



THE NNPC AND THE ROLE OF THE DEPARTMENT OF PETROLEUM RESOURCES IN THE EFFECTIVE REGULATION AND DEVELOPMENT OF PETROLEUM INDUSTRY IN NIGERIA

Samuel C. Dike*
Celine Ukachuku Okeahialam*
Ibanichuka Gabriel PhD

Abstract

The main objective of this Chapter is to examine the Nigerian National Petroleum Corporation (NNPC), and the role of the Department of Petroleum Resources (DPR) as the major regulator of the petroleum industry in Nigeria, its challenges and the way forward. The Chapter shall evaluate the relationship between NNPC and the DPR to determine whether such relationship would foster petroleum sector development in energy constrained world and the impacts of this relationship in promoting development and creating a vibrant petroleum industry. The paper shall be descriptive as well as analytical of all issues regarding the effective regulatory frameworks for the NNPC which will reposition this vital department- DPR. Many questions had been asked with much persistent concerning the role of regulators in the affairs of corporations and one of these concerns is whether the Corporation is overregulated or under-regulated. This question has not been given any proper answer by Government and researchers as regards the DPR. This chapter finds that both overregulation and under-regulation do not yield any positive dividend to a corporation hence the answer lies in examining which is the best regulatory approach for the Corporation to deliver in its mandate as encapsulated in the statute establishing it. It is the authors argument that whether deregulation or overregulation prevails in the sector, the DPR requires an urgent overhaul or repositioning for effective performance.

1.0 Introduction

The Nigerian National Petroleum Corporation (NNPC) was established in 1971 as the Nigerian National Oil Corporation,¹ with a mandate of promoting petroleum industry's sector development as well as ensuring the availability and reliability of petroleum products supplies throughout Nigeria. NNPC was originally structured for the purpose of being a government agency, with government being the regulator. The President of Nigeria as well as the Minister of Petroleum, if he chooses to appoint one, remains the managers of the corporation with surrogates acting at various times, as Directors and Group Managing Directors (GMDs). This scenario did not yield any positive outcome as the Government was a participant in the industry as well as a regulator. With the passage of time, it has become apposite to restructure the industry for effectiveness. Consequently, in 1988, the Corporation was restructured into 12 different departments with one of its department- DPR acting as a regulator. The supposed Regulator has been overwhelmed by many factors and it is apparent that it is not the only body or agency exerting regulatory functions over the activities of the NNPC. For instance, there is the Energy Commission of Nigeria (ECN)² whose main function is to supervise, coordinate and regulate all energy industries in Nigeria. There is also the Minister of Petroleum, heading the petroleum ministry who directs and coordinates the affairs of the ministry and whose regulatory functions are derived from Section 9 of the Petroleum Act. 1969.

* (PhD Aberdeen) LLM (RSU) ACIarb Scotland, GMI (London) Associate Professor of Energy Laws and Head of Department, Jurisprudence and International Law, Faculty of law, Rivers State University, Port Harcourt. Email- eme.olive@yahoo.co.uk

** Celine Ukachuku, Okeahialam, LLM (RSU), Ph.D (Candidate.) Faculty of Law, Rivers State University, Port Harcourt. +234865838399.

¹ See NNPC Act 1977, Cap N123, LFN 2004, s 5.

² Energy Commission of Nigeria Established by Energy Commission Act, 1976.



Similarly, the Ministry of Environment, with regulatory functions over environmental issues, including those arising from petroleum operations endangering all aspects of the environment- namely air, water and habitat.³ The Ministry of Environment, through the former Federal Environmental Protection Agency Act 1992 (FEPA)⁴ and now the National Environmental Standard Enforcement Regulation Agency Act 2007 (NESREA Act)⁵ enforces certain regulations and ministerial directives that effect the petroleum industry directly or tangentially.

Further, the Ministry of Industry and Finance exert regulatory oversight functions on the petroleum ministry through the regulation of immigration, labour related matters, grant of expatriate quotas, and taxation related matters.⁶

Although, petroleum, mines and minerals are found in the exclusive legislative list, the negative activities of the industry transcend the federal territorial jurisdiction.⁷ Hence, also, States and Local Governments equally exert one form of regulation or the other on the industry.

Therefore, the questions that remain unanswered are: whether the petroleum industry is overregulated or under regulated? Should it be deregulated? What form of regulation is suitable to reposition the industry for it to perform optimally?

It is an attempt to answer these questions that NNPC has been stressed with various reforms that aimed at changing the regulatory and management architecture and narratives, thereby leading to the consequent amendment of the statute establishing it.

This chapter examines all these questions and issues. The chapter starts by inquiring into the establishment of NNPC, the structure of NNPC and an evaluation of the relationship between the NNPC and the DPR, and how this affects the regulatory outcome. The chapter also considers the roles of NNPC regarding the very poignant issue of energy security, its role as the nation's operating committee under a Joint Venture Partnership and its role in promoting privatization and grant of subsidy to the downstream sector of the oil and gas industry. Further, the authors shall evaluate the nature of over regulation and under regulation of NNPC and the challenges facing DPR as a regulatory authority and finally the chapter shall conclude with some recommendations on how to reposition the NNPC for maximum efficiency and for the DPR to optimally perform its regulatory functions in the petroleum industry.

³ Ibibia L. Worika and Uzuazor Etemire, "Developing and Enforcing International Environmental standards in oil and gas Operations," (2017) (1) *African Journal off International Energy and Environmental Law* 2.

⁴ FEPA 1992 has been abolished but certain regulations made under FEPA has been re-enacted under NESREA Act 2007.

⁵ See, Ss 7 and 8 of NESREA Act 2007 with respect to its jurisdictions.

⁶ Corporate tax, Capital gain Tax and Income tax are administered in accordance with their respective tax laws on these IOCs or other companies engaged in oil and gas business.

⁷ See, Section 251(9)(n) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).



2.0 The NNPC and the DPR

2.1 Establishment of NNPC

The Nigerian National Petroleum Corporation (NNPC) is the state oil corporation which was established on April 1, 1977 vide NNPC Act No 33 of 1977. In addition to its exploration activities, the Corporation was given powers and operational interests in refining, petrochemicals and products transportation as well as marketing.⁸ Between 1978 and 1989, NNPC constructed refineries in Warri, Kaduna and Port Harcourt and took over the 35,000-barrel Shell Refinery established in Port Harcourt in 1965.⁹ NNPC succeeded the Nigerian National Oil Corporation which was formed in 1970.

Before the NNOC was established, the petroleum Ministry was part of the Ministry of Environment and had no substantive Minister or Ministry. Apart from that, the formation of the National Oil Company was based on the agitation of oil producing countries of developing nations who were short-changed by the Multinational Corporations. Through the United Nations Declaration on Permanent Sovereignty, most of these oil producing countries decided to establish their own national oil corporations to compete with the established multinational oil corporations in the petroleum business.¹⁰ These IOC were vertically integrated—control upstream, midstream and downstream sectors of the industry to the detriment of the oil producing third world countries and no value was added to the people from their natural resources.¹¹ Consequently the Arab members of the oil producing countries led by Iran and Venezuela's had to take up the matter with the United Nations; where in the principle of permanent sovereignty was enunciated. This principle declared and restated the sovereignty of national government over their resources and the need for the national oil companies to actively be engaged in participation in the petroleum industry, and if possible, to nationalise the interest of the IOC while paying adequate compensation for nationalised assets.

Accordingly, OPEC was formed in 1960 and following which, the Nigeria National Oil Corporation was formed in 1970. Thus, by 1977 due to some structural issues, NNOC was renamed NNPC with the same vertical integrated structure of the IOCs.

2.2 Functions of the NNPC

The NNPC was formed as a result of a merger between the Ministry of Petroleum Resources and the Nigerian National Oil Company which was established in 1971. This merger which gave birth to the NNPC as the national oil company of Nigeria took place in 1977. The NNPC Act of 1977¹² which establishes the corporation permitted, subject to delegation from the Minister and or, the President, the issuance of licences and permits with respect to refining, storage, marketing and distribution. It is also to actively be involved with the licensing of marketers for the purpose of importation of petroleum

⁸ See, NNPC Act 1977.

⁹ NNPC, "Development of Nigeria Petroleum Industry" (14 February 2014) <<http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasInNigeria/DevelopmentoftheIndustry.aspx> >accessed 14/02/2019.

¹⁰ See, UN Declaration on Permanent Sovereignty No (1803) of 1962.

¹¹ Yinka Omorogbe, *Oil and Gas law in Nigeria* (Lagos: Malthouse Ltd, 2001), 99.

¹² Cap N123 LFN 2004 (NNPC Act).



products in Nigeria and to protect the petroleum operating environment. The NNPC Act provides for governance regime in the Nigerian oil and gas industry. It creates the NNPC as a body corporate.¹³

There is also a Board of Directors responsible for the conduct of the affairs of the NNPC, except affairs relating to regulations which are the exclusive mandate of the Department of Petroleum Resources (DPR).¹⁴ The Board of Directors consists of the Chairman; the Permanent Secretary, Federal Ministry of Finance and Economic Development; the Managing Director of the Corporation (now styled General Managing Director); and three persons to be appointed by the President, being persons who by reason of their ability, experience or specialised knowledge of the oil industry or of business or professional attainments are capable of making useful contributions to the work of the Corporation.¹⁵ Section 1(3) of the NNPC Act further provides that the Chairman shall be a Minister in the Government of the Federation to be known and styled as the Minister of Petroleum Resources.

The NNPC Act creates the NNPC as both a commercial operator and regulator in the Nigerian oil and gas industry. The preamble to the NNPC Act states the legislative purpose behind the establishment of the NNPC. It provides thus:¹⁶

An Act to dissolve the Nigerian National Oil Corporation and to establish the Nigerian National Petroleum Corporation empowered to engage in all commercial activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its Petroleum Inspectorate department.

As a vertically integrated national oil company, the NNPC Act fuses in the NNPC with both commercial regulatory and governance functions. The NNPC is also empowered, and in fact it has a general duty to, engage in activities that would enhance the petroleum industry in the overall interest of Nigeria.¹⁷ Thus, the NNPC may make policy formulations in the Nigerian oil and gas industry at the same time it carries out commercial and regulatory activities in the industry. Policy implementations and the regulation of activities of operators in the oil and gas industry are key statutory functions of the NNPC.

The NNPC's regulatory functions are to be performed by the Petroleum Inspectorate department.¹⁸ The Petroleum Inspectorate department is established by section 10(1) of the NNPC Act. The Petroleum Inspectorate department is an integral part of the NNPC,¹⁹ and it is headed by a chief executive who is appointed by the Minister of Petroleum Resources with the approval of the President.²⁰ The Petroleum Inspectorate has now been redesigned as the Department of Petroleum Resources (DPR) without an amendment to the NNPC Act.²¹ However, this re-designation does not alter the statutory functions of the Petroleum Inspectorate department as it only bears a new name and remains itself. The regulatory

¹³ *Ibid.*, s1(1).

¹⁴ *Ibid.*, s 1(2).

¹⁵ *Ibid.*

¹⁶ The Preamble although does not supersede the main provision, but helps in understanding the main Act.

¹⁷ NNPC Act, s 5(1) (h).

¹⁸ *Ibid.*, the preamble.

¹⁹ *Ibid.*, s10(1).

²⁰ NNPC Act, s11(1).

²¹ S. C. Dike, *Energy Security: the Case of Nigeria and Lessons from Brazil, Norway and the UK* (Port Harcourt: Pearl Publishers, 2015) 56.



functions of the NNPC through the DPR cover all matters in the oil and gas industry. The Minister of Petroleum Resources may also confer on the chief executive of the DPR his powers under the Oil Pipelines Act,²² the Petroleum Act²³ or any other enactment.²⁴ Specifically, the regulatory functions of the NNPC through the DPR extend and relate to the following three main duties:

- i. issuing permits and licences for all activities connected with petroleum exploration and exploitation and the refining, storage, marketing, transporting and distribution of petroleum;²⁵
- ii. acting as the agency for the enforcement of the provisions of the Oil Pipelines Act, the Petroleum Act or any other enactment and any relevant regulations made there under by the Minister of Petroleum Resources;²⁶
- iii. carrying out such other functions as the Minister of Petroleum Resources may direct from time to time.²⁷

The DPR however, does not exercise any commercial functions in respect of any activities of the Government of Nigeria relating to the petroleum industry.²⁸ The NNPC and its subsidiaries engage in commercial activities in the industry. Thus, the NNPC performs the following general duties categorised into nine, vis:

- i. exploring and prospecting for, working, winning or ^{otherwise} acquiring or possessing and disposing of petroleum;²⁹
- ii. refining, treating, processing and generally engaging in the handling of petroleum for the manufacture and production of petroleum products and its derivatives;³⁰
- iii. purchasing and marketing petroleum, its products and by-products;³¹
- iv. providing and operating pipelines, tanker-ships or other facilities for the carriage or conveyance of crude oil, natural gas and other products and derivatives, water and any other liquids or other commodities related to its operations;³²
- v. constructing, equipping and maintaining tank farms and other facilities for the handling and treatment of petroleum and its products and derivatives;³³
- vi. carrying out research in connection with petroleum or anything derived from it and promoting activities for the purpose of turning to account the result of such research;³⁴
- vii. doing anything required for the purpose of giving effect to agreements entered into by the Federal Government with a view to securing participation by the Federal Government or the NNPC in activities connected with petroleum;³⁵

²² Cap O7 LFN 2004.

²³ Oil and Gas Industry Content Development Act 2010, Oil Spill Detection and Response Agency Act 2006 are all parts of the oil and gas legislation.

²⁴ NNPC Act, s 10(2).

²⁵ *Ibid.*, s 10(2)(a).

²⁶ *Ibid.*, s 10(2)(b).

²⁷ *Ibid.*, s 10(2)(c).

²⁸ *Ibid.*, s 10(4).

²⁹ NNPC Act, 1977, s 5(1)(a).

³⁰ *Ibid.*, s 5(1)(b).

³¹ *Ibid.*, s 5(1)(c).

³² *Ibid.*, s 5(1)(d).

³³ *Ibid.*, s 5(1)(e).

³⁴ *Ibid.*, s 5(1)(f).

³⁵ *Ibid.*, s 5(1)(g).



- viii. engaging in activities that would enhance the petroleum industry in the overall interest of Nigeria;³⁶ and
- ix. undertaking such other activities as are necessary or expedient for giving effect to the provisions of the NNPC Act.³⁷

The NNPC also engages in the Nigerian participatory joint ventures with the companies, and provides the chairman of the operating committee while the IOCs are the operating companies. NNPC by its exercise of these functions is expected to monitor the activities of the IOCs to ensure adequate tax payment, energy security to Nigerians, while promoting return on investment to the IOCs in a win-win strategy.³⁸

However the exercise of the NNPC's functions by its many organs which we shall see hereunder raises many conflicts of interests.³⁹ The corporation has been bedevilled with one challenge or the other and with one reform or the other, questioning the very essence of its establishment. Some of the challenges relate to its structural configuration, vertical integrated functions, corruption and tribalism, lack of funding and institutional defect. These problems had remained intractable; questioning the government's various past reforms for the sector.⁴⁰

2.3 Structure of the NNPC

In 1988, the NNPC was commercialised into 12 strategic business units, covering the entire spectrum of oil industry operations: exploration and production, gas development, refining, distribution, petrochemicals, engineering, and commercial investments.⁴¹ Currently, the subsidiary companies include:

- i. Nigerian Petroleum Development Company (NPDC)
- ii. The Nigerian Gas Company (NGC)
- iii. The Products and Pipelines Marketing Company (PPMC)
- iv. Integrated Data Services Limited (IDSL)
- v. National Engineering and Technical Company Limited (NETCO)
- vi. Hydrocarbon Services Nigeria Limited (HYSON)
- vii. Warri Refinery and Petrochemical Co. Limited (WRPC)
- viii. Kaduna Refinery and Petrochemical Co. Limited (KRPC)
- ix. Port Harcourt Refining Co. Limited (PHRC)
- x. NNPC Retail
- xi. Eleme Petrochemical Co. Limited now called Ndorama

There are also many IOCs and independent oil Companies operating in Nigeria. Some of these are: Mobil Oil Nigeria Plc, Unipetrol Nigeria Plc, Con Oil, Texaco Nigeria Plc; Total Nigeria Plc, African Petroleum Plc; Agip Nigeria Plc; and Elf Nigeria Limited. There are wholly indigenous marketers who

³⁶ *Ibid.*, s 5(1)(h).

³⁷ *Ibid.*, s 5(1)(i).

³⁸ Nwokeji, "The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Direction," (2007) *The James Baker 111 Institute for Public Policy of Rice University* 16- 25.

³⁹ E. Emeseh, "Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: a Case Study of the Petroleum Industry Nigeria," [2006] (24)(4) *Journal of Energy and Natural Resources Law*, 599.

⁴⁰ S. C. Dike, *Energy Security: the Case of Nigeria and Lessons from Brazil, Norway and the UK* (Port Harcourt: Pearl Publishers, 2015) 15.

⁴¹ G.U. Nwokeji, "The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Direction," (2007) *The James Baker 111 Institute for Public Policy of Rice University*, 22-28.



are responsible for about 48 per cent of the market for refined products and could if properly regulated promote energy security in a vibrant petroleum industry.

2.4 Department of Petroleum Resources (DPR)

The industry is also regulated by the Department of Petroleum Resources (DPR), a department within the Ministry of Petroleum Resources. The DPR ensures compliance with industry regulations; processes applications for licenses, leases and permits, establishes and enforces environmental regulations. The DPR, and NAPIMS, play a very crucial role in the day to day activities in the industry. The Department has equally made some regulations for ensuring safety, health and operational efficiency of the industry throughout the value chain covering upstream and downstream sectors of the industry. This is comprised in the Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN), made in 1991 and revised in 2002.

Some of the other departments are as follows: The Pipeline and Product Marketing Company (PPMC), Petroleum Investment Management Services (PIMS) and a host of other independent companies. Following the proposal for the reform of the NNPC in 2007-2008, a new bill titled Petroleum Industry Bill (PIB) 2008 was tabled before the National Assembly for passage and now it has severally been modified into many names and it is now restyled Petroleum Industry Governance Bill of 2018 (PIGB); now incrementally being passed by the National Assembly. These Bills intend to reduce and restructure the existing organs of the NNPC by creating new structure and formation for repositioning of both governance, management and regulatory functions into separate independent bodies, quite insulated from the government.⁴²

The challenge in achieving this noble objectives of the DPR has been lack of political will to enforce and implement basic reform in place hence, it is argued that this may posed some difficulties to achieve in a country where petroleum is monolithic export product and corruption and opaque deal prevail in the industry.⁴³ The performance of NNPC and its regulatory organ- DPR can be evaluated from the following prisms; their roles in the provision of energy security in Nigeria; in ensuring downstream privatisation etc. How do the NNPC and the DPR synergy affect energy security?

3.0 NNPC/DPR and Security of Supply of Petroleum Products

According to the International Energy Agency (IEA), “energy insecurity” stems from the welfare impact of either the physical unavailability of energy, or prices that are not competitive or overtly volatile.⁴⁴ The IEA recognised that a proper energy policy is one, which strikes a balance among energy security, economic efficiency and environmental protection.⁴⁵ Adeola Adenikinju *et al.* on their part, consider, as fundamental for energy security in Africa, and in Nigeria, a framework for, “ensuring availability of a reliable energy services to the economy.”⁴⁶ These definitions deal with the physical

⁴² See, the Purpose of the PIB Bill 2008.

⁴³ Nwokeoji (n.15) 8-13.

⁴⁴ OECD/IEA, ‘Energy Security and Climate Change’ 32. Full Citation required

⁴⁵ *Ibid.*, 24.

⁴⁶ Adeola Adenikinju, Seth Acton and Olayinka Adenikinju, ‘Energy Security in Africa Issues , Challenges and Possible Role for Green Energy’ in Adeola Adenikinju, Akin Iwayemi and Wumi Iledare, *Green Energy and Energy Security* (National Association of Energy Economic 2012). Provide page number.



unavailability, reliability and affordability (economic consideration), sustainability (environmental considerations).

However, For Barton *et al.*, who argued from the prism of both developed and developing countries, energy security has been defined as “A condition which a nation and all, or most, of its citizens, and business have access to sufficient energy resource at reasonable prices for the foreseeable future free from serious risk of major disruption of services.”⁴⁷

It is the contention that, the Nigerian nation does not boast of ensuring the availability of petroleum products or their accessibility to Nigerians; hence there is no energy security. This is so because in Nigeria, the emphasis is on export revenue and how much Nigeria can garner from export foreign exchange that the welfare of Nigerian citizens and the further emphasis in Nigeria is the satisfaction of any government in power not on adequate investment in the sector which would guarantee sustainable development for not only for the present generation but the future generations of Nigerians.⁴⁸ The authors argue that the NNPC, as a national oil company has key responsibilities in promoting energy security in Nigeria but has unfortunately exacerbated energy insecurity.⁴⁹ We are further of the contention that the alliance between the NNPC and DPR and the present governance structure of the industry do not guarantee the availability, reliable supply and sustainability of petroleum products and resources in Nigeria at least in the present days.⁵⁰

3.1 NNPC as Operator of Joint Venture Agreements (JVAs)

NNPC as the nation’s representative in the petroleum industry is in joint venture with the IOCs and holds between 55% to 60% in the existing JVAs.⁵¹ NNPC remains the majority equity holder under the JVAs while the IOCs are the Operators and the Contractors under the JVA’s and new Production Sharing Contracts.⁵² The current JVAs now are capable of determining the level of security of supply of petroleum resources in Nigeria.⁵³ Further, the NNPC is responsible and engages the exploration and production through its (NPDC), marketing and supply of product through its many downstream outlets.⁵⁴

Due to the NNPC vertically integrated structure, it hardly can perform all the services as it requires a strong and robust regulator which is independent of the corporation.⁵⁵ DPR is the main regulator of the industry but lacks the requisite independence from NNPC and the Minister of Petroleum; hence it could

⁴⁷ Barry Barton, Catherine Redgwell, A. Ronne and D. Zillman, “Introductions” in B. Barton, C. Redgwell A. Ronne and D.N. Zillman (eds.), *Energy Security: Managing Risk in a Dynamic Legal and Regulatory Environment* (OUP 2005).

⁴⁸ Sustainable Development Agenda, UN News Center, at: <<http://www.un.org/sustainable-development-agenda>> accessed 17/03/2018.

⁴⁹ Nwokeji (n. 15) 8-15.

⁵⁰ NNPC and scarcity of products has been the recurrent issue in Nigerian today.

⁵¹ NNPC, ‘Development of Nigeria Petroleum Industry’ (2018). <<http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasInNigeria/DevelopmentoftheIndustry.aspx>> accessed 14/02/2019.

⁵² NNPC, ‘Development of Nigeria Petroleum Industry’ 2019) <<http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasInNigeria/DevelopmentoftheIndustry.aspx>> accessed 01/01/2019.

⁵³ The various form of legal and contractual engagements between Nigeria and the International Oil Companies IOCs) are discussed in Chapter 2 of this research.

⁵⁴ NNPC Act 1977, Section 5.

⁵⁵ Nwokeji (n.15) 5-20, “NNPC’s production and marketing departments have woefully failed Nigerians in ensuring security of supply of petroleum resources”.



not meaningfully contribute to ensuring a vibrant petroleum industry.⁵⁶ The result is an industry orchestrated by conflict of interest and inefficiency in some of its departments.⁵⁷ According to Ayaoda,⁵⁸ NNPC has not been conducted like a business organisation despite its commercialisation and reorganisation at different times and “this has affected the ability of the government to discharge its responsibility to Nigerians.”

The status of NNPC as a major player and exercising a monopoly in the downstream activities of the industry in Nigeria imposes a responsibility on it to ensure adequate crude to the refineries and that citizens are well supplied with products at affordable prices.⁵⁹ NNPC has a contractual duty to honour its obligation to the joint venture parties and this will promote adequate supply of petroleum to the refineries.

However, the results of the non-payment of cash-calls have meant that most energy security projects were either abandoned, or delayed.⁶⁰ Further, this vertical integrated nature of NNPC has meant that it has greater responsibility under the present setting for developing adequate infrastructure, which includes refineries, gas pipelines and petrol stations. With a marketing department and various retail outlets, NNPC could ensure that there are enough petroleum depots and filling stations with adequate stocks to serve these stations.

It is the contention of the authors that NNPC could perform these roles directly through its Pipeline and Product Marketing Company Limited (PPMC) or through independent marketers under the agreed franchise scheme. These marketers have also been licensed to import refined products on behalf of the NNPC and to sell directly to consumers at the government’s regulated uniform prices.⁶¹ NNPC is expected to spare itself from the direct importation of petroleum product as it has been the order of the day in recent years.

The government has though, at various times endeavoured to address the price fluctuations of petroleum products through subsidy as implemented by Petroleum Equalisation Fund Management.⁶² Subsidy implementation has had unintended results in Nigeria as it benefit the rich class rather than the poor and encourages scarcity of petroleum products.⁶³ Those that mainly benefits from subsidized prices are most independent marketers licensed by the NNPC to import refined products are who still ripe off Nigerians

⁵⁶ Mark Thurber, Ifeanyi Emelife and Patrick RP Heller; NNPC and Nigerian Oil patronage Ecosystem (2010) Working Paper Program on Energy and Sustainable Development 95.

⁵⁷ Nwokeji (n15) i 21-24.

⁵⁸ M. Adebayo, “State Petroleum Ownership Model-Symbolism vs Progress?” (2009) (7) (3) *OGEI*, 1-4;9 (Emphasis is Mine).

⁵⁹ Y. Omorogbe, “Legal Framework for Production of Petroleum in Nigeria.” (1987) *Energy and Natural Resources law* 274-283.

⁶⁰ G. Etekerentse, *Nigerian Petroleum Law* (2nd edn), (Dredew Publishers 2006) 18, on the disappointment of Nigerians with the Act 23-24.

⁶¹ This one way the government subsidises the independent marketers vide Petroleum Equalisation Fund Act. Provide the citation of the Act for consistence and reference purpose. Again why not discuss the Act or cite the relevant provision that deals with subsidy

⁶² Y. Omorogbe, *Oil and Gas Law in Nigeria* (Malt house Press Limited 2001) 113.

⁶³ I. Ogundari, A.s. Momodu and J.B. Akaraki, kerosene Subsidy and Oil Deregulation Policy Development in Nigeria in I. Iwayemi, W. Iledare and A.A. Adenikinju, *Energy, Environment and Economic Growth* (2011) Nigerian Association for Energy Economics 123.



till date. As at today, the availability of basic petroleum products such as kerosene cannot be guaranteed and if available, are at exorbitant and unsustainable prices.⁶⁴

This is an indication of mal-governance and regulatory challenges and a sad situation resulting from the improper coordination and issuance of import license by the NNPC officials; together with the lack of payment of import cost to the marketers and the interference in the affairs of NNPC's management by the Federal Government of Nigeria, and all these signpost a regulatory failure.

4.0 NNPC and Nigerian Gas Company (NGC)

Another department of NNPC is the Nigerian Gas Company Limited (NGC), and this department explains regulatory failure and maladministration of NNPC. The NGC is in charge of managing, on behalf of the NNPC, gas pipelines and ensuring supply of gas to the domestic consumers. NGC and the Power Holding Company Nigeria Limited, now liberalised companies under the Powers sector Reforms Act 2005), that are successor to the (Nigeria National Power Company), are the main off-takers of gas produced by the IOCs but could not pay for gas supplied by the IOCs because they are government institutions.⁶⁵

Although the former Petroleum Industry Governance Bill 2018, was set to restructure the NNPC by creating a truly independent limited liability gas company, together with the introduction of a Domestic Gas Supply Obligation,⁶⁶ the non passage of the PIB bill and Petroleum Industry Governance Bill (PIGB) 2017 have meant that we have to wait longer for these reforms to yield any fruits. It is only hoped that when the bill passes in to law the new gas outfit would be able to meet its obligation to gas producers.⁶⁷ Likewise, NNPC is the holder of the Oil Mining lease under the existing Production Sharing Contracts.⁶⁸ PSCs as a means of participation in the industry by the government could be employed to influence the availability of crude oil and gas in Nigeria but has yet to live up to this responsibility.⁶⁹ NNPC also has an exploratory and production department called Nigerian Petroleum Development Company (NPDC). NPDC could produce adequate crude for the nation's refineries from its choice acreage, if it wishes to, in the absence of supplies from the IOCs.⁷⁰ However, the effectiveness of its production department has been compromised by political interference and lack of funding.⁷¹ Therefore, NNPC is in position to promote security of supply of crude oil, gas and refined products in Nigeria. If these roles were effectively discharged, it could have addressed the lack of security of supply of petroleum resources.

⁶⁴ I. Daniel "Long Queues at Filling Station: Situation Is Temporary, Says Jonathan," *Information Nigeria* (2015), available at: <<http://www.informationng.com/tag/fuel-scarcity>> accessed 04.03/2015.

⁶⁵ Thurber *et al* (n. 30) pp. 1, 13.

⁶⁶ See, PIB 2012, ss 159 and 183.

⁶⁷ Adeola Adenikinju, Seth Acton and Olayinka Adenikinju, "Energy Security in Africa Issues, Challenges and Possible Role for Green Energy," in Adeola Adenikinju, Akin Iwayemi and Wumi Iledare, *Green Energy and Energy Security* (National Association of Energy Economic 2012).

⁶⁸ Production Sharing Contract, as a form of participation of the Nigerian government in the industry, was first experimented in 1993, following the failure of the joint venture arrangements to deliver the required economic gains from the petroleum industry.

⁶⁹ M.B. Umar, "Legal Issues in the Management of Nigeria's Production Sharing Contracts From a study of Nigerian National Petroleum Corporation's National Management Services' Perspective," (2005) 3(1) *OGELI* 15-23.

⁷⁰ Sadly, Nigerian Petroleum Development Company (NPDC) - the exploratory and production company set up under the NNPC is not adequately funded by the government because of political reasons.

⁷¹ *ibid*.



However, under the deregulated industry, NNPC will have to dedicate, in conjunction with other co-partners, a certain percentage of its crude for domestic consumption.⁷² This is in line with the provisions in the PIB 2012, which is yet to pass into law. There is also a serious conflict of interest between the NNPC officials and Federal Ministry of Environment over whose function, it is to regulate environmental pollution arising from the petroleum industry and this affects the implementation of an efficient environmental protection policy of the government.⁷³

The Officials of the National Environmental Standards Regulations and Enforcements Agency cannot regulate the oil and gas sector even though pollution from this sector occurred within the media of air, land and water under the control of the Agency. This is due to superiority complex syndrome between the officials of DPR and the NESRA Agency over whose position is more direct to or tangential to oil industry. We argue that this complex is one of the many challenges facing environmental protection regimes in Nigeria and has contributed in aggravating environmental pollution cases and regulation in Nigeria.⁷⁴

5.0 Need for Robust Regulations

The authors argue that there is need for some sort of regulation by an independent body without government interference. Nigerian petroleum industry's regulatory frameworks in the light of the many challenges facing the industry and against the background of the epoch making advances made by similar industries in other countries needs to be reposition through some forms of regulation and deregulations.

This work finds that by 1969 when the superimposing law that governs the industry was promulgated, the country was governed by the military and thus the military command and control approach overwhelm the existing regulatory frameworks such as found in the Petroleum Act 1969 –the main coordinating law.⁷⁵ Apart from the Petroleum Act, the Petroleum Profit Tax Act 1959, Petroleum (Drilling and Production Regulations) 1969 and Company Income Tax Act 1958, which directly affect the industry were all military-made regulations. These regulations were similarly made at a time when oil explorations were onshore and there was no great impetus to go offshore.

It is for this reason also that there are dearth of off shore drilling regulations in Nigeria and the result was that pollutions from offshore activities were greater in number than onshore pollution.⁷⁶ Revenue from offshore were not adequately realised due to inexperience on offshore acreage development. The Deep offshore (Inland Basin) Production Sharing Contract Act was only made in the year 2003 and the same captures only rents and taxes without adequate consideration for environmental, health and safety implications of offshore drilling activities.

⁷² PIB. See, 183 (1) (5); See also Bernard Taverne, *Petroleum Industry and Governments: A Study of the Involvement of Industry and Governments in Exploring for and Producing Petroleum* (3rd edn.), (Wolter Kluwer Law and Business, 2013), pp. 148,246, for meaning of DSO and the application of a DSO in Indonesia.

⁷³ See the United Nations Environmental Program *Environmental Assessment of the Ogoni Land* (UNEP 2011) 139-140, DEP /1337/GE, 1195-200< <http://www.unep.org>> accessed 5 July 2018, indicted the Department of Petroleum Resources of the NNPC, for the negative consequences of this conflict with the Federal Ministry of Environment.

⁷⁴ Worika and Etemeire (n. 3) 2.

⁷⁵ *Ibid.*, page 3-7.

⁷⁶ See, UNEP Goals and Principles of Environmental impact Assessment 1987 on pollution. Proper citation required.



Again, climate change, with its national and global impacts, which now shapes energy industries, including the petroleum sector, did not receive much attention in Nigeria and indeed in some other hydrocarbon nations until recently.⁷⁷ The result is that the existing legal regimes of the petroleum industry in Nigeria, did not address the inverse relationship between the oil and gas industries and the presence of green house gases in the atmosphere.

Similarly, issues such as sustainable development, corporate governance and rights of indigenous host communities were inchoate issues in the lexicons of the conventional petroleum industries governance; hence most petroleum legislation did not envision these issues.⁷⁸ A study of some legal and regulatory frameworks in other countries like Norway⁷⁹, United Kingdom,⁸⁰ and Brazil⁸¹ revealed that a robust and proactive petroleum industry should address the following.

- i. the ever changing crude oil price shocks and fluctuations in the international markets,
- ii. the international nature of the petroleum industry and markets,
- iii. the importance of energy security and the need for domestic supply obligations,
- iv. dealing with the challenge of climate change and fossil fuels relationship,
- v. the challenge of transportations of crude oil and gas from one country to the other,
- vi. dealing with compensation and human capacity development issues in the petroleum industry,
- vii. the threats of terrorism at the high seas, acts of sabotage piracy, pipeline vandalism and militancy and geopolitical conflict in some oil producing and exporting countries ,
- viii. the influence of regional oil politics, bodies and cartels such as OPEC and International Energy Agency (IEA),
- ix. The development of new form of fuels such as shale gas and shale oil that affect the global international petroleum market, and
- x. Dealing with the problem of lack of transparency in the extractive industry and the resulting resources curse syndrome in some hydrocarbon nations.

This research argues that while the best drafted petroleum legislation and regulatory frameworks might not incorporate all of these impacts, let alone anticipating all, it would be expected that such a legislation or regulation should be dynamic enough to meet changing needs and emerging legal realities or problems in the industry. It would also be expected that governments or the legislature should promptly amend or formulate better policies or legal framework outside the main Act to deal with these emerging needs, if amendment becomes problematic.

However, the current 1969 Petroleum Act in Nigeria and all the relevant regulations seem anachronistic and out of tune with the realities and expectations of modern regulatory framework. Similarly, the main

⁷⁷ Climate Change Legal Regime was passed through the UNFCCC, 1992, Kyoto Protocol 1997 and now the unified Paris deal for 2015; See also United Nations Framework Convention on Climate Change, First steps to a safer future: Introducing The United Nations Framework Convention on Climate Change, available at: <http://unfccc.int/essential_background/convention/items/6036.php> accessed 13/01/2019.

⁷⁸ In Nigeria the failure to address the rights of host oil bearing communities of the Niger Delta affects the price of crude oil in the international markets.

⁷⁹ See, Petroleum Activities Act 1996 Norway.

⁸⁰ Petroleum Act 1998 UK.

⁸¹ Law Regulating Petroleum Activities Law 9478 1997 Brazil as example where indigenes rights were fully addressed.



regulatory body DPR cannot similarly perform these functions optimally because of the conflict of interest.⁸² Hence, therefore, it could be argued strongly that Nigeria's petroleum industry has been lagging behind similar petroleum industry in other hydrocarbon nations such as Norway, UK, Brazil, Saudi Arabia, Indonesia and Venezuela, just to mention these few and there is need for more regulation to address these emerging concerns.

6.0 Challenges Facing the (DPR) as a Regulator of the Petroleum Industry

As we had argued earlier, many institutions have direct regulatory impacts on the oil and gas industry in Nigeria while others have tangential effect. Two arguments could be articulated with respect to the performance of regulatory bodies and institutions controlling the petroleum industry in Nigeria.⁸³

One argument is that there seem to be too many institutions and regulatory frameworks with conflicting functions that affect the industry in Nigeria.⁸⁴ The proponents of this view could argue that the industry is overregulated - too many Legislation, State laws, Regulations, Ministerial Directives even Local Government Edicts on Taxes –that affect petroleum operations be it (upstream, mid-stream and down-stream) operations.

Another argument is that, when compared with other hydrocarbon nations, there is dearth of legislation, governing the industry in Nigeria, hence the lack of effective performance and service delivery in the industry.⁸⁵ The proponents of this view examine the rate of structural unbundling, reorganisation of the NNPC and the Petroleum Ministry since 1971 when it was first established as NOAC up till date.⁸⁶

This work identifies some of the challenges facing the industry as regulatory capture, lack of funding and expertise in technical aspect of the industry which has meant that some jobs must be reserved for the expatriates, thus promoting capital flight. Others are government interference, corruption and lack of enforcement capabilities. This section examines some of these challenges in brief.

6.1 Regulatory Capture

Regulatory capture means the capture of the regulator by the regulated. It envisions a situation where due to helplessness induced or created, the regulator can no longer perform its regulatory roles effectively. The result of this is abandonment of regulation. Regulatory capture leads to an improper enforcement of regulation by the regulator. The net effect is connivance or compromise with the regulated bodies or companies. These situations are very rife in Nigeria and affect the performance of most of the regulatory institutions such as the DPR. Example is a situation where the regulator depends on the regulated companies to fund its regulated functions, to provide logistics, to implement its

⁸² Nwokeoji (n. 30).

⁸³ Kristin Buske, Stefan Jentzsch and Clemens Bechter, "Is Self-Regulation Sufficient? Case of the German Transparency Code," (2016) (1) *Admin Science*, p. 3.

⁸⁴ S C Dike, "Nigerian Petroleum industry, International Oil Companies and Human Rights Concerns: Need for Operational Due Diligence (2017)1 (1) *African Journal of International Energy and Environmental Law* 32-35

⁸⁵ *Ibid*, 35.

⁸⁶ By Jancit Jordan and David Levi, *The Politics of Regulation: Institutions and Regulatory Reform* (Edward Elgar Publishing Limited, 2004).



regulated functions, then, it would be difficult for these regulated agencies to effectively perform their regulated functions. Then the regulator is said to have been captured by the regulated.

In order to avoid regulatory capture most oil and gas regulatory institution such as the DPR should be fully funded, privatised or commercialised so that they can operate in businesslike manner, targeting huge profits, while serving the objective of government through tax remittances. Government should, when necessary, provide operational capital, in addition to logistics and personnel needed for enforcement and implementation of these regulations. When the Regulator is captured due to these influence, then both environment, efficiency, security of supply of products, and other positive benefits accruable from a robust industry is captured as well compromised.

A situation where DPR could not regulate NNPC's poor oil pollution record because DPR officials are appointed by the MD of NNPC does not augur well for the industry and it is an example of regulatory capture. A similar scenario is where DPR officials could not regulate any of the multinational oil Companies due to unusual patronage or lack of adequate enforcement materials which must be provided by these multinational oil Companies. This does portend great danger for the oil industry and regulatory bodies.

6.2 Funding

An adequate funding of the regulator is a pre-conditional to optimal regulatory performance. Most of these regulatory institutions do not have adequate funds to carry out their regulatory functions in an efficient manner. They also lack necessary funds to develop regulatory kits and other machineries with which to execute their functions. Consequently, they expose themselves to regulatory capture, ineptitude and corrupt influence by the regulated IOCs. The DPR is a poorly regulated agency bedevilled with funding problems.

Related to this is the failure of the NNPC to pay cash calls meant for oil and gas projects which usually stall such projects leading to the IOCs accusing NNPC of lack of transparency. Again, the Nigerian Gas Company and National Electric Power Authority (as it then was), were the main off takers of gas produced by the IOCs. The failure of these bodies to pay proper price or market price for gas supplied to them because they are government agencies have meant that these IOCs would not have return on their investments. These acts affected the gas sector development in Nigeria and hinder the ability of the regulator to proceed against the IOCs to recover various tax due to the government.

6.3 Expertise

Allied to the above challenges is the problem of inadequate capacity. In the petroleum industry, it yet to be proven that Nigeria has adequate capacity in all the departments of the industry be it the upstream, midstream or downstream. It is as a result of this that the industry is still highly dominated by IOCs. It is also for this reason that Nigeria has not experimented in the large scale, the framework of Service contract arrangement which most developed hydrocarbon countries employ for developing their industry given their level of technological and human capacity development. It is also for this reason perhaps that Nigeria import virtually most of the oil and gas equipments and it does not have functional



refineries since most of the equipments needed are imported. These contribute to capital flight and rob the nation of a robust petroleum industry.

6.4 Interference by the government

One of the major challenges facing the industry today is the interference by government in virtually all the departments of the industry. The failure to fully privatise the NNPC and its major departments was necessitated by the government's overbearing influence over the activities of the industry. Government appoints the Minister in charge of the industry and can remove him any time. Similarly, Government audits the projects executed by the industry and approves its budget. Government imposes subsidies and can remove it any time on the downstream sector of the industry. Sometimes, the government lays hold to the profits of the NNPC and adopt less transparent process in awarding licenses and leases.⁸⁷ The government starves the industry of counterpart funds to service most of the existing JVCs and other projects. Consequently, the industry cannot compete favourably with other national oil companies and the result is inefficiency and poor performance.

6.5 Lack of transparency

It has been argued that NNPC is the most corrupt government agency in Nigeria.⁸⁸ This is due to its poor performance indicators since 1977 when the National oil company was first incorporated. Apart from its production department called Nigeria petroleum Development Company NPDC, virtually all the departments of the NNPC are performing with suboptimal efficiency. The Ministry of petroleum itself has not fared well. There are cases where the past Ministers of petroleum were found to have corruptly enriched themselves to the detriment of Nigeria. Most of the departments have not been functioning well due to corruption.⁸⁹ The failure of the four Nigerian refineries which are situated at Port Harcourt, Warri, Kaduna and Eleme to operate optimally is a sign of corruption. The opaque bidding process has necessitated the grant of licences and leases to those never qualified to secure such licences under a competitive environment. Tribal and other political influences are also major challenges facing the industry.

The appointment of various top NNPC officials in the past, has been tainted with politics, ethnicity and religious considerations and these considerations undermine efficiency and competence. Structural defects and lack of transparency play major role in the proper governance of the Industry. Too many departments and agencies, all doing almost the same function at the same time can best contribute to conflict of interest and poor results.

Therefore, the non-passage of the PIB into law has meant that NNPC cannot discharge its obligation in the interest of Nigerians. Consequently, the inefficiency in the NNPC, the lack of indigenous capacity, corruption and the lack of transparency, together with the inherent conflict of interests between NNPC

⁸⁷ Mark Thurber, Ifeanyi Emelife and Patrick R.P. Heller, "NNPC and Nigerian Oil Patronage Ecosystem." **Provide the complete citation**

⁸⁸ Corruption and NNPC Working Paper Program on Energy and Sustainable Development, 2010, 14. **Provide the complete citation.**

⁸⁹ *Ibid.*



and the Ministry of Environment department, have had adverse impacts on the promotion of energy security in Nigeria.⁹⁰

6.6 Out-dated legal Frameworks

The industry in Nigeria operates under harsh and outdated legal regime.⁹¹ This legal regime did not anticipate the international, competitive and emerging issues surrounding the modern day petroleum industry such as security of supply, pollution arising from the industry and international oil prices. The Petroleum Act 1969, Oil Pipeline Act 1959, Petroleum Profit Tax Act 1959, which control and coordinate the oil and gas industry in Nigeria have less attractive provisions suitable to the modern day petroleum legislation. These Acts were passed many decades ago and are still made to apply today after 50 years, notwithstanding the emerging challenges facing the industry.

The Petroleum Act upon which much hope had been placed by Nigeria according to one author has proved hallow in solving the many problems of the industry.⁹² Today, oil and gas pollution has no solution in Nigeria due to anachronistic petroleum legislation. Security of supply of petroleum products cannot be guaranteed by the laws. Effective and robust petroleum industry governance has no support from the existing legislation. Capacity development of Nigerians are not fundamentally addressed in these laws hence the promulgation of the Local Content Act 2010, which operates notwithstanding the provision of the Petroleum Act 1969.⁹³

Further, various attempts had been made to emend the Petroleum Act in the year 1996 and 2000. In 1996 the result of the amendment was the creation and recognition of marginal fields out of the existing license leases granted under the concession eras. Another attempt was in the year 2000 through the petroleum industry bill now restyled Petroleum Industry Governance Bill which bill is yet to be passed into law due to so many factors ranging from corruption and the lack of political will. Consequently, the oil and gas industry in Nigeria suffers serious setback because of anachronistic legislation that do not meet the reality of the modern day Petroleum industry globally.

7.0 Conclusion

NNPC is the Nigerian National Oil Company and DPR is the main regulator, for now. The DPR could not optimally perform its regulatory functions due to several factors outlined above in this Chapter. The only way to reposition the NNPC is to have an independent regulatory body to cater for the upstream, midstream and downstream sectors of the petroleum industry, The authors found that past reform had tinkered on the need to have separate regulatory agencies for the industry but due to lack of political will to implement these various reforms, together with the inability of the nation's National Assembly to pass the PIGB Bill into law; coupled with the withholding of assent by the President to certain sections of the bill, the result has meant that the Nigerian nation shall continue to have for a long time, stalemate in the regulatory architecture governing the petroleum.

⁹⁰ Ngogbo, Emeseh, "Mainstreaming Enforcement for Victims of Environmental Pollution; Towards Effective Allocation of Legislative Competence under a Federal Constitution," [2012] *Environmental Law Review*, 185,196.

⁹¹ See, Petroleum Act 1969 Nigeria.

⁹² G. Etekerentse, *Nigerian Petroleum Law* (2nd ed ,Drewdew Publishers 2006) 5-15.

⁹³ See, Oil and Gas Industry Local Content Act 2010.



Although, there are several regulatory agencies coordinating and having oversight functions on the industry, the DPR stands out as the main regulatory body but is dogged by regulator capture and conflict of interests. This work recommends *inter alia* an independent regulatory body and robust regulation that will envision emerging development in the petroleum industry. Thus an incremental passage of the bill is also hereby recommended, while hoping that the industry would be fully privatised to create a business minded national oil company capable of meeting the aspirations of Nigerians.