NIGERIAN PETROLEUM INDUSTRY: THE CHALLENGE OF LACK OF EFFECTIVE GOVERNANCE

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Abstract

This article explored the concept of good governance, particularly in Nigeria's petroleum sector and addressed issues in the oil and gas sector which hindered national development. It defined good governance and discussed its principles, emphasized its critical role in achieving development goals. However, it highlighted the lack of good governance in Nigeria's oil and gas industry and contrasted it with the United Kingdom's petroleum licensing regime. The analysis revealed similarities between Nigeria and the UK and that how that the petroleum ownership was vested in the state. While both Nigeria and the UK had licensing authorities, the distribution of powers differed; Nigeria's PIA 2021 granted authority to both the Minister and the Commission to issue license, whereas the UK entrusted it solely to the Oil and Gas Authority (OGA).Despite improvements in Nigeria's licensing regime under the PIA Act 2021, challenges persist, including potential conflicts of interest and overlapping responsibilities between the Minister and the Commission. The article recommended clarifying their roles to mitigate such issues. Moreover, it identified the absence of good governance as a root cause of weak laws, ineffective enforcement agencies, government participation, and corruption in the petroleum sector. Recommendations included diversifying ownership of petroleum resources, enforcing anti-corruption laws, promoting transparency through public participation, and ensuring merit-based contract awards. Ultimately, the article underscored the importance of effective governance in fostering sustainable development, advocating for reforms to enhance transparency, accountability and efficiency in Nigeria's petroleum industry.

Keywords: *Petroleum, petroleum sector, Governance, effective governance, principles of effective governance, licensing regime and challenges.*

1.0 Introduction

The Nigerian petroleum industry, a vital engine of economic growth and global energy supply, faces a myriad of governance challenges that impede its potential for sustainable development. This article embarks on a comprehensive exploration of governance within Nigeria's petroleum sector, traversing through various dimensions to unravel the complexities and consequences of ineffective governance. Beginning with an examination of the fundamental principles of good governance and its critical role in fostering development, we pivot towards a comparative analysis of Nigeria's petroleum licensing regime vis-à-vis the United Kingdom's framework, shedding light on divergent approaches and shared challenges. Delving deeper, we scrutinize the nuances of petroleum ownership, public participation, corruption, environmental pollution, and the legal foundations governing the licensing systems in Nigeria and the UK. By dissecting these critical aspects, we aim to provide a holistic understanding of the governance landscape in Nigeria's petroleum industry, elucidating the pressing need for reforms to engender transparency, accountability, and equitable distribution of resources. Through this comprehensive

exploration, we endeavour to catalyse discourse and action towards fostering effective governance practices that can unlock the industry's full potential and propel Nigeria towards a future of sustainable prosperity.

2.0 Conceptual Issues

2.1 Petroleum

Petroleum also known as crude oil is a naturally occurring toxic, flammable liquid comprising of a complex mixture of hydrocarbons of various molecular weights and other organic compounds, that are found in geologic formations under the earth surface.[1] Petroleum has also been defined as a mixture of hydrocarbon that occurs under the earth surface primarily within the pore spaces of sedimentary rocks, in liquid, gaseous or solid forms.[2] Under the Act, petroleum has been defined as "hydrocarbons and associated substances that exist in its natural state in strata and includes crude oil, natural gas, condensate and mixtures of any of them, but does not include bitumen and coal."[3]

2.2 Petroleum Industry

Petroleum industry is the sector involved in refining crude petroleum and processing of natural gas in to diverse products.[4] It is also involved in the distribution and marketing of petroleum-derived products.[5] In Nigeria, the Petroleum Industry consist of six (6) major sectors namely; exploration for reservoirs of crude and natural gas; reservoir development; production or lifting of oil and gas; transportation or transmission; refining of crude oil into refined petroleum products; and lifting (or extraction) are generally referred to as the 'upstream' activities of the Petroleum industry, while refining and marketing of petroleum make up 'downstream' operations. These activities release pollutants to the environment and the pollutants emitted from these activities are volatile organic compounds arising from leakage, venting, and the exploration of raw materials and finished products.[6] The Petroleum industry is one of the largest sectors in the world in terms of dollar value, generating an estimated $3.3 trillion in revenue annually.[7] The petroleum industry is the backbone of the Nigerian economy. Nigeria is the sixth largest producer of crude oil in the world and its oil industry generates over 95% of the country's foreign revenue, and about 80% of government revenue.[8]

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[1]National Open University of Nigeria, Oil and Gas Law1 Course Guide 2011 <https//nou.edu.ng/coursewarecontent/LAW411%20oiland%20and%20gas%20l.pdf>

[2]Y Omorogbe, *Oil and Gas Law in Nigeria* (Nigeria: Malthouse Law Books 2001)

[3]Petroleum Industry Act Cap P10 LFN 2021 s318

[4]N P Cheremisin off and P Rosenfeld, 'The Petroleum Industry-An Overview, in Handbook of Pollution Prevention and Cleaner Production - Best Practices in The Petroleum Industry, 2009' (2023). <https://www.sciencedirect.com/topics/engineering/petroleum-industry>accessed10 February 2024

[5]*Ibid*

[6]*Ibid*

[7]IBISWorld, 'Global Biggest Industries by Revenue in 2020'<www.ibisworld.com/global/industry-trends/biggest-industries-by-revenue/> accessed 10 February/2024

[8]S Fajana, 'Industrial Relations in the Oil Industry in Nigeria International Labor Organization' 1995<https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/--sector/documents/publication/wcms_161189.pdf>accessed10/02/2024

2.3 Governance

Etymologically the word "governance" comes from the Greek word "*kubernaein*," and also from the Latin verb "*gubernare*," meaning "to steer." Governance therefore refers to the manner of steering or governing, or of directing and controlling, a group of people, a state an institution, organization or a sector. Governance in generic sense may refer to the task of running a government, or any other entity for that matter.[9]Governance as a concept has evolved to mean the structures and processes put in place in ensuring transparency, accountability, stability, responsiveness, rule of law, equity and inclusiveness, it also includes broad-based participation, and empowerment.[10]According to British Council the concept governance involves the interaction between the formal institutions and those in civil society, it refers to a process where elements in society wield power, authority and influences, enacts policies and laws, and makes decisions touching on public life as well as standardizing social wellbeing.[11]Governance may also stand for rules, norms and values of the game via which public affairs are managed in a transparent manner that is participatory, responsive and inclusive. In a wider sense, the term governance may represent the culture and institutional environment in which citizens, stakeholders and the general public interact among themselves and participates in public affairs.[12]The term 'Governance' is of many definitions and its meaning sometimes may depend on the level been talked about and what is to be achieved given the approach adopted.

Governance is therefore the process of decision-making and the process by which decisions are implemented (or not implemented). It is true the concept of governance goes beyond that of government.[13]Governance in this context can apply to corporate, international, national or total governance as well as the interactions between other sectors of the society.

2.4 Effective Governance

The term Effective governance is the same as good governance. Therefore, in this research both will be used interchangeably. "In international development, good governance is a way of measuring how public institutions conduct public affairs and manage public resources in a preferred way."[14] Impliedly, good governance portrays good management, good performance and good stewardship of public resources.

Good governance also implies high level of organizational effectiveness in relation to policy formulation

[9]Global Development Research Center (GCDR), 'Understanding the Concept of v Governance' 2015<https://www.gdrc.org/u-gov/governance-understand.html>accessed 10 February2024

[10] International Bureau of Education, 'Concept of Governance' 2023< http://www.ibe.unesco.org/en/geqaf/technical-notes/concept-governance>accessed 10 February 2024

[11]n9

[12] n10

[13] K S K Saikio, 'Good Governance and Human Right International and National Perspective' [2013] (2) (7) *International Journal of Advancement in Research and Technology.* <https://www.ijoart.ng/docs/good.governance-and-human-rights-international-and-national-perspective.Pf>accessed 10 February2024.

[14]UNODC, The Doha Declaration, 'Promoting a Culture of Lawfulness'<https://www.unodc.org/dohadeclaration/index.html> accessed 10 February 2024

and the policy actually pursued, especially in the conduct of economic policy and its contribution to stability, growth and citizen's welfare.[15]

Although the term effective or good governance is not defined in the statute book, the Constitution of the Federal Republic of Nigeria(CFRN) 1999 (as amended) provides that the:

National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part one of the second schedule of the constitution.[16]

3.0 Principles of Effective (Good) Governance

The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) has identified the major characteristics of good governance thus; good governance is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable, inclusive and follows the rule of law. It makes sure that corruption is minimized, the views of the minorities are taken into consideration and that the voices of the most vulnerable in the society are heard in decision-making. It is responsive to the present and future needs of the society.[17] As can be deduced from above, the following are the principles of effective governance:

3.1 Participation: Participation by both men and women is a key cornerstone of good governance. Participation here means that, anyone affected by or interested in a decision, should have the opportunity to participate in the decision making process. Participation could be direct or through representatives. The participation should be informed and organized. What this means is that freedom of association, freedom of expression and organized civil society should co-exist.

3.2 Rule of law: Rule of law means that the law is the supreme principle in public administration that should be observed by all government officials and citizens and that both should be equal before the law. Good governance requires fair legal framework that are enforced impartially. It requires protection of human rights especially those of the minorities.

3.3 Transparency: This refers to publicity of political information. All citizens are entitled to the information on state policies of interest to them such as legislative activities, policy making, legal provisions, policy enforcement, administrative budget, public expenditure and so on. Information in the above-mentioned areas should be made easily available to the public through various social media mediums so that they can take part in policy making and supervise public administration effectively.

3.4 Accountability: An organization or institution is accountable to those who will be affected by its decisions and actions. However, since accountability cannot be enforced without transparency and the rule

[15] P Sahni and M Uma, *Governance for Development Issues and Strategies* (New Delhi: Practice Hall of India 2003)
[16]Constitution of the Federal Republic of Nigeria 1999 (as amended) S4(1)(2).
[17]UNESCAP 2009, What is good governance? Accessed 10 February, 2024

of law, it is necessary that government and organization leaders should live up to their obligation to report, explain and be answerable for the consequences of the decisions made on behalf of the public.

3.5 Responsiveness: Good governance is responsive in the sense that it requires public institutions to serve stakeholders within a reasonable timeframe. Swift response in decision making and attendance to public issues rather than unnecessary delay regardless of the number of interests involved should be the key.

3.6 Consensus oriented: There are several stakeholders as well as many opinion holders in the society. Therefore, good governance requires mediation of the various interest groups in the society and to reach a consensus on what is the best interest of the general public and how this can be achieved. This cannot be done in isolation of the understanding of the historical, cultural and social context of the particular society.

3.7 Equity and Inclusiveness: It is a requirement of good governance that every member of the society should have a stake in governance and that none should feel excluded from decision making. This requires that all groups especially the most vulnerable have opportunities to improve or maintain their wellbeing.

3.8 Effectiveness and Efficiency: This principle emphasizes that institutions should make the best use of the resources, people and time within their disposal in order to produce results that meet the needs of the society. This principle also covers the sustainable use of natural resources and the protection of the environment.

4.0 The Challenges of the Petroleum Industry

The Petroleum Industry has continued to be the major source of energy in the world since its discovery till date. Nigeria has vast oil and gas history potential as it has the largest natural gas and second largest oil reserves in Africa.[18]Regardless of the vast reservoir of natural resources in oil and gas and the income raked in by the government from the Petroleum Industry, Nigeria has a lot to do in terms of human capital development.[19]Nigeria has continually remained near the bottom of the human development index rankings in the world, with the majority of her citizens living below the poverty line of $1.25 dollars per day.[20] As a matter of fact, Africa is a resource-rich continent, with diverse natural resources of varying

[18]M Brown, 'Nigeria: Oil & Gas: Challenges Facing the New Government' (2015) <https://www.mondaq.com/nigeria/oil-gas-electricity/427850/oil-gas-challenges-facing-the-new-governmen>accessed11 February2024

[19]J O Adewumi, 'Governance in the Nigerian Extractive Industries: from a Human Development Perspective'<https://www.luc.edu/media/lucedu/prolaw/documents/volume4/D.%20GOVERNANCE%20IN%20THE%20NIGERIAN%20EXTRACTIVE%20INDUSTRIES.pdf>accessed11 February2024

[20]Poverty line of $1.25 dollars per day was mentioned in the report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda titled: A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development<https://www.post2020hlp.org/the-report/>accessed11 February2024

quantities which include both renewable and nonrenewable energy.[21] Nigeria would have gone beyond where she is if the revenues from the oil and gas sector had been judiciously utilized by the nation's successive leaders. Hence, the urgent need to examine the problems plaguing the oil and gas sector in Nigeria.

5.0 The Challenge of Ownership of Petroleum Resources.

When it comes to ownership of petroleum resources, many theories are involved. They are: The Absolute ownership theory, the qualified theory, The Non-qualified ownership theory and The Eminent domain theory.[22]The absolute theory states that whoever owns the land upon which oil is found, becomes the owner by way of right. The qualified theory is of the view that no one can be said to own oil or gas by merely being the owner of the land on which such resource is found, except where he captures such resource. Non-qualified ownership sees oil and gas as natural phenomenon incapable of being owned. The Eminent domain also called state ownership theory is of the notion that all lands belongs to the state. The eminent domain applies in Nigeria; therefore, we would focus on it. Some of the legislative instruments which give the government power with respect to this theory include: the 1999 Constitution of Nigeria, the Petroleum Industry Act, the Nigerian Minerals and Mining Act 2007. The 1999 Constitution provides thus:

…the entire property is and control of all minerals, mineral oils and natural gas is under or upon any land in Nigeria or in under or upon the territorial waters and the Exclusive Economic zone of Nigeria shall vest in this Government of the Federal and shall be managed in such manner as may be prescribed by the National Assembly.[23]

Also the Petroleum Industry Act (PIA) stipulate as follows:

The property and ownership of petroleum within Nigeria and its territorial water, continental shelf and economic zone is vested in the Government of the Federation of Nigeria[24]

The Supreme Court of Nigeria affirmed the provision of the above statutes in the case of AG Federation v.AG Abia State & 35 others.[25]

Furthermore, oil and gas are natural resources and therefore it would be unfair for it to be absolutely owned by anyone including the government. The phrase "subject to the foregoing provisions of the Act…" qualify the absoluteness of ownership vested on the state with respect to oil and gas. Therefore, when oil is discovered in a private land, the government ought to pay adequate compensation to the owner of the land before taking over the land. The Land Use Act provides for compensation where the state revoke the right

[21]J O Adewumi, 'Governance in the Nigerian Extractive Industries: From a Human Development Perspective'<https://www.luc.edu/media/lucedu/prolaw/documents/volume4/D.%20GOVERNANCE%20IN%20THE%20NIGERIAN%20EXTRACTIVE%20INDUSTRIES.pdf>accessed11 February2024

[22]K G Kato, *Oil and Gas Laws: A Guide for International Practitioners* (2nd edn: Lambert Academic Publishing 2018)6.

[23]CFRN 1999 (as amended) S44(3)

[24]Petroleum Industry Act (PIA) 2021, s1

[25](2002) 6NWLR (Part764)728-729

of occupancy of a land owner based on overriding public interest.[26]

Despite the express stipulations of the law vesting ownership right of resources on the government, there have been agitations especially from the Niger Delta region of Nigeria where bulk of the oil and gas resources are found. The Niger Delta states are of the opinion that they should take a larger share of the revenue arising from oil and gas activities because they suffer the negative environmental impact the most yet they have no ownership title. This was the basis of the suit between AG Federation v. AG Abia State & 35 others[27] where state governments asked court to determine who is entitled to the natural resources found within a state. The Court without hesitation held that only the Federal government could exercise any form of power whether legislative, executive or judicial over the exclusive economic zone. The clamor for resource control seems endless and is fingered as the root cause of militancy and youth restiveness in the region.

The Petroleum Act empowers the Minister of Petroleum to grant Licenses and lease under the Act to oil Companies. It has been argued that for smooth petroleum industry operations, the entity upon whom petroleum is vested should be clear and unambiguous, as this will encourage investors as well as stability in the industry.[28] This is the case in Norway where the ownership of petroleum resources is vested in the Norwegian people while the King directs it management. This can be associated to one of the reasons the Norwegian Petroleum industry has continued to flourish. Frankly, the ambiguity surrounding the ownership of petroleum resources in Nigeria is very likely the factor responsible for large scale of crude oil theft, illicit bunkering, pipeline vandalism, sabotage and other menace confronting the industry.

5.1 Public Participation

Webster's Dictionary defined 'public' as "an organized body of people or group of people distinguished by common interest or characteristics"[29] Public also refers to an aggregate of all those who are not government officials, an undifferentiated mass of people embracing the public interest, public opinion or public concern as well as farmers, businessmen and so on.[30] Participation on the other hand means the act of sharing in the formulation of policies and proposals.[31] Public participation therefore is basically part of an evolutionary process of social change which aims at political and social egalitarianism.[32] Its ultimate aim being community participation where citizens, resource professionals and politicians work together to resolve legitimate disagreements and fairly allocate environmental resources.[33]

[26]Land Use Act 1978, Ss28 and 29
[27](2002) 6NWLR(Part764)728-729
[28]S C Dike, 'Energy Security: The Case of Nigeria and Lessons from Brazil, Norway and the UK' (Pear Publishers 2015)134.
[29]Merriam-Webster's Collegiate Dictionary 11th edition, 2004
[30] S Schatzow, 'The Influence of the Public on Federal Environmental Decision-Making in Canada' in Sewell D and Coppock J J (eds); Public Participation in Planning, John Willey (1977) 141-158
[31]H M S O Skeffington Committee Report, London (1969)
[32] O Femi, 'Public Participation in the Petroleum Industry Development in Nigeria' published by Nigerian National Petroleum Corporation and The Federal Ministry of Works and Housing (Lagos, 1985)
[33] D Sewell and T O'Riodant, 'The Culture of Participation in Environmental Decision-Making' (1976) 16 Natural Resources Journal 16

It is very unfortunate to know that many of the people living near oil producing fields have minimal education, hence, might be placed at the whims and caprices of the project proponents or government agencies. Still access to information, short time frame to study and respond to the proposed projects is a disturbing issue.

Oil and gas is given to man as a natural gift and as such should not be absolutely owned by anyone, not even the government. Phrase "subject to the foregoing provisions of the Act…" This phrase goes to qualify the absolute the absoluteness of ownership vested on the state with respect to oil and gas.

Therefore, when oil is discovered in a private land, the government after seizing the land is expected to pay adequate compensation to the owner of the land before extracting natural resources. The land use act provides for compensation to persons where the state revokes their right to occupancy of a land based on overriding public purpose.

Under the Environmental Impact Assessment act (EIAA) companies shall give opportunity to government agencies, members of the public, experts in the relevant field and interested groups to make comment on environmental impact assessment of the activity.[34] The EIAA therefore, recognizes public participation. Regardless of this provision, environmental impact in some instances can be jettisoned as provided in the Act.[35] These exemptions to carry out environmental impact assessment will invariably affect public participation.

5.2 Corruption

Corruption have been defined as the totality of the actions and activities of an individual or group of individuals and within a political society that constitutes an injury to the collective interest or impedes service delivery, constitutionally intended for the public.[36] The issue of corruption have contributed to the failure of enforcement and compliance because they have made the other challenges ravaging the oil and gas sector to remain unaddressed.[37] It is very sad the funds that are meant to address these challenges at a tender age are diverted into private pockets, thereby living government agencies in a worse state. Furthermore, corruption in the Nigerian oil and gas sector is multi-faceted. There is corruption in the entire petroleum sector,[38] mismanagement of revenues accruing to the federal government, corruption pertaining

[34]EIA Act 1992 s7
[35]EIA Act 1992 s15 (1)
[36]United Nations Environment, 'Environmental Rule of Law: First Global Report' (2019) https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>accessed11 February2024
[37]E Ehwarieme and J Cocodia, 'Corruption and Environmental Degradation in Nigeria and Its Niger Delta' (2011)13(15) *Journal of Sustainable Development in Africa* 34,36 and 44
[38]E Oshionebo, 'Mismanagement of Oil Revenues: Is the Nigerian Sovereign Authority the Panacea' (2017) 10 *Journal of World Energy Law and Business* 329

to compliance and enforcement and so on.[39] The scarce funds which are hardly enough to carry out various activities in the petroleum sector are either diverted into private pockets or diverted into alternative use other than what was originally intended.

It is disheartening that amidst the existence of economic and financial crimes commission (EFCC) independent corrupt; practices and related offences commission (ICPC), Transparent International and many other anti-corruption organizations, the level of corruption and bad governance prevalent in the Nigerian oil and gas sector is still high.[40]

6.0 Types of corruption in Nigerian Oil and Gas Sector

The following are the types of corruption in the Nigerian oil and gas sector according to Obioma:[41]

a. Policy corruption: This involves corrupt influence on the design of sector policies, the enactment and taxes in a manner intended to provide political or personal gains at the public expense. This type of corruption usually exists between policy makers and special interest group.
b. Administrative corruption: This type of corruption is the abuse of administrative office to extract illegal benefits in exchange for approval covering a wide range of commercial and operational activities either for the enforcement agency to "look the other way" or for a favorable interpretation of fiscal regulations.
c. Commercial corruption: this involves procurement abuse, including tender rigging, kickbacks and cost inflation
d. Grand corruption: Under this type of corruption we have direct theft of massive amount of money through diversion of production, products or revenues.

7.0 The Challenge of Weak Laws and Regulatory Agencies

Over the years laws regulating the oil and gas sector in Nigeria have been enacted or even repealed in order to reflect the development of the petroleum sector. The most recent of such laws is the Petroleum Industry Act 2021 (PIA). The legal framework before the PIA was enacted lacked transparency and accountability due to its archaic nature and its failure to conform with international best practices and failure to reflect the current economic reality. It was against this background that the PIA was enacted. Although the PIA was viewed as a panacea to the challenges in the petroleum sector, yet the sector has continued to suffer corruption, poor governance and poor management which kept the refineries in a

[39]J Rexler, 'Beyond the Oil Curse: Shell, State Power and Environmental Regulation in the Niger Delta' (2010)12(1) *Stanford Journal of International Relations* 26, 27
[40] Y O Akinwale, 'Emperical Analysis of Resources Course in Nigeria' (2012)1(6) *International Journal of Economics and Management Sciences* 19-25
[41] B K Obioma, 'Corruption Reduction in the Petroleum Sector in Nigeria: Challenges and Prospects' (2012)3(15) *Mediterranean Journal of Social Sciences* 98-107.

terrible condition thereby creating room for subsidy payment which creates a wider room for corruption.

It has been stated that the mandate of the Nigerians PIA is to assist the government attain 40 billion barrels of reserves and raise production levels to four million barrels per day.[42] However, the Act failed to state precisely how the Act could assist the government in attaining this goal. The PIA which rest ownership of petroleum on the Federal Government, alone[43] will end up making the Federal Government too powerful over petroleum resources. The PIA unintentionally still incites hostility in the Niger Delta Region when only 3% of the petroleum revenue is allocated to the Region rather than the 10% that the Region and her law makers are demanding for.[44] The Act also established NNPC Ltd making it a corporation under CAMA[45] and further states that all shares are to be owned by the Federal Government and held by the ministry of finance on its behalf. Therefore, it implies that the Federal Government will be the only shareholder in this company. State governments have no say in the administration or distribution of dividends from the corporation.[46] Furthermore, the Act appears to undermine a section of the Constitution which stipulates that federal revenues are to be deposited into a Federation account and distributed to the different tiers of government.[47] Hence, by allowing NNPC Ltd to retain 30% from its activities for frontier basins exploration will reduce the oil revenue of the Federal Government, State and Local Government making it difficult for them to meet their financial obligation. In addition, some of the laws are outdated with paltry monetary penalties and fines, inadequate compensation, vague and ambiguous provisions.

Furthermore, conflicting legislative provisions has posed a serious challenge to the petroleum industry in terms of enforcement. For example, the non-justifiability provision of the constitution of the Federal Republic of Nigeria which provides that the state shall protect the environment,[48] yet the same constitution precludes the courts from adjudicating matters concerning the provisions of chapter 2 of the constitution.[49]Also the paltry nature of the fines will make it difficult for oil companies to comply with laws in the oil and gas sector especially if the fine involved is easily affordable.

7.1 Environmental Pollution

Oil exploration by oil companies since 1956 has seriously caused environmental degradation and biodiversity depletion. The most hit is the Niger Delta Region. Environmental pollution caused by oil

[42]M N Umenweke and W A Chukwuma, 'An Examination of the Petroleum Industry Act 2021 and the Quest for a New Nigeria' (2023)9(2) *Law and Social Justice Review*
[43]PIA 2021 S51
[44]Y M MAlameen, 'The Norwegian Oil Experience of Economic Diversification: A Comparative Study with Guff Oil' (2016)8(15) *European Journal of Business Management* 94
[45]PIA 2021, S53(3)
[46] E Reed, 'Nigeria's PIA Under the Microscope Energy Voice' <https://www.energyvoice.com/oilandgas/africa/346676/nigeria-pia-taxes-oil/>11 February2024
[47]LOlubi, 'Perspectives on the Nigerian Petroleum Industry Act. Vanguard Newspaper, September 2021 <https://www.vanguardngr.com/2021/09/perspectives-on-the-nigerian-petroleum-industry-act/>accessed11 February2024
[48] CFRN 1999, S20
[49]CFRN 1999, S6 (6)(c)

spills and gas flaring[50] has caused aggravated poverty, loss of livelihood, contamination of water, damage to agricultural land death. A report by the United Nations Environmental program (UNEP)[51] on the Environment Assessment of Ogoni land states that restoration of Ogoni land, an ethnic group in the Niger Delta could take up to 30 years and an initial investment of about $30billion for the first five years.

It is the duty of the government to protect the environment against the damages caused by oil and gas activities. However, with all the laws in existence it is unfortunate that environmental pollution has continued unabated. Some of the laws enacted to protect the environment from damage in the oil and gas sector includes the constitution of the Federal Republic of Nigeria 1999, Petroleum Industry Act 2021, Environmental Impact Assessment Act, 1992, Oil Pipeline Act 1956 and so on.

The Courts also have a role to play in the issue of environmental protection. The Nigeria Judiciary in deciding petroleum related pollution should look beyond economic gains, expert witnesses, technicalities and focus more on environmental protection. In addition to compensation, the order for rehabilitation and fixing the damaged environment should be made whether it was asked for by the plaintiff or not. For instance, in Shell v. Tiebo vii,[52] five families filed a suit against shell for destruction of their farm lands and economic trees as a result of shell's oil exploration activities. The plaintiff asked for both compensation and for rehabilitation. When shell paid the compensation but failed to rehabilitate the damaged land, the court upon the report of experts ordered that the land should be rehabilitated. This was the first case where the plaintiffs specifically asked for both compensation and remediation of damaged land and also the first case where the court awarded compensation and ordered for rehabilitation of damaged land.

8.0 The Legal Foundation for the Licensing System of Oil and Gas in Nigeria and the United Kingdom (UK).

Chapter 1 of the Petroleum Industry Act of 2021 provides for governance and institutions of the Act. Section 1 of the Petroleum Industry Act provides that the property and ownership of petroleum within Nigeria and its territorial waters, and continental shelf and exclusive economic zone is vested in Government of the Federation of Nigeria. In Nigeria, the allocation of responsibility for oil and gas resources is established by the provisions of the 1999 Constitution (as amended),[53]the Petroleum Industry Act 2021[54] and the Land Use Act 2004.[55] This arrangement grants exclusive ownership of oil and gas assets to the Federal Government of Nigeria, thereby limiting the rights of states, local governments, and host communities where these assets are located.[56]

[50]Friends of the Earth International(2005)www.foei/publication/gas-flare-in-nigeria/accessed11 February2024
[51]UNEP Report 2011
[52] (2005) 9 NWLR (pt931)439
[53] CFRN 1999 S44(3).
[54] PIA 2021 S1
[55]LUA2004 S1
[56]AP Lilly and others,' An Appraisal of the Petroleum Licensing Regimes of Nigeria and The United Kingdom'(2019)(1)*Journal of Public Law Rivers State Universities* 132.

The Minister of petroleum resources pursuant to the provisions of the Petroleum Industry Act 2021 upon recommendation of the commission is mandated to grant Petroleum Exploration License, Petroleum Prospecting License and Petroleum Mining Lease.[57] However, The Department of Petroleum Resources (DPR) is mandated by law to ensure adherence to petroleum laws, regulations, and guidelines in the oil and gas industry. It is also tasked with overseeing and monitoring all operations within the petroleum industry conducted under licenses and leases throughout the country.[58]

The Nigerian Upstream Petroleum Regulatory Commission (referred to as "NUPRC" or "the Commission") is authorized to issue and renew Petroleum Mining Leases (PMLs).[59] Additionally, the Commission oversees and administers exploration activities conducted under a PML in accordance with regulations established under the Petroleum Industry Act (PIA).

By the provisions of the Petroleum Industry Act 2021 (PIA Act), the holder of a petroleum prospecting license or petroleum mining lease shall not assign or transfer his license or lease or any power or interest without prior written consent of the minister.[60] The commission shall be responsible for granting of petroleum licenses. The holder of petroleum exploration license shall have non-exclusive right to carry out petroleum exploration operations within the areas provided for in the license.[61] The holder of a petroleum prospecting license, petroleum exploration license or a petroleum mining lease shall be entitled to enter and remain on the land that is the subject of the license or lease and do such things that are not prohibited by applicable law or under the license or lease.[62]

However, certain aspects of Nigeria's Petroleum Industry Act (PIA) have sparked controversy, while others have raised concerns, highlighting the need for legislative amendments to better align with international industry standards.[63] Section 1 of Nigeria's Petroleum Industry Act (PIA) should have been crafted to designate ownership of petroleum resources not solely to the Federal Government, but also to include the state, local governments, and host communities. This broader inclusion of ownership rights among all tiers of government and host communities could help alleviate persistent tensions over resource control, as well as mitigate issues like pipeline vandalism, crude oil theft, and other related crimes in the oil sector. Section 235 of the Act mandates every settlor, as defined in Section 318 as "a holder of an interest in a petroleum prospecting license or petroleum mining lease whose area of operations is located in or appurtenant to any community or communities," to establish a Development Trust within 12 months

[57]PIA 2021 S3(1) (g-k)
[58]Nigeria Extractive Industries Transparency Initiative (NEITI), 'Department of Petroleum Resources (DPR)'2016<https://neiti.gov.ng/cms/wp-content/uploads/2021/08/FASD-2012-2016-DPR-Report.pdf> accessed 18 February 2024
[59]PIA 2021 Ss4 and 10
[60]PIA 2021 S95(1)
[61]PIA 2021 S71(1)(2)
[62]PIA Act SS 71, 72 and 81
[63]D Oladeji and others, 'An Examination of the Petroleum Industry Act 2021: Prospects, Challenges and the Way Forward' (2023)*E1000 Research*,<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10468656/pdf/f1000research-12-153263.pdf>accessed 18 February 2024

from the effective date for existing oil mining leases/designated facilities or prior to the commencement of commercial operations for licensees of designated facilities, for the benefit of the host communities for which the settlor is responsible.[64] In practice, Nigeria's Petroleum Industry Act (PIA) continues to provoke resentment in the Niger Delta region. Critics of the PIA argue that the percentage contribution to the Host Community Development Trust Fund (HCDTF) is inadequate, and they view NNPC Ltd.'s allocation of 30% profit to the Frontier Basin Development Fund as unjust. Public statements made by some Northern politicians have reinforced suspicions in the Southern region that the Frontiers Basin Fund is intended to redistribute resources to the North.[65]

9.0 The Legal Foundation for the Oil and Gas Licensing System in the United Kingdom.

The exclusive right to search, drill, and extract petroleum, as outlined in the UK Petroleum Act 1998, belongs to Her Majesty. This section pertains to petroleum, including petroleum located in Crown land, that currently exists in its natural state within geological layers in Great Britain or below the territorial sea adjacent to the United Kingdom.[66]The UK Petroleum Act 1998 (As Amended)[67] also grant the right to petroleum in the Crown but the Secretary of state has right to grant licenses to prospective applicants. There is thus a division of labor between the right to petroleum and the right to create right out of petroleum.

The UK Act authorizes the Oil and Gas Authority (OGA) to issue licenses to individuals or entities considered suitable to explore, drill, and extract petroleum. Exploration and production activities related to petroleum within the UK are only permissible under the conditions specified within these licenses.[68]

In April 2015, the Oil and Gas Authority (OGA) assumed the duties previously held by the Department for Energy and Climate Change (DECC), including granting oil and gas licenses and providing guidelines for the upstream oil and gas industry.[69] Later, in October 2016, the OGA was established as an independent regulatory body and a government-owned entity, with the Secretary of State as its sole shareholder.[70]

The contrast is that in Nigeria, where the Department of Petroleum Resources (DPR) seems heavily dependent on and aligned with the Nigerian National Petroleum Company Limited (NNPC), leading to duplicated functions and instances of power abuse. While most licenses follow a standard format, the OGA in the UK remains flexible, adapting new licenses to unique circumstances. The Secretary of State wields discretionary power in license granting, with the goal of maximizing the exploitation of national resources.[71] OGA acts as the licensing authority, issuing permits through competitive rounds. The UK Act dictates that exploration and petroleum production within the UK are exclusively allowed under the terms

[64]PIA 2021 SS235
[65] n64
[66]UKPA1998 S2(1)
[67]UKPA1998 S2
[68]*Ibid*
[69] B S Kpea-ue and others, 'Comparative Analysis of Petroleum Licensing Under the Nigerian Petroleum Industry Act 2021 and the UK' (2023) (6) *African Journal* 3 <https://ajieel.com/index.php/a/article/view/43/25>accessed 18 February, 2024
[70]UKPA1998 S2
[71]UK PA 1998 S4(1B)

specified in these licenses.[72]

To obtain a license under the Petroleum Industry Act 2021, an individual or corporation must be incorporated in Nigeria under the Companies and Allied Matters Act (CAMA) or any corresponding legislation.[73] In the UK however, an OPL concedes the total right. The essential mechanical and momentary capability to add to the conveyance to maximum economic recovery to the UK is the vital basis for the acceptance of an organization to be a licensee.

10.0 Conclusion

Considering the issues raised and discussed above, it is obvious that a lot still have to be done in terms of building the culture of good governance that will eliminate corruption in private or public institutions and facilitate effective implementation of developmental policies. Corruption pervades all sectors of Nigerian economy and all levels of government thereby making it difficult for the principles of good governance to thrive. The challenges of the petroleum sector are founded on lack of effective or good governance. The petroleum industry Act which most Nigerians thought will put an end to the challenge of good governance has even created more problems. The new NNPC ltd established by the Act is still owned by the Government, thereby making the Federal Government to be heavily involved in the oil and gas sector. More so, the Act still maintained that petroleum belonged to the Federal Government, this will only continue to preach the gospel of marginalization in the Niger Delta Region. Furthermore, weak and outdated laws, weak regulatory agencies, persistent environmental degradation and attitude of the judiciary in determining petroleum matters are as a result of lack of effective governance.

11.0 Recommendation

1. Introduce measures to combat corruption and enhance transparency and accountability in the petroleum sector. This could involve strengthening anti-corruption laws and enforcement mechanisms, implementing measures to promote integrity and ethical conduct within government agencies and industry organizations.
2. Recognize the need to reduce dependency on oil and gas revenues and diversify the Nigerian economy to promote long-term sustainable development. This could involve investing in infrastructure and human capital development, promoting the growth of non-oil sectors such as agriculture, manufacturing, and technology, and creating incentives for private sector investment and entrepreneurship.
3. To become a sustainable and internationally competitive national oil company, NNPC Ltd should priotize good governance above financial gains in the petroleum sector while focusing on technological capacity development and innovation.

[72]UKPA1998 SS3 and 4
[73]CAMA2020 SS75 and 50

4. Good governance means transparency, the openness of the state business and conduct to the scrutiny of other state actors and of the public. Therefore, the public should not be left out in decision making, public participation should be encouraged.
5. The constitution of Nigeria, petroleum industry Act and other legislations which vest the ownership of natural resources on the Federal Government should be revisited and amended to accommodate states and host communities to reduce incessant agitation for resource control, pipeline vandalization, crude oil theft and so on.
6. Anti-corruption laws should be implemented without fear or favor. The President start implementing the laws from his cabinet regardless of who is involved.
7. All culprits in corruption of any form in the oil and gas sector should be immediately suspended or dismissed, prosecuted and if found guilty imprisoned. This will serve as a deterrent to others and the issue of "Plea Bargain" should not be allowed.
8. Weak and outdated laws should be reviewed, amended or totally overhauled especially the sections dealing with punishment and penalties to reflect the current economic reality and deter further occurrence.
9. The Court which is the last hope of the common man should be affordable and accessible for the aggrieved.
10. Contracts should not be awarded on the basis of tribe or "man know man" to avoid the case of having square pegs in a round whole thereby creating room for corruption.