

SUSTAINABLE PETROLEUM DEVELOPMENT IN NORWAY AND NIGERIA: A LEGAL AND POLICY COMPARISON

By

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Abstract

Despite the existing nuances, the relevance of the concept of sustainable development in natural resources production and management appears implicit. If nothing, it offers at least a minimum glimpse to evaluate whether some country rich in natural resources is on the durable development path. Norway is used in this article as a contrast for policy and legal comparison. The article argues that the Nigerian policy framework towards petroleum sector development strays from Norway's core paradigm of petroleum policy evolution, which is predicated on sustainable development. The article thus analyses a few of the similarities Norway and Nigeria share regarding oil sector development as well as offers an opportunity to identify and investigate the policies and strategies Norway adopted, and to ascertain in what degree such policies and strategies sharply contrast with that of Nigeria so as to find out if there are valuable lessons to be learned for Nigeria. In other words, through a comparative assessment using the globally pre-determined rules of sustainable development law as a yardstick, relevant policy and legal frameworks similar in many ways to that of Norway are offered in the Nigerian oil sector. Simply put, the article adduces most significant reasons that can be distinguished to validate the claim that Norway differs from Nigeria in sustainable oil development terms.

1.0. The Concept of Sustainable Development

When construing the concept of sustainable development, scholars have often differed on the status of the concept in international law. From one perspective, the concept is dismissed as a vague concept with an ambitious meaning and thus lacking any normative character.¹ From another perspective, however, sustainable development is acknowledged to be of normative status by virtue of its ascendancy to international customary law status, including the fact that it is a 'meta-rule' that covers several elements.² A third argument is that sustainable development has evolved into a concept close to which a number of legally significant expectations concerning environmental conduct have begun to grow.³ Despite these nuances, the relevance of the concept of sustainable development in natural resources production and management appears implicit. If nothing, it offers at least a minimum glimpse to evaluate

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¹ A Dias and O Songi, "Sustainable Development for Communities Hosting Extractive Industries: All is far from Fair" (2012) OGEL 1-32.

² *Ibid.*

³ *Ibid.*

whether some country rich in natural resources is on the durable development path.

Crude oil is a finite resource. Besides, every oil producing nation, both developed and developing is prone to experience a drop in oil production and monetary value. Boom and bust characterize the world oil market owing sometimes to a glut in oil supply, little or no production of existing fields or where new discoveries are yet to be developed and when reserves are unproven.⁴ In light of the irreplaceability of petroleum resources, the notion of sustainable development with respect to the substantive obligations of states to progressively ensure that natural resource wealth does not undermine the interests of both present and future generations becomes very imperative. The consensus under international law is that the notion of sustainable development originated from the 1987 Brundtland Report of the UN's World Commission on Environment and Development (WCED) titled 'Our Common Future'.⁵ Therein, the commission defined sustainable development as 'the development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs'. Since then a range of international organizations such as the Organization for Economic Cooperation and Development (OECD), United Nation's Commentary on Transnational Corporations (TNCs); The World Summit on Sustainable Development (WSSD); the first UN Environment Assembly (UNEA-1), and United Nations Environmental Protection (UNEP) have frequently proclaimed their wide supports for the proposition that businesses should be conducted with reference to sustainable development.⁶

Most notably, the guiding principle behind the recent UNEA-1 was the need to compromise on economic, social and environmental issues.⁷ The central element of this compromise which was reiterated by the UN General-Secretary in his December 2014 Synthesis report entitled 'The Road to Dignity by 2030', was the conclusion that the post-2015 sustainable development agenda should fully integrate economic, social and environmental dimensions in a 'coherent, holistic, comprehensive and balanced manner'.⁸ Sustainable solutions, in other words, can be achieved through integrating their social, economic and environmental dimensions.⁹ According to the UNEP conceptual framework, there are three key issues the road map to sustainable development must address: (1) leave no one behind and provide a life of dignity for all; (2) live within our means and achieve greater prosperity in an inclusive manner within the capacity of the earth's life support system; and (3) leave something behind by increasing natural, social and the economic capital to achieve greater resilience and secure future generations' livelihoods.¹⁰

Sustainable development may, therefore, be viewed as a multi-dimensional concept. It seems

⁴ T Hunter, "Role of the Regulatory Framework in Encouraging the Sustainable Extraction of Petroleum Resources in Australia and Norway" (2014) OGEL 1-35.

⁵ Dias and Songi (n 1).

⁶ *Ibid.*

⁷ See "The Three Dimensions of Sustainable Development" (UNEP) available online at <<http://web.unep.org/ourplanet/march-2015/unep-work/three-dimensions-sustainable-development>> accessed 20/02/2021.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

to combine growing concerns in a wide range of subjects including management, political science, sociology, economics and law.¹¹ Going by the foregoing, sustainable petroleum production presupposes then that petroleum production should be able to offer to future generations, at least the same degree of economic opportunities and welfare currently available to the present generation.¹² And in addition, that per capita income should not decline overtime as a consequence of petroleum production.¹³ It also reflects the concept of equity or intergenerational equity. Equity or intergenerational equity in turn, evokes the core principles of redistributive justice and intergenerational sustainability.¹⁴ While intergenerational equity is defined as equal consumption per capita at each date, intergenerational sustainability demands that the development of resources today should not be at the detriment of successive generations; rather generations of today should be able to guarantee the economic sustainability of successive generations.¹⁵

This ‘inter-temporary welfare economics’¹⁶ has arisen from the concern that the developmental paths chosen today appear to lead to a rapid accumulation of physical and human capital at the expense of excessive depletion and degradation of the natural resources.¹⁷ It is, therefore, arguable that an irreversible depletion of petroleum resources would have detrimental implications for the generations to come.¹⁸ Hence, the suggestion that petroleum resources should be used effectively and efficiently so as to balance the needs of the present generation with those of the future generations.¹⁹ The big issue, however is that this formula of holding a balance between today and tomorrow seems quite implausible because no general principle is enunciated to determine how a balance can be struck between the development needs of today and those of tomorrow.²⁰

Nevertheless, the heavy emphasis would appear to lie in the fact that petroleum resources wealth differs significantly from others sources of a country’s national revenue in that revenue flow from oil extraction ‘is resource rent rather than return from reproducible capital’.²¹ It is in other words, an admission of the commercial reality that the depletion of oil resources reduces the wealth of a nation-‘once the first barrel has been produced, the asset in a sense, is on a declining curve [and] cannot be produced again’.²² Thus, it would be altogether contrary to intergenerational justice not to heed to the imperativeness of transforming non-renewable petroleum resources into other categories of national wealth.²³ In this respect, the article

¹¹ O Ihlen, “The Oxymoron of Sustainable Oil Production: The Case of the Norwegian Oil Industry” (2011) 18(1) *Business Strategy and Environment* 53-63.

¹² E B Barbier, *Natural Resources and Economic Development* (Cambridge University Press 2005).

¹³ *Ibid.*

¹⁴ Hunter (n 4).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Barbier (n12).

¹⁸ *Ibid.*

¹⁹ Hunter (n 4).

²⁰ R M Solow, “On the Intergenerational Allocation of Natural Resources” (1986) 88(1) *Scandinavian Journal of Economics* 141, 142.

²¹ Hunter (n 4).

²² *Ibid.*

²³ *Ibid.*

defends the view that Norway is a sterling example to follow for Nigeria with regard to sustainable oil development.

2.0. Similarities between Norway and Nigeria in Petroleum Production

Norway and Nigeria are similar in terms of discovery of oil, oil production capacity and as being reliant on petroleum resource.²⁴ Regarding period of discovery, oil was first discovered in commercial quantities in Nigeria in 1956. More than a decade later precisely in 1969 the first oil was struck in Norway. Norway is a major player in the world oil market. Norway has about 60 oil producing fields.²⁵ Per day, Norway produces about 2 million bbl. and 99.3 billion standard cubics of gas.²⁶ She ranks as the world's 7th largest exporter of oil and in terms of natural gas, she is the 2nd largest exporter in the world.²⁷ In all, Norway accounts for about 5% of the world's oil market.²⁸ Petroleum represents 21% of the GDP, 26% of the state revenue, 26% of total investment, 47% of total exports with the oil industry employing approximately 206, 000 people.²⁹ The petroleum industry accounted for 21% of national value creation in Norway in 2004.³⁰ Nigeria is also a major player in the global oil market. She is leading oil producing in Africa and is among the top five of the exporters of LNG in the globe.³¹ Nigeria has about 500 oil fields, both offshore and onshore producing, presently about 2 million bpd.³² Estimated Nigerian proven crude oil reserves as of January 2015 stood at about 37 billion barrels.³³ Petroleum accounts for about 75% of government revenue and 95% of export earnings.³⁴

3.0. Differences between Norway and Nigeria in Petroleum Policy Framework

As crucial as petroleum policies in Norway and Nigeria are, a proper critique on each deserves its own paper. This analysis may not therefore represent a comprehensive corpus, but only focuses on the vital aspects of the policies.

3.1. Licensing System

In the beginning of petroleum production, Norway lacked experience regarding petroleum exploitation and as such had no choice than to make do with the already existing North American concession system as the only available option.³⁵ The traditional concession system was the earliest form of contractual relationship between the state and oil companies in Norway.

²⁴ O Noreng, "The Norwegian Experience of Economic Diversification in Relation to Petroleum Industry" (2004) 2(4) OGEL.

²⁵ Hunter (n 4).

²⁶ *Ibid.*

²⁷ Hunter (n 4).

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Ihlen (n 11).

³¹ "Country Analysis: Nigeria" (2015) U.S Energy Information Administration.

³² S C Dike, "Analyzing the Roles and Operations of Key Participants in the Nigerian Petroleum Industry and their Impact in Promoting Energy Security" (2015) 4 IELR 175-186.

³³ Oil and Gas Journal (OGJ) (2005).

³⁴ "Country Analysis: Nigeria" (n 31).

³⁵ Hunter (n 4).

The concession system was a model in which international oil companies (IOCs) were granted absolute proprietary and ownership rights over parcels of land (and of any hydrocarbons produced within the relevant area). The state could only intervene for the purposes of imposing certain regulations in as much as it does not interfere directly in petroleum activities.³⁶ A major disadvantage of the system, however, was that the state was subjected to ‘a minimalist and laissez-faire’ approaches to petroleum business.³⁷ Over time, licenses were introduced, arguably, as a newer form of concessions. Of particular note is that the current licensing system in Norway is being used to promote natural resource transparency.³⁸ Natural resource transparency has been defined as ‘the public disclosure of necessary, reliable and accessible information about all the activities and processes involved in the natural resource wealth management chain from discovery and exploitation to the revenue collection and expenditure’³⁹. So in order to avoid opaque style of operations, Norway operates a discretionary system that is not based on auctions⁴⁰; private oil companies are used rather as agents to add value to the system under the supervision of the Norwegian Petroleum Directorate (NPD).⁴¹ Discretionary licensing means that licenses would be awarded ‘upon bargaining with oil companies for multiple objectives’.⁴²

Norway also organises a stepwise opening of new areas as key in the licensing system.⁴³ That means that no petroleum activity is permitted to take place until an area has been formally announced and opened for such operations by the Ministry of Petroleum and Energy (Ministry). This is usually done through a licensing round.⁴⁴ Before the opening of new areas for possible petroleum operations, a strategic impact assessment must be carried out so as to determine the level of associated risks. Public consultation would then be made and the outcome is finally submitted to the Parliament for decision. The Ministry shall, as a rule announce the areas for which applications for production licences may be submitted.⁴⁵ The announcement is usually published in the Norwegian Gazette (Norsk Lysingsblad) and the official Journal of the European communities.⁴⁶ Award of production of licenses would be made by the Ministry after the close of licensing round on factual and objective basis as long as the requirements and conditions as stipulated in the notification are met.⁴⁷

Detail plans for development and operations of the allotted oil fields as submitted by the operators must also be approved by the government, together with the impact assessment that

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ T Hunter, “The Offshore Petroleum Regulatory Frameworks of Australia and Norway” (2010) 8 (4) OJEL 1-38.

³⁹ M U Uzoigwe, *Exploring Multi-Stakeholder Initiatives for Natural Resource Governance-The Example of the Nigerian Extractive Industries Transparency Initiative (NEITI)* (PhD Thesis, University of Birmingham 2011).

⁴⁰ When licenses are allocated to the highest bidder.

⁴¹ Hunter (n 38).

⁴² Noreng (n 24).

⁴³ Norwegian Petroleum Activities Act (PAA) 1996, s 3-1.

⁴⁴ Hunter (n 38).

⁴⁵ PAA 1996, s 3-5.

⁴⁶ PAA 1996, s 3-5.

⁴⁷ PAA 1996, s 3-5. See also the Norwegian Petroleum Activities Regulation (PAR) 1997, S 10.

has been carried out.⁴⁸ This is to ensure that wastage of petroleum resources are avoided.⁴⁹ Accordingly, is expected that petroleum production shall be conducted prudently by the employment of prudent and sound economic principles.⁵⁰ In order also to avoid the wastage of petroleum or reservoir energy, the licensee shall conduct a continuous evaluation of production strategy and technical solutions, taking as well measures necessary to accomplish this.⁵¹ But the King has the discretion to grant a production licence without announcement albeit that under such circumstances, the licensees of production licences in all adjacent areas shall be given the right of first refusal for the affected blocks.⁵² The affected blocks shall also be published in in the Norwegian Gazette (Nosk Lysingsblad) and the official Journal of the European communities.⁵³ Also at the discretion of the Ministry, an exploration right could be granted to a third party over an acreage already covered by a production licence.⁵⁴ So the exclusivity of a production licence does not bar the grant of an exploration licence to third parties in the same area covered by the production licence. But in the event of a clash between the exploitation of two resources the King has the discretion to elect which of the two activities shall be postponed and to what extent after taking due consideration of the nature of the discovery, investments already made etc.⁵⁵

In Nigeria, the Petroleum Act 1969 gives the Minister of Petroleum discretionary authority to grant oil prospecting, production and mining licenses. Thus on a closer examination, a crucial similarity between Norway and Nigeria in this regard is revealed-both adopted the discretionary system, including the fact that in both countries before licensing rounds are conducted government advertisement of available land areas is publicly made with the selection criteria. However, while Norway uses a discretionary award system not based on auction, the Nigerian Minister of Petroleum exercises his discretionary award powers based on an auction.⁵⁶ Also in contrast to Nigeria, the Norwegian licensing system is used as a tool in the relationship between the state and foreign oil companies-it essentially 'honours foreign oil companies that give a priority to Norwegian goods and services'.⁵⁷

While Norway's licensing system is well-guided by Norway's petroleum law, the dissatisfaction with the Nigerian system is that much room is left to the Minister's discretion as he freely allocates and approves licenses with no compelling and oversight provisions. As a consequence, most of the permits granted during the military era by the heads of state could not reasonably be in line with best practice procedures. It was for this cause that the civilian regime of 1999 revoked most of the blocks arbitrarily awarded to senior military officers and

⁴⁸ PAA 1996, s 4-2.

⁴⁹ PAA 1996, s 4-1.

⁵⁰ PAA 1996, s 4-1.

⁵¹ PAA 1996, s 4-1.

⁵² PAA 1996, s 3-5.

⁵³ PAA 1996, s 3-5.

⁵⁴ PAA 1996, s 3-11.

⁵⁵ PAA 1996, s 3-13

⁵⁶ *Nigerian Natural Resource Charter: 2014 Report* available online at

<<http://www.resourcegovernance.org/news/blog/measuring-progress-nigeria-natural-resource-charter-publishes-benchmarking-report>> accessed 26/02/2021.

⁵⁷ Noreng (n 24).

their allies by the previous military governments and subsequently introduced an open and competitive award system as a replacement for the discretionary award procedures. Yet, the licensing rounds of 2000, 2005, 2006 and 2007 and 2013 were marred by deep abuses and irregularities such as bribery, favoritism, lack of transparency and due process.⁵⁸ Apparently, the simple fact of lack of well-regulated awards procedures in Nigeria is connected to the consequences of lack of transparency and corruption in the system, which arguably came to emerge due to the untoward influence of the Minister.

3.2. Fiscal Policy-Taxation and Sovereign Wealth Fund

In petroleum taxation, Norway applies the ordinary corporate taxation system as stipulated in the Petroleum Taxation Act 1975. A particular tax (special tax) is additionally imposed to accord with the super profitability of crude production.⁵⁹ While the average tax rate is 28 per cent, the special tax rate is 50 per cent. Tax deductions are however permitted where relevant.⁶⁰ Companies can also apply for a refund of the tax value of exploration expenses in connection with the tax assessment.⁶¹ The reason why the tax scheme is designed this way is to promote neutrality so that an investment project that is profitable for an investor before tax will also be profitable after tax.⁶² This makes it possible to safeguard the consideration both for substantial income for society as a whole, as well as for the fact that companies want to implement profitable projects.⁶³

There is in addition what is called 'Area Fee'. This fee is intended to guarantee that an awarded acreage is explored efficiently by increasing activity in the region.⁶⁴ It will therefore not be charged where production or active exploration is on-going.⁶⁵ Area Fees' roles have recently been amended to reinforce the purpose of the fee. According to the new regulations, companies must pay NOK 30 000 per square kilometres during the first year and NOK 60 000 during the second year.⁶⁶ In the third year, companies pay the maximum rate of NOK 120 000 per square kilometre.⁶⁷ Companies can be exempted from the area fee if they (1) submit a plan for development and operation (PDO) to the Ministry of Petroleum and Energy; (2) if the company drills an additional wildcat well beyond the mandatory work commitment; and (3) where extensive work is being carried in the production license.⁶⁸

In 1990 Norway created a Government Petroleum Fund (later renamed Government Pension Fund-Global in 2006). The petroleum fund was largely established in order to achieve

⁵⁸ *Nigerian Natural Resource Charter 2014 Benchmarking Report* (n 56).

⁵⁹ Facts 2014.

⁶⁰ Deductions may be allowed for costs incurred during production, decommissioning or in support of research and development. See Facts 2013.

⁶¹ Facts 2013.

⁶² Facts 2013.

⁶³ Facts 2013.

⁶⁴ Facts 2014.

⁶⁵ Facts 2014.

⁶⁶ Facts 2014.

⁶⁷ Facts 2013.

⁶⁸ Facts 2013.

intertemporal policy objectives.⁶⁹ ‘Net oil revenue is deposited into the fund and finances the non-oil deficit through a revenue transfer’.⁷⁰ Norway’s Petroleum Fund has been noted as one factor that not only ensured fiscal discipline and prudent management of oil revenues but also restrained rentier politics in Norway.⁷¹ It shows that a well-drafted resource fund can, *inter alia*, insulate natural resource revenues against rent-seeking, politicised use and corruption, enforcing conditions for proper management of resource endowments.⁷²

A major fiscal instrument in the Nigerian petroleum sector is the Petroleum Profits Tax (PPT). It is a resource rent for the federal government that is governed by the Petroleum Profit Tax 2007. The PPT is chargeable to companies engaged in upstream petroleum activities in Nigeria with much emphasis on profitability.⁷³ It is considered progressive as the government take only increases in profitability with Net Present Value threshold rate calculation.⁷⁴ The PPT tax rate is set at 67.5% for the first five years of taxable operation by the company and 85% thereafter.⁷⁵ It is noteworthy that joint venture agreements (JVs) govern half of oil production in Nigeria. But the fiscal regime under the JVs relies on the government’s cash-call obligations, the failure of which has led to serious under-investment in the JVs. Partly for this reason, Production Sharing Contracts (PSCs) were introduced in 1993⁷⁶ with the objectives of stimulating deep-water exploration, diversify the sector’s corporate participants and avoid the problem of cash-call system’.⁷⁷

However, under the fiscal terms of the 1993 PSC, government take reduces when oil prices and profitability increase.⁷⁸ This is contrary to the fiscal terms of 2005 PSC which is seen as progressive as it provides higher government take under higher oil prices and profitability.⁷⁹ It is noteworthy that the current fiscal terms under the PSCs could change since the PSCs have the flexible regime of renegotiation of contractual terms upon the expiration of the contracts. On the whole, it has been argued that there are extensive petroleum revenue losses in Nigeria due to weak cost regulation.⁸⁰ The consensus is that: (a) the fiscal regime does not ensure that the government receives a rising share of revenues during periods of increased profitability as the fiscal terms in the contract covering almost all of Nigeria’s oil production, and (b) the fiscal regime does not ensure that the government has a minimum revenue stream in all production periods, with the exception of signature bonuses and royalties except for the deep water operations under the 1993 PSCs, for which the royalty rate is zero.⁸¹

⁶⁹ T Bunsgaard, “Fiscal Policy in Nigeria: Any Role for Rules” (2003) IMF Working Paper WP/03/155.

⁷⁰ *Ibid.*

⁷¹ Stella Tsani, “Natural Resources, Governance and Institutional Quality: The Role of Resource Fund” (2013) 38 Resource Policy 181-195.

⁷² *Ibid.*

⁷³ *Nigerian Natural Resources Charter 2014 Report* (n 56).

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ See the Deep Offshore and Inland Basin Production Sharing Contract Act, CAP D3 LFN, 2004.

⁷⁷ *Nigerian Natural Resources Charter 2014 Report* (n 56).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

Furthermore, the Nigerian Resource Fund established with objectives of maintaining fiscal discipline and the overall macroeconomic stabilization of the volatile extractive industry has proved problematic as it has been a subject of unnecessary alterations.⁸² As a result of the series of alterations, the Petroleum Trust Fund, established in 1995 was replaced by the Excess Crude Account (ECA) in 2004.⁸³ The ECA was established as a pseudo-fund with no statutory backing. Instead of being used in accordance with the rules establishing it, it became an option for personal and paternalistic purposes. A fund that started with about US\$ 5 and grew to US\$ 30 billion has been in constant decline⁸⁴ In an effort to correct this abnormality, the Sovereign Wealth Fund (SWF) was created in 2011. The SWF was meant to serve as a deficit cushion and rule-based stabilisation fund to replace the ECA as well act as a potential funding source for domestic infrastructure development.⁸⁵ Yet there is no reported progress being made with the governance situation of the SWF remaining unclear given that the ECA still exists and is being used to cushion budget deficits and for other expenditures of the government.⁸⁶

3.3. Environmental Health and Safety

Environmental health and safety are pivotal to petroleum activities in Norway from licensing to actual exploitation and disposal of petroleum products. As shown above, the safety of the environment is an integral part of the licensing system in Norway which inter alia requires adequate assessment of the potential risks even to the decommissioning stage. Adequate policy measures have therefore been adopted to safeguard the environment from emissions such as methane (CH₄), CO₂, NO_x, Sulphur Oxide (SO₂) and mmVOC as well discharges and sea disposal of the remnant of oil and chemicals used in production processes. These environmental concerns are regulated by several acts to include the PAA 1996, the CO₂ Act, the Sales Act, the Greenhouse Gas Emission Trading Act and Pollution Control Act.⁸⁷ The jurisdiction of these legislative frameworks is also extended to the onshore petroleum activities in addition to the Planning and Building Act.⁸⁸

Gas flaring is barred and only permitted when necessary for safety reasons and must be approved by the ministry of Petroleum and Energy (MPE).⁸⁹ CO₂ tax was also introduced in 1991 in order to further reduce the emission of CO₂ in the petroleum activities.⁹⁰ The tax is levied per standard cubic metre (Sm³) of the gas that is burned or released directly, and per litre of petroleum burned.⁹¹ In 2014, the tax was set at NOK 0.98 per litre of petroleum or standard cubic metre of gas.⁹² A decommissioning plan containing impact assessment must be approved before decommissioning can be executed. As well, licensees are responsible for

⁸² Tsani (n 71).

⁸³ *Ibid.*

⁸⁴ *Nigerian Natural Resource Charter 2014 Report* (n 56).

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Facts 2013.

⁸⁸ Facts 2014.

⁸⁹ Facts 2014.

⁹⁰ Facts 2013.

⁹¹ Facts 2013.

⁹² Facts 2013.

carrying out the disposal of decommissioned structures under the stringent measures.⁹³ A licensee who sells part of the production license has the alternative liability for removal costs related to the sold share.⁹⁴ Under such circumstance also, the licensees are still liable for wilful or negligent damage, harm or inconvenience in connection with the abandoned facility.⁹⁵

Decommissioning is further regulated by other international and regional instruments, in particular, the Oslo and Paris convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Decision 98/3). In addition to other repeated provisions covered in earlier conventions, the main attraction of Decision 98/3 is the fact that it prohibits the disposal of offshore installations at sea⁹⁶ and gives prominence to recycling or reuse in order not only to reduce the cost of decommissioning but also to make recycling and reuse more attractive for many.⁹⁷ The exception is where accurate disposal assessment⁹⁸, consultations⁹⁹ or unforeseen circumstances¹⁰⁰ prove that sea disposal would be preferable to recycling and reuse.¹⁰¹ The Disposal at sea is only permitted on the assessment satisfaction that ‘there are significant reasons why’ it is the best option.¹⁰² So sea disposal is meant to be the last resort.¹⁰³ Indeed, Norway is a front runner in the use of environmentally efficient solutions.¹⁰⁴ Stringent measures are not only imposed but also used and implemented. As a result, the Norwegian oil and gas industry has reached the set goal of zero harmful discharges to sea.¹⁰⁵ As of 2012, Norway’s nmVOC emissions have been reduced to 132 000 tonnes more than half since 1990.¹⁰⁶ Gas combustion is very low in Norway due to the efficiency of storage facilities.¹⁰⁷ Norway is the first country in the world to store a large amount of CO₂ in geological formations under the seabed from the Sleiper Vest field.¹⁰⁸ Gas flaring accounted only about 10% of the CO₂ emissions from petroleum production in 2012.¹⁰⁹

The need to carter for potential negative environmental impacts of petroleum exploration and exploitation has also been captured within the Nigerian policy framework. First, oil pollution in Nigeria is a criminal offence. A jail term of six months is imposed for ‘any person who corrupts, fouls the water of any spring, stream, well, tank or place so as to render it less fit for the purpose for which it is ordinarily used’¹¹⁰. Also, any person who ‘vitiates the atmosphere

⁹³ PAA (as amended in 2009).

⁹⁴ PAA (as amended in 2009).

⁹⁵ PAA (as amended in 2009).

⁹⁶ OSPAR Decisions 98/3, para 2.

⁹⁷ OSPAR Decisions 98/3, para 2.

⁹⁸ OSPAR Decisions 98/3, para 3.

⁹⁹ OSPAR Decisions 98/3, para 4.

¹⁰⁰ OSPAR Decisions 98/3, Annex 1, para 3.

¹⁰¹ OSPAR Decisions 98/3, Annex 1, para 3.

¹⁰² OSPAR Decisions 98/3, Annex 1, para 3.

¹⁰³ OSPAR Decisions 98/3, Annex 1, para 3.

¹⁰⁴ Facts 2014.

¹⁰⁵ Facts 2013.

¹⁰⁶ Facts 2014.

¹⁰⁷ Facts 2013.

¹⁰⁸ Facts 2014.

¹⁰⁹ Facts 2013.

¹¹⁰ The Nigerian Criminal Code Act 2004, s 25.

in any place so as to make it noxious to the health of persons or who does any act which is and which he knows or has reason to believe to be, likely, to spread the infection of any disease dangerous to life whether human or animal is guilty of an offence punishable with Six Months imprisonment.¹¹¹ Second, there is the mandatory requirement that an environmental assessment must be carried out prior to the commencement of petroleum operations.¹¹² In addition, companies are also encouraged to take precautionary measures to guard against hazards and risks. A licensee or a lessee must adopt 'all practical precautions' and take 'prompt' steps necessary to prevent, control and possibly end pollution cases.¹¹³ All apparatus, appliances, boreholes, and wells capable of producing petroleum must be maintained and put in good repair and condition.¹¹⁴

Licenses could thus be revoked if inter alia petroleum operations are not carried in accordance with 'good oilfield practice'.¹¹⁵ However, the term 'good oilfield practice' is not legally defined thus subjecting the term to the standpoint of the interpreter. Pollution of lands, waters including the navigable waters of Nigeria in all its forms is also prohibited.¹¹⁶ Gas flaring is illegal with the deadline for cessation of gas flaring set as far back as 1984¹¹⁷ though the deadline was not met with Nigeria still maintaining the unenviable position as the number 2 gas flarer in the world¹¹⁸ after Russia.¹¹⁹ But as shall be further emphasized below, significant shortcomings have been indicated on the basis that environmental law provisions are vaguely and imprecisely drafted with the issue of enforcement being a most challenging phenomenon in Nigeria.

It is arguable from the foregoing that Norway maintains a high measure of environmental wellness and safety in petroleum production compared to Nigeria. Norway appreciated the need to integrate health, safety and environmental concerns into its oil sector development plans. Thus, health, safety and environment prominently feature as the foundation for all the petroleum activities in Norway.¹²⁰ Arguably, the strong focus on health and safety was created in order to cause an overall trust and confidence that petroleum activities would be conducted in a safe and sustainable manner. Commitment to this notion of sustainable oil development was framed as an important condition of the licenses granted oil companies to explore and exploit oil reserves in Norway.¹²¹ But in Nigeria, it could be observed that apart from the fact that the provisions on environment protection and safety are poorly defined, there are no

¹¹¹ *Ibid*, s 247.

¹¹² Environmental Impact Assessment Act 1992.

¹¹³ Petroleum (Drilling and Production) Regulations 1969, reg 25.

¹¹⁴ *Ibid*, reg 37.

¹¹⁵ Petroleum Act 1969, S 6 (1) (g).

¹¹⁶ Oil in Navigable Waters Act 1969.

¹¹⁷ See the Associated Gas Re-Injection Act; Oil Pipeline Act 2004.

¹¹⁸ Olubayo Oluduro, "Oil Exploration and Ecological Damage: the Compensation Policy in Nigeria" (2012) 33(2) Canadian Journal of Development Studies 164, 166.

¹¹⁹ E Emeseh, "Mainstreaming Enforcement for the Victims of Environmental Pollution: Towards Effective Allocation of Legislative Competence under Federal Constitution" (2012) 14(3) Env. L. Rev. 185-199.

¹²⁰ PAA 1996, ss. 8-3, 8-4, 8-5, 9-1, 9-2.

¹²¹ P Heum, "Local Content Development-Experiences from Oil and Gas Activities in Norway" (2008) SNF Working Paper No. 02/08, Institute for Research in Economics and Business Administration, Bergen 1.

sufficient punitive legal consequences to impact upon the corporate offender.¹²² Even the available consequence of revocation cannot be said to be a deterrent as it rarely occurs.

Most significantly, the hallmark of Norway's oil and gas sector development is that good policies are not only formulated, they are allowed to implement. Conversely, the major concern in Nigeria is that policy frameworks, no matter how honest they are, are often not enforced.¹²³ That is why as worrisome as oil pollution is, enough is not being done to counterbalance for the environment of the Nigerian Niger Delta host communities who are most affected by the adverse shocks of petroleum exploitation and production in Nigeria. Besides, despite the criminal law provisions on the environment, there is yet to be any prosecution of companies for offences related to environmental crimes with the courts even unwilling to grant locus standi for relator proceedings.¹²⁴

Failures of policy implementation and enforcement in Nigeria has been attributed to the economic priority of the Nigerian government: not to force the oil companies to relocate from the country 'thus leading to the possible collapse of the Nigerian economy'¹²⁵ For e.g. in *Allar Iron v Shell-BP Development Company (Nig) Ltd*¹²⁶, the country's overriding national interests was the main reason why the plaintiff was refused an injunctive relief when he sued shell for damages resulting from an oil spillage.¹²⁷ This case also shows how an injunction, which is a remedy sought by the aggrieved party to stop a continuous harm, is often unjustly denied the plaintiff.¹²⁸ An injunction is often refused in order not to cause the 'stoppage of trade' or the rise of unemployment given that '...mineral oil is the main source of this country's revenue...the defendant having been granted an oil exploration license, an order for an injunction may render...nugatory...such license. It will not be just and convenient to grant an injunction...' ¹²⁹ One may, however, argue that the economic justifications seem to blindfold the courts as it is even more unjust and unfair to say that an order just to restrain the defendant from further polluting the property of the plaintiff is unjust.¹³⁰ The implication is that the potency of hazards and risks will continue to be ignored or underestimated in favour of the culture of cutting corners for production and profits.

¹²² Kinsley Edu, "A Review of Existing Legal Regime on Exploitation of Oil and the Protection of the Environment in Nigeria" (2011) 37(2) Commonwealth Bulletin 307-327.

¹²³ E Emeseh, "Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria" (2006) 24(4) J. Nat. Resources. L. 574-600.

¹²⁴ Edu (n 122).

¹²⁵ Emeseh (n 123).

¹²⁶ *Allar Iron v Shell-BP Development Company (Nig) Ltd* Unreported, Suit No W/89/71. 1973.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Damfebo K Derri, "Litigation Problems in Compensation Claims for Oil and Gas Operations in Nigeria" in Festus Emiri and Gowon Deinduomo (eds.) *Law and Petroleum Industry in Nigeria: Current Challenges; Essays in Honour of Justice Kate Abiri* (Malthous Press Limited 2009).

3.4. Local Content Development

As for industrial development and research, it is noteworthy as earlier said that Norway had never had some onshore petroleum activities from which a specific industry experience could be gathered to face the challenges of offshore petroleum activities when oil was found in the NCS in the 1960s. As the early years of petroleum exploration and exploitation was too risky to commit public funds¹³¹, IOCs were wooed with more lenient terms and conditions to operate in Norway. However, in order to avoid being exposed to the consequences that come with dependence on foreign expertise, Norway formulated an effective local content policy development, in which industry capacities and competence are made to grow locally. With the forecast of possible depletion of fossil fuel in the near future¹³², local content development policy became an 'industrial ambition' meant to 'develop domestic industrial competence that will contribute to national welfare even when the extraction of oil and gas no longer will induce growth in the economy'.¹³³

The drive towards local content development in Norway was facilitated by the government policy initiative which mandated that foreign oil companies fund research and technological development at the Norwegian academic institutions.¹³⁴ It is on record that international oil companies 'were required to conduct at least 50% of the research for technology needed to develop prospect in Norway at local institutions'.¹³⁵ Inevitably, these and other stipulations in favour of local content development in Norway have played significant roles in the emergence of Norwegian companies as globally competitive companies in all spheres of offshore oil development.¹³⁶ Norway now has a very competitive oil and gas industry. In the fields of seismic surveying, subsea installations and floating production system, the Norwegian suppliers are among the best in the world.¹³⁷

Nigeria as well has had the desire to grow local content capacity in the petroleum industry. Local content has been defined as 'the quantum of composite value added to or created in Nigeria through utilization of Nigerian resources and services in the petroleum industry resulting in the development of indigenous capability without compromising quality, health, safety and environmental standards'.¹³⁸ The Nigerian local content initiative according to Jean Balouga is 'framed within the context of the growth of Nigerian entrepreneurship and domestication of assets to fully realize Nigeria's strategic development goals'.¹³⁹ The origin of the concept of local content in Nigeria is not easy to trace. It certainly must have originated in

¹³¹ Heum (n 121).

¹³² C M Hoerter *et al*, "The Smart Grid: Energy Network of Tomorrow-Legal Barriers and Solutions to Implementing the Smart Grid in the EU and the US" (2015) 8 IELR 291-300.

¹³³ Heum (121).

¹³⁴ U J Orji, "Towards Sustainable Local Content Development in the Nigerian Oil and Gas Industry: An Appraisal of the Legal Framework and Challenges: Part 2" (2014) 2 IELR 68-75.

¹³⁵ *Ibid*.

¹³⁶ *Ibid*.

¹³⁷ Noreng (n 24).

¹³⁸ The Nigerian Content Development Act 2010, s.106.

¹³⁹ J Balouga, "The Nigerian Local Content: Challenges and Prospects" (2012) 3 International Association for Energy Economics 23-26.

the early 1960s when the Oil Minerals Ordinance 1914 and the Immigration Act 1962 were enacted.

The Oil Minerals Ordinance was enacted in 1914 when the unification of the southern and northern protectorates of Nigeria was proclaimed. Oil Mining Lease (OML) was the prevalent form of concession under the 1914 Oil Minerals Ordinance. Under the OMLs, the lessees were required to train indigenous Nigerian tradesmen and craftsmen at the inception of their mining operations.¹⁴⁰ The conditions also included the training of Nigerian professionals within a reasonable time in supervisory and senior managerial positions.¹⁴¹ In 1962, the Immigration Act was enacted, evidently with the great concern that the Nigerian economy was dominated by foreigners. The Nigerian leading industries at the time such as the Cement Company, air transport, shipping, mining, and oil were not in the hands of Nigerians but foreigners.¹⁴² Indeed to allow foreign investors to go along to dominate as high as 70% of Nigerian overseas trade suggested the reduction of Nigerians to mere ‘hewers of wood and drawers of water all the time’ rather than being manufacturers.¹⁴³

Therefore, to further protect local content or indigenous workers, the Immigration Act 1962 established the expatriate quota system in Nigeria. Companies desiring to employ expat workers must apply for and obtain an expatriate quota, which is essentially a scheme designed by the government to prevent indiscriminate employment of foreigners when there are qualified and suitable Nigerians for such positions. The 1969 Petroleum Act, as the principal legislation regulating the oil sector also promoted this government policy desire by ensuring under section 38 that,

The number of citizens of Nigeria employed by the holder of a mining lease in connection with the lease in managerial, professional and supervisory grades (or any corresponding grades designated by him in a manner approved by the Minister) shall reach at least 75% of the total number of persons employed by him in those grades; and the number of citizens of Nigeria in any one such grade shall be not less than 60% of the total; and all skilled, semi-skilled and unskilled workers are citizens of Nigeria.

Paragraph 26 of the Act’s appurtenant Petroleum (Drilling and Production) Regulations 1969 required an OML lessee to submit for approval by the Minister of Petroleum Resources, a detailed programme for the recruitment and training of Nigerians. Under paragraph 29, such a lessee was to provide a report on its compliance with the approved programme. Another law which is complementary to the Petroleum Act 1969 is the Nigerian Enterprises Promotion Degree (Indigenization Degree) 1972. The Degree was arguably predicated on the Nigerian indigenization policy of 1971 which set out the primary objectives of (i) creating opportunities

¹⁴⁰ I Oguine, “Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues” (2011) 29 J. Energy & Nat. Resources L. 405-430.

¹⁴¹ *Ibid.*

¹⁴² U J Orji, “Towards Sustainable Local Content Development in the Nigerian Oil and Gas Industry: An Appraisal of the Legal Framework and Challenges-Part 1” (2014) 1 IELR 30-42.

¹⁴³ *Ibid.*

for indigenous Nigerian businessmen; (ii) maximizing local retention of profits and (iii) raising the level of intermediate capital and good production.¹⁴⁴ The achievement of these objectives basically works in two dimensions: the indigenization of ownership of industrial assets whether public or private and the indigenization of foreign owned or foreign controlled industries.¹⁴⁵ In essence, the policy meant ‘the roping off certain types of business activities and reserving these for exclusive ownership and control of Nigerians’.¹⁴⁶

It thus set the stage for significant and meaningful participation by Nigerians in the ownership, management, and control of the productive enterprises in the country. It has also been identified as an attempt to completely liberate Nigeria from colonial rule as it ‘represented a counter-thesis of the British open economy’ which subordinated Nigeria to the capitalist world, nested in the principles of free markets and private enterprise.¹⁴⁷ However, it is arguable that a more meaningful advancement of local content policy in the Nigerian petroleum industry began in 1971 when a national oil company was formed.¹⁴⁸ According to Oguine, the policy measure that had the greatest impact on Nigerian content was the creation of a national oil company.¹⁴⁹ In 1971, Nigeria joined the Organization of Petroleum Exporting Countries (OPEC), and as a result of OPEC’s mandate urging its members to have the utmost control over petroleum resources, in the same year, the Nigerian National Oil Company (NNOC) was created. The NNOC was later succeeded by the Nigerian National Petroleum Corporation (NNPC) pursuant to the NNPC Act of 1977. Thus, Nigeria oil policies have since then been reflecting the underlying aims of her membership of the organization.¹⁵⁰ In fact, it has been argued that the Nigerian NOC was established as a vehicle for promoting the Nigerian indigenisation policy in the oil and gas sector.¹⁵¹ It was also in line with 1970-74 second national development plan which required the participation of the government in the exploration of production of mineral resources in Nigeria.¹⁵²

So, in 1971 when the NOC was created, the government acquired substantial interests in the concessions granted to IOCs operating in Nigeria at the time.¹⁵³ Such included the 33 1/3% of equity interest in NAOC and 35% in ELF.¹⁵⁴ Over time, it ‘extended its reach into refining and marketing of petroleum products, the transport of products by pipeline and the manufacture of petrochemicals’.¹⁵⁵ When the NOC was renamed in 1977 as NNPC the company ‘flagged off’ the actual local content initiative through the acquisition of interests on behalf of the Nigerian

¹⁴⁴ C S A Ogbuagu, “The Nigerian Indigenisation Policy: Nationalism or Pragmatism” (1983) 82(327) *African Affairs* 241-266.

¹⁴⁵ W A Ndongko, “Indigenisation Policy and the Development of Private Enterprise in Nigeria” (1980) 15(1) *African Spectrum* 53-71.

¹⁴⁶ Ogbuagu (n 144).

¹⁴⁷ Ndongko (n 145).

¹⁴⁸ Balouga (n139).

¹⁴⁹ Oguine (n 140).

¹⁵⁰ O J Onwe, “Economic Implications of Petroleum Policies in Nigeria: An Overview” (2012) 2(5) *American International Journal of Contemporary Research* 60-71.

¹⁵¹ Balouga (n 139).

¹⁵² G C Nwaobi, “Oil Policy in Nigeria: A Critical Assessment (1958-1992)” (1980) JEL NO. E60.

¹⁵³ Oguine (n 149).

¹⁵⁴ Nwaobi (n 152).

¹⁵⁵ Oguine (n 140).

government in joint-ventures operations with six IOCs including Shell, Mobil, Agip, Elf, Chevron and Texaco and 'recruited several Nigerian professionals offering opportunities in diverse aspects of the petroleum industry'.¹⁵⁶ The company also diversified into new areas of petroleum production including natural gas processing and transport, and liquefied natural gas (LNG) development, with Nigerians further acquiring and developing skills relating to oil and gas production.¹⁵⁷

However, after several years of tergiversation, the Nigerian parliament has succeeded in passing legislation, which to varying degrees, has modernized local content concept in Nigeria. This is the Content Act 2010.¹⁵⁸ Its key provisions inter alia being that: (a) first consideration shall be given to services provided from within Nigeria and to goods manufactured in Nigeria, and (b) Nigerians shall be given first consideration for training and employment in work programme for which a plan was submitted.¹⁵⁹ The Act also made clauses further imposing an obligation on licensees to submit annually, a satisfactory plan to the Nigerian Content Development and Monitory Board (NCDMB) setting out a programme of planned initiatives aimed at promoting the effective transfer of technologies to indigenous Nigerians or companies.¹⁶⁰

In contrast to Norway, the Nigerian local content requirements did not satisfy and do not seem to satisfy even with the current Act. They did not set targets for the training and recruitment of Nigerians, neither did they provide any mechanism for assuring compliance with these provisions'.¹⁶¹ Even though there is evidence that some IOCs complied with some of the local content stipulations by training and recruiting Nigerians in various disciplines related to the oil and gas industry, there is no evidence indicating punitive actions taken against any liable company in the 1960s or 1970 with regard to the Nigerian content development, a deficiency which could perhaps be justified 'either because [the few compliances] were considered on the whole as satisfactory or because of the generally benign regulatory environment of that period'.¹⁶² Given that the local content policy under the 1969 Act (and the subsidiary regulations based upon it) were devoid of enforcement, the 1969 Act has been described as a mere paperwork.¹⁶³ Its criticism has stemmed mainly from its generalized provisions on employment, training and capacity development. This generalization is blamed for the compliance challenges with its provisions. It is precisely due to the 'precedent-effects' of the earlier regimes that great doubts are currently entertained as to whether the 2010 Act, (as the significant overhaul critics of Nigerian content policy demanded) will live up to its expectations.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ The Nigerian Content Development Act 2010.

¹⁵⁹ *Ibid*, ss.10 (1) and 28(1).

¹⁶⁰ *Ibid*, s. 44.

¹⁶¹ Oguine (n 140).

¹⁶² *Ibid.*

¹⁶³ Balouga (n 139).

3.5. State Organization of the Petroleum Sector

Norway's direct state participation (DSP) in petroleum matters is organized by the use of three separate agencies for each of the three major responsibilities as demanded by the Norwegian oil sector.¹⁶⁴ These responsibilities which include policy making; technical control, regulatory and advisory functions, and commercial role are respectively manned by the Ministry, NPD and the NOC-Statoil.¹⁶⁵ Statoil is organized as a company limited by shares under the Norwegian corporate laws. This tripartite system of governance is such that these entities are independent agencies having arms-length relationship with each other and it became what is known today as the 'Norwegian Model' of hydrocarbon governance.¹⁶⁶ The overarching aim is to ensure good oil sector governance by empowering the ministry to, on one hand devise good petroleum policy and regulations, and on the other hand, develop 'a skilled purpose-built regulatory agency' to oversee the NOC and all other players in the oil sector.¹⁶⁷

In Nigeria, the state organization of the petroleum sector is equally in the form of a triumvirate identical to the Norwegian model. The Nigerian National Petroleum Corporation (NNPC) is the NOC in charge of the commercial interests of the federal government in the oil sector. The Ministry of Petroleum takes on the responsibility of policy-making as well as oversees the NNPC. The Department of Petroleum Resources (DPR) mainly functions as the industry regulator, a responsibility it however shares with the NNPC. This clearly depicts the phenomenon often called 'shared regulatory space', in which the lawmakers assign more than one agency the same or similar roles or divides multiple authority among multiple agencies, giving each responsibility for a part of the larger whole. The NNPC's intrusion into regulatory functions is seen as capable of raising potential conflicts of interest issues as to affect its commercial viability.

However, according to Thurber et al, the NNPC can still be confined to some regulatory responsibilities to develop its skills sets and bankability until it is mature to aspire for greater commercial success, provided however, its commercial and non-commercial responsibilities are distinguished and prioritized and 'smaller niches' are carved out within its portfolio of activities for its financial autonomy.¹⁶⁸ Given that the 'Norwegian model' inter alia enables the NOC concentrates doing what it knows best, namely the government's business interests of profit-maximization, it is now recommended as a prime example to follow for other oil-rich countries with regard to oil sector governance. Whether or not it can successfully be replicated in other oil-rich states is at the core of contemporary oil sector management debates. It is arguable that the tripartite arrangement would make no difference in the profitability of the NNPC if it remains a statutory corporation. Moreover, the success of the tripartite arrangement

¹⁶⁴ PAA, ss.10-11.

¹⁶⁵ Heum (n 121).

¹⁶⁶ P R Heller and V Marcel, "Institutional Design in Low-Capacity Oil Hotspots" (2012) Revenue Watch Institute available online at <http://www.resourcegovernance.org/sites/default/files/Institutional%20Design%20in%20Low%20Capacity%20Oil%20Hotspots.pdf> accessed 20/02/2021.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

depends on its 'institutional fit' with the existing conditions of the importing country. This institutional capacity simply does not exist in Nigeria.

It is probably accurate to say that the comparative success recorded by Norway and Statoil has been beyond the division of commercial, regulatory and policy functions into three independent legal entities. One of the core strategies in Norway is the legal organization of Norway's NOC-Statoil. At the time of its creation in 1972, Statoil was registered as a public limited company and designated an ordinary joint stock company under the Norwegian corporate laws. It subsequently went public in 2001 and listed in both Oslo and New York exchanges as a global company. Statoil's legal and corporate forms as a joint stock company made it relatively an autonomous commercial entity and ensured a large degree of freedom and independence for Statoil's commercial mandate. Its financial fortune was as well formally separated from the government treasury as it did not need government's permission to expend and invest its money. Like private sector companies, Statoil applies and competes for licenses, pays taxes and dividends to the government with no preferential treatment. Today Statoil is one of the high performing NOCs in the world. Likewise decoupling the ownership structure of the NNPC by means of corporatization and subsequent listing would arguably serve to reduce its current profitability challenges.

4.0. Concluding Appraisal

It is evident that Norway's policy framework on petroleum production is in marked contrast to that of Nigeria. The remarkable secret being that, contrary to the practice in Nigeria, Norway applied practical and reasonable precaution with respect to the discovery of petroleum in the Norwegian Continental Shelf (NCS). Norway believed it was realistic to expect that 'peak oil'¹⁶⁹ will occur in the future. This recognition provided the starting point for a prudent and efficacious use of petroleum resources in Norway. It understandably predisposes Norway to first and foremost identify the oil wealth not as a substitute but as a supplement to the pre-existing merit-based, high level of technical and bureaucratic competence.¹⁷⁰

Before oil, Norway already had a thriving shipping and fishing industries. In a deliberate effort to ensure that Norway escaped the 'oil trap' (adverse consequences oil wealth has caused in oil-rich developing countries), the government created a 'qualitatively better society' by 'a swift and uncontrolled growth in the use of material resources and the maintenance of the pace to petroleum extraction'.¹⁷¹ This helped to 'prevent the conversion costs of adopting to entirely new industry becoming too high.'¹⁷² Petroleum was believed to last longer with moderate pace in order to ensure that Norway would be 'less vulnerable to the day, which sooner or later must arrive, when nothing was left'.¹⁷³ Besides, the petroleum sector, 'by raising the domestic cost

¹⁶⁹ The notion that oil wells may soon decline and dry up. See T L Karl, "Ensuring Fairness: The Case for a Transparent Fiscal Social Contract" in Humphrey Sachs and Stiglitz (eds) *Escaping the Resource Curse* (Columbia University Press 2007).

¹⁷⁰ *Ibid.*

¹⁷¹ Helge Ryggvik, *The Norwegian Oil Experience: A Toolbox for Managing Resources* (TIK 2010).

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

level appeared as a threat to employment, as it could easily destroy more jobs than it creates'.¹⁷⁴ Hence the need for diversification in order to reduce dependence on oil revenues and checkmate the risks associated with oil price volatility.¹⁷⁵

Therefore, it is arguable that Norway has in large part escaped 'the Dutch disease' by preventing the oil revenues from overheating the Norwegian economy.¹⁷⁶ Norway developed and has continued to develop other sectors of the economy alongside the petroleum sector.¹⁷⁷ Nigeria, in contrast, is not a diversified economy. While the petrodollars flowed, the petroleum sector 'crowded out' other productive sectors of the economy. Evidence of the Dutch disease has emerged in Nigeria since the oil price shocks of 1973-74 and 79. The oil price shocks of the 1970s resulted in a large transfer of wealth to Nigeria with a great increase in unnecessary public expenditures on huge industrial and 'elephant' projects that could better hide revenue siphoning. Nigeria became incapable of putting brakes on overspending but could not stop over-borrowing in bad times. It was during this period that the Dutch disease emerged, in which agriculture the only non-oil tradable sector declined.¹⁷⁸

The oil boom led to a severe disruption of the agricultural economy and a large exodus of labour to the cities.¹⁷⁹ Per capita income has plummeted from \$250 in 1965 to about \$1091.64 in 2014.¹⁸⁰ Income distribution is in continuous deterioration. Records also show that the capacity utilization in the Nigerian manufacturing industry fell from 70% in 1975 to about 35% in the mid-1980s, a level the country is yet to recover from even as we write.¹⁸¹ Currently, Nigeria has a very low rating in the UNDP's Human Development Index scoring 0.514 in HDI value for 2014 and ranking 156 out of 187 countries.¹⁸² Urbanization is high at the rate of 3.8% with more than 50% of the total population living in the urban areas.¹⁸³ According to the National Bureau of Statistics (NBS), Nigeria's unemployment rate rose in the second quarter of 2015 to 8.2%.¹⁸⁴

Although, it is observable that the economy appears more diversified now than previously as the oil sector constitutes 15.9% of the GDP, the service and agricultural sectors of the economy accounting for 51% and 22% respectively¹⁸⁵, yet as the government policies have not been able to lower the degree of reliance on petroleum resources, there is no likelihood that these trends

¹⁷⁴ Noreng (n 24).

¹⁷⁵ *Ibid.*

¹⁷⁶ Ryggvik (n 171).

¹⁷⁷ Tina Hunter, *Legal Regulatory framework for the Sustainable Extraction of Australian Offshore Petroleum Resources: A Critical Functional Analysis* (PhD Thesis, University of Bergen, Norway 2010). 100-101.

¹⁷⁸ B Pinto, "Nigeria During and After the Oil Boom: A Policy Comparison with Indonesia" (1987) 1(3) *The World Bank Economic Review* 419-455.

¹⁷⁹ *Ibid.*

¹⁸⁰ See Nigeria GDP Per Capita available online at <<http://www.tradingeconomics.com/nigeria/gdp-per-capita>> accessed 23/02/2021

¹⁸¹ U Idemudia, "The Resource Curse and the Decentralisation of Oil Revenue: The Case of Nigeria" (2012) 35 *Journal of Cleaner Production* 183-193.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ See *The Nigerian Daily Post*, 3 August 2015.

¹⁸⁵ *Nigerian Natural Resource Charter 2014 Report* (n 56).

would be sustained. Therefore, it is arguable that the most obvious reason why Nigeria is unable to diversify (or why attempts at economic diversification have yielded marginal results) is due to the high dependence on oil-generated revenues. Over-reliance on oil (as a single and unique source of rent) has created a negative expenditure pattern, producing in the words of Lynn Karl the *ne plus ultra* of the no tax and spend state.¹⁸⁶

As a guaranteed source of income to the government, petroleum has created revenue autonomy from the citizens thereby occasioning a distributive pattern that is not only detrimental to the economy but also harmful to the state structures.¹⁸⁷ Because oil revenue is regarded as ‘manna from heaven’, it is challenging to implement a viable tax regime in Nigeria. Tax-related decisions are not being disentangled from the easily available oil revenues. Yet, tax-based economy seems to be the best way to create the right incentives for governance as it would inter alia contribute to reducing corruption and the rest of the problems that affect the Nigerian institutions.¹⁸⁸ By the reading of evidence in this respect, it would be much more difficult to mismanage the resources that come from taxes than those that fall from the sky-like manna.¹⁸⁹

So, the fact that oil revenue in Nigeria does not translate readily into economic growth and development for the present and future generations would appear indicative of a policy and legal framework devoid of sustainability. Sustainable development is extremely appealing as an international legal concept. ‘Sustainable development has become a ubiquitous phrase and avowed goal of many public policy initiatives...but...[n]o consensus has...emerged about what a sustainable path of economic development might look, nor about how to get there from here.’¹⁹⁰ Yet, to speak of sustainable oil development evokes to most of us visions of the oil wealth being well-integrated within the budget framework and employed to achieve intertemporal policy objectives as in the case of Norway. It seems to me quite plausible that the popular appeal of sustainable development relates to its very ability of ensuring a system that reduces the frequency of rent-seeking behavior, curbs overspending and its spill-over effects, shields the economy from fiscal indiscipline, maintains diverse industrial activities as well as makes the manufacturing sector the wage leader despite a super profiting oil sector as in the case of Norway.

Most crucially, not only that good petroleum policies were adopted in Norway but that they were allowed implemented. It might be argued that Norway has had a high dose of good luck as durable institutions were already in place prior to oil production. This is simply emblematic of good governance and political maturity. The support for sustainable oil development can be said to have been demanded by Norway’s political model of stable democracy. Political and democratic stability and consensus created economic viability in Norway by keeping institutional structures including those around the oil sector together for the common purpose

¹⁸⁶ Karl (n 169).

¹⁸⁷ *Ibid.*

¹⁸⁸ Erling Larsen, “Escaping the Resource Curse and the Dutch Disease? When and How Norway Caught up with and Forged ahead of its Neighbours” (2004) Discussion Papers No 377.

¹⁸⁹ *Ibid.*

¹⁹⁰ R Seidler and K S Bawa, “Dimensions of Sustainable Development” in A. F Maniruzzman et al (eds) *International Sustainable Development Law-Volume II* (EOLSS, 2010).

of ensuring that oil revenues benefit the entire Norwegian citizens. That is why, unlike Nigeria, Norway is immune to the resource curse. Contemporary literature has linked Norway's escape of resource curse to the robust institutions Norway has, and thus underscores the importance of institutional quality as the determinant of economic performance.¹⁹¹

The rule of law and high-quality judiciary, for example, are noticeable institutions prevailing in Norway. Norway has a well-functioning legal system and a swift judicial system that detect and deter individual, factional and unjust enrichment.¹⁹² This underlines the necessity for compliance and enforcement if sustainable oil development must be achieved. Though the contents of legal rules and principles are important, the role of the courts and enforcement agencies cannot be kept at bay. Legal principles are significant but its strength is largely founded on effective enforcement and execution. Good governance has laid a credible foundation for long-term petroleum policies in Norway which by all indications will continue for the foreseeable future. The Norwegian approach, therefore, can play a helpful role in an efficiency-oriented evolution of legal and policy regimes with regards to sustainable oil development in Nigeria. The form of petroleum-oriented policy failures in Nigeria could be tackled by Nigeria identifying and devising the functional equivalent of crucial forms of good governance that would ensure credibility in the system; credibility being the belief that policies will not only endure but will be enforced. It can be reiterated that there is a major challenge of law and policy enforcement in Nigeria, which 'is not merely a result of poor legislation and weak enforcement capacity but is symptomatic of inadequate governance and supporting structures-no matter how laudable capacity building efforts are, they will not achieve much without the existence of adequate governance structures and enabling environment'.¹⁹³ Thus good governance, particularly 'within the decision-making framework of resource allocation' can be considered as the cornerstone for sustaining oil development in Nigeria as it underlies the principles of transparency, accountability and responsiveness.¹⁹⁴ Aspects of good governance with particular reference to the hydrocarbon sector, together with the role and rule of law as a major prerequisite for good hydrocarbon governance might be a suitable topic for reconsideration.

¹⁹¹ F Al-Kasim, *Managing Petroleum Resources: The Norwegian Model in a Broad Perspective* (Oxford Institute for Energy Studies 2006).

¹⁹² Larsen (n 188).

¹⁹³ Emeseh (n 123).

¹⁹⁴ N Chowdhury and C E Skarstedt, "The Principle of Good Governance" (2005) CISDL Working Paper, Oxford UK.