and areas of co-operation. The government also promote credible commitment by seeking to erect

structures that ensure the regulator operates along the lines of good governance and professionalism. And there should be deliberate strategies to check regulators while ensuring they operate with limited restriction. This check is required to prevent independent regulation from resulting in unbridled corruption and abuse of power.

### **7.2.1 IN SEARCH OF EFFECTIVE REGULATION: CEDE SOME REGULATORY POWERS TO PRIVATE CITIZENS**

Chapter three identified Nigeria's dependence on petroleum as a major constraint to regulatory independence. It also identified funding, direct government involvement in petroleum production, and corruption as other significant limitations to regulatory quality in the NPI. In the light of such constraints, it is further recommended that alternative complementary regulatory strategies be adopted by the National Assembly. The Nigerian government should seek the active participation of the citizenry, in the regulation of the NPI which can take the form of regulatory litigation. Such regulatory litigation can be filed either as public interest litigation, a class action, or can be filed by an independent government prosecutor, completely separate from the regulator, as is the case of Brazil.

In the same vein, the law of class actions should be clarified and its scope broadened. It was shown earlier that funding is a clear and present challenge for litigation against petroleum firms by people of the Niger Delta Region.<sup>24</sup> A viable class action and regulatory litigation regime will help to address this challenge however, as they will enable persons affected by the degradation of the environment to combine forces in bringing suits against giant multinational corporations which are sometimes grossly negligent in their response to pollution.

Chapter three explored the importance of citizen participation, borrowing examples from the American and Brazilian approaches to regulation. It was shown that in America, through

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<sup>24</sup> See chapter 3, para 3. 9.4. See Frynas JG, *Oil in Nigeria: Conflict and Litigation Between Oil Companies and Village Communities* (LIT Munster/Hamburg 2000) 244

massive class actions, large multinational corporations have been forced to comply with laws rather than face huge fines that may be imposed on them by courts. The above recommendation is by no means an advocacy for the abdication of regulatory responsibility. Rather it is the recognition of the need to recognise that the citizenry are partners and stakeholders in the industry. This is further justified in the light of the constraints on administrative regulation.

It is recommended that Nigeria should seek to block leakages through which petroleum revenues are misapplied, as this challenge can thwart expected outcomes of any meaningful reform process. In view of the challenge of corruption in the NPI, Nigeria should also seek not only to protect whistleblowers, but to reward them. There should also be a general recognition of this class of persons as being able to potentially complement regulatory efforts. Thus a whistleblower regime should seek to embolden employees and other persons who are privy to acts of corruption, to come forward with such information.

### **7.2.2 ECONOMIC DIVERSIFICATION FOR INDEPENDENT REGULATION OF THE NPI**

Independent regulation and the cession of regulatory powers are dependent on the willingness of the FGN, as policy and law maker, to relinquish its ‘tight hold’ over the NPI. This may never happen unless the importance of petroleum to the Nigerian socio-economic fabric is diminished. Currently however, petroleum remains ‘too’ important to the Nigerian government and regulatory autonomy appears to be an unattainable ideal for some time to come. To that extent, Nigeria requires an economic diversification away from petroleum, and the development of other equally important aspects of the economy. It will be recalled from chapters two and three, that Norway reduced its dependence on petroleum by investing in other segments of its economy. Less dependence on petroleum meant the government was ‘strong’ enough to regulate the industry with reduced concerns about the adverse economic impact of strict regulation.

### **7.3 COLLABORATION AND CO-OPERATION: A VIABLE STRATEGY FOR THE IMPLEMENTATION OF NOGICDA**

Drawing comparisons from Norway, Brazil, and Nigeria, among others, chapters two and four established that the extent to which a country has developed its local content is a measure of how well its petroleum industry is managed and regulated. Conversely a weak local content, after many years of production, may be evidence of lack of good management and well thought out policies. It also established that local content policies are often spearheaded by viable NOCs, indigenous petroleum firms, and/or vibrant petroleum service firms.

Chapter four also analysed Nigeria's current initiative for the development of local content in the NPI as embodied in NOGICDA 2010, and compared same with the approaches adopted by Brazil and Norway. It was shown that although Brazil has some relatively developed technological capacity, its local industry has also struggled to meet the demands of local content legislation. This is in contrast to Norway, which by collaboration with foreign firms has developed one of the highest local content levels in the world, with first class service firms operating across the globe. It was concluded that Nigeria should aim at developing infrastructure, relax NOGICDA where necessary, and pursue a firm local content policy with vigour and commitment. To that extent, it requires an approach that is a hybrid between the strict approach of Brazil, and the flexible approach of Norway.

### **7.4 IN SEARCH OF AN EQUITABLE APPLICATION OF PETROLEUM REVENUES: THE CASE FOR ECONOMIC DIVERSIFICATION, AND LEGISLATIVE AND INSTITUTIONAL REFORMS**

The aim of any meaningful industry reform should not be about systems, but people, thus the real test for the impact of any reform in the NPI should be whether the people are positively



impacted. Thus chapters two and six argued that in addition to effective industry regulation and a significant local content, equitable and effective distribution of petroleum revenues is a factor in determining the effectiveness of an industry.

Chapter six also explored Nigeria's initiatives towards managing petroleum revenues through the years. It focused on recent transparency initiatives in the form of NEITI, FOIA, and the PIB 2012. The chapter also analysed the NSIA Act 2011 and compared same with the Santiago Principles of 2008.

Finally it analysed the legal framework for distribution of petroleum revenues within Nigeria's federal framework and established that the NPI has in recent years been 'haunted' by the consequences of inequitable distribution of petroleum revenues, in the Niger Delta as seen in the rise of sabotage, oil thefts and insecurity. To address this challenge, there may be need to give the NDR a greater stake in the industry beyond the current 13 per cent. This will promote equity, reduce poverty, and in turn positively impact the NPI, as there will be a reduction of crude oil thefts, sabotage and militancy. But this recommendation may only be possible if Nigeria diversifies from petroleum as such diversification will make the other sectors of the economy more ready to increase the constitutional allocation of the NDR. The US is able to adopt a more liberal stance towards states' ownership of petroleum because its economy is not petroleum reliant.

## **7.5 LIMITATIONS OF THE STUDY AND SUGGESTIONS FOR FURTHER RESEARCH**

While the scope of this thesis has been wide, a deliberate effort was made to stay within the ambit of local content development, industry regulation, and the equitable application of petroleum revenues. This has been necessary due to the interconnectedness of the triune factors in the NPI. This approach was necessary since an analysis on a holistic reform of the NPI cannot, but address in some measure, these important factors. This thesis therefore faces

the challenge of space, which made it almost impossible to address the legal regime for the regulation of downstream sector of the NPI. A narrower and more streamlined approach would have been justified if any of the three factors had been functional. But since Nigeria has struggled in regulation, local content, and in the application of petroleum revenues, it became imperative that these interrelated aspects of the reform be address in a holistic manner.

The width of the thesis invariably means that attention has been devoted to various aspects of the NPI, sometimes at the expense of depth. But again, the interrelatedness of these various aspects of the industry however, means that industry reform can only be impactful and meaningful if it is holistic. This approach was however adopted because to do otherwise would have defeated the original purpose of the thesis, which was to analyse the various roles of law in the development of a functional petroleum industry, which can be a model for other African countries.

The challenges facing the NPI are multifaceted and far reaching, requiring on-going legal study within a multidisciplinary environment. This is more so, given the socio-economic dimensions of the industry. To that extent, it would be possible in the future to pursue other aspects of the research in a more incisive and integrated manner. Currently there is need for more funding of legal research especially in the area of the downstream aspects of the NPI. Thus specific legal enquiry is required in the areas of refining, distribution and transportation of petroleum products within the Nigerian environment.

## **7.6 CONCLUSION: A ROAD MAP TO AN EFFECTIVE PETROLEUM INDUSTRY IN A POST PIB ERA**

This thesis has argued that various aspects of the petroleum industry are interconnected and interdependent, thus a comprehensive reform should be holistic and focused. It has argued for legal reforms to be combined with a private sector driven NOC to promote an effectively

managed NPI. The role of law should be appreciated, along with its limitations. It will be recalled that chapter two was devoted to arguing that virtually every aspect of the NPI is petroleum law dependent. Law is therefore an important vehicle for the implementation and development of local content, viable regulation, and the equitable distribution of petroleum revenues. As was shown in chapter two, Brazil and Norway relied heavily on law to develop their petroleum industries.

Chapter two however found that as important as laws are, they are by no means alone. It is an understanding or the lack of understanding of this limitation that may be the separating line between the Brazilian and Nigerian approaches to petroleum industry regulation, and management. For it was shown from chapters three, four, five and six, that although laws provide the basic framework for industry reform, their successful application and implementation are dependent on a variety of factors. These factors include: capable regulators, a strong political will, infrastructural capacity, and a willingness to comply with the law on the part of regulators and the regulated.

Nigeria should seek to develop the petroleum industry by developing other concurrent factors, starting with a strategic privatization of its NOC. Nigeria appears to place undue reliance on law. But without a concurrent development of other equally important factors, the ends of the reform process as epitomised in the PIB, may be frustrated. For instance, it was argued in chapter five that while Nigeria has a commendable local content legislation in the form of NOGICDA, its successful implementation is dependent on factors outside the purview of the law itself. They include infrastructural development in the form of power and transport, among others, industrial capacity, access to funding by local firms etc.

In the same vein, it was also argued that without an independent and capable regulator, laws geared towards the protection of the environment may lie largely unenforced, until such a time as regulators are able to enforce such laws in the public interest. And even though Nigeria has a legal framework for the distribution of petroleum resources, the implementation of these laws are dependent on the willingness of the political class to be subjected to the legal process.

As a matter of first importance therefore, Nigeria should seek to promote good governance, credible elections, a democratic culture and a respect for rule of law. For without these underlying virtues, the instrument of law and legal reform in the NPI will be limited in its impact. For instance, it was shown that most of the challenges of the NPI (weak NNPC, industry regulation, and ineffective application of petroleum revenues) have been largely a product of weak governance frameworks and the lack of credible enforcement regime.

There is also urgent need to enact the PIB into law since the Bill represents hope for the birth of an improved NPI. The recommendations made in this thesis should however be incorporated into the Bill and this will require some amendments and more importantly, a paradigm shift in government policy. For instance, the powers of the minister of petroleum should be reduced in order to ensure that there is independence of regulation.

For the reasons enunciated above, it is recommended that the Nigerian political class should support the passage of the Bill in the interest of the country. Admittedly there may be concerns by this class, (which has benefited immensely from Nigeria's patronage system, and corruption in the NPI), that the passage of the PIB would block avenues for corrupt enrichment. The truth however is that the political class, which has benefitted from Nigeria's other reform and privatisation programmes in other sectors, may even benefit more from the PIB era.<sup>25</sup> This is because the PIB seeks to reduce the role of IOCs and to promote indigenous petroleum firms, and local content, and firms backed by the political elite are almost certainly likely to benefit from concessions which will be awarded in the PIB era. Thus the PIB may actually enable the political class to profit from the petroleum industry in a more legitimate, transparent, and permanent way, as against back hand dealings and corrupt enrichment which has characterised the current era.<sup>26</sup>

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<sup>25</sup> See Privatisation in Nigeria: the Perils, the Promise' *Thisday* (3rd October 2012) <http://www.thisdaylive.com/articles/privatisation-in-nigeria-the-promise-the-peril/126714/> accessed 31 July 2014.

<sup>26</sup> See 'G.N. Ogbonna and Ebimobowei Appah, 'Rent Seeking and Group Interest on Petroleum Revenue in the Nigerian Economy: a Causality Approach' (2013) Vol 5(2) *Asian Journal of Business Management*, 213

Many new petroleum producing countries of Africa are yet unsure if significant discoveries of petroleum resources are a 'blessing' or a 'curse'. They seek mentor countries which are experienced in the field of petroleum industry regulation and management. Naturally they should look first to Nigeria as by far the most populous nation in Africa with the largest economy in the continent. Sadly however, many of them are looking away from Nigeria, to Europe and America. Reform of the NPI at this stage, is therefore not only about improving efficiency and improving the lives of the citizenry, but also about the redemption of the image of the largest black nation on earth. For in Nigeria lies the hope of many smaller African countries. If Nigeria can get it right, then they can get it right. Brazil today stands as a model to many South American countries, as an efficient petroleum industry manager and regulator. Currently Chile, Argentina, and Mexico all have sought to pattern reforms after Brazil.

Without doubt, Nigeria stands on the threshold of history. The NPI is at its middle age. The past forty years have largely not produced an enviable local content, a functional and properly managed NOC, or an effective regulator. The beneficiaries from the industry have largely been the Big Five, and a small cadre of former military personnel, and political oligarchs. Despite its huge potentials, petroleum wealth has not translated into better standards of living for its people. The remaining estimated 41 years of crude oil production can determine the extent to which the country will be able to take its place among the comity of nations, as a serious player in global economics and politics. A radical reform of the petroleum industry is therefore imperative. Much time has been lost already. There is need to redeem the remaining time, and the current ongoing legal reforms may be the starting point.

The strengths of a functionally private driven all inclusive NOC should be combined with ongoing legislative and administrative reforms. Brazil has relied largely on the ANP and Petrobras. Similarly, Norway relied on Statoil, and the PSA: two different arms of the same government. A commercial and a regulatory arm, both endowed with resources and structures to make them functional without being subservient to the other. It is hoped that policy makers, operators, law makers and land owners will be able to converge on the need to ensure that the NPI progresses from its current state of debacle into a truly global one. Nigeria's claim as the 'giant of Africa' will remain in doubt until it is able to effectively manage its

most important economic asset for the improvement of the lives of its citizenry, reduce corruption, and create a platform for entrepreneurs to function effectively. And the proposals in this thesis can assist greatly in attaining these lofty objectives.

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## BIBLIOGRAPHY

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### Books and Publications

- Abed I and Hellye P, (eds) *United Arab Emirates: A New Perspective* (Trindent 2001) 249
- Aileen McHarg and others (eds) , *Property and the Law in Energy and Natural Resources* (OUP 2010) 163
- Alberto Diaz-Caveros, *Federalism, Fiscal Authority, and Centralization in Latin America* (Cambridge, 2006)
- Al-Kasim F, *Managing Petroleum Resources, The ‘Norwegian Mode’ in a Broad Perspective* (Oxford: Oxford Institute of Energy Studies, 2006)
- Ariweriokuma S, *The Political Economy of Oil and Gas in Africa: the case of Nigeria* ( Taylor and Francis 2009)
- Baldwin R and Cave M, *Understanding Regulation* (Oxford, 1999) 2
- Bardach E and Kagan RA, *Going by the Book : the Problem of Regulatory Unreasonableness* (Transaction Publishers 2002) 6.
- Bavly D, *Corporate Governance and Accountability: What Role for the Regulator, Director and Auditor* (Westport, Quorum Books, 1999)
- Birds J and Boyle A.J, *Company Law* (John Birds and others eds, 8th edn, Jordans 2001)
- David G. Victor, Amy M. Jaffe, and Mark H. Hayes (eds) *Natural Gas and Geopolitics: From 1970 to 2040* (Cambridge University Press 2006)
- David G. Victor, Amy M. Jaffe, and Mark H. Hayes (eds) *Natural Gas and Geopolitics: From 1970 to 2040* (Cambridge University Press 2006)
- Victor DG, Hults D, and Thurber MC, (eds) *Oil and Governance State-owned Enterprises and the World Energy Supply* (Cambridge 2012)
- Diaz-Caveros A, *Federalism, Fiscal Authority, and Centralization in Latin America* (Cambridge, 2006)
- Donald N. Zillman, Redgwell C, Omorogbe Y, and Barrera-Hernández L K, (eds) *Beyond the Carbon Economy Energy Law in Transition* (Oxford, 2008) 399 at 401
- Etikenrentse G, *Nigerian Petroleum Law* (2<sup>nd</sup> edn Drewdrew 2004) 23
- Farhang F, *Public Regulation and Private Lawsuits in the US* (Princeton 2010)
- Festus Emiri and Gowon Deinduomo (eds) *Law and Petroleum In Nigeria: Current Challenges* (Malthouse 2009)
- Frynas JG, *Oil in Nigeria: Conflict and Litigation Between Oil Companies and Village Communities* (LIT Munster/Hamburg 2000)
- Fuller L, *The Morality of Law* (1969) New Haven : Yale University Press,
- Hallwood P, *The Offshore Oil Supply Industry in Aberdeen: The Affiliates - Their Characteristics and Importance* (1986 University of Aberdeen)
- Hussain M, *Corporate Fraud, the Human Factor* (Blumsbury, 2014)50
- Ibrahim A.A, and Peter H, (eds) *United Arab Emirates: A New Perspective*. (Trindent Press 2nd edn, 2001) 231-248
- Keasey K, Thompson S, and Wright M, (eds), *Corporate Governance: Economic, Management and Financial Issues* (Oxford, OUP, 1997)

- Levi-Faur D, (ed), *Handbook on the Politics of Regulation* (Edward Elgar, 2011) 3-6
- MacMillian F (ed) *International Corporate Law* (Hart 2003) 171
- McAllister LK, Making Law Matter , *Environmental Protection and Legal Institutions in Brazil* ( Stanford University Press 2008
- McHarg A, Barton B, Adrian Bradbrook, and Godden L, (eds) , *Property and the Law in Energy and Natural Resources* (OUP 2010)
- Mitnick B, *The Political Economy of Regulation* ( New York, Columbia University Press, 1980)
- Monks B, and Minnow N, *Power and Accountability* (HarperCollins, Glasgow, 1991),
- Muller S, and others (eds) in *The Law of the Future and the Future of the Law*
- Norman J. Smith, *The Sea of Lost Opportunity: North Sea Oil and Gas, and the Offshore Supplies Office* (2011Elsevier)
- Oliver RW, *What is Transparency* (McGraw Hill 2004)
- Raymond MS, and Leffler WS, *Oil & Gas Production in Nontechnical Language*, (3rd edn Penwell Books 2006)
- Sam Muller, Zouridis S, Frishman M, and Kistemaker L (eds) *The Law of the Future and the Future of the Law*
- Taverne B, *Industry And Governments: An Introduction To Petroleum Regulation, Economies And Government Policies* (Kluwer 1999)

#### Articles

- Abram Chayes, ‘The Role of the Judge in Public Law Litigation.’ (1976) 89 HLR
- Abutudu M, and Garuba D, ‘Natural Resource Governance and EITI Implementation in Nigeria’(2011) 47 Current African Issues
- Abiboa DE and Maiangwa B, ‘Corruption and the Underdevelopment of the Niger Delta in Nigeria’ (2012) Vol. 5 (8) Journal of Pan African Studies
- Agbiboa D.E, ‘ Between Corruption and Development: The Political Economy of State Robbery in Nigeria’ (2011) Vol 108 Journal of Business Ethics
- Adeyemi OO, ‘Corruption and Local Government Administration In Nigeria: A Discourse Of Core Issues’ (2012) Vol 1 1 European Journal of Sustainable Development
- Adepetun S, and Segun K, ‘The Nigerian Liquefied Natural Gas Project’ (1996) 24 Energy Policy
- Akinpelu OA, ‘Corporate Governance Framework in Nigeria: An International Review’ ((2011) IUniverse
- Allen WT, ‘Our Schizophrenic Conception of the Business Corporation’ (1992) 14 Cardozo Law Review
- Al-Kasim F, Soreide T, and Williams A, ‘Corruption and Reduced Production: an Additional Resource Curse Factor?’ (2013) 54 Energy Policy
- Al-Maied and others, ‘A Sustainable Approach to Controlling Oil Spills’ (2012) 113 Journal of Environmental Management
- Al-Mazeedi Wael, ‘ Privatising National Oil Companies in the Gulf’ (1992) 29 Energy Policy
- Alstine JV, ‘Transparency in Resource Governance, The Pitfalls and Potential of “New Oil” in Sub-Saharan Africa (2014) Vol. 14 Global Environmental Politics
- Antonio Gidi ‘Class Actions in Brazil: a Model for Civil Law Countries’ (2003) 51 American Journal of Comparative Law



- Backer local content, 'Sovereign Wealth Funds as Regulatory Chameleons: the Norwegian Sovereign Wealth Funds and Public Global Governance through Private Global Investment' (2010) 41 *Georgetown Journal of International Law*
- Badmus I, Oyewola OM, and Fagbenle RO, 'A Review of Performance Appraisals of Nigerian Federal Government-Owned Refineries' (2012) 4 *Energy and Power Engineering*
- Banks CM and Sokolowki JA, 'Modeling the Niger Delta Insurgency' (2010) Vol 47 *The Social Science Journal*
- Bermann GA, 'US. Class Actions and the "Global Class' (2009) 19 *Kan. J.L. & Pub . POL'Y*
- AM Bertelli and AB Whitford, 'Perceiving Credible Commitments: How Independent Regulators Shape Elite Perceptions of Regulatory Quality' (2009) 39 *British Journal of Political Science*
- Barry Scholl and K. Timken, 'Blow the Whistle: The Dodd-Frank Act Creates New Incentives for Whistleblowers –and Compliance Issues for Utah Businesses' (2012) 25 *Utah Bar Journal*
- Bernardi. R. A. and Catherine C. LaCross, 'Corporate Transparency: Code of Ethics Disclosures.' (2005 ) 75 *CPA*
- Berle AA, 'Corporate Powers as Powers in Trust' (1931) 44 *HLR*
- Bertelli AM and Whitford AB "Perceiving Credible Commitments: How Independent Regulators Shape Elite Perceptions of Regulatory Quality " (2009) 39 *British Journal of Political Science*
- Bettina Lange and A. Gouldson "Trust-based Environmental Regulation." (2010 ) 408 *Science of the Total Environment*
- Blades W. B, 'Production, Politics, and Pre-Salt: Transitioning To a PSC Regime' (2012) 7 *Texas Journal of Oil and Gas Energy Law*
- Brunetti A, and Weder A, 'A Free Press is Bad News for Corruption', (2003) 87 *Journal of Public Economics*
- Burgess J.M, 'Effective and Efficient Regulation in Nova Scotia' (2003) 26 *Dalhousie L.J*
- Browning Jeffries 'Shareholder Access to Corporate Books and Records: the Abrogation Debate '(2010-2011) 58 *Drake L. Rev*
- Carlos O. Saraiva 'Brazilian Legislation on Pollution of the Sea and Inland Waters.' (2010-2011) 6J. *Mar. L. & Com*
- Chen CX. Lu H, and Sougiannis T, 'The Agency Problem, Corporate Governance, and the Asymmetrical Behavior of Selling, General, and Administrative Costs' (2012) 29 *Contemporary Accounting Research*
- Colgann J, 'Oil and Resource-backed Aggression' (2011) *Energy Policy* 39
- Damachi, B. B. and Y. Zhaosheng, 'The Nigerian Shipping Industry and Indigenous Shipping Companies' (2005) 32 *Maritime Policy & Management*
- De Oliveira and Ricardo Soares 'Business success, Angola-style: Postcolonial Politics and the Rise and Rise of Sonangol (2007) 45 *The Journal of Modern African Studies*
- Dean W. James and Tatiana Andreyeva, 'Privatization, Ownership Structure and Company Performance: the Case of Ukraine' (2007) 5 *Journal for Institutional Innovation, Development and Transition*
- Dibua JI, 'Citizenship and Resource Control in Nigeria: The Case of Minority Communities in the Niger Delta' (2005) Vol 40 *Africa Spectrum*
- Dixon A.D and Monk A.H.B, ' Rethinking Sovereign Wealth Funds' (2012) 37 *Transactions of the Institute of British Geographers*
- Ebeku KSA, 'Critical Appraisal of Nigeria's Niger Delta Development Commission Act 2000' (2003) Vol 6 *International Energy Law and Taxation Review*

- Elamide O, 'The Inter-face of Ethnicity and Revenue Allocation in Nigeria's First Republic' (2012) Vol 10 African Identities
- Engoboh Emeseh, 'The Limitation of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria' (2006) 24 J.E.N.R.L
- Enweremadu DU, 'Nigeria as an Emerging Economy? Making Sense of Expectations' (2013) Vol 20 South African Journal of International Affairs
- Erjia Joy Guan, 'Understanding Brazil's Oil Industry: Policy Dynamics and Self Sufficiency' (2010) 2 Journal of Emerging Knowledge of Emerging Markets
- Erling Røed Larsen, 'Escaping the Resource Curse and the Dutch Disease? When and Why Norway Caught Up with and Forged Ahead of Its Neighbours' (2006) 65 The American Journal of Economics and Sociology
- Garcia-Canal E, and Guillen MF, 'Risk and the Strategy of Foreign Location Choice in Regulated Industries' Strategic Management Journal (2008) 29 Strategic Management Journal
- Faleye F, 'The Costs of Intense board Monitoring' (2011) Vol 101 Journal of Financial Economics
- Familoni, K. A. 'The Role of Economic and Social Infrastructure in Economic Development: A Global view' (2006) 6 Journal of Economic Perspectives
- Fernando Antonio Slaibe Postali, 'Petroleum Royalties and Regional Development in Brazil: The Economic Growth of Recipient Towns' (2009) 23 Resources Policy
- Finch V, 'Corporate Governance and Cadbury: Self-Regulatory and Alternatives' (1994) Journal of Business Law
- Frynas JG, 'Legal Change in Africa: Evidence From Oil-Related Litigation in Nigeria' (1999) 43 Journal of African Law
- Frynas JG, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta' (2001) Vol. 10 African Affairs
- Geir Sverre Braut and Preben H. Lindoe (2004) 'Risk Regulation in the North Sea: A Common Law Perspective on Norwegian Legislation : The Norwegian model' (14) Safety Science Monitor
- George C. Oguejiofor, 'Gas Flaring in Nigeria: Some Aspects for Accelerated Development of SasolChevron GTL Plant at Escravos' (2006) 28 Energy Sources
- Gervasoni C, 'A Rentier Theory of Subnational Regimes: Fiscal Federalism, Democracy, and Authoritarianism in the Argentine Provinces' (2010) 62(2) World Politics
- Geske Dijkstra, 'What Did US\$18 bn Achieve? The 2005 Debt Relief to Nigeria' (2013) 31 Development Policy Review
- Grant D.S, 'Allowing Citizen Participation in Environmental Regulation: An Empirical Analysis of the Effects of Right-to-sue and Right-to-know Provisions on Industry's Toxic Emissions.' (1997) 78 Social Science Quarterly
- Gunter M.M, 'Arab-Kurdish Relations and the Future of Iraq' (2011) 32 Third World Quarterly,
- Gutin A, 'Regulating Sovereign Wealth Funds in the U.S.: A Primer on SWFs and CFIUS' (2010) 5 FIU L. Rev
- Guobadia, O. O, 'The Relevance of the Judiciary in a Democratic Nigeria'(2012) 20 Afr. J. Int'l & Comp. L
- Hausken K and Zhuang J, 'The impact of Disaster on the Strategic Interaction between Company and Government' (2012) Vol 221 European Journal of Operational Research
- Henry Hansmann and others 'Law and the Rise of the Firm' (2006) HLR 119.

- Hopkins A, 'Risk-Management and Rule Compliance: Decision-making in Hazardous Industries' (2006) 49 Safety Science
- Ibronke T. Odumosu, 'Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations' (2007) 44 Alberta L. Rev
- Idemudia Uwafiokun, 'The Resource Curse and the Decentralization of Oil Revenue: the case of Nigeria.' (2012) 35 Journal of Cleaner Production
- Ifedi A.J.P, Anyu J.Ndume, 'Blood Oil, Ethnicity, and Conflict in the Niger Delta Region of Nigeria' (2011) 22 Mediterranean Quarterly
- Ike Oguine 'Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues' (2011) 29 JENRL
- Iwayemi A, and Fowowe B, 'Impact of Oil Price Shocks on Selected Macroeconomic Variables in Nigeria' (2011) 39 Energy Policy
- Jenna G. Farleigh, 'Splitting the Baby: Standardizing Issue Class Certification.' (2011) 64 Vand. L. Rev
- Jean Tirol, 'Corporate Governance'(2001) 69 Econometrica
- Jesse Salah Ovadia , 'The Making of Oil-backed Indigenous Capitalism in Nigeria' (2012) 18 New Political Economy
- Jibrin, S. M. and others, 'Impact of Petroleum Profit Tax on Economic Development of Nigeria' (2012) 5 British Journal of Economics, Finance and Management Sciences
- João S.C.N, 'Risk-Bearing Service Contracts in Brazil'(1985) 3 JERNL
- Gyong J.E, 'Social Analysis of the Transformation Agenda of president Goodluck Ebele Jonathan' (2012) 16 European Scientific Journal
- Hittinger CW and Bona MJ, 'The Diminishing Role of the Private Attorney General in Antitrust and Securities Class Action Cases Aided by the Supreme Court' (2009) 1 Journal of Business and Technology Law
- Hong TL, and Lening L, 'Death Penalty in China: The Law and the Practice' (2005) Vol 33 Journal of Criminal Justice
- Jara-Bertin M, López-Iturriaga F.J, and López-de-Foronda, 'Does the Influence of Institutional Investors Depend on the Institutional Framework? an International Analysis' (2012) Vol. 44 Applied Economics
- Joseph E. O. Abuju, 'ILO Standards and the Nigerian Law of Unfair Dismissal' (2009) 17 African Journal of International and Comparative Law
- Joseph. S. Schumacher Introducing Transparency into the Oil Industry: The Quest for E.I.T.I.' (2004) 4 Global Jurist Advances
- Julius O.O, ' The Role of Multinational Companies in Tax Evasion and Tax Avoidance : The Case of Nigeria' (2011) 22 Critical Perspectives on Accounting
- Kahan M and Rock E.B, "Where the Government is the Controlling Shareholder" (2011) 89 Tex. L. Rev
- Kakonge JO, ' Challenges of Managing Expectations of Newly Emerging Oil and Gas Producers of the South' (2011) Vol 4 J.W.E.L. & B
- Kern S, 'Sovereign Wealth Funds : New Economic Realities and the Political Responses' (2009) Vol 9, Revue d'Économie Financière pp
- Kramer B and Anderson OL, 'The Rule of Capture –An Oil and Gas Perspective ' (2005) 35 Environmental Law
- Kuwait: Have its Oil and Gas Prospects been Exaggerated? (2007) 32 Oil and Energy Trends (2012). 40 World Development
- Kyambalesa J 'Corruption: Causes, Effects and Deterrents'(2006) 36 Africa Insight

- Laura Cabeza-Garcia and Silvia Gomez-Anson 'Post-privatization ownership concentration: Determinants and influence on firm efficiency' (2011) 39 *Journal of Comparative Economics*
- Lawrence A. Atsegbua 'The Nigerian Oil and Gas Intry Content Development Act 2010: an examination of its Regulatory Framework' (2012) *OPEC Energy Review*
- Lazarus O. Ukpere 'A Strategic Reposition of the Maritime Industry for Economic Recovery and Sustainability: "The Cabotage Act"' (2011) 5 *African Journal Of Business Management*
- Lindøe, P. H. and others, 'Robust Offshore Risk Regulation – an assessment of US, UK and Norwegian Approaches.' (2012) 25-29 *Helsinki*
- Luff P, 'Risk Regulation and Regulatory Litigation' (2011) 64 *Rutgers L. Rev.* 73
- Lutz S, Eberle D and Lauter D, 'Varieties of Private Self-regulation in European Capitalism: Corporate Governance Codes in the UK and Germany' (2011) 9 *Socio-Economic Review*
- Margaret Jane Radin, *Reconsidering the Rule of Law* (1989) 69 *B.U. L. Rev*
- Matthew Genasci and Sarah Pray, 'Extracting Accountability: The Implications of the Resource Curse on for CSR: Theory and Practice' (2008) 11 *Yale H.R. & Dev. L.J*
- McCabe M, and Nowark M, 'The Independent Director on the board of Company Directors' (2009) 23 *Managerial Auditing Journal*
- Megginson W.L and Netter J.M 'From State to Market: A Survey of Empirical Studies on Privatization' (2001) 39 *Journal of Economic Literature*
- Michael E Humphries, 'The Competitive Environment for Oil and Gas Financing' (1995) 23 *Energy Policy*
- Michael Fini and L. Rethel, 'Enacting the Rules of Global Finance; Sovereign Wealth Funds and the Promotion of Corporate Governance Reform' (2013) 11 *Asia Eur J*
- Michael M. Ting, 'Whistleblowing' (2008) 108 *American Political Science Review*
- Michelman J.E, MacArthur J.B, and Shea Christina, 'The Growing Challenge of Corruption in China' (2011) 22 *Journal of Corporate Accounting & Finance*
- Monk Ashby, 'Recasting the Sovereign Wealth Fund Debate: Trust, Legitimacy, and Governance' (2009) 14 *New Political Economy*
- Moore M.T, 'The End of "Comply or Explain" in UK Corporate Governance?' (2009) 60 *Northern Ireland Legal Quarterly*
- Musa Jibrin and others, 'Impact of Petroleum Profit Tax on Economic Development of Nigeria.' (2012) 5 *British Journal of Economics, Finance and Management Sciences*
- Norton J.J, 'The Santiago Principles' and the International Forum of Sovereign Wealth Funds: Evolving Components of the New Bretton Woods 11 *Post-Global Financial Crisis Architecture and Another Example of Ad Hoc Global Administrative Networking and Related 'Soft' Rulemaking* (2010) 29 *Rev. Banking & Fin. L.*
- Nwajiaku-Dahou K, 'The Political Economy of Oil and 'Rebellion' in Nigeria's Niger Delta' (2010) 39 *Review of African Political Economy*
- Nwaogu OGF, 'Anomalies of the Nigerian Federalism.' (2013) 9(4) *Canadian Social Science*
- Nwaokoro J, 'Beyond Legislation: A Contract Alternative to Legislating Local Content in Nigeria' (2009). 18 *Currents Int'l Trade L.J*
- Nwaokoro JNE, 'Nigeria's National Content Bill: The Hype, the Hope and the Reality' (2009) 55 *Journal of African Law*
- Nwaokoro JNE, 'Beyond Petroleum Production to Community Development: International Oil Companies as De facto Governments' (2010) *Texas Journal of Oil, Gas and Energy Law* 324
- Nwaokoro JE, 'Signed, Sealed but will it Deliver? Nigeria's local content Bill and Cross-Sectoral Growth' (2012) *J.W.E.L.B.* 4.

- Obi Cyril, 'The Petroleum Industry: A Paradox or (Sp)oil of Development?' (2010) Vol.28(4) *Journal of Contemporary African Studies*
- Odeh A. Mercy, 'Privatization of Public Enterprises and Productivity: Nigeria's Dilemma' (2011) 2 *Journal of Emerging Trends in Economics and Management Sciences*
- Ogbonna G.N and Appah E, 'G.N. Ogbonna and Ebimobowei Appah, 'Rent Seeking and Group Interest on Petroleum Revenue in the Nigerian Economy: a Causality Approach' (2013) Vol 5(2) *Asian Journal of Business Management*, 213
- Okere B. Obinna, 'Judicial Activism or Passivity in Interpreting the Nigerian Constitution (1987) 36 *International and Comparative Law Quarterly*
- Okpanachi E, and Andrews N, 'Preventing The Oil "Resource Curse" In Ghana: Lessons From Nigeria' (2012) 68 *The Journal of Global Education*
- Okoroji Lazarus and Wilfred Isioma Ukpere, 'A Strategic Reposition of the Maritime Industry for Economic Recovery and Sustainability: "The Cabotage Act"' (2011) 5 *African Journal of Business Management*
- Olusegun A. Akanbi and C. B. D, 'Macro-econometric Modelling for the Nigerian Economy: A Growth-poverty Gap Analysis' (2011) 28 *Economic Modelling*
- Onorato W and Park JJ, "World Petroleum Legislation : Frameworks that Foster Oil and Gas Development" (2001) 39(1) *Alberta Law Review*
- Orogun P, 'Resource Control, 'Revenue Allocation and Petroleum Politics in Nigeria: the Niger Delta Question' (2010) Vol. 75(5) *GeoJournal*
- Osaretin Aigbovo, 'Nigerian Anti-corruption Statutes: an Impact Assessment' (2013) 62 *Journal of Money Laundering Control*
- Page A, 'Unconscious Bias and the Limits of Director Independence' (2009) *University of Illinois Law Review*
- Patrick Luff 'Risk Regulation and Regulatory Litigation' (2011) 64 *Rutgers Law Review*
- Pendse S.G, 'Ethical Hazards: A Motive, Means, and Opportunity Approach to Curbing Corporate Unethical Behaviour' (2012) 107 *J Bus Ethics*
- Peter. H. Eigen 'Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry 29(2) *Houston Journal of International Law*
- Rachel Beller 'Whistleblower Protection Legislation of the East and West: Can it really reduce Corporate Fraud and Improve Corporate Governance? A Study of the Successes and Failures Whistleblower Protection Legislation in the USA and China' (2011) *N.Y.U. J. L. and Bus*
- Rachinsky A, 'The Role of Oligarchs in Russian Capitalism' (2005) 19 *Journal of Economic Perspectives*
- Rehana Kouser and others , 'Reasons for Privatization and Consequent Role of Government: Comprehensive Study Based on Early Evidence'(2011) 2 *International Journal of Contemporary Business Studies*
- Rich Richard and others, 'Citizen Participation and Empowerment: The case of Local Environmental Hazards '(1995) 23 *American Journal of Community Psychology*
- Rich Richard and others, 'Citizen Participation and Empowerment: The case of Local Environmental Hazards.' (1995) 23 *American Journal of Community Psychology*
- Richard Mulgan, 'Accountability": an Ever-Expanding Concept?' (2002) 78 *Public Administration*
- Robert B. Ahdieh, 'Dialectical Regulation' (2008) 38 *CONN. L. Rev*
- Robert B. Seidman " Law and Development: The Interface Between Policy and Implementation' (1981) 2 *Third World Law Journal*

- Robinson J.A. and others, 'Political Foundations of the Resource Curse' (2006) 79 *Journal of Development Economics*
- Schleifer A, and Vishney R.W, 'Survey of Corporate Governance' (1997) 52 *Journal of Finance*
- Rosemary Adomokai and W. R. Sheate 'Community Participation and Environmental Decision-making in the Niger Delta' (2004) 35 *Environmental Impact Assessment Review*
- Rosner R, 'The East India Company' (2012) 43(3) *Asian Affairs*
- Ruth W. Grant and Robert O. Keane, 'Accountability and Abuses of Power in World Politics' 99 *American Political Science Review*
- S.I. Strong, 'Regulatory Litigation in the European Union: Does the U.S. Class Action Have a New Analogue' (2012) 88 *Notre Dame L. Rev*
- Saul Estrini, 'Corporate Governance and Privatization: Lessons from Transition Economies.' (2002) 11 *Journal of African Economies*
- Saraiva, C.O, 'Brazilian Legislation on Pollution of the Sea and Inland Waters' (1975) 6 *J. Mar. L. & Com.*
- Sala-i-Martina X, and Subramanian A, 'Addressing the Natural Resource Curse: An Illustration from Nigeria' (2012) Vol. 22 *Journal of African Economies*
- Seidenfeld M. and J. S. Nugent, 'The Friendship of the People: Citizen Participation in Environmental Enforcement.' (2005) 73 *Geo. Wash. L. Rev*
- Sonibare SO, Sonibare OO, Ekundaye OO, and Zeng EY, 'Assessment of Organochlorine Pesticides Residues in Higher Plants from Oil Exploration Areas of Niger Delta, Nigeria' (2012)
- Soobaroyen T, and Mahadeo JD, 'Do Corporate Governance Codes Improve board Accountability? : Evidence from an Emerging Economy' (2012) Vol. 9 *Qualitative Research in Accounting and Management*
- Steyn Phia, 'Oil Exploration in Colonial Nigeria' (2009) 37, *Journal of Imperial and Commonwealth History*
- Surrey J, 'Petroleum Development in Brazil: The Strategic Role of a National Oil Company' (1987) Vol. 15(1) *Energy Policy*
- Thurber CM, 'Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance' (2011) Vol 39 *Energy Policy*
- Timothy A. Slating and Jay P. Kesan, 'Making Regulatory Innovation Keep Pace with Technological Innovation' (2011) *Wisconsin Law Review*
- Tina Hunter, 'Sustainable Socio-economic Extraction of Australian Offshore Petroleum Resources through Legal Regulation: Is it Possible?' (2011) 29 *JERNL*
- Tony Prosee, 'Constitutions and Political Economy: The Privatization of Public Enterprises in France and Great Britain' (2011) 53 *MLR*
- Tore Tonne, 'Energy Policy: A Norwegian Perspective' (1983) 5 *North-western Journal of International Law & Business*
- Udoma U, 'Incentives For Gas ventures in Nigeria' (1998) 2 *Modern Practice Journal of Law and Finance Law*
- Ugwushi BI, Olatunde A, Kamdi NE, and Chris A, 'Entrepreneurial implications of Nigeria's oil industry local content policy; Perceptions from the Niger Delta region' (2011) Vol 5, *Journal of Enterprising Communities: People and Places in the Global Economy*, 223-241
- Ugwushi BI, 'Local Content Policy and SMEs Sector Promotion: The Nigerian Oil Industry Experience' (2010) 5 *International Journal of Business and Management*

- Ulrich H.Klueh and others , ‘Policies to Improve the Local Impact from Hydrocarbon Extraction: Observations on West Africa and Possible Lessons for Central Asia.’ (2009) 37 Energy Policy
- Van Gyampo and Ransford Edward, ‘Saving Ghana from Its Oil: A Critical Assessment of Preparations so Far Made ‘ (2011) 57 Africa Today
- Vaalandi I and others, ‘ Local Content and Struggling Suppliers: A Network Analysis of Nigerian Oil and Gas Industry’ (2012) 16 African Journal of Business Management
- Vaughn, R. G. and other, ‘The Whistleblower Statute Prepared for the Organisation of American States and the Global Legal Revolution Protecting Whistleblowers.’ (2003) 35 Geo. Wash. Int’l L. Rev
- Virginia Hauer Haufler, ‘Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World’(2010) 10 Virginia Global Environmental Politics
- Wajid Rasheed, ‘The Oil Curtain and the Evolution of National Oil Companies’(2009) Journal of Petroleum Technology
- Weiss TG, ‘Governance, Good Governance and Global Governance: Conceptual and actual Challenges’ (2000) Vol 21 (5) Third World Quarterly,
- Wheeler S, ‘Non-executive Directors and Corporate Governance’ (2009) 60 NILQ
- Yuval Feldman and O. Lobel, ‘The Incentives Matrix: The Comparative Effectiveness of Rewards, Liabilities, Duties, and Protections for Reporting Illegality.’ (2010) 88 Texas Law Review

#### Official Reports, Research and Working Papers

- Al-Kasim Farouk, Soreide Tina, and Williams Aled, ‘Grand Corruption in the Regulation of Oil’ (2008) < <http://www.cmi.no/publications/file/3034-grand-corruption-in-the-regulation-of-oil.pdf>>
- Ameh, ‘The Shift from Joint Operating Agreements to Production Sharing Contracts in the Nigerian Oil Industry’s: Any Benefit for the Players?’
- Arcot S, Burno V, and Faure-Grimaud A, ‘Corporate Governance in the UK: is the Comply or Explain Approach Working?’ (2009) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1532290](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1532290)
- Armour J, Hansmann H, and Kraakman R, ‘The Essential Elements of Corporate Law: What is Corporate Law?’(2009 The Harvard John M. Olin Discussion Paper Series 643 <[http://www.law.harvard.edu/programs/olin\\_center/](http://www.law.harvard.edu/programs/olin_center/)>
- Balouga J , ‘Nigerian Local Content: Challenges and Prospects’ (2012)International Association of Energy Economics [www.iaee.org/en/publications/newsletterdl.aspx?id=176](http://www.iaee.org/en/publications/newsletterdl.aspx?id=176)
- Beck R, and Fidora M, ‘The Impact of Sovereign Wealth Funds on Global Financial Markets,’ (2008), Occasional Paper Series No 91< <http://www.ecb.europa.eu/pub/pdf/scpops/ecbocp91.pdf>>
- Baines, ‘Studies of Regulatory, Corporate and Financial Alternatives for the Exploration and Production of Oil and Gas and the Industrial Development of the Oil and Gas Production Chain in Brazil’ (2009) 48<[http://www.bain.com/bainweb/images/LocalOffices/BNDES\\_Consolidated\\_Report\\_BNDES\\_eng.pdf](http://www.bain.com/bainweb/images/LocalOffices/BNDES_Consolidated_Report_BNDES_eng.pdf)>
- Campbell B, ‘Managing Oil Wealth the Alberta/Canada Model vs. the Norwegian Model’ Canadian Centre for Policy

Alternatives<<http://www.policyalternatives.ca/publications/commentary/managing-oil-wealth>> Oxford Online Dictionary <<http://oxforddictionaries.com/>>

- Chambriard M, 'Brazil's Regulatory Framework Challenges of a Rapidly Expanding Petroleum Industry' <<http://www.anp.gov.br/?pg=60260&m=conteúdolocal&t1=&t2=conteúdolocal&t3=&t4=&ar=0&ps=1&cachebust=1352472654403>>
- Chinwendu O, 'The Fight against Fake drugs by NAFDAC in Nigeria' (2008) 44th International Course in Health Development (ICHD) <<http://apps.who.int/medicinedocs/documents/s18405en/s18405en.pdf>>
- Christensen JG, 'Public Interest Regulation Reconsidered : From Capture to Credible Commitment' (Regulation at the Age of Crisis: ECPR Regulatory Governance Standing Group, 3rd Biennial Conference, 2010)
- Commission of the European Communities, ' Special Rights in Privatised Companies in the Enlarged Union- a Decade full of Developments' (2005) Commission Staff Working Document <[http://ec.europa.eu/internal\\_market/capital/docs/privcompanies\\_en.pdf](http://ec.europa.eu/internal_market/capital/docs/privcompanies_en.pdf)>
- Ekpo AH, 'Employment, Growth and Poverty Reduction in an Oil Export Economy: Evidence from Nigeria' (2012) being paper presented at the 53rd Annual Conference of the Nigerian Economic Society, 27-30 August, Nicon Luxury Hotel, Abuja.
- Flournoy A, Andreen W, Brastpies R, Doremus H, Flatt V, Glicksman R, Mintz J, Rohlf D, Sinden A, Steinzer R, Tomain J, Zellmer S and Goodwin J, ' Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence' (2010) Centre for Progressive Reform White Paper <[http://www.progressivereform.org/articles/BP\\_Reg\\_Blowout\\_1007.pdf](http://www.progressivereform.org/articles/BP_Reg_Blowout_1007.pdf)>
- Furtado AT, 'Institutional Changes and Innovation in the Brazilian Petroleum Industry' (2003) International Symposium on 'Energy Reforms and Institutional Development in Latin America, National Autonomous University of Mexico, University of Grenoble PMF Mexico City, November 2003 <[www.depfe.unam.mx/p-cientifica/.../10CbAndrefurtadoenglishLtt.pdf](http://www.depfe.unam.mx/p-cientifica/.../10CbAndrefurtadoenglishLtt.pdf)>
- Gboyega A, Soreide T, Le TM, and Shukla G.P, 'Political Economy of the Petroleum Sector in Nigeria' (2010) The World Bank Policy Research Working Paper <[http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2011/08/24/000158349\\_20110824134316/Rendered/PDF/WPS5779.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2011/08/24/000158349_20110824134316/Rendered/PDF/WPS5779.pdf)>
- Gönenç R, Maher M, and Nicoletti G, 'The Implementation and the Effects of Regulatory Reform: Past Experience and Current Issues' (2001) No. 32 OECD Economic Studies <<http://www.oecd.org/eco/reform/2731922.pdf>>
- Gordon R, and Stenvoll T, 'Statoil: A Study in Political Entrepreneurship' (2007) Policy Report on the Changing Role of National Oil Companies in International Energy Markets<[http://large.stanford.edu/publications/power/references/baker/studies/noc/docs/NOC\\_Statoil\\_Gordon-Stenvoll.pdf](http://large.stanford.edu/publications/power/references/baker/studies/noc/docs/NOC_Statoil_Gordon-Stenvoll.pdf)>
- Gupta N, 'Partial Privatization and Firm Performance' (2002) Fondazione Eni Enrico Mattei Working Paper 110
- Heum P, Quale C, Karlsen JE, Kragha M, and Osahon G 'Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria: A Comprehensive and Viable Policy Approach' (2003) SNF Report No. 25/03 <<http://cosmic.rz.uni-hamburg.de/webcat/hwwa/edok04/no2g/R25-03.pdf>>
- Heum P, Christian Q, Erik KJ, Moses K, and George O, 'Enhancement of Local Content in the upstream Oil and Gas Industry In Nigeria' (2003) SNF Report NO 25/03, SNF : Institute for Research in Economics and Business Administration <[http://brage.bibsys.no/nhh/handle/URN:NBN:no-bibsys\\_brage\\_21973](http://brage.bibsys.no/nhh/handle/URN:NBN:no-bibsys_brage_21973)>



- Heum P, 'Local Content Development - Experiences from oil and gas activities in Norway' (2008) SNF- project No. 1285 < [http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys\\_brage\\_23232/1/A02\\_08.pdf](http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys_brage_23232/1/A02_08.pdf)>
- Hopkins A, 'Risk-Management and Rule Compliance: Decision-making in Hazardous Industries' (2011) 49 Safety Science, Investment Climate Advisory Services, 'Regulatory Governance in Developing Countries' (2010) Working Paper 55645, Regulation for Better Growth <[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/07/13/000334955\\_20100713050729/Rendered/PDF/556450WP0Box0349461B0GovReg01PUBLIC1.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/07/13/000334955_20100713050729/Rendered/PDF/556450WP0Box0349461B0GovReg01PUBLIC1.pdf)>
- Jaffe AM, 'The Changing Role of NOCs in International Energy Markets: Introduction and Summary Conclusions' (2007) James A. Amy Baker Rice III Institute for Public Policy < <http://www.bakerinstitute.org/programs/energy-forum/publications/docs/NOCs/Presentations/Hou-Jaffe-KeyFindings.pdf>>
- Julius OO, 'The Role of Multinational Companies in Tax Evasion and Tax Avoidance : The Case of Nigeria'
- Kar D, and Cartwright-Smith D, 'Illicit Financial Flows from Africa: Hidden Resource for Development' (2010) Global Financial Integrity Program of the Center for International Policy, [http://www.gfintegrity.org/index.php?option=com\\_content&task=view&id=300&Itemid=75](http://www.gfintegrity.org/index.php?option=com_content&task=view&id=300&Itemid=75)
- Kaufmann D and Bellver A, 'Transparenting Transparency – Initial Empirics and Policy Applications' (2005) Presentation at the Pre-Conference on Institutional Change for Growth and Poverty Reduction in Low-Income Countries (2005) International Monetary Fund, Washington D.C
- Key A, 'Accountability and the Corporate Governance Framework: From Cadbury to the UK Corporate Governance Code' (2012) Working Paper [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2143171](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143171)>
- Kolstad I, and Wigg A, 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?' (2009) Vol. 37 C.M.I Working Papers 521–532
- Lubeck P, Watts M, and Lipschultz, 'Convergent Interests: U.S. Energy Security and the 'Securing' of Nigerian Democracy' (2007) International Policy Report, Washington DC: Centre for International Policy, < [http://ciponline.org/NIGERIA\\_FINAL.pdf](http://ciponline.org/NIGERIA_FINAL.pdf)>
- McPherson C, 'State Participation in the Natural Resource Sectors: Evolution, Issues and Outlook' (2008) IMF Conference on Taxing Natural Resources: New Challenges, New Perspectives< <http://www.imf.org/external/np/seminars/eng/2008/taxnatural/pdf/mcpherson.pdf>>
- Müller M, 'Revenue Transparency to Mitigate the Resource Curse in the Niger Delta? Potential and reality of NEITI ' (2010) Bonn International Centre for Conversion<[http://www.bicc.de/uploads/tx\\_bicctools/occasional\\_paper\\_V\\_06\\_10.pdf](http://www.bicc.de/uploads/tx_bicctools/occasional_paper_V_06_10.pdf)> Neff S, 'Memorandum on International Best Practice in Development of Local Content in the Energy Sector' (2005) Presented to the Nigeria National Stakeholders Working Group <http://www.neiti.org.ng/sites/default/files/page/uploads/local-content-5-9-051.pdf>>
- Ngozi O, and Osafo-Kwaako P, 'Nigeria's Economic Reforms: Process and Challenges', (2007) Working Paper No. 6, Brookings Global Economic Development, Washington DC: The Brookings Institution<[http://www.brookings.edu/~media/research/files/papers/2007/3/23globaleconomics%20okonjo%20iweala/20070323okonjo\\_iweala.pdf](http://www.brookings.edu/~media/research/files/papers/2007/3/23globaleconomics%20okonjo%20iweala/20070323okonjo_iweala.pdf)>
- Nigerian Institute of Advanced Legal Studies, 'Communique on the Roundtable on Class Action Litigation in Nigeria' ( March 2013)< [nials-nigeria.org/text/n\\_comm.aspx](http://nials-nigeria.org/text/n_comm.aspx)>

- Nordas HK, 'The Upstream Petroleum Industry and Local Industrial Development: A comparative Study' (2003) SNF Project No. 4245 Institute for Research in Economics and Business Administration <  
[http://brage.bibsys.no/nhh/bitstream/URN:NBN:nobibsys\\_brage\\_21925/1/R08\\_03.pdf](http://brage.bibsys.no/nhh/bitstream/URN:NBN:nobibsys_brage_21925/1/R08_03.pdf)>
- Nordas HK, Vatne E, Heum P, 'The Upstream Petroleum Industry and Local Industrial Development: A Comparative Study' (2003) Private Sector Development in the Nigerian Upstream Industry SNF Report No. 08/03 <  
[http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys\\_brage\\_21925/1/R08\\_03.pdf](http://brage.bibsys.no/nhh/bitstream/URN:NBN:no-bibsys_brage_21925/1/R08_03.pdf)>
- OECD, Building Capacity for Regulatory Quality, Stocktaking Paper 11 delivered at the 29th Session of the Public Governance Committee, International Energy Agency, Paris <  
[http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC\(2004\)11&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC(2004)11&docLanguage=En)>
- Ognedal M, 'The Goal-Setting Approach to Regulatory Supervision: The Experience of a Safety and Working Environment Regulator' (PowerPoint presentation and transcript from the Workshop on Prescriptive vs. Performance-based Regulatory Regimes for the Canadian Offshore Petroleum Industry at the Oil and Gas Administration Advisory Council Conference (OGAAC), St. John's, Newfoundland, 16-17 October 2000)
- Oxford Analytica, 'The Impact of Pre-Salt: a Long Term Perspective' (2010) A Report Prepared for Petrobras <  
[www.oxan.com/.../cr/.../OxfordAnalyticaPetrobrasPreSalt.pdf](http://www.oxan.com/.../cr/.../OxfordAnalyticaPetrobrasPreSalt.pdf)>
- Paul H, "The Offshore Oil Supply Industry in Aberdeen: The Affiliates - Their Characteristics and Importance (1986) University of Aberdeen
- Productivity Commission Research Report, 'Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector' (2009) <  
[http://www.pc.gov.au/data/assets/pdf\\_file/0011/87923/upstream-petroleum.pdf](http://www.pc.gov.au/data/assets/pdf_file/0011/87923/upstream-petroleum.pdf)>
- Sayne A, Mahdavi P, Heller PRP, and Schreuder J, 'The Petroleum Industry Bill and the Future of NNPC' (2012) <  
<http://www.renewwatch.org/publications/petroleum-industry-bill-and-future-nnpc>>
- Shaxson N, 'Nigeria's Extractive Industries Transparency Initiative Just a Glorious Audit?' (2009) Chatam House, Royal Institute of International Affairs, <  
<http://eiti.org/document/shaxson-neiti-glorious-audit>>
- Silvana Tordo, Tracy BS, Noora A, 'NOCs and Value Creation' (2011) World Bank Working Paper 218 <  
<http://web.worldbank.org/wbsite/external/topics/extogmc/0,,contentMDK:21991336~pagePK:148956~piPK:216618~theSitePK:336930,00.html>>
- Spurn C (ed), Oil Regulation in 28 Jurisdictions Worldwide <  
[http://www.kluge.no/arch/img.aspx?file\\_id=9084808&ext=.pdf](http://www.kluge.no/arch/img.aspx?file_id=9084808&ext=.pdf)>
- Stacy L. Eller, Hartley P, and Medlock KB, 'Empirical Evidence on the Operational Efficiency of National Oil Companies' (2007) The Changing Role of NOCs in International Energy Markets, James A. Baker Rice III Institute for Public Policy
- 'The Role of law in Combating Public Procurement Corruption in Nigeria' (2009) National Sensitization and Enlightenment programme on the Public Procurement Act 2007. <  
[www.abu.edu.ng/publications/2009-07-12-134311\\_3901.docxShare](http://www.abu.edu.ng/publications/2009-07-12-134311_3901.docxShare)>
- Transparency International, 'Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies' (2011) <  
[http://www.transparency.org/whatwedo/pub/promoting\\_revenue\\_transparency\\_2011\\_report\\_o\\_n\\_oil\\_and\\_gas\\_companies](http://www.transparency.org/whatwedo/pub/promoting_revenue_transparency_2011_report_o_n_oil_and_gas_companies)>
- Ugo Nwokeji 'The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions' (2007) James

- United States Non-Governmental Delegation Trip Report, Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta 1999)
- Verr A, Post –Privatization Appraisal of Control and Management in Privatized Banks : The Need for A Golden Share, in IA Ayua and Owasanoye (eds) Privatization of Government Owned Banks and Issues of Ownership and Control (Legal and Economic Perspectives) Proceedings of a Roundtable , NIALS , Lagos (1996)
- Wade Locke, ‘Exploring Issues Related to Local Benefit Capture in Atlantic Canada’s Oil and Gas Industry’(2004) < [publications.gc.ca/collections/collection.../AC5-10-2004-eng.pdf](http://publications.gc.ca/collections/collection.../AC5-10-2004-eng.pdf)>
- Yohannes K, G, M, ‘ Environmental Sustainability and Regulation: To-Down Versus Bottom-Up Regulation’ (2001) Munich Personal RePEc Archive < [http://mpra.ub.uni-muenchen.de/413/1/MPRA\\_paper\\_413.pdf](http://mpra.ub.uni-muenchen.de/413/1/MPRA_paper_413.pdf)>

## **Legislation and Legal Instruments**

### **Nigeria**

- African Charter on Human and People’s Rights Ratification and Enforcement Act 1983
- Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation ) Act 2004
- Associated Gas Reinjection Act 1979
- Central Bank of Nigeria Act 2007
- Criminal Code Act 1916, as amended
- Coastal and Inland Shipping (Cabotage) Act (the ‘Cabotage Act’) 2003
- Companies and Allied Matters Act 1990
- Constitution of the Federal Republic of Nigeria 1999, as amended in 2011
- Deep Offshore and Inland Basin Production Sharing Contracts Act, 1998
- Environmental Impact Assessment Act 1992
- Economic and Financial Crimes Commission (Establishment) Act 2004
- Exclusive Economic Zone Act of 1978
- Fiscal Responsibility Act 2007
- Freedom of Information Act (FOIA) 2011
- Harmful Waste (Special Criminal Provisions) Act 1988
- National Oil Spill Detection and Response Agency Act 2007
- Independent Corrupt Practices and Other Related Offences Act of 2000
- Investment and Securities Act (ISA) 2007
- Land Use Act of 1978
- Minerals Oils Act of 1914
- National Agency for Food and Drug Administration and Control 1992
- NDDC Act 2000
- Nigerian Extractive Industries Transparency Initiative Act (2007)
- Nigerian Investment Promotion Commission Act 1995
- Nigerian Land Use Act of 1978
- Nigerian Liquefied Natural Gas (Fiscal Incentives, Guarantees and Assurances) Act, 1989
- Nigerian National Petroleum Corporation Act No. 73 of 1977
- Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993
- Nigerian Oil and Gas Industry Content Development Act 2010
- Nigeria Sovereign Investment Authority (Establishment) Act 2011

- Off shore Revenues (Registration of Grants) Act 1971
- Oil in Navigable Waters Act 1968
- Petroleum Act 1969
- Petroleum Equalisation Fund (Management board etc.) Act No. 9, of 1975
- Petroleum Production and Distribution (Anti-Sabotage) Act 1975
- Petroleum Profits Tax Act (PPTA) 1959
- Petroleum Industry Bill 2012
- Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003
- Petroleum (Special) Trust Fund Act 1993
- Petroleum Technology Development Fund Act 1973
- Public Procurement Act 2007
- Petroleum Trust Development Fund (PTDF). established by Act No. 25 of 1973
- Robbery and Firearms (Special Provisions) Act, 1984
- Territorial Waters Act 1967

### **Subsidiary legislations**

- Petroleum (Drilling and Production) Regulations 1969
- Environmental Guidelines and Standards for the Petroleum Industry in Nigeria ( EGASPIN) 2002
- Hydrocarbon Oil Refineries Regulation 1965
- Order 9 Rules 1-4 of Nigeria's Federal Civil Procedure Rules 2009
- Order 13 Rule 13 Bayelsa State High Court Civil Procedure Rules
- Order 13 Rule 13 of the Rivers State High Court Civil Procedure Rules 2010

### **Norway**

- Petroleum Act 1963
- Norwegian Petroleum Act 1985
- Norwegian Petroleum Act, No 72 of 1996
- Working Environment Act, No 17 of 2005
- Act 123 of 2005, the Norwegian government established Government Pension Fund Act
- Submarine Resources Act of June 21, 1963, No. 12, relating to Exploration for and Exploitation of Submarine Natural Resource

### **Regulations**

- Royal Decree of 1972 (as amended)
- Royal Decree of 1982 on the exploration and production of Hydrocarbons
- Petroleum Regulations of 27 June 1997
- Resource Management Regulations of 18 June 2001
- Regulations on the Use of Facilities by others, December 2005
- Regulations for the Measurement of Petroleum for Fiscal Purposes and for Calocal contentulation of CO2 Tax, November 2001

## **Brazil**

- Production Sharing Act as contained in Law 12.351 of 2010
- Environmental Crimes Act Law 9, 605 of 1998
- Law Capitalising Petrobras Law No. 12.276
- Law No. 12.304 (creation of
- .Law 12304 of 2010 which created the Pre Petroleo S.A (PPSA)
- Petroleum Act Law 9478
- Constitution of the Federal Republic of Brazil 1967
- Constitution of the Federal Republic of Brazil 1988
- IBAMA Act Law 7.735 of 1989
- Petrobras Act Law 2004 of 1953
- National Environmental Policy Act, Law 6938/1981

## **Subsidiary Legislations**

- Resolution No. 36 -Reg of Local content Certification
- ANP Resolution No. 37 - Rules of Accreditation Entity for Local Content Certification
- ANP No. 38 - Rules of Certification Audits
- ANP Resolution No. 39 - Reg of Local Investment Report.

## **United Kingdom**

- Public Interest Disclosure Act 1998
- Employment Rights Act (ERA) 1996

## **United States of America**

- Sarbanes-Oxley Act 2002 and Dodd-Frank Wall Street Reform and Consumer Protection Act
- Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Dodd-Frank) 20
- US Freedom of Information Act 1967

## **Table of Cases**

- *Adams v Cape Industries* (1990) Ch. 443.
- *Amadi v NNPC* (2002) 10 NWLR, (Pt 674) 76
- *Attorney General of Rivers State V. Attorney- General of Akwa Ibom State* (2011) All Federated Weekly Law Reports (pt.579)102
- *Attorney General V Pya Quarries Ltd* (1957) 2 Queens Bench 169
- *Attorney General of the Federation v Attorney General of Abia State and 35 others* (2002) 6 NWLR (Pt.764)
- *Bernard Longe v. First Bank of Nigeria Plc* [2010] 2-3 Supreme Court (part III) 67
- *Cinerama, Inc v Technicolor, Inc.*, 1991 Del. Ch LEXIS 105, 1991 WL 111134 at 19 (Del. Ch.)
- *Continental Chemists Ltd V. Ifeakandu* [1966] 1 All Nigerian Law Reports 1
- *Deposit Guaranty National Bank v. Roper* (1980) 445 U.S. 326, 339

- *Jonah Gbemre v Shell and others* (2005) Suit No FHC/B/CS/53/05
- *Kahn v. Lynch Commc'n Sys., Inc* 638 A.2d 1110, 1114 (Del. 1994).
- *National Electric Power Authority Vs. Mudasiru Amusa and another* (1972) 12 Supreme Court 99
- *Ogbuechi v Governor of Kano State* (1995) 9 NWLR (Pt 417) 53;
- *Oronto Douglas v. Shell Petroleum Development Company Limited and 3 others*, Suit No. FHC/2CS/ 573.
- *Salomon v Salomon and Company* [1897] A.C.
- *S.O. Adole v Boniface B. Gwarler* (2008) 3-4 S. C. 78
- *Shell v. Enoch* (1992) 8 NWLR 335
- *Taiwo Okeowo v Migliore and others* (1979) 1 SC Reports 13

### **News**

- BBC
- Bloomberg
- Business Day
- Financial Times
- Guardian
- Huffington Post
- Leadership
- MSNBC.com
- Newswatch
- Newsweek
- Punch
- Reuters
- Tell Nigeria
- The Economist
- Thisday
- Tribune
- Vanguard

### **Thesis**

- Okafor O, *The State of Environmental Monitoring in Nigeria and ways to Improve it: Case Study of Niger Delta* (Msc Thesis Wageningen University 2011) <[http://www.academia.edu/909562/The\\_State\\_of\\_Environmental\\_Monitoring\\_in\\_Nigeria\\_and\\_Ways\\_to\\_Improve\\_It\\_Case\\_Study\\_of\\_Niger\\_Delta](http://www.academia.edu/909562/The_State_of_Environmental_Monitoring_in_Nigeria_and_Ways_to_Improve_It_Case_Study_of_Niger_Delta)>
- Gidado M ‘*Petroleum Development Contracts with Multinational Oil Corporations : Focus on the Nigerian Oil Industry*’, (PhD Thesis University of Warwick 2009) University of Warwick Publications Service <<http://wrap.warwick.ac.uk/4320/>>
- Gilles A, ‘*Oil Sector Reform in Africa: The Case of Nigeria*’ (PhD thesis, Cambridge University, 2010)

### **Websites**

- <[http://www.opml.co.uk/sites/opml/files/OPM\\_Foster%20Fixing%20the%20legal%20and%20Operational%20frameworks%20for%20Niger%20Delta%20oil%20spills.pdf](http://www.opml.co.uk/sites/opml/files/OPM_Foster%20Fixing%20the%20legal%20and%20Operational%20frameworks%20for%20Niger%20Delta%20oil%20spills.pdf)> policy brief<

- <<http://www.reuters.com/article/2010/12/09/us-nigeria-shell-idUSTRE6B80HL20101209>>
- <<http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/282-regulation-of-the-petroleum-industry-a-tale-from-the-north-sea-norway-by-ishmael-setsoafia-amegah>>
- <<http://regulationforum.org/docs/presentations/2013/Symposium-march-12-e.pdf>>
- <<http://www.npd.no/en/Publications/Facts/Facts-2013/Chapter-2/>> a
- <[http://www.ey.com/Publication/vwLUAssets/Nigeria\\_Petroleum\\_Industry\\_Bill\\_%E2%80%944\\_2012/\\$FILE/Nigeria\\_Petroleum\\_Industry\\_Bill\\_26Oct12\\_lowres.pdf](http://www.ey.com/Publication/vwLUAssets/Nigeria_Petroleum_Industry_Bill_%E2%80%944_2012/$FILE/Nigeria_Petroleum_Industry_Bill_26Oct12_lowres.pdf)>
- <<http://www.environmental-protection.org.uk/committees/air-quality/air-pollution-and-transport/car-pollution/>>
- <<http://sydney.edu.au/legal/policy/what/index.shtml>>
- <<http://www.regjeringen.no/en/dep/oed/Subject/Oil-and-Gas/Norways-oil-history-in-5-minutes.html?id=440538>>
- <<https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>>
- <[http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture\\_Energy\\_Developing\\_Local\\_Content\\_Programs\\_EiaB5.pdf](http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture_Energy_Developing_Local_Content_Programs_EiaB5.pdf)>
- <<http://www.bp.com/en/global/corporate/about-bp/our-history/history-of-bp.html>>
- <<http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/282-regulation-of-the-petroleum-industry-a-tale-from-the-north-sea-norway-by-ishmael-setsoafia-amegah>>
- <<http://www.neiti.org.ng/news/2012/09/24/neiti-urges-agencies-recover-98-billion-dollars-companies>>
- <[http://www.ensec.org/index.php?option=com\\_content&view=article&id=346:brazils-bright-oil-future&catid=123:content&Itemid=389](http://www.ensec.org/index.php?option=com_content&view=article&id=346:brazils-bright-oil-future&catid=123:content&Itemid=389)>
- <<http://www.npd.no/en/Publications/Norwegian-Continental-Shelf/No2-2010/10-commanding-achievements/>>
- [www.eia.gov/countries/cab.cfm?fips=N,I](http://www.eia.gov/countries/cab.cfm?fips=N,I)
- [www.braziltexas.org/attachments/files/401/ANP-Marcelo.pdf](http://www.braziltexas.org/attachments/files/401/ANP-Marcelo.pdf)
- <[http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns\\_109056](http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns_109056)> See also Carmon AB and Cameiro OC, ‘Challenges of <[www.veirano.com.br/veirano/.../Default.aspxCached](http://www.veirano.com.br/veirano/.../Default.aspxCached)
- <<http://www.upstreamonline.com/live/article276020.ece>>
- <<http://www.iaia.org/conferences/iaia11/proceedings/presentations/IAIA11%20-%20Cristiano%20Vilardo%20-%20Pre-salt%20contribution%20to%20SD%20in%20Brazil.pdf?AspxAutoDetectCookieSupport=1>>
- <<http://riotimesonline.com/brazil-news/rio-business/petrobras-requests-local-content-changes/>>
- [http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture\\_Energy\\_Developing\\_Local\\_Content\\_Programs\\_EiaB5.pdf](http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture_Energy_Developing_Local_Content_Programs_EiaB5.pdf)>
- <[http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm)>
- <[http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm)>
- <http://www.ncdmb.gov.ng/index.php/public-relations/news-updates/134-nigerian-content-act-stakeholders-share-experience-3years-on>
- <[http://www.opec.org/opec\\_web/en/about\\_us/25.htm](http://www.opec.org/opec_web/en/about_us/25.htm)>
- <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=252121>
- [http://www.ptdf.gov.ng/index.php?option=com\\_content&view=article&id=40&Itemid=54](http://www.ptdf.gov.ng/index.php?option=com_content&view=article&id=40&Itemid=54)
- <[http://www.un.org.kh/undp/media/files/undpconf\\_present080327\\_olsen1.pdf](http://www.un.org.kh/undp/media/files/undpconf_present080327_olsen1.pdf)>
- <<http://www.utp.edu.my/>>
- [http://www.ey.com/Publication/vwLUAssets/Oljeserviceanalysen\\_2011/\\$FILE/oljeserviceanalysen-2011\\_ny\\_web.pdf](http://www.ey.com/Publication/vwLUAssets/Oljeserviceanalysen_2011/$FILE/oljeserviceanalysen-2011_ny_web.pdf)

- <<http://www.timeshighereducation.co.uk/world-university-rankings/2012-13/world-ranking>>  
<<http://www.webometrics.info/en/search/Rankings/university%20of%20lagos%20type%3Amondial>>
- <<http://www.ncdmb.gov.ng/index.php/public-relations/news-updates/127-nigeria-content-support-fund-hits-100-million>>
- <<http://www.tucrivers.org/The%20Nigerian%20Content%20Act%20-%20Issues%20and%20Workers%20Concerns.pdf>>
- <http://sweetcrudereports.com/2012/10/30/pengassan-urges-total-enforcement-of-local-content-act/> < [www.instituteforgovernment.org.uk/](http://www.instituteforgovernment.org.uk/)>
- <<http://www.sdi.co.uk/~media/SDI/Files/documents/energy/Reports/doing-business-in-brazil-subsea-focus.pdf>>
- <[http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns\\_109056](http://www.epmag.com/Technology-Regulations/Brazils-Local-Content-Policy-Stirs-Concerns_109056)>
- < [www.veirano.com.br/veirano/.../Default.aspxCached](http://www.veirano.com.br/veirano/.../Default.aspxCached)>
- < <http://www.upstreamonline.com/live/article276020.ece>>
- <http://riotimesonline.com/brazil-news/rio-business/petrobras-requests-local-content-changes/>>
- < <http://www.nnpcgroup.com/NNPCBUSINESS/Subsidiaries.aspx>>
- < <<http://www.nlng.com/pressreleases.aspx?id=>>
- < <http://www.dregbogah.com/documents/69.html>>
- < <http://www.intereconomics.eu/archive/year/1998/1/>>
- [www.investidorpetrobras.com.br/en/financial-results/4q12.htm](http://www.investidorpetrobras.com.br/en/financial-results/4q12.htm)<http://www.investidorpetrobras.com.br/en/financial-results/4q12.htm>
- [http://ec.europa.eu/internal\\_market/capital/docs/privcompanies\\_en.pdf](http://ec.europa.eu/internal_market/capital/docs/privcompanies_en.pdf) at
- <http://www.adamsmith.org/80ideas/idea/62.htm>
- [http://ec.europa.eu/internal\\_market/capital/docs/privcompanies\\_en.pdf](http://ec.europa.eu/internal_market/capital/docs/privcompanies_en.pdf)
- <http://www.nlng.com/PageEngine.aspx?&id=41>
- <http://www.eia.gov/EMEU/cabs/Nigeria/pdf.pdf>
- [http://www.ey.com/Publication/vwLUAssets/The\\_Dodd-Frank\\_Act/\\$FILE/The\\_Dodd\\_Frank\\_Act\\_Dec\\_2012.pdf](http://www.ey.com/Publication/vwLUAssets/The_Dodd-Frank_Act/$FILE/The_Dodd_Frank_Act_Dec_2012.pdf) Ernst and Young
- <http://pwypdev.gn.apc.org/sites/pwypdev.gn.apc.org/files/goldwyntestimonyNigeria051706.pdf>
- <http://eiti.org/sydney2013/awards>
- <http://www.swfinstitute.org/fund-rankings>
- [http://www.networkideas.org/feathm/mar2007/PDF/Ben\\_Obi.pdf](http://www.networkideas.org/feathm/mar2007/PDF/Ben_Obi.pdf)



