REVOCATION OF LICENCES IN THE NIGERIAN PETROLEUM INDUSTRY: A CRITICAL APPRAISAL

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Abstract

The ownership, control and management of the Nigerian hydrocarbon resources both onshore and offshore are vested exclusively in the government. In exercise of its management functions, the government grants licenses and leases to prospective applicants before they can operate in the petroleum industry. The grant of such license or lease is not absolute – the government has the power to revoke licences for a variety of reasons, including non-performance of environmental obligations, non-compliance with regulations, terms and conditions of grant, failure to comply with fiscal obligations and many others. The authors critically appraised the revocation of licences in the Nigerian petroleum industry, rationale for revocation, grounds for revocation, procedure for revocation and effect of revocation. The authors also discussed the issues and challenges facing the current licence regime and finally make a comparative appraisal using Norway and Brazil. The authors found that revocation of licenses can have both positive and negative on the petroleum industry depending on the propriety and otherwise of the revocation and the procedure adopted and concluded that until the root problems facing revocation of licenses in the industry are addressed, the industry will be far from attaining sustainable development.

Keywords: *Petroleum Licence, Revocation of Licence, PIA, Brazil, Norway, Legal barriers*

Introduction

1. The rights to explore, extract, produce, and market petroleum resources were initially granted through traditional concessions in which IOCs had exclusive rights for a long period with little or no state involvement. Nigeria had a similar concession arrangement until the Oil Minerals Act of 1958 introduced a licensing regime that curtailed the IOCs' latitude in terms of duration and geography. In view of the UNGA Resolution 1803 and the need to curtail the excessiveness of IOCs, the National Assembly has since 1969 continued to evolve new laws that permit the exploitation of Nigerian petroleum resources without undermining the sovereign power of the country. The Petroleum Act 1969 introduced three licenses in the industry namely; the Oil Exploration License (OEL), Oil Prospecting License (OPL) and the Oil Mining Lease (OML)[65] which are now respectively known as the Petroleum Exploration License (PEL), Petroleum Prospecting Licence (PPL) and the Petroleum Mining Lease (PML).[66] In addition to these traditional forms of petroleum licenses, the PIA has

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[65] Petroleum Act 1969 Cap P10 LFN 2004, s.2(1)(a)-(c).

[66] Petroleum Industry Act 2021, s.70(1)(a)-(c).

introduced two categories of petroleum licences in the midstream and downstream sector namely; the gas licenses and the petroleum liquid licenses. The essence of this is to expand investment in the Nigerian petroleum and value chain and boost investment in the Nigerian gas market.

2. Conceptual Framework

a) Petroleum Licence

In ordinary parlance, the term 'license' means permission or an official document showing that permission has been given to do, own or use something.[67] According to the Black's Law Dictionary, it is defined 'a privilege granted by a state or city upon the payment of a fee, the recipient of the privilege then being authorized to do some act or series of act that would otherwise be impermissible.' By virtue of section 318 of the PIA, license is statutorily defined as the license issued by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) pursuant to the provision of the PIA. In the same vein, the PIA defines permit to mean an official certificate of permission to undertake an activity issued by the NUPRC or NUPRC.

3. Revocation

To revoke means to annul or make void by taking back or recalling. It also means to cancel, rescind, repeal or reverse something. Revocation, therefore, means the annulment, cancellation, or reversal of an act or power.[68] With respect to the meaning of cancellation of an instrument, the court has stated in *Nnubia v. Attorney-General of Rivers State*[69] as follows:

> Cancellation means to destroy the force, effectiveness or validity of. To annul, abrogate or terminate, defacement or mutilation of instruments, words of revocation written across instrument. A means whereby a holder discharges a party's liability on an instrument by physically demonstrating on the face of the instrument the intention to discharge as by writing "CANCELLED" across the instrument's face, striking out the party's signature, or destroying or mutilating the signature or the instrument.[70]

[67] A S Hornby, *Oxford Advanced Learners' Dictionary* (10th edn., Oxford: Oxford University Press 2020) 904.
[68] Garner (n 9)1515.
[69] (1999) 3 NWLR (Pt. 593) 82
[70] *Ibid.,* 110-111, paras. H-B

Thus, revocation refers to the process of annulling an act, the recalling of a power, right or privilege granted to operators in the petroleum industry to explore, prospect, mine or produce crude oil or natural gas within the contract area. Where a petroleum licence is revoked, the power and rights of the affected licensee under the revoked licnense ceases to be valid. Thus, unless such revocation is set aside by the competent authority, any act performed by the affected license becomes illegal and criminal. There are different kinds of revocation, and in most cases, it is carried out either as a form of punishment or in order to stop the misuse of a privilege. A suspension is a term used to describe a revocation that is just temporary.

Furthermore, the court has said that licences granted may be revoked as long as there are good reasons and prior sufficient notice, notwithstanding the absence of any provision in that law for the revocation of such licences.[71] However, any such revocation to be valid cannot be done by 'a stroke of the pen.'[72]

4.Revocation of License in Nigeria

The revocation of petroleum licenses in the Nigerian petroleum industry is necessary to ensure compliance with regulations, protect the environment, promote sustainable development, attract new investments and combat corruption in the sector.[73] Generally, the Nigerian petroleum industry has been criticized for its negative impact on the environment.[74] Oil spills and gas flaring have caused significant harm to the ecosystem and the health and development of the host communities. The revocation of petroleum licenses is a way to ensure that companies are held accountable for their environmental impact and are incentivized to operate sustainably. This can include measures such as reducing gas flaring, implementing spill prevention and response plans and investing in remediation efforts.[75]

Also, revocation is an essential step towards creating a more transparent and competitive environment that benefits both the industry and the Nigerian people. Companies that fail to comply with the regulations, obligations, terms and conditions of the license may have their licenses or leases revoked. This will encourage companies to operate responsibly and sustainably, which will benefit the environment and the local communities.[76] This is to also demonstrate the state ownership of hydrocarbon resources in Nigeria as opposed to the traditional concession era where the government

[71] *Igbuya v. Eregare* (1990) 3 NWLR (Pt. 139) 425, 431, paras. F-G.
[72] *Ibid.*
[73] J Mohammed, 'Terms of Oil and Gas Exploration Contracts: Effectiveness and Challenges in Developing Countries' [2013](5)(1) *Port Harcourt Law Journal*:350-362.
[74] *Ibid.*
[75] *Ibid.*
[76] Kingston K G and Thompson J E, 'The Menace of Penalty Rules and Default Clauses in Petroleum Contracts in Nigeria' [2019](3)(3) *African Journal of International Energy and Environmental Law*:230-244.

had little or no control over the concessions held by the IOCs.[77] It also shows that the grant of license is not absolute but subject to regulations. This is a way to safeguard the petroleum industry and exert some level of control over the operations of the industry.

However, the State cannot unilaterally revoke or annul a petroleum licence or lease without complying with the substantive and procedural requirements of the law. This entails examining the grounds for annulment and following the proper procedure. These will be discussed in the preceding parts of this chapter.

5. Grounds for the Revocation of Petroleum License

The grounds for the revocation of license in the petroleum industry are clearly stated in section 96 of the PIA. The power of revocation of PPL and PML is vested in the Minister but before he can exercise this power, he must receive a written recommendation from the NUPRC based on any of the grounds stated in this section of the chapter.

1. Failure to Conduct Petroleum operations in accordance with International Practices

This is one of the grounds for the revocation of petroleum licenses or leases in Nigeria. Where the holder of a PPL or PML fails to conduct petroleum operations in accordance with good international petroleum industry practices, the Minister may revoke his licence.[78] Pursuant to section 318 of the PIA, a practice in the Nigerian petroleum industry is said to be of good international petroleum industry practice if the practice in question, at the time in question, is generally acceptable in the international petroleum industry as being good, safe, economical, environmentally sound and efficient in operations and should reflect standards of services and technology that are either state-of-the-art or otherwise appropriate to the operations in question and should be applied using standards in all matters that no less rigorous than those in use by petroleum companies in global operations.

2. Interruption of Production

Where a licensee or lessee as the case may be interrupts production for a period of over 180 consecutive days without justification or as provided in the license or lease or approved field development plan, the Minister may revoke the licence or lease in question.[79] However, it is pertinent to note that the Minister shall not revoke the said license if the interruption of production is as a result of *force majeure* or an act of God which is acceptable as a justification for the interruption.

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[77] *Ibid.*
[78] Petroleum Industry Act 2021, s.96(1)(a).
[79] PIA, s.96(1)(b).

3. Failure to Comply with the Prescribed Terms and Conditions of the Grant

The grant of licenses and leases under the PIA comes with corresponding terms and conditions prescribed not only under the license or lease itself but also under the approved field development plan. Thus, where a licensee or lessee fails to fulfill the terms and conditions of the applicable license or lease or the approved field development plan, it will be a ground for revocation of the license or lease.

In the case *Korea National Oil Corporation v OPS (Nig.) Ltd.*[80] the Minister of Petroleum Resources revoked the allocation of OPL 321 and OPL 323 granted to appellants because they failed to pay the signature bonus for the licences. By the same letter, the ONGC Videsh Ltd's status as the winning bidder for OPL 321 and OPL 323 was restored subject to its payment in full of the signature bonus within the period stated in the letter. The appellants were aggrieved with the voiding of their licences. So they sought and were granted leave to apply for judicial review. They filed an originating motion in which they sought several declaratory reliefs, an order of certiorari to quash the decision of the Minister voiding their licences, and an order of injunction.

The trial court held that it had the power to review the decision of the Minister. The trial court examined the reasons given for the Minister's decision, found the same untenable, and voided the revocation of OPL 321 and 323 on the grounds that the decision was illegal and procedurally unfair to the appellants. It, therefore, entered judgment in favour of the appellants, declared the revocation of OPL 321 and 323 null and void, and granted the other reliefs sought by the appellants. In appeal, the Court of Appeal allowed the appeal on the ground that a writ of certiorari does not lie against executive or legislative acts and that the trial court lacked jurisdiction to hear and determine the appellants' suit. The Supreme Court affirmed the decision of the Court of Appeal and the appellant's suit was struck out.

4. Failure to Pay Financial Obligations to the Government

One of the obligations of the holders of licenses and leases under the PIA is to pay royalties, dues, rents, taxes or other payments or production shares under the PIA. Where the holder fails to fulfill its monetary or financial obligation, the Minister may evoke the holder's license or lease.[81] Chapter 4 of the PIA, the Federal Inland Revenue Service (FIRS) is to collect tax of 5-15% - 30% on profit from crude oil production, companies income tax at 30% and education tax at 2% which will no longer be deductible. The NURPC will collect rents, royalties and production shares as applicable while the

[80] (2018)2 NWLR (Part 1604) 394.
[81] PIA, s.96(10(d).

NMDPRA will collect gas flare penalty from midstream operations. Royalties are payable at the rate of 15% for onshore areas, 12.5 for shallow water and 7,5% for deep offshore and frontier basins.

Thus, under section 100 of the PIA, a holder of PPL or PML shall pay to the government royalties, fees, rents and production or profit shares in the amount and time as prescribed in the license or lease under the law. The holders of the licenses and leases must therefore comply with the fiscal regime under the PIA as non-compliance may ground revocation.

5. Illegal Transfer of Interest in the License

Section 84 of the PIA empowers the holders of licenses and leases to enter into a contract with a third party for the exploration, prospecting, production or development of crude oil or natural gas or both. The purpose of this is to encourage local content development and deepen local involvement and empowerment in the Nigerian oil and gas sector. However, this power to enter into contract does not confer on any licensee or lessee the right to assign an interest in any license except in accordance with the provisions of the PIA.[82]

Section 95 specifically deals with the transfer, assignment, merger and acquisition of interests in petroleum license. Under this provision, a holder of a petroleum prospecting license or petroleum mining lease shall not assign, novate, or transfer his license or lease or any right, power or interest or a shareholder of an incorporated joint venture shall not sell or transfer its shares without the prior written consent of the Minister.[83] Where a holder fails to comply and transfer an interest in a license without prior written consent of the Minister, it would ground revocation under section 96(1)(f) of the PIA.

6. Failure to Comply with Environmental Obligations

Under the PIA, a licensee or lessee who engages in upstream and midstream petroleum operations shall submit for approval an environmental management plan in respect of project which requires environmental impact assessment to the NUPRC or NMDPRA as the case may be.[84] As a condition for the grant of a license or lease, a licensee or lessee shall pay a prescribed financial contribution to the environmental remediation fund established for the rehabilitation or management of negative

[82] *Ibid*, s.84(2).
[83] PIA, s.95(1).
[84] *Ibid.,* s.102

environmental impacts.[85] Thus, where the holder of license or lease fails to comply with the foregoing environmental obligations, it would be a ground for the Minister to revoke his license or lease.[86]

7. Failure to Submit and Advance a Field Development Plan

Where a licensee under a petroleum prospecting license declares a commercial discovery, a licensee shall within 2 years of the declaration, submit to the NURPC a field development plan with regard to the commercial discovery together with a commitment to carry out the work described in the field development plan.[87] However, where a licensee does not submit a field development plan and work commitment within the prescribed period, the area containing the commercial discovery shall be relinquished.[88] In addition, under section 96(1)(k) of the PIA, the Minister is empowered to revoke a license where the holder fails to submit and advance a field development plan and work commitment as required by the PIA.

8. Failure to Comply with Host Communities Obligations

Chapter 3 of the PIA provides for host communities development with the objectives of fostering sustainable prosperity and development within the host community.[89] To realize this objective, the settlors or licensees are obligated by the PIA to incorporate the host community trust for the benefit of the host communities which the settlor is responsible.[90] By virtue of section 240(2) of the PIA, each settlor shall make an annual contribution to the applicable host communities development trust fund of an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities development trust fund was established. These obligations are mandatory and must be fulfilled by the settlors. However, where it fails to do so, the community reading of sections 238 and section 9(1)(n) provide that its shall be a ground for the revocation of the applicable license.

9. Failure to Comply with Domestic Supply Obligations

Failure to comply with domestic obligations in both upstream and midstream sectors may result in the revocation of licenses.[91] A domestic supply obligation is a form of energy security measure with obligations imposed by host governments on the IOCs to facilitate the supply of the products under

[85] PIA (n 6), s.103(1).
[86] *Ibid.*, s.96(1)(i).
[87] *Ibid.*, s.79(1).
[88] *Ibid.*, s.79(4).
[89] PIA, s.234(1).
[90] *Ibid.*, s.235.
[91] *Ibid.*, s.96(1)(m).

obligations.[92] It is the imposition of an obligation on the IOCs to dedicate a certain percentage of petroleum resources to meet domestic needs at agreed prices with the host state. Sections 109 and 110 of the PIA empower the Nigerian Upstream Petroleum Regulatory Commission to prescribe and allocate on a yearly basis the domestic supply obligation based on the domestic crude oil supply obligations and domestic gas delivery obligations as determined by the Midstream and Downstream Petroleum Regulatory Authority on a yearly basis.

4. Procedures for and Effects of Revocation of Petroleum Licenses

Before examining the effects of wrongful revocation of licenses and leases, it is important to explain the procedure for lawful revocation. Before the Minister can exercise his power of revocation under the PIA, the law requires him to serve a notice of default on the applicable licensee or lessee stating the grounds upon which the NUPRC may recommend revocation of the license or lease to the Minister.[93] Also, the Minister is to provide the licensee or lessee with a remediation period of not less than 90 days within which to remedy the default.[94] The essence of these procedural steps is to give the licensee a fair hearing and afford him reasonable time to remedy his default. This is to encourage investment in the industry and defeat arbitrary and unjust revocation without notice and remediation.

If the licensee responds to the notice by remedying his default and the NURPC is satisfied with such remedy, it will automatically terminate the revocation process.[95] However, where the 90 days remediation period has elapsed or expired and the default persists, the license may be revoked subject to the provisions of section 99 of the PIA.[96] Under section 99 of the PIA, where two or more persons are holders of a petroleum prospecting license or petroleum mining lease, and more than one or more grounds for revocation apply to not all of the holders, the Minister may revoke the participating or shareholder's interest to which the grounds apply and retain the interests of the other holder or holders to which the grounds do not apply. Upon the revocation of an interest, the rights of the defaulting holder shall cease without prejudice to any obligation or liability incurred or imposed on the defaulting holder under the terms and conditions of the license or lease prior to the time of the revocation.[97]

It is pertinent to state that the revocation of licences and leases does not extinguish the liability and obligations of the licensees or lessees incurred in favour of the NUPRC, the government or ant third party.[98] This simply means that the licensees are bound by those obligations owned to the foregoing

[92] S C Dike, *Energy Security: The Case of Nigeria and Lessons from Brazil, Norway and the UK* (Pearl Publishers 2015)
[93] PIA, s.97(1)(a).
[94] *Ibid.*
[95] *Ibid.*, s.97(2)
[96] *Ibid.*, s.97(3)
[97] *Ibid.*, s.99(3).
[98] *Ibid.*, s.97(5)

persons even after their petroleum license has been revoked by the Minister in accordance with the provisions of the law. It, therefore, implies that the NUPRC, the government or any third may still maintain a claim against the licensee whose licence has been revoked.

Where a revocation is validly revoked, the Minister may on the recommendation of the NUPRC appoint an interim operator to ensure petroleum operations continue from the areas and zones subject to the PML and based on good international petroleum industry practices. This appointment is to be made within 30 days of the revocation of the petroleum licence.[99] During the tenure of an interim operator, the NUPRC may conduct a fair, transparent and competitive bidding process for the grant of a new PML to replace the revoked one.

5. Challenges Facing the Revocation of Licenses in the Nigerian Petroleum Industry

The success of the petroleum industry in Nigeria has depended largely on the issuance of licences and renewals to IOCs within the industry in order to encourage investment. However, issues over renewals and revocation have threatened to undermine the confidence of both domestic and foreign investors in the industry, which will lead to a reduction in exploration and investment in the oil and gas industry and will further threaten the economic development of Nigeria as a whole.[100]

The first problem faced by the government is that the majority of licenses are not granted based on the merits of the individual company's application and capability in the industry, but rather on the favouritism of the government towards a particular company or group of companies.[101] In many cases, the government issues and revokes licenses only to favoured companies or individuals in order to avoid accusations of corruption, despite the fact that those companies or individuals may not have the technical capability to deliver in the petroleum value chain.

Second, the lack of independent regulators means that the government is able to pressure the companies into providing favourable treatment in return for the grant of the license.[102] Companies are thus forced to accept government interference in their operations in order to obtain a licence and operate legally, rather than being able to operate in a free and fair market. This increases the risk that the companies will perform poorly, leading to financial losses for themselves and their shareholders, which could in turn lead to further problems in the administration of the oil industry.

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[99] PIA, s.98.
[100] E O Ekhator, 'Public Regulation of the Oil and Gas Industry In Nigeria: An Evaluation' [2016] (21)(1) *Annual Survey of International & Comparative Law*: 43-91.
[101] A O Oyewunmi and O J Olujobi, 'Transparency in Nigeria's oil and gas industry: Is Policy Re-engineering the way out?' [2016](5)(4) *International Journal of Energy Economics and Policy*:630-636.
[102] *Ibid.*

Third, the system of granting licences and renewals does not give due consideration to the interests of the country as a whole. Rather than being issued on the basis of their technical and economic merit, licences are issued in exchange for political support. This poses a serious problem for the oil sector in particular, as the decisions of the government have a significant impact on the future of the oil industry.[103] Thus, it is particularly important for the government to exercise its judgment fairly when choosing whether or not to renew or revoke licences in order to ensure that the best interests of the country are served.[104]

Another issue facing revocation of licences in the Nigerian petroleum sector is that the government does not have a clear legal framework for determining the circumstances in which a company should be stripped of its operating licence, nor is there a set process for reviewing such decisions once they are made. The current provisions of the PIA allow for the revocation of licenses on the basis of failure to meet specified financial requirements or or non compliance with obligations enshrined in the PIA, licence and other regulations. However, the provision on revocation is not clearly and elaborately defined in the Act, meaning that the government does not have sufficient grounds on which to revoke the licences of any company that might be deemed a threat to public interest. As a result, the government has become increasingly reluctant to take action against companies that do not comply with the rules and regulations governing the industry. This has a negative impact on the development of the industry as a whole, as it makes it difficult for companies to invest in their operations without first gaining the approval of the government.

The unilateral revocation of license is another factor that operates to endanger the Nigerian petroleum industry. This system of revocation is not only unjust, it is also against the principle of fair hearing. The Federal Government's unilateral revocation of petroleum licences before expiration and without merit constitutes a breach of contract. It also involves value confiscation, robbing licenced operations of their rights and benefits. This has increased licensees' investment risk in the sector. This also violates the legally guaranteed and exclusive rights of licensees under applicable laws and regulations. Although the PIA has tried to remedy this problem by involving the NUPRC to make recommendations for revocation and later notifying the affected licensee of the intent to revoke to enable him to remedy his default, this procedure is not effective in practice as the government is more inclined towards unilateral revocation.

[103] A Akinrele, 'The current impact of global crude oil prices on Nigeria-an overview of the Nigerian petroleum and Energy Sector' [2016](9)(5) *Journal of World Energy Law and Business*:314-345.
[104] *Ibid.*

Another challenge facing the revocation of licenses in the Nigerian petroleum industry is the lack of political stability and continuity of governance.[105] There are numerous examples where the Federal Government has revoked licences given by earlier administrations. Notably, it was claimed that Eni and Shell Petroleum spent $1.1 billion for oil block OPL 245 in 2011.[106] The payment was purportedly sent to the federal government, which then forwarded it to the Malabu Company, which was owned by a former oil minister of Nigeria who had given his own business the oil block while in office.[107]

There is also the problem of corruption, which has become a culture in this part of the world. This problem has eaten deep into the Nigerian petroleum industry that it has become a non-legal criterion in determining the grant, renewal or revocation of licenses in the country. The Halliburton case is particularly important to note since company officials admitted that sometime in 2006, its Nigerian subsidiaries proposed $2.4 million in bribes to tax officials in exchange for favourable tax rebates totaling more than $14 million.[108] As a result, the company's licence was revoked.[109]

Under the PIA, the Minister may revoke petroleum for failure to pay rents, rents, royalties, taxes and other payments to the Government. The obvious problem with this ground of revocation is that many of the licenses issued under the PIA were issued under unfavourable circumstances and contain a number of onerous terms and conditions which sometimes significantly reduces the profit available for distribution among the licensees. The taxes are sometimes burdensome to some who often may not meet up with the financial obligations.[110] For example, in addition to the numerous taxes, the licenses are also required to make financial contributions to the host community development trust fund and environmental management trust coupled with the obligations stated in the Local Content Act 2010.

This lack of harmony and unanimity in the fiscal regime often results in the non-payment of monies due to the Government. This in turn attracts heavy penalties on the licensees which often serve as a disincentive to investment in the industry. Procedural delay in the resolution of disputes relating to revocation of licenses also constitutes a challenge in the Nigerian petroleum industry. It is possible for most cases to linger in court for 10-15 years without a final determination. This is a significant impediment to the growth of the industry and impedes the investment climate in the country. This is especially the case for those in the upstream sector who are often faced with lengthy and expensive legal battles in attempts to defend their rights to block produce from the oil fields

[105] O J Olujobi and O A Oyewunmi, 'Annulment of Oil Licences in Nigeria's Upstream Petroleum Sector: A Legal Critique of the Costs and Benefits' [2017](7)(3) *International Journal of Energy Economics and Policy*:364-369.
[106] *Ibid.*
[107] *Ibid.*
[108] *Ibid.*
[109] *Ibid.*
[110] S E C Nwosu, 'Law and Nigeria's Petroleum Industry Optimisation: Any Hope in the Petroleum Industry Act 2021' [2021](5) *Journal of International Energy and Environmental Law* :23-38

6. Revocation of Petroleum Licence in Norway

The Norwegian legal system is based on civil law, and the oil and gas industry is regulated primarily by Legislation, the principal law being the Petroleum Act (Act 29 November, 1996, No 72 as amended). The Norwegian State has a petroleum policy that involves state participation interest.[111] In Norway, the Ministry of Petroleum and Energy (MPE) has the overall responsibility for managing the petroleum resources in the Norwegian continental shelf, however, the government discharges its responsibilities in accordance with guidelines set by the Parliament.[112] Ownership of Petroleum is vested in the Norwegian people although the King directs its management.[113] The Act addresses these issues by vesting the proprietary right to the subsea petroleum deposit and the exclusive rights to resources management in the Norwegian state.[114]

Exploration and production licences are the two types of licences that the MPE may issue. The MPE also issues a particular licence for the installation and operation of pipelines. According to the Hydrocarbons Licensing Directive,[115] the decision to grant a production licence is based on impartial, objective, and non-discriminatory criteria, with weight given to the applicant's technical expertise, financial stability, geological knowledge, and experience on the NCS or other comparable areas. The Norwegian legal system also recognizes the revocation of licenses.

If there are substantial or persistent violations of the Petroleum Act, its regulations, the terms and conditions of the licence, or orders made in accordance with the Act, the government may revoke the licence. Additionally, a licence may be revoked if an application for a licence contains incorrect information or if important information has been excluded, and it must be assumed that the licence would not have been granted correct or complete information. Revocation is also possible if the security that the licensee is required to provide in accordance with the Petroleum Act has significantly deteriorated or if the corporation or other organisation that holds the participating interest in the licence dissolves or initiates bankruptcy or debt settlement proceedings. A licence or participating interest in a licence may be revoked for a variety of reasons, although the Norwegian government has, as far as is known, never used this authority of revocation.

[111] Ministry of Petroleum and Energy (NMPE) and Norwegian Petroleum Directorate (NPD) 'FACTS 2013: The Norwegian Petroleum Sector' <https://npd.no/global/Engelsk/3publications/Facts/facts2013.pdf > accessed 21 November 2022.
[112] Dike (n 20) 133
[113] This is by virtue of section 1-1, 1-2 of the Petroleum Activities Act 1996.
[114] *Ibid.*, 134
[115] (94/22/EC),

7. Revocation of Petroleum Licence in Brazil

The state-run company, PETROBRAS (Petroleo Brasilerio SA) maintained exclusive control of all oil industry activities in Brazil for four decades following its establishment in 1953. In 1995, Amendment No 9 to the 1988 Federal Constitution changed the legal structure of the state monopoly and established a new regulatory framework for the Brazil oil industry. The general provisions of the Brazilian Constitution as well as a variety of federal legislation, ordinances, and decisions passed by the National Agency of Petroleum, Natural Gas and Biofuels (ANP) control the Brazilian oil and gas industry. According to articles 20 and 176 of the Brazilian Constitution, oil and gas reserves found in Brazil (including the continental shelf, territorial waters, and exclusive economic zones) are regarded as federal government assets, and article 177 of the Brazilian Constitution grants the federal government the right to contract for the exploration and production of hydrocarbon deposits. The federal government may enter into agreements with state-owned or private businesses for the discovery and development of oil and gas deposits in accordance with the Constitutional Amendment.[116]

With respect to license, there is currently no Brazilian law that allows the federal government to terminate the concession contract or PSC at its discretion or, otherwise, to expropriate. With respect to revocation, both the concession contract and the PSA contain provisions that allow the federal government to terminate the respective granting instrument in the following situations:

i. upon expiration of the term of the contract;
ii. upon completion of the exploration phase without performance of the minimum exploration programme;
iii. at the conclusion of the exploration phase, in the event that there has not been a commercial discovery;
iv. in the event that the contractors fully relinquish the contracted area;
v. upon failure to deliver the development plan within the term established by ANP; and

In addition to the foregoing situations, it is stated in both the concession contract and the PSC that the federal government has the right to unilaterally terminate each instrument if the concessionaires fail to fulfil their contractual obligations within the time frame set by the ANP, unless the ANP has expressly waived them. Additionally, if a concessionaire engages in judicial or extrajudicial reorganisation without submitting an approved reorganisation plan that can show the ANP that it has the economic and financial resources to fully carry out all contractual and regulatory obligations, the federal government may revoke its interest in the concession.

[116] No. 09/1995.

8. Similarities and Differences between Norway, Brazil and Nigeria

Nigeria, Norway and Brazil are all hydrocarbon nations with unique legal framework regulating their respective petroleum industries. Despite being hydrocarbon nations, there are differences that exist in the way in which the governments of these jurisdictions participate in the oil and gas sector.

In terms of ownership of petroleum resources, these countries operate the domanial system or pattern where ownership, control and management of hydrocarbon resources are vested in the state. Section 44(3) of the CFRN and section 1 of the PIA recognizes this system of ownership in Nigeria, section 177 of the Brazilian Constitution and Brazilian Law No.9.478 of 1997 also vest ownership of oil and gas in Nigeria. Section 1(2) of the Norwegian Petroleum Act 1996 also vests ownership of petroleum resources on the Norwegian King (the government). Also, in all of these jurisdictions, the governments decide how they are to exercise their ownership, control and management of this industry.

They have a similar license regime where the government grants or issue permits to interested applicants who demonstrate competence and technical capability to explore and produce crude oil or natural gas or both. Furthermore, in each of these jurisdictions, the grant of petroleum license is not absolute as same may be revoked, annulled or withdrawn upon the occurrence of some circumstances within the provisions of the law in each jurisdiction.

However, there are differences between these three jurisdictions. First, Brazil and Norway are civil law jurisdictions whose legal systems are based more on statutory law unlike Nigeria. Nigeria is a common law jurisdiction where the decision of the court has more force that statutes. Also, Nigeria and Brazil are developing countries or third-world countries while Norway is a developed or first-world country. Geographically, Brazil is situated in South America, Nigeria is located in West Africa and Norway is located in northern Europe. Among these three jurisdictions, Nigeria has the most recent law on petroleum regulation by virtue of the enactment of the PIA in 2021. The Norwegian petroleum industry is still regulated by the Petroleum Act of 1966 whereas Brazil is substantiated by the 1997 Brazilian Law No.9.478.

There are also slight variations in relation to the revocation of licenses. Under Norwegian law, there are grounds for revocation such as persistent violation of the law, regulations and terms and conditions of the licence, submission of incorrect information during the application phase and deterioration of security of licence which do not expressly exist in Brazil and Nigeria. Also, in Brazil there are grounds for revocation such as expiration of the period of license, non-commercial discovery, and relinquishment. One notable thing about the Brazilian system is the recognition of unilateral

annulment of license upon circumstances already highlighted earlier. Also, unlike Nigeria, Norway and Brazil are slow in revoking their petroleum licence as the licensees are carefully selected on merit. It should be noted that unlike Nigeria, Norway and Brazil are more proactive in exercising national ownership of hydrocarbon resources for the common good and the general interest of the public.

Finally, among these three countries, Norway standards out in terms of petroleum regulatory and that is why it the developed of the jurisdictions. One model that stands Norway out is the 10 commandments of petroleum regulations which underscore 10 fundamental principles through which the government must run and control the petroleum industry.[117] The second commandment states that 'petroleum discoveries must be exploited in a way which makes Norway as independent as possible of others for its supplies of crude oil.'[118] This command ensures that licenses do not make the host state dependent on them, which has been the problem of Nigerian since 1956 when crude was discovered in commercial quantity.

9. Lessons for Nigeria

From the review, it is seen that Nigeria, Norway and Brazil are hydrocarbon nations from different continents with different economic benefits from the industry. Norway and Brazil are ahead of Nigeria in issues relating to the grant and revocation because their grounds for revocation are more specific and less ambiguous than the grounds under the Nigerian PIA. Therefore, in addition to reviewing its ground for revocation, Nigeria has to learn from Norwegian 10 commandments by adopting simple but enforceable principles that will regulate how the petroleum industry is to be governed and regulated.

10. Conclusion

The emergence of the PIA in 2021 has expanded the licence regime and the grounds upon which petroleum licenses and leases may be revoked. The law on the revocation of these licenses is inevitably tied to the state, national or dominial ownership of hydrocarbon resources in Nigeria. Thus, in recognition of its permanent sovereignty over its natural resources, Nigeria no longer practices the traditional concession but utilizes the instrumentality of licenses to engage IOCs and other operators in the petroleum industry. As a result, the holders of the licenses and leases are bound to comply with certain mandatory obligations failure of which will ground revocation. However, the increasing rates of corruption, favouritism, weak enforcement and poor institutions have continued to threaten the effectiveness of the Nigerian petroleum industry. It is hereby submitted that until these root problems

[117] T Meland, 'The 10 oil commandments' <statfjord.industriminne.no/en/2018/07/09/the-10-oil-commandments/> accessed 20 November 2022.
[118] *Ibid.*

are effectively addressed, the Nigerian petroleum industry will continue to suffer serious setbacks despite the laudable objectives of the PIA.

11. Recommendations

Based on the analyses, the following recommendations are therefore made:

i. The National Assembly should review the PIA to simplify the provisions relating to licenses and the grounds for revocation. This will address the problem of lack of clarity and multiplicity of grounds for revocation.

ii. The National Assembly should review the PIA to reduce the licenses particularly those relating to the midstream and downstream gas operations and petroleum liquids operations in order to achieve the purpose of these licenses.

iii. The regulatory agencies such as the office of the Minister of Petroluem Resources, the NUPRC and the NMDPRA should work in synergy to remove bureaucratic bottlenecks and regulatory barriers often encountered by holders of licenses or leases in interfacing these institutions to comply with statutory provisions.

iv. The extant institutions should be adequately equipped with more funds and professionally qualified personnel skilled in the petroleum industry. This will help in addressing the issue of weak institutions and inadequate enforcement and also help to reduce institutional corruption in the petroleum industry.

v. Nigeria should learn from Brazil and Norway by managing and controlling the petroleum industry for the interest of the public and not for the privileged few in politics. Also, like Norway, Nigeria should develop a 10 commandment model that stakeholders in the petroleum industry must adhere to in the course of their operations in the industry.