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Energy Security in Nigeria: Legal and Statutory Framework Examination

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Abstract

Energy is a source of power, such as fuel used for driving machines, providing heat. Security is protection against something bad that might happen in the future, energy security. Petroleum sector is the main source of energy supplies in most countries and really the most dominant export commodity in a country like Nigeria. If properly utilized, it could help to secure a sustainable energy future and promote economic development in Nigeria. The duty of ensuring the availability, affordability, reliability and sustainability of energy supplies does not rest with the government alone. But Nigerian National Petroleum Corporations (NNPC), the organized private sector, non-governmental organizations, individuals and the multinational corporations have respective responsibilities in this duty. Law plays a central role in this search, as it is the instrument with which every society creates for itself a framework of principles within which to develop. The energy industry is essential to the security and independence of a country. Actually, meeting the world's need for accessible petroleum in a reliable, affordable and sustainable ways has become a difficulty duty for government, national oil companies and the industry. Nigeria's energy security situation is a contradiction as there is a blatant evidence of an inadequate supply of petroleum resources for its teeming domestic consumers. This paper's reliance on legal and statutory framework and economic success in Nigeria enriched its recommendation for promoting a sustainable energy supply in Nigeria. This, we said, is the precis of this paper. Our recommendations are" there is need to legislate for security of supply of petroleum products which has eluded many citizens in Nigeria. Infact, the passage of Petroleum Act, 2020 (as amended) is a welcome development; as the extant law on Petroleum in Nigeria, the Petroleum Act 1969 was inadequate and lacking in energy security. We recommended total implementation of the Act for energy security and sustainable development.

Keywords: Energy, Security, Energy Security, Nigeria, Legal and Statutory Examination.

1. Introduction

Petroleum resources and how it could be maximized and utilized to ensure energy security and economic growth in the oil producing countries such as Nigeria is the basis of this paper. The need for abundant security of supply of petroleum in every country at cost is considered relevant for meeting the sustainable development goals, especially for the eradication of poverty. The objective of this paper is to provide some recommendations on how Nigeria and China can attain energy security in the presence of their abundant natural resources. We tried to find out the best legal approach suitable for Nigeria in ensuring supply of Petroleum resources given their

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different energy security circumstances. We looked at the constitutional and statutory/legislative provisions on petroleum issues in Nigeria and found that Chapter II of the 1999 Constitution of Nigeria (as amended) did not specifically and directly mandate or recognize the provision of energy to Nigerian citizen as of right thus posting an enormous obstacle to the proposal for legislating for energy security for domestic purposes.[1] Petroleum Act on the other hand in any country should be considered a fundamental Law that regulates the petroleum industry.[2]

We shall examine the legal and statutory framework in Nigeria in the area of Energy security; to seeing the prospects, opportunities, weaknesses and challenges inherent in these laws on managing the petroleum resources in these nations for efficiency and sustainable development; despite their high population densities.

2. Clarification of Terms

Energy is a source of power such as fuel for driving machines, providing heat etc; solar /nuclear energy[3]

Security is the activities involved in protecting a country, building or person against attack, danger etc. national security.[4]

Legal of**,** relating to, or involving law generally, falling within the province of law. It also means established, required or permitted the law, lawful.[5]

'**Energy Security'** has a multifaceted dimensions ranging from economic, social, environmental, political, military and foreign, policy.[6] For Mitchell, energy security policy encompasses reliability, affordability, environmental sustainability, avoiding constraints on foreign policy.[7] It also includes insecurity caused by temporary blackouts and extends to long-term threats such as the failure of investment.[8] There is yet another dimension, which is insecurity due to market and regulatory failures and the main concern of this paper.[9] This paper considers the deficiencies in the Petroleum legislation in Nigeria and in any of these countries as a regulatory failure, which has a negative impact on the security of supply of petroleum resources.

Energy security also has an economic perspective and for the economist, energy products and services are commodity under a market.[10] The proponent of this view believes that energy

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[1] See the 1999 Constitution of Nigeria, Section 6(b)(c), especially on the exclusion of any question on the management of petroleum industry from being asked by citizens. Again, see Sections, 16, 17 and 18 of the Chapter II thereof.

[2] S C Dike, Energy Security: The Case of Nigeria and lessons from Brazil, Norway and the UK (Port Harcourt: Real Publishers, 2015), 20

[3] A S Hornby, Oxford Advanced Learner's Dictionary (Oxford: 9thed, Oxford University Press, 2015) 508

[4] Ibid at 1399

[5] B A Garner, Black's Law Dictionary (USA: 10thed, THOMSON REUTERS, 2004) 1029

[6] A F Alhaji, 'What is Energy Security? Economic, Environmental, Social, Foreign Policy, Technical andSecurity Dimension's' (2008) 6 (3) OGEL1, 4-5

[7] J V Mitchell, 'Analysing Energy Insecurity' (2007) 5(4) OGEL 1-3

[8] *ibid*

[9] OECD/ IEA, *Energy Security and Climate Change Policy: Assessing Interactions* (OECD/IEA 2007) 35.In Nigeria, there is no liberalised energy market and the term 'regulatory failure 'as employed in thisbook applies to the deficiencies in the Petroleum Act

[10] D R Bohi and M Toman, 'Energy Security: Externalities and Policies' [1993] Energy Policy 1093, 1093, on legislative proposals in promoting energy security.

products should be appropriately priced like any other good (s) and that energy supply and demand should be determined by the market.[11] The environmentalists are concerned with the greening of energy industries with sustainability of energy as their focus.[12] This paper will argues that all these perceptions of energy security contribute to magnifying the importance of the concept, thereby bringing the various perceptions within the remit of the Elkind criteria. They further contribute in making it appropriate for a researcher to develop a subjective indicator that affects energy security threats in his own country.[13]

For the International Energy Agency (IEA), energy insecurity stems from the welfare impact of either the physical unavailability of energy, or prices that are not competitive or overtly volatile.[14] The IEA recognised that a proper energy policy is one, which strikes a balance among energy security, economic efficiency and environmental protection.[15]Adeola Adenikinju *et at.*, on their part, consider, as fundamental for energy security in Africa, and in Nigeria, framework for, 'ensuring availability of a reliable energy services to the economy.[16] These definitions deal with the physical availability, reliability and affordability (economic consideration), sustainability (environmental considerations). All these concepts together informed the choice of the criteria chosen in this paper for analysing the impact of the various Petroleum Acts on promoting security of supply of petroleum resources in these countries.

Barton *et at.,* arguing from the perspective of both developed and developing countries, defined as energy security 'A condition which a nation and all, or most, of its citizens, and business have access to sufficient energy resource at reasonable prices for the foresee future free from serious risk of major disruption of services.'[17] The authors; recognised different countries' perspectives of energy security, the original traditional concepts of energy security which hinges on oil, and the paradigm shift to other threats that affect energy sup They, however, identified security of supply, security of demand, reliability of energy security of energy installations and personnel, as components of energy security.[18] This means that there are many elements of energy security and that security of supply is as important as security of demand in different countries.[19]However, this book will argue all these components form part of energy security threats that are prevalent in all the chosen countries.

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[11] ibid.

[12] I Vera and L Langlois 'Energy Indicator for Sustainable Development' (2007) 32 (6) Energy 875, 881.

[13] ibid on the purpose and benefits of formulating indicators in assessing energy security.

[14] OECD/IEA, 'Energy Security and Climate change' (n 5) 32

[15] ibid 24

[16]Adeola Adenikinju, Seth Acton and Olayinka Adenikinju, 'Energy Security in Africa Issues , Challenges and Possible Role for Green Energy' in Adeola Adenikinju, Akin Iwayemi and WumiIledare, *Green Energy and Energy Security (*National Association of Energy Economic 2012).

[17] Barry Barton, Catherine Redgwell, A Ronne and D Zillman, 'Introductions' in B Barton, C Redgwell A Ronne and D N Zillman (eds.), *Energy Security: Managing Risk in A Dynamic Legal and Regulatory Environment* (OUP 2005).

[18] Barry Barton Catherine Redgwell, Anita Ronne and Donald N Zillman, 'Energy Security in the Twenty-First Century' in B Barton, C Redgwell, A Ronne, D Zillman, *Energy Security: Managing Risk in A Dynamic Legal and Regulatory Environment* (OUP 2005)1, 459-460.

[19] Jon Barnett, SurajeDessai, Michael Webber, 'Will OPEC Lose from the Kyoto Protocol' (2004) 32 Energy Policy 20772079, on emphasis on security of demand by OPEC members.

Sovacool, on his part, defined energy security as, 'The interconnected dimension of availability, affordability, efficiency and stewardship.'[20] He also reproduced forty-five different definitions and concepts of energy security.[21] This shows that what constitute an energy security problem is not closed but includes geopolitical considerations and host community's acts of sabotage, which pose serious energy security threats in a country such as Nigeria.[22] Although, these factors might not constitute any security of supply threat in countries such as UK and Norway, they have been recognised as security threats in Nigeria.[23]

Therefore, while some threats to energy security in most countries are identical, each country undoubtedly has peculiar energy security challenges. Consequently, there is a great deal to learn from the regulatory frameworks in the oil and gas laws of these jurisdictions on how to manage specific threats that are common to security of supply of petroleum resources.[24] A definition of energy security which captures these identical energy security threats should be a better option for any researcher on energy security and Elkind's criteria offer this advantage.

3. The Role of Law or Petroleum Legislation: Why Legislate for Security of Supply?

This paper argues that proper petroleum legislation could promote security of supply of petroleum resources in a hydrocarbon country. It thus argues for the appropriate role of law and policy in promoting security of supply.[25] This is so because whether in a deregulated energy market, as in some developed (OECD) countries,[26] or state regulated petroleum industry, such as in Nigeria, law has a paramount role in promoting security of supply.[27] Law can set out the entitlement of citizens to a certain level of rights to energy resources.[28] The proper role of petroleum legislation is to provide an enforceable right that would permit access to petroleum resources for domestic consumption.

Taverne has also recognised the complementary roles of a country's constitution to its Petroleum Act in promoting security of supply.[29] This is because the right to enjoy the benefits of natural resources in a country has been recognised as legitimate entitlement of citizens of oil producing countries and one of the proper roles "of the governments to their citizens.[30]

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[20] Benjamin K Sovacool 'Introduction' in B Sovacool (ed.), *Roulledge Hand Book of Energy Security* (Routledge 2011)

[21] ibid 3-6

[22] Nelson E Ojukwu-Ogba, 'Tackling Insecurity in Niger Delta Region: The Devils Alternative' (2006) 4 (4) OGEL 1,8.

[23] Ibid

[24] See Aiyiath Kuteri, Namibiar 'A Comparative Analysis of the Contractual and Regulatory Framework of the Oil Industry; Global Changes and Practices' (2013) 169731PTC 1, on the ever changing paradigm of the oil industry.

[25] P Carter, 'The Regulator's Dilemma: How to Regulate yet Promote Investment in the Same Asset Base: the UK's Experience' (2007) 3 IELT R 4, 62-65.

[26] See Bohi and M Toman (n 12) 1093, for more on deregulated markets.

[27] Barry Barton, Catherine Redgwell, Anita Ronne and Donald Zillman, 'Energy Security in the Twenty-First Century 'in B Barton *et al* (eds.), *Energy Security: Managing Risk* in a *Dynamic Legal and Regulatory Environment* (OUP 2005) 457, 460.

[28] See YinkaOmorogbe 'Promoting Sustainable Development through the Use of Renewable Energy: The Role of Law' in D Zillman, C Redgwell, Y Omoragbe and L K Barrera Hernandez' *Beyond the Carbon Economy: Energy Law in Transition* (OUP 2008) 45-46.

[29] Taverne (n36) 125, who notes that petroleum legislation works with relevant legislation such as a constitution.

[30] J Kakango, 'Challenge of Managing Expectation of Newly Emerging Oil and Gas Producers of the South (2011) 4 (2) Journal of World Energy Law and Business ' 124, 130.

This work argues that the Nigerian Petroleum Industry Bill 2012 supports the researcher's position. This is because it recognises the important role of Petroleum legislation in promoting security of supply. The introduction of Domestic Gas Supply Obligation,[31] the framework for Public Service Obligation,[32] the and the optimisation of gas supplies. However, the current Petroleum Act of Nigerian 1969 does not in any way promote security of supply of petroleum. The Petroleum Act does not provide or recognise access to petroleum as a Universal Service Obligation, hence the need for a radical legislative approach.

The Brazilian Petroleum Act Brazil, Law no 9.478, also supports this researcher's position by guaranteeing the supply of gas throughout the Brazilian territory.[33] This is notwithstanding that Brazil is also self-sufficient in bio-energy.[34] Consequently, Brazilian citizens have higher access to petroleum and other energy types than Nigerians. While the Norwegian Petroleum Activities 1995 generally protects the Norwegian national interest, the UK Petroleum Act is silent about the need to mandate adequate supply of petroleum resources because the believes that the market and the industry should discharge this responsibility.

However, there are other legal frameworks in the UK that promote security of supply outside the market. This is evident in both its domestic and the European Union legislative frameworks. For instance, the European Union vised a legislative approach through the Energy Charter Treaty (ECT),[35] in promoting exploration, production, transit and trade, protection of investment. The aim is also to address security of supply problems facing its members.[36] In addition, the EU, through its Public Service Obligations,[37] 'compels' its members to provide universal service of general interest and security of supply of electricity and gas fall within this obligation.[38] Consequently, most Organisation of Economic Cooperation and Development (OECD) countries, including the UK, have not only implemented this legislative framework but also ensured that their citizens enjoy unmatched access to energy services including petroleum.[39]

Similarly, Bohi and Toman[40] have advanced the benefits of a legislative -framework in promoting security of supply and energy efficiency in the United States. They referred to the US

[31] ibid Section 183 and 269.
[32] ibid *s* 260.
[33] Chapter 1 Article I (v)of the Brazilian Petroleum Act.
[34] United States Energy Information Administration, 'Countries Analysis: Brazil' (Last updated February 2012) <http:www.eia,gov/cabs/brazil/full.html> accessed 5 August 2013.
[35] The Energy Charter Treaty and Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects signed on 17 December 1994 and entered into Force on 16 April 1998, OJL 69/28 and OJL 69/46. See Article 10. The Charier has been acceded to by fifty-one Countries including the European Union.
[36] J Bielecki, 'Energy Security: Is the Wolf at the Door? (2002) 42 The Quarterly Review of economics and Finance 235, 237.
[37] Leigh Hancher, and Sally Janssen,' Shared Competences and Multifaceted Concepts-European legal Framework for Security of supply 'in Barry Barton et *al* feds.), *Energy Security: Managing Energy Risk in a Dynamic legal and Regulatory Environment* (OUP 2005) 89-113
[38] ibid; See also Commission, 'Green Paper on Service of General Interest' (Green paper) Com (2003) 270 final of 2 May 2003.
[39] Organisation of Economic Cooperation and Development (OECD), 'Countries Statistical Profile: KeyTables from OECD (2013) <http://dx.org/10.1787?csp-gbr-2012-en> accessed 5 July2013 for their higher standard of living liked to their access to energy.
[40]Bohi and Toman (n 12) 1093.

National Energy Security Act 1992, which sets targets and standards by which the United States promoted energy security and efficiency thereby reducing oil imports.

Therefore, this paper will examine the complementary roles of the national energy security law and policies in Brazil, Norway and the UK in promoting security of supply of petroleum resources. In the case of Nigeria, the paper will also justify the need for a radical legislative approach because of the inadequacy of other means of realising the objective of meeting security of supply in Nigeria.[41] We believe the new PIB Bill 2020 if passed into Act will be a step in right direction. The paper hopes to propose a greater role for the Petroleum Act, 1969, the PIB, 2012 and PIB, 2020 in promoting energy security. This will be achieved by also deconstructing the common objective of petroleum legislation[42] which is only to regulate the relationship between the host-nations and the operators in the award of licences and the promotion of export of products, leaving an important issue as security of supply of petroleum to domestic consumers unattended or neglected.

The Concept of Legislating for Security of Supply

This paper will propose the concept of legislating for security of supply of petroleum resources as panacea to the lingering energy insecurity in Nigeria. This concept involves first, the recognition of an enforceable right to adequate supply of petroleum products for domestic consumption. Secondly, it also involves the imposition of general and specific duties to provide adequate petroleum products for domestic consumers respectively on the government, National oil companies, the International oil Companies and other operators engaged in the petroleum industry .This paper recognises that Brazil, Nigeria and Norway have national oil companies while UK does not have at the moment and thus it makes allowance for the different application of this principle of legislating for security of supply in the UK.[43]

The general duty will be addressed to the government and it will impose an obligation on it to recognise the right to adequate supply of petroleum resources and this by incorporating it directly into the national Petroleum legislation or other regulatory frame works that binds the parties. The specific duty will be addressed to the national oil companies or the industry to supply or ensure the provision of adequate petroleum resources for domestic consumption. This means that the general duty would be imposed on their national oil companies (Petrobrass as in Brazil, Nigerian National Petroleum Corporation, in the case of Nigeria and Stat oil for Norway).

This duty is in line with the globally recognised practice for lOCs to give back to their host-country.[44] The approach further envisions a collaborative effort among the stakeholders in the industry in the provision of energy security. This collaboration will also include the affected consumers who will be expected to shoulder part of the responsibilities by paying appropriate

[41] A Iwayemi, 'Nigeria's Dual Energy Problems: Policy Issues and Challenges' (2008)4 International Association for Energy Economics 17; Omorogbe, 'Regional and National Frameworks (n 7) 135 on the failure of current and past actions in addressing energy security in Nigeria.

[42]Taverne (n36) 122 who defined a state petroleum legislation as, 'Comprising all laws, regulations and rules specifically designed for the purpose of regulating petroleum operations ... and for awarding authorisation for carrying out said operations.'

[43] In 1975, the former British Prime Minister Margaret Thatcher, privatised the British National Oil Companies and as she believed that the company was not efficient enough to ensure energy security for the Britain, hence BNOC no longer exist.

[44] See United Nations Draft Code of Conduct on Transnational Corporations 1986, Art 9.

prices for products and services made.[45] The strategy might require the establishment of an enforcement organ with quasi-judicial function to oversee the success of the initiative.

The difference between general duty and specific duty is that the general duty will be imposed on the government, and it will require it to make direct guarantee for security of supply of petroleum to be incorporated into the Petroleum legislation as a form of public service obligation. However, the specific duty will be imposed on the national oil companies, the lOCs and this will be in the nature of domestic gas supply obligation. Both obligations are enforceable by consumers or other affected parties but must also pass the test of recognition.

4. Survey of Legal and Statutory Frameworks for Energy Security in Nigeria

This Act starts with a preamble thus:

> *[A]n act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all onshore and offshore revenue from petroleum resources derivable there from in the Federal government and for all other purposes incidental thereto.*[46]

Section 1 of the Act vests the entire ownership and control of petroleum, in under or upon any land in Nigeria, under the territorial waters, or that forms part of its continental shelf or its exclusive economic zones in the *State.*[47]These two provisions conflict with each other as "Federal Government" in the preamble is not the same thing as the "State" in

Section 1 of the Act. This conflict poses threats in determining who owns and controls petroleum in Nigeria. Consequently, it negatively affects security of supply of petroleum.

Section 2 gives the Minister the right to grant an Oil Exploratory Licence (OEL) on a non-exclusive basis; an Oil Prospecting Licence (OPL) to explore and prospect for petroleum on an exclusive basis. He is also given powers to grant an Oil Mining Lease (OML) to a holder of an OPL, who has discovered oil in a commercial quantity i.e. (about 10,000 barrels of oil per day). Also, Sections I, 4 and 8 respectively of the First Schedule to the Act, limit the duration of these grants as follows: OEL (1 year for 500 square miles), OPL (5 years for 1000 square miles), and OML (20 years for 500 square miles);[48] instead of 40-50 year grants made under the Mineral Oil Ordinance.[49] The different rights, duties of an OEL, OPL and OML are stated in the First Schedule to the Act. The implication of these sections is that licensees and lessees of OPLs and OMLs claim exclusive rights to the associated gas produced within their respective licensed areas. However, the Federal Government also claims rights to participate in any venture covered under any licence or lease relating to natural gas.[50] Further, the licensees and the lessee have relied on this section in locking up their acreages, as of right, without developing them, thereby denying Nigerians optimal petroleum recovery. This adversely affects security of supply and will be analysed as a threat to the current licensing regime. The section further shows that both the

[45] This is to ensure fair play and easy compliance.

[46] The Preamble to the Petroleum 1969 (emphasis supplied).

[47]The word 'State' here means the nation State called 'Nigeria' as understood under the international law. It is different from the 36 State Governments that make up Nigeria.

[48] Petroleum Act 1969, s 2; Petroleum (Drilling and Production) Regulations 1969, Regulation 2

[49] Mineral Oil Ordinance 1914 and Mineral Oil Act 1958; See Section 14(3).

[50]See Petroleum Act 1969, Section 35 of the First Schedule on government's participation in the existing licences or leases concerning natural gas.

government and the IOCs have responsibilities to contribute towards the provisions of security of supply.

Sections 3 deals with the establishment of refineries only by companies incorporated in Nigeria thus restricting foreign and private investors from participating in the nation's refineries. The ownership and management of these refineries by the government has largely been responsible for their ineffective performance and leads to the inadequate supply of petroleum products.[51] This section indicates the problem of state control and direct involvement in the provisions of energy services. This will be discussed under the affordability criterion. Section 4 gives the Minister of Petroleum the power to control imports and sales of petroleum products by granting licences to any person wishing to import or sell petroleum products. The criteria for selecting the importers are not clearly stated and the preference for importation of products against domestic productions has not been justified. This provision, constructs *ab initio,* the framework for a perpetual dependence on imported petroleum products. However, it implies an obligation on the NNPC to contribute significantly towards adequate petroleum resources for domestic consumption, the failure of which duty, has contributed to insecurity of supply of petroleum products.

Section 5 deals with offences relating to the marketing of petroleum products and the fine imposed for the breach of bilateral agreements between two marketers is N100 (£0.4 pence). These marketers contribute to artificial scarcity of products, hence the fine imposed is not commensurate with the social impacts of this offence.[52] However, this section reflects the low sanction regimes for serious breaches of the provisions of the Act and creates enforcement difficulties for regulators. Section 6 gives the Minister discretionary powers to fix prices of petroleum products. About 80% of these products are imported.[53] The import prices are fixed by the international market. This section contributes to the regulation of pricing and the application of subsidies for the industry with their adverse energy security implications. Section 7 provides for the right of pre-emption by the government. This right enables the government to have access to petroleum products during an emergency. The non-deployment of this clause by the Minister, to demand from the lOCs, access to petroleum for domestic consumption is inimical to security of supply. The Section also provides the right to suspend any operations, which in the opinion of the Minister, are not conducted in accordance with 'good oil field practice.' However, the Government rarely exercises this right due to the failure of the NNPC to fulfil its obligations to the 3OCs. This shows that the government and NNPC have greater responsibility for ensuring security of supply of petroleum to Nigerians. Section 8 gives the power of supervision of the industry to the Minister. He is also required to enter any premises to arrest any person where pollution has occurred.

This section exemplifies the use of command and control regulatory technique with serious implication for the enforcement of environmental control measures.[54] Section 9 grants the

[51]A T Soreide, J Minhle and G P Shukla, 'Political Economy of the Petroleum Sector'(2011) 5779 World Bank Policy Research Working Paper l, 5-17, for the impact of government control.

[52] See also Section 4(6) of the Act on the imposition of a fine of N200 (£0.8} for carrying out an unlicensed distribution of petroleum products.

[53] A Iwayemi, 'Nigeria's Dual Energy Problems: Policy Issues and Challenges' (2008)4 International Association for Energy Economics 17,17.

[54] Stuart Bell and Donald Me Gillivray, *Environmental Law* (7thedn, OUP 2008) 249.

Minister the power to make any regulations regarding the industry.[55] These regulations have security of supply implications. It is important to highlight that though they form part of the Petroleum Act, these regulations are not incorporated into the existing contracts and licences with the IOCS. The Minister, without parliamentary approval, could not also amend them, once made, because the Act does not provide for the power to amend. They are like any other regulations that a licensee could take into account in the course of his operations. Therefore, they lack the efficacy of a Mode) clause in the UK Petroleum Act.[56]

Nevertheless, they are useful in revealing some hidden regulatory lapses in the Act and the objective of this paper is to attempt to fill these lapses. Section 10 provides for the payment to the Minister of fees, rents, royalties, premiums and other sums. This section does not state how these revenues will be distributed among the Federal Government, States and oil producing communities. The distribution of petroleum revenue is addressed in the Nigerian Constitution[57] rather than in the Petroleum Act. This is unlike the practice in Brazil, where its" Petroleum Act clearly states the manner of allocating petroleum revenue.[58] The paper contends that lack of a transparent revenue distribution in Act affects security of supply.[59]The benefit of the Brazilian approach is that it reduces the opaqueness in the allocation process and is more transparent.[60] The Nigerian Constitution, which regulates the distribution of petroleum revenue, in contrast, does not adequately deal with revenue distribution in an equitable manner that favours the oil-producing region.[61]

The paper will argue that an ill-defined revenue allocation affects security of supply of petroleum resources in Nigeria. Section 11 deals with dispute resolution which shall be in accordance with arbitration laws. In addition, Section 12 deals with the power of the Minister to delegate his responsibility excepting his regulatory powers. This shows the lack of independence of the Department of the Petroleum Resources (DPR)-the supposed industry's regulator and this has an adverse effect on the enforcement of the provisions of the Act.[62]

Section 13 makes any person who obstructs any licensed activity liable to pay a fine of N200 (less than GB £1) or face imprisonment for six months. This reflects both the prescriptive nature of the Act and the low sanction regime that affect its compliance.[63] Section 14 is the transitional provisions. This section saved the pre-colonial grants excluding the amount of royalties and rent. It consequently enabled the licensees to lock-up their acreages thus creating the marginal field problems with serious security of supply implications.[64] Section 15 is the interpretation section.

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[55] See NNPC Act 1977, s 10, on similar powers given to the DPR.

[56]Petroleum Act 1998 (UK), ss. 3 and 4 (1) (c).

[57] See 1999 Constitution, s 162 (2) and (4).

[58] See Brazilian Petroleum Act 1997 Law no. 9.478, Chapter 1 Articles, 1 and 44- 49,

[59] See Chapter 3, Brazilian's section for discussion on transparency.

[60] M Morgandi, 'Extractive Industries Revenue Distribution at the Sub-National Level: The Experience in Seven Countries' (2008) Revenue Watch Institute 1, 44.

[61] C O Ikporukpo, 'Petroleum, Fiscal Federation and Environmental Justice in Nigeria' (2004) 8 Space and Polity 321, 323-326.

[62] See Chapter 2 for (he impact of regulatory conflicts.

[63] M Olisa, 'Legal Framework for Pollution Control in the Petroleum Industry 'in NNPC, *Nigerian State and Petroleum Industry* (NNPC/Thomopulos Consulting 981), on the problems of regulating environmental pollution in Nigeria.

[64] See L Atsegbua 'A Critical Appraisal of the Legal Framework for the Operations and Development of Marginal Fields in Nigeria' (2005) Environmental and Planning Law Review 1, 10-11.

It defines petroleum as mineral oil or natural gas existing in the strata, and this definition does not recognise shale gas. This makes natural gas an appendage of oil while shale gas is not regulated under the Act. This section does not promote diversity of energy forms.

There are four Schedules but the most important is the First Schedule. Section 14 of the First Schedule provides that a holder of an OEL or OML shall not assign his licence or lease unless with the prior consent of the Minister. Similarly, Section 17 of the First Schedule deals with the right of a holder of an OML to farm-out, with the approval of the President, any marginal field which lies within the leased area. By the 1996 Petroleum (Amendment) Decree, the power to farm-out any marginal field, which has been 'unattended for not less than 10 years,' was also given to the President. This is because the licensee-holders of these acreages have refused to utilize this power to farm-out these fields and had rather chosen to leave them undeveloped.

The powers of the President were to be exercised in the public interest, thus showing that holding over acreages without developing them, which the Act promoted, was against public interest. Similarly, locking up such acreage affects the availability of crude to the refineries. Nevertheless, the power of the President did not appeal to the affected lessees, hence the conflict between the government and the affected lessees. This conflict also affects the timely development of some of these acreages and contributes to security of supply challenges.[65] Further, Section 25 (1) of the First Schedule deals with the termination of licences and leases and it provides:

> *The Minister may revoke any OPL or OML if..., inter alia, (a) is not conducting operations (i) continuously (ii) in a vigorous or a business-like manner in accordance with a basic work program approved for a licensee or lessee, and (iii) in accordance with a good oilfield practice;...or (b) has failed to comply with any of the provisions of the Act or any regulations or directions given there under....*

These expressions such as 'business-like manner' 'good oilfield practice' are nowhere defined in the Act and they duly present some difficulties for the enforcement agencies because of their ambiguities.[66] The result has been the low level of compliance by the licensees of various provisions of the Act. This adversely affects the sustainability of the industry.

Petroleum Regulations under the Act

There are seven regulations which were made by the Minister pursuant to Section 9 of the Act. The most important of these regulations is the Petroleum (Drilling and Production) Regulations 1969 (PDPR). This is because PDPR regulates the exploratory and production activities and provides appropriate rules for (he operation of the upstream activities. These rules are very important in securing access to petroleum resources. Other regulations made by the Minister are: Petroleum (Refining) Regulation (PRR), which provides that the total storage capacity of any finished products and feedstock in any refinery shall not be less than 30 days of the maximum processing capacity,[67] Deep Water Block Allocation to Companies (Back-in-Rights) Regulations

[65] See the availability section for more discussion.

[66] Nelson E Ojukwu-Ogba, 'Legal and Regulatory Instruments on Environmental Pollution in Nigeria: Much Talk, less Teeth' [2001] IELTR 201,206.

[67] See Regulation is Reg. 36 (PRR). However, the National Energy Policy provides for 90days storage period.

2003[68](DWBAR), which provides for the participation of the Federal Government in Decpwater allocations up to Five-Sixths of the Licensee's interest in the relevant (OPL) and (OML).

This participation will be based on terms not less favourable than those in effect at the - Commencement of the DWBR regulations. This regulation recognises the shortcoming of the Petroleum Act in dealing with revenue recovery in the new Production-Sharing Contracts" offshore. However, both indigenous and foreign investors are opposed to this provision on the ground that it undermines their original lease agreements with the government.[69] This provision creates instability that affects foreign investment in the upstream sector.

In addition, the Mineral Oil (Safety) Regulation through Reg. 7 provides that where these regulations make no specific provisions, the relevant undertakings shall conform to 'good oilfield practice,' which for the purpose of these regulations, shall be as adequately covered by the current Institute of Petroleum Safety Codes. This regulation refers to international practice while emphasising compliance with other rules made by the DPR. This provision contributes to creating regulatory ambiguity as to which rule should have precedent over the other. Another regulation is Crude Oil (Transportation and Shipment) Regulations and Oil Prospecting Licences (Conversion to Oil Mining leases) Regulations. Most of the provisions of this regulation are identical to and generally covered under the Deep Water Block (Allocation to Companies (Back-in-Rights) Regulations and Mineral Oil (Safety) Regulations, hence they do not require further explanation.

Crude Oil and Security of Supply

Considering the importance of crude oil to the Nigerian economy the research argues that the production and uninterrupted supply of crude oil to the refiners is a *sine qua non* to energy security in Nigeria. Nigeria is among the top ten oil-producing countries in the world and the leading producer in Africa.[70] Although, sometimes Angola superseded Nigeria due to the activities of the Niger Delta militants which affect oil production in the area. According to BP, Nigeria has 37.2 thousand million barrels reserve of crude oil.[71] However, by 2013, it barely produced 2.0 million barrels per day and by 2016 about 1.7 and 1.8mbd due to what the U.S Energy Information Administration called 'unplanned outages' that led to a loss of almost 500,000 barrels of oil per day.[72] This loss was due to geopolitical conflicts in the Niger Delta region.[73] The region has been underdeveloped by successive government in Nigeria and the various acts of sabotage against the industry stem from their anger against the Government and IOCs.[74] These acts of sabotage affect security of supply of petroleum resources.[75]

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[68] S. 17 of 2003

[69] See for *NNPC v. FamfaOil unreported* (Suit No SC71/200 of 12/5/2012, *where the, Supreme Cowl halted the move to acquire Ike Applicant'sinterest without payment of compensation.*

[70] Nigeria Extractive Industries Transparency Initiatives (NEITI), 'Making Transparency Count: Uncovering BilIions'<http://eiti.org/fiIes/Case%20Study%20-%20EITI%20in%20Nigeria.pdf>(2012)accessed20January 2016.

[71] BP, 'Statistical Review of Work Energy' (June2013)<http://vvww.bp,com/content/dam/bp/pdf/statistical- * review/statist ica]j"eview_of_worM_energy_2013. pd£> accessed 5 June 2013.

[72] United State Energy information Administration(USEIA): Country Analysis Nigeria (Last updated 30 December 2013)

[73] Ibid

[74] K S Ebeku 'Oil, Niger Delta and the New Development Initiatives: Some Reflections from Socio-Legal Perspective'(2006) 4 (3) OGEL1, 12.The first oil well was drilled by SPDC in!956 Bayelsa State of Nigeria

However, crude oil exploration, production and supply to the refineries is faced with many challenges and paradox. This is because, Nigeria exports crude petroleum and import refined petroleum products, and thus both security of supply and security of demand are quite germane indicators of its energy security challenges.[76] Further, there are threats, which are peculiar to crude oil supplies in Nigeria. The reliability of crude oil has been affected by the non-payment of cash-calls by the Nigerian national oil company – National Petroleum Corporation (NNPC) and this contributes to the cessation or abandonment of exploratory activities by the International oil companies (IOCs).[77] Consequently, the major IOCs have been forced to cease operations by declaring *force majeure* and this is with serious implications for exploration activities.[78] As at today only the ambitious IOCs are still operating in the Niger Delta region.[79]

Crude oil is an internationally traded commodity and the main foreign exchange earner for Nigeria. It poses a unique security of supply threat different from natural gas.[80] The exploratory activities of crude oil take place mainly in the sensitive Gulf of Guinea and the Niger Delta region of Nigeria.[81] Hence, crude oil attracts more attention and raises more geopolitical concerns.[82] Furthermore, crude oil exploration and production causes more environmental pollution and raises thereby, the question of lack of bests international practices and want of corporate social responsibility on the part of the IOCs operating in Nigeria.[83]

Further, the Federal Government had planned to grow its reserve of crude oil to 40 billion barrels and production to 4 million barrels per day from 2008.[84] However, this has not been realized by 2014 due to the security situation in Nigeria, the uncertainty surrounding the non-passage of the PIB,[85] and the decision of most of the IOCs to sell some of their acreages.[86]

The various regulatory and contractual relationships such as concession, Joint Venture Agreements, Production Sharing Contracts and Service Contracts, have not been fully utilized to

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[75] G S Akpan, 'The Failure of Environmental Governance and Implication for Foreign Investors and the Host State: A Study of the Niger Delta Region of Nigeria' (2005) 3 (3) OGEL1, 15-16 on the extent of sabotage activities in the region.

[76] Energy Commission of Nigeria, 'National Energy Policy' (2003) 2-5; on the energy situation in Nigeria.

[77] Nwokeji (n 66) 8-12.

[78] USEIA (n 77)

[79] See Dr S C Dike, Op.cit

[80] See for details USEIA (n77)

[81] M Lubeck, M J Watts and R Lipschutz, 'Convergent Interest: U.S Energy Security and the "Securing" ofNigerian Democracy' (2007) International Policy Report 1, 1- 5.

[82] Y Omorogbe, 'Law and Investors Protection in the Nigerian Natural Gas Industry' (1996)14 Journal of Energy and Natural Resources 1/9, 181.

[83] See E Duruigbo, O Wozniak, M Leighton, 'Oil Development: A Critical Look at Chevron Corporate Social Responsibility' (2005) 2 Environmental and Planning Law Review 2, 130.

[84] NNPC, 'Development of Nigeria's Oil Industry'(9 November 2012)<http: //ww.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasinNigeria/Deve]?> accessed 14 January 2016

[85] See also Dizeani Allison Madueke, 'Dissecting Petroleum Industry Bill From 'Govt, Operators Perspectives' *This day Live* (12 May 20l3) available at <http^/www.thisdylive.com/articlees/diseecting-petroleum-industry-bill-from-govt-ope...> accessed 12 April2014

[86] Shell Petroleum Development JV to Sell Nigerian Onshore Assets, (9Nov201) *Oil and Gas financial journal* <http://www.ogfj.eom/artiGles/2012/l 1/shelpetroleumdevelopment-jv-to-sell-nigerian-onshore-assets.html accessed 20 January 2016.

develop a strong petroleum industry outside crude oil, without reliance on the IOCs.[87] The government has equally failed to maintain adequate stocks of crude oil for use by the domestic sector and has not appropriately imposed any obligation on NNPC and the IOCs to maintain such serves which would have benefited the domestic consumption.[88]

Similarly, the lack of transparency and accountability in the petroleum industry affects the level of security of supply.[89] This is due to the opaque bidding process, the lack of adequate investment in petroleum infrastructure which has placed undue reliance on foreign IOCs' capital, thereby undermining indigenous qualified companies.[90] In the past, and before the promulgation of the Local Content Act of 2010, this incentivized the vertical integration of the IOCs in all the department of the industry.[91] This, no doubt, contributed in positioning the IOCs to determine the exploration levels, production rate, export country and indeed and the availability of crude to the nations' refineries.[92] The research points out that these contribute to the crisis in the security of supply of crude oil.

5. Conclusion

There is no doubt that petroleum or crude oil is one of the major sources of revenue to Nigeria. Availability, affordability, sustainability and reliability of this precious natural resource otherwise termed Energy security is not without problems in Nigeria. We have looked at how secured this product is in Nigeria and found a lot of bottlenecks that hinders its reliability, affordability and environmental sustainability. We observed, for instance in Nigeria that some complications and overlapping of regulatory authorities via-a-vis their responsibilities and functions.

6. Recommendations

We hope with the passage of Petroleum Act, 2020 (as amended), government should eschew political interest and develop strong political will for the overall interest of Nigerians. The function of the NNPC and DPR are now separated and defined. Also, the responsibilities of Minister of Petroleum Resource is now defined and separated from other administrative functions of the holder for efficiency and effectiveness. This, was the problem with the extant law in Nigerian Petroleum Regulation; Petroleum Act, 1969.

Besides, unnecessary defences available to interested parties in Law should be removed with immediate effect. As these are done, energy security will be achieved in Nigeria in no distant time for sustainable development.

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[87] See for example G Etikerentse, *Nigerian Petroleum Law* (2nd edn, Dredew Publishers 2006) 15-25 on the disappointment of Nigerians with the Act

[88] See Section 36 Petroleum Refining Regulation providing for only 30 days whereas the National Energy Policy provides for 90days. NNPC hardly keep stock judging from the recent fuel shortages in parts of Nigeria.

[89] See Mark Thurber, Ifeanyi Emelife and Patrick RP Heller,' NNPC and Nigerian Oil Patronage Ecosystem '(2010) Working paper Program on Energy and Sustainable Development (2010) 95 Working Paper Program on Energy and Sustainable Development 1,19

[90] ibid 21-22.

[91] The local content Act 2010 seeks to ad local value to all the petroleum activities by creating local services and jobs for Nigerians

[92] ibid.