

# Institutional and Regulatory Compliance Gaps in Natural Resource Governance: Empirical Evidence and Lessons from the Nigeria Oil and Gas Industry

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## Abstract

*Institutional governance has traditionally been frequently undermined by developing countries, but this behaviour has immensely impacted economic growth and development outcome with long term implications. More fundamentally, the Nigeria oil and gas industry governance are beset with various challenges including regulatory compliance, monitoring capacity, enforcement mechanism, politics and very frequently plagued with blame games. Consequently, the study conducted primary and secondary data to problematized gaps in institutional governance from the standpoint of development discourse to establish a convergence of evidences within the context of the quality of state institutions that unarguably reflects the Nigeria scenario. Institutional and regulatory compliance gaps permeate the gamut of the oil and gas industry so resolutely in the global South like Nigeria, orchestrated by the political elites who are so perverse, rent seeking, inept and greed driven with no clear sense of patriotism compare to the global North like Norway that is more effective and nationalistic. The findings of the study highlight weaknesses in policy framework, corrupt practices, poor contract management, compromised professional integrity, inadequate funding, poor contract management and systemic gap in revenue management as a consequence of gaps in natural resources governance in the oil and gas industry in Nigeria. It explains this on the basis of existing mechanisms and empirical evidences. These evidently exemplify that Nigeria has struggled for several decades from lethargic institutional and regulatory compliance capacity as the presence of oil and gas does not translate or appear to systematically support development outcome in many developing countries.*

**Keywords:** *Institutional Governance; Regulatory Compliance; Institutional Framework; Natural Resource Governance, Development Outcome*

## INTRODUCTION

The study contributes to the literature of institutional governance and regulatory compliance gaps in natural resource governance with emphasis and lessons from the Nigeria oil and gas industry.

It advances the problem of mismanagement, maladministration, corrupt and inefficient utilization of resources, lack of policy clarity, fiscal framework, lack of transparency and overburden functional responsibilities in the oil and gas industry in Nigeria. Today, there is a convergence of opinions about the quality and behaviour of state institutions and agencies on governance with evidently poor development outcomes in the Nigeria oil and gas industry (Thurber et al 2011; Amundsen 2011). While the effects of natural resource abundance on the economies of less-developed countries have attracted so much attention in research and are covered by a voluminous body of literature (Mehlum et al 2006; Savoia and Sen 2021), however institutional governance gaps and its consequences have been often overlooked (Rahman et al 2017; Moise 2020).

Historically, oil boom and resource wealth have weakened state institutional and governance immensely in many developing countries (Thurber et al 2011; Amundsen 2011), undermined economic growth (Shaxson 2009), weaponised and entrenched poverty (Okpanachi and Andrews 2012), triggered ethnic conflict (Bannon and Collier 2003; Ko 2014) and responsible for corruption (Moise 2020) predominantly among the Nigerian political elites. Undoubtedly, some research on gaps in natural resource governance have traditionally focus on its long-term implications (Isham et al 2005; Rahman et al 2017; Aysan et al 2023) and aligning this development to a resource curse phenomenon (Mehlum et al 2006; Savoia and Sen 2021). Successive developments discuss have emphasized political economy explanation (Graaf and Colgan 2016), to the effect of natural resources

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dependence growth (Isham et al 2005), but this paper emphasize the quality of state institutions and compliance to transparency and efficiency as a solution.

Some studies (Aysan et al 2023; Rahman et al 2017) pointedly argued that natural resources governance challenges are associated with capacity, knowledge and with connectivity, nevertheless, their findings resonate with the Nigeria scenario. Furthermore, Alstine (2014) maintained that governance includes “hard” rules, such as regulation, monitoring, and enforcement mechanisms, as well as “soft” rules, such as voluntary standards, norms, beliefs, and social understandings. Nonetheless, Graaf and Colgan (2016) focus on effectiveness of institution as a problem-solving mechanism and the quality of its policy on development outcomes, but governance structure in Nigeria is often littered with blame games (Okpaleke and Abraham-Dukuma 2020). However, theory on the relationship between institutional quality on governance (Rahman 2017) and the presence of abundant resources (oil and gas) points to how successive government policies and institutional framework affects natural resource conservation and development (Aysan et al 2023). Similarly, faulty institutions affect the economy in a negative way, specifically in the presence of high and sudden rent inflows ((Thurber et al 2011; Amundsen 2011).

Quite evidently, weak governance space (Edomah et al 2016), poor states policy decision making on governance and enforcement (Fearon and Laitin, 2002; Thurber et al 2011) and ‘looting’ agenda particularly in most developing countries (Collier and Hoeffler 2002) nurtured by political elitists mentality and privilege individual entrusted with public offices dimmed the possibility of hope towards natural resource governance in Nigeria (Edomah et al 2016). Quite profound is the perceived and well-established notion that Nigeria suffered from poor natural resource governance with enormous resource curse phenomenon (Mehlum et al 2006; Amundsen 2011). Consequently, some studies (Alstine et al 2014; Okereke et al 2018) emphasises strict policy adherence to governance, but stresses the influences of politics and ethical behaviour on natural resource governance, nonetheless they failed to clearly advance the gaps on the mechanism to foster its development outcome and how such factors might be best promoted.

Outka (2012) concurred that natural resource and indeed Nigeria oil and gas industry governance in general are in a sui generis state, defiling every logic, not necessarily because of the absence of or lack of regulatory frameworks but due to gaps in governance and institutional weaknesses. This is consistent with the views expressed by Amundsen (2011) that institutions in Nigeria are somewhat politically protected, and sometimes kept outside of the bloated and inefficient *modus operandi* of the ordinary state bureaucracy. Thus, institutional governance has been largely out of sync, fragmented, mismanaged and poorly understood from the standpoint of the political elites and outside the embrace of the general public (Ogunba 2016). Institutions have been largely in abeyance (Mordi et al 2018), ill equipped and not strong enough to efficiently manage the vast oil and gas resources to influence positive outcome for the economy (Elwereflli and Benhin 2018). Crucially, however, poor resource governance in Nigeria has of course helped to fuelled socio tension, inequality, violence, societal instability, perceived injustices and permeates so resolutely (Bannon and Collier 2003), that some scholars termed it as “Swiss army knife of policy tools” (Alstine 2014). The latter (above) is attributed to the resource curse phenomenon very well explained by the Dutch disease (Mehlum et al 2006) and made worst by gaps in natural resource governance (Elwereflli and Benhin 2018). Basically, Nigeria scenario reflects and is often used as a classical example of negative effects of oil and gas mismanagement emanating from gaps in natural resource and institutional governance (Rahman et al 2017).

Drawing on the experience of natural resource governance in most developed countries, Ejumudo (2014) and Ahmadov and Guliyev (2016) highlighted the high-quality of institutional governance in Norway and Chile compare to the perverse rent seeking greed driven by the availability of resource rents political elites and bourgeoisies with no sense of identity in some developing countries like Nigeria and Venezuela. Some scholars (Okpaleke and Abraham-Dukuma 2020; Aysan et al 2023) posited that natural resource wealth owing to gaps in governance incentivizes loot seeking political elites with a paradox of negative development outcome inherent human security dimension that fuel violent conflicts (Bannon and Collier 2003). Similarly, Amundsen (2011) painted a seemingly gloomy historical perspective of gaps in natural resource governance space with deeply entrenched political resource curse and Dutch disease relationships. Institutions and political structures

across Nigeria are generally weak, lopsided and in most cases eccentricity (Abutudu and Garuba 2011), hence disaster is imminent for any country that strive on strong individuals, rather than strong institutions.

Similar to many developing countries, Nigeria has struggled with oil and gas industry governance for several decades further compounded by lax regulatory environment (Alstine 2014), weak institutions, poor governance structure (Abutudu and Garuba 2011, and the very near-absent of a number of so-called compliance and governance awareness (Edomah et al 2016). Simply put succinctly that institutional governance structure in Nigeria is strictly political, elitist controlled and conservative in nature (Amundsen 2011). Thus, some scholars (Levy and Newwell 2005; Aysan et al 2023) classified institutional governance to includes rules such as policies, regulations, monitoring, and enforcement mechanism, as well as norms, standard, knowledge, connectivity, expectation and social understanding.

The objective and the central argument of this study revolves around regulatory and institutional compliance gaps in natural resource governance with emphasis on the oil and gas industry in Nigeria. Accordingly, the research question focused on institutional and regulatory compliance gaps in the Nigerian oil and gas industry. The study contributes to the nuance of analysis on gaps in natural resource governance, weaknesses in policy framework, corrupt practices, inadequate funding, poor contract management and its development outcomes. It uses primary and secondary data-based evidence from a multi-scale resource governance typology that highlights the influence, gaps and weaknesses in governance and its implication for the oil and gas industry in Nigeria. Indeed, Nigeria clearly exemplifies the dynamics of regulatory compliance gaps in governance based on the findings evidenced and laid bared in this study.

To buttress the argument, this paper has been organised in 4 sections. Section 1 draws mainly from the literature on institutional and regulatory compliance gaps in natural resource governance and provides extensive analysis and linkages to the politic of natural resource governance, institutional gaps and regulatory framework in Nigeria. On the basis of this background, the study proceeds with methodological framework used and data sources employed in Section 2. The analysis in Section 3 turns to the very heart of the paper and identified the findings and discusses the interlinks between institution and regulatory compliance gaps and its development discourse. Some hypotheses advanced in literature appear to corroborates the findings of this study with reflections on lessons to be learnt. Finally, conclusion was drawn on the key implications in natural resource governance gaps in Section 4.

## **METHODOLOGY**

The methodological framework section addresses the data collections employed to unravelled the findings and discussions of the study. To answer the research question and objective set out above, the study problematizes institutional governance as well as its linkages and consequences. The study collected primary data and secondary data mainly from analyses of published materials of previous studies. The primary data involved interview of 12 people principally senior executives of oil companies, oil and gas services contractors and NGOs operating in the oil producing areas. It comprises gathering of simple narrative but comprehensive in-depth thematic qualitative method of data collection. The interview yielded significant insights, and thematic analysis was done to closely examines the data to identify and interpret significant themes and patterns for meaning that come up repeatedly during the interviews process to draw up insights and understanding (Elliott 2018). However, there were a number of limitations during the data collection process including access to senior executive oil workers who were extremely busy for interview (which were mitigated by telephone interviews) and relatively small sample size. Hence further research is imperative to explore and interrogate the interactions amongst various groups on governance to provide a comprehensive taxonomy to maximise the vast oil and gas resources in Nigeria into economic benefit.

The secondary data comprises extant literature-based evidence in the Web of Science, Scopus and Google Scholars, and analyzed qualitatively through the comparison of the different streams of qualitative literature of which it is composed to provide understanding of institutional governance, regulatory compliance, policy framework gaps and its consequences in the oil and gas industry in Nigeria. Findings from the qualitative study was mainly descriptive and clearly indicates lethargic institutional compliance incapacity which support the

argument that natural resource abundance in many developing countries apparently does not translate or appear to systematically support development outcome (Savoia and Sen 2021). In recent years, there have been numerous studies (Mehlum et al 2006; Levy 2008; Gerring and Cojocar 2016) which have identified and analyzed key methodological traditions of case study research from sociohistorical context (see Buehler and Nikitin 2020) as well as critical analysis of EITI transparency initiative framework in Nigeria on accountability and corruption control (Ejiogu et al 2018). Therefore, this study draws on a range of secondary evidence data and methodological tradition, and align itself to the web-based generic search engines such as Scopus, Web of Science and Google Scholar using the snowball method or chain sampling method (see Chan 2020) to retrieve significant references from the NNPC, DPR, NEITI reports and relevant data of several decades.

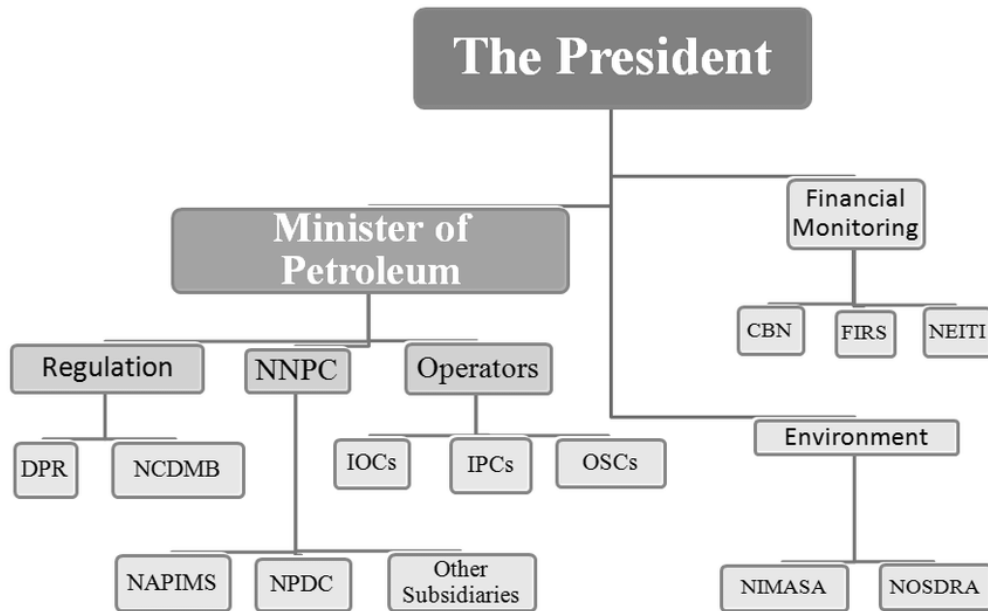
## **FINDINGS AND DISCUSSIONS**

This section presented the findings from the standpoint of primary data and review of extant literature-based empirical evidence of compliance gaps in natural resource governance. Consequently, section 3.1 summarises findings and discussions of the study that resonate with weaknesses in policy framework, compromised professional integrity, corrupt practices, poor management of oil and gas blocks, passive and dual role of the regulatory agencies, inadequate funding, systemic gaps in management of revenue and poor contract management.

### **Weaknesses in Institutional and Policy Framework**

Natural resource rich countries may be both growth losers and growth winners, however, the differences in these diverging experiences lies within the domain in the quality of institutional governance and compliance (Mehlum et al 2006). The manifest compliance gaps in the Nigeria oil and gas industry point towards weaknesses in policy framework and institutional governance. Some scholars (Mehlum et al 2006; Godfrey 2012) theorized that the economic costs of poor governance are too great to fathom. However, Longhoefer and Schofer (2010) summarises these argument with empirical evidence that institutional capacity and compliance is not only pivotal to natural resource governance but fundamental to societal and economic development. Contrary to the widely acknowledged institutional compliance gaps in Nigeria, Norway's oil and gas industry governance model is anchored on sound regulatory framework and quality institutional governance pivotal to maximizing economic value from its natural resources (Thurber et al 2011; Okpaleke and Abraham-Dukuma 2020). This is corroborated by Elwerefili and Benhin (2018) that gaps in natural resource governance and poor policy framework may weaken economic performance and subsequent resource curse for most developing countries as evidence in Nigeria.

Consequently, Mehlum et al (2006) posited that the combination of resource abundance and “grabber-friendly mentality” as well as the ill-motivated institutions of most developing countries like Nigeria is detrimental to economic growth and development, compared to “producer-friendly mentality” institutions of the developed countries such as Norway which advances natural resource for economic development. There is a long symptomatic of this weakness is the longstanding inability of Nigerian state to affirm and enforce appropriate and governance in the oil and gas industry (Ukiwo 2018). Ideally, the business case for the NNPC and DPR is to act responsibly and ensure appropriate governance (Okereke et al 2018), but these principles are often jettisoned in the Nigeria context, focusing primarily on business as usual scenario that tend to accord no ethical value on institutional governance (Ukiwo 2018).



**Figure 1:** Nigeria oil and gas industry governance structure

Source: Nwazor et al (2020)

The figure above reflects the hierarchical structure of the oil and gas industry in Nigerian which clearly outlined flows of authority from the President who has a sole responsibility to appoints a Minister of Petroleum Resources and subsequent senior management including the NNPC, DPR, FIRS and CBN. Accordingly, Ejiogu et al (2018) contended that the existing governance structure outlined above is outmoded and out of touch with modern reality to strengthen transparency and accountability let alone deliver the intended objectives.

First in this context, one of the significant responses of the primary data from participant “D and N” indicated thus: ***“there is a lack of integration and apparent inconsistency amongst the relevant agencies of government in natural resource governance. Continuing, he maintained that there is duplication of authority and responsibilities, over centralisation, role conflicts, overburdened functional overlap and responsibilities amongst the various agencies of government on natural resource and governance”***. This is consistent with the views expressed by Alstine et al (2014) and Rahman et al (2017) that abnormalities in resource governance norms have evolved at multiple scale, occasionally with policy inconsistencies which has given rise to potential negative and wider narrative regulatory and institutional compliance gaps.

### **Compromised Professional Integrity**

Some power influential political elites from rent seeking community, IOCs and government official may collude to undermine and compromised the professional integrity of government agencies hence they may become ineffective (Ukiwo 2018). Overall, political corruption is perhaps the most important outcome of the ruling elite’s manipulation of institutions governing the oil and gas industry (Amundsen 2011; Moise 2020), that involves people at the highest levels of the political system primarily for enrichment, consumption and to sustain the hold on power through nepotistic manipulation of institutions. Accordingly, Amundsen (2011) Ahmadov and Guliyev (2016) openly maintained the deepened social contractions that the oil and gas industry in Nigeria is mostly elitist and bourgeoisie’s rent seeking greed driven at the expense of the vast majority of the population. Hence the political consideration in the composition, selection and appointment of board members and directors of the various government agencies suggests that professional integrity and capacity may often be compromised. Thus, participant “C” argued that ***“the greed mentality of the elites, political class and political office holders are utterly lacking patriotism, indeed they put their personal interest beyond national consideration”***. Furthermore, ***appointment of regulatory agencies officials is not based on***

***merit, but those always willing to serve the interest of their appointors in line with common axiom, “he who pays the piper dictates the tone”.***

Accordingly, Elwerefli and Benhin (2018) questioned the ability of the appropriate government institutions to control and withstand the pressures for extraction from the political elites to usurped and hijacked for selfish and favouritism (clientelism, patronage, elitism). Moreover, arbitrary use of Ministerial or executive power in a supposedly civil service structure by the political class to influence or harass officials of regulatory agencies pose an intrinsically obvious limitation to governance (Sayne et al 2015). The DPR has a civil service structure, the chief executive officer is subservient to the Minister of Petroleum Resources who is a political office holder appointed by the Nigeria President (see figure 1 above). This spells dooms for its capacity and independent considering the political influence in the civil service in Nigeria. Political pressures arise from power-holders to obstruct and dismantle state institutions in order to enable their extraction of rents and to protect their power positions for wealth accumulation, the more authoritarian the government, the bigger the scope for illicit elite enrichment (Amundsen 2011). The findings are not a far departure from the reality of today’ situation in the Nigeria oil and gas with incessant cases of pipeline vandalism and stealing of crude oil which makes it impossible to meet OPEC quota.

### **Corrupt Practices**

From the perspective of economic standpoint and development outcome, there is almost a consensus that Nigeria typifies evidence of a failed state with cases of frequent oil theft from producing fields with other corrupt practices that are daily occurring (Okpaleke and Abraham-Dukuma 2020). Indeed, oil and gas resources are not itself a curse; it led to high economic growth and efficient economic performance for countries with strong institutions (Elwerefli and Benhin 2018), but corrupt behaviour and rent seeking practices of the major political establishment has widening the governance gaps with severe consequences. There is empirical evidence from the Nigerian Liquefied Natural Gas (NLNG) scandal involving \$182 million cash for contract bribed to some Nigerian officials by KBR, a subsidiary of Halliburton prior to 2007, in respect of the construction of a US\$6 billion liquefied natural Gas (LNG) contracts gas plant (see table 1 below) in Southern Niger Delta, Nigeria (Reuters 2009; The News 2010). Similarly, Albert Jackson Stanley, the former KBR boss pleaded guilty in February 2012 and was sentenced to 30 months in prison. Equally, 2 former employees of American company operating in Nigeria, Wilbros Group Inc. Jim Bob Brown and Jason Edward Steph both pleaded guilty to Judge Lake in American District Court. They paid US\$6 million bribes in early 2005 to some Nigerian officials to secure and retain Eastern Gas Gathering System Project valued at approximately US\$387 million (US Department of Justice 2009). Unfortunately, all these sentences took place outside the shore of Nigeria as no Nigerian officials have ever been tried in court or found guilty in Nigeria to date (Reuters 2009). While the US government made a whopping sum of USD\$579,000 as penalties from sanctions for corrupt practices committed in Nigeria, unfortunately Nigeria where the offence took place made absolutely nothing.

**Table 1: Some selected cases of corrupt practices and poor management in the Nigeria oil and gas industry**

S/N	Nature of Case	Amount	Years
1	LNG cash for contract bribed to Nigerian officials by KBR in respect of US6 billion LNG contract in Niger Delta	\$182 million bribes to Nigeria officials	2006
2	Malabu oil deal on OPL 245 relating to bribing of Nigerian politicians	\$1.3 billion bribed to Nigeria politicians	2011
3	Ambassador Ayodele Oke (NIA), money recovered in a private property in Osborne Road, Lagos by EFCC in respect of \$289,202,382 for special operations by the CBN	\$43 million, £27,800 and N23.8 million	2015
4	Non-review of the 1993 PSC Act/legislation (steep cost of inaction)	\$62 billion unpaid oil and gas revenue	1993
5	Non-payment of LNG earnings into the federation account	\$1,076,011,589	2009
6	Gas supply processing agreement (GSPA) with P&ID	\$11 billion damages	2010
7	\$53.1 million cash and \$16 million promissory note from Kolawole Aluko and Olajide Omokore being bribes to Diezani Alison-Madueke, former Nigeria Petroleum Minister for lucrative oil contract.	\$100 million promissory note	2011 - 2015

*Source: Author study note*

Another illustration of poor governance in contract management is the controversial Malabu oil deal scandal on the lucrative OPL 245 license (richest oil blocks) offshore Nigerian waters which remain underdeveloped and became a subject of cross-border investigation spanning over six countries (Premium Times 2018; Moise 2020). It involved the transfer of \$1.1 billion bribes to Nigerian politicians including Shell and Agip-Eni through the government of Nigeria in 2011 to an account controlled by a former Petroleum Minister, Dan Etete who had previously been convicted of money laundering in France and subsequently \$520 million was transferred to Abubakar of AA oil who fronted for Goodluck Jonathan administration (Premium Times 2021; Sahara Reporters 2022). Furthermore, several politicians received bribed including Abubakar who claimed to have received \$400 million as consultant fee in the deal according to a Milan court.

As a result, the Nigerian government lost \$1.7 billion claims against JP Morgan Chase Bank in respect of the OPL 245 oil deal, arguing that the Bank ought to have known and in fact acted negligently and ignored glaring red flags that the deal was indeed corrupt and fraudulent which saw the Bank transferred \$875 million between 2011 and 2013 to Etete and subsequent Malabu selling its 100% stake in OPL 245 to Shell and Eni for \$1.1 billion (Business Day 2022). The Malabu situation depicts the poor governance structure in Nigeria which does not promote accountability of the political elites and state institutions that favor meritocratic appointment over patronage in the public sector (Moise 2020). Hence participant “B” stated that **“corruption is everywhere and endemic in the Nigeria oil and gas industry and has indeed eaten deep into the fabric of Nigeria nationhood”**.

In 2015 the Central Bank of Nigeria (CBN) acting on the instruction of the former Nigeria President, Dr. Goodluck Jonathan was allegedly to have made a cash disbursement of USD\$289,202,382.00 for special operations from the account of the NNPC/NAPIMS to the then Director General (DG), Ambassador Ayodele Oke of the Nigeria Intelligence Agency (NIA) (Punch 2020). Out of these cash payments to Ambassador Oke, the sum of \$43 million, £27,800 and N23.8 million respectively was later recovered from fire proof cabinets in a private apartment in Lagos by the Economic and Financial Crime Commission (EFCC). When higher authority from above over-ride every other consideration to such extent that the vault of an apex bank could dole out cash payment in this manner portend great danger, and laid credence to the appalling state of institutional governance in Nigeria.

Fairly recently, the US Department of Justice (2023) indicated Messrs Kolawole Aluko and Olajide Omokore who conspired with other to bribed the former Nigeria Minister of Petroleum Resources, Diezani Alison-Madueke in return for a lucrative oil and gas contract. They both forfeited \$53.1 million in cash and a promissory note with a principal value of \$16 million.

### **Poor Management of Oil and Gas Blocks**

Abundance natural resources may hinder or contribute little to economic growth if the quality of institutional governance meant to supervise it become lackadaisical (Mehlum et al 2006; Savoia and Sen 2021). Nigeria has been clearly mirrored and fits into a case par excellence of a country that failed to use its abundance oil and gas resources to transform it economy and to improve the wellbeing of its population (Ukiwo 2018). In 1993 the Nigerian government signed into law the production sharing contract (PSC) Act and fixes the duration of the oil prospecting license between 5 to 10 years. Analysis from the Guardian Newspapers (2018) revealed a total of 7 PSCs producing fields were awarded. Consequently, the Royal Dutch Shell Plc, ExxonMobil Corporation, Chevron Corporation, Total SA and Eni SpA agreed to fund the exploration which was signed into law when crude oil was selling for \$9.50 per barrel at the time. It provided a review of the terms on two conditions; the first review should be triggered if oil prices exceeded \$20 dollars per barrel and the share of the government shall be adjusted accordingly. In this consideration, the review should have been activated in 2004 when oil prices exceeded the \$20 dollars mark. The second review was to be activated 15 years from the date of commencement of the PSCs, and every 5 years thereafter to enable the OICs to recoup their investment. However, the review did not prescribe whether it should be done by a regulation or by order, which created ambiguity and a gap in the Act. Nevertheless, the review was not done.

**Table 2: Crude oil and condensate royalties in Nigeria based on monthly production**

S/No	Terrain	Royalty (%)	Volume
1	Onshore areas	15	Chargeable volume of crude oil and condensates produced from field area in the relevant month
2	Shallow water (up to 200 meters water depth)	12.5	Chargeable volume of crude oil and condensates produced from field area in the relevant month
3	Deep offshore (greater than 200 meters depth)	7.5	Chargeable volume of crude oil and condensates produced from field area in the relevant month
4	Frontier Basins	7.5	Chargeable volume of crude oil and condensates produced from field area in the relevant month
5	Deep offshore fields producing not more than 50,000 bopd	5	<50,000 bopd
6	For item 5 above, share of production above 50,000 bopd	7.5	Share of production above 50,000 bopd
7	Onshore fields and shallow water fields including marginal fields with crude oil and condensate production not more than 10,000 bopd	5	First 5,000 bopd
		7.5	Next 5,000 bopd, i.e. share of production over 5,000
		Rates specified in item 1-4 above (as applicable)	Share of production over 10,000 bopd

Source: Asburst (2021)

Thus, Nigeria government lost at least \$62 billion between 1993 and 2017 regarded as “the steep cost of inaction” due to non-review of its law/legislation as specified in the 1993 PSC Act. As a result of poor institutional governance, the country slept in its rights and obligations to activate the clause to increase revenue as provided for in the PSCs legislation. The government says IOCs failed to comply with a 1993 contract-law requirement which stipulate that state receive a greater share of revenue when the oil price exceeds \$20 per barrel, but government was far asleep to implement existing law and legislation. Unfortunately, poor institutional governance meant that successive governments remained passive while the IOCs who are more induced by profit maximisation benefit largely from government inaction and poor auditing provision (Muller 2010; Bondy and Starkey 2012; Ukiwo 2018). This state of affair prompts the response of participants “A” argued, ***“it is on record the government is not capable of management its vast oil and gas resources with appalling examples from the 4 oil refineries which has remained comatose for decades and has resulted in massive importation of refined petroleum products from abroad”***.

### Passive and Dual Role of Government Agencies

An understanding of natural resource governance in Nigeria cannot be gained without a critical reflection on the NNPC and DPR that are the principal institutional governance in the Nigeria oil and gas industry. Evidently, the government represented by the NNPC and DPR plays passive role in the management of JV, PSCs and SC operations with the IOCs which reflects the state of governance (Obi 2010). Given the structure of the JV and PSCs, the government is both a partner, player as well as in charge of regulation which have often been reflected on the state of its governance (Obi 2014). Thus, government rely heavily on the revenue accruing from the ownership status for economic development, thus the political will towards resource governance is often jettison. This view has been further supported by several research studies (including those by William 2002; Ibaba 2010; Muller 2010) which paints a gloomy picture of serious failure in governance that is the bane of the oil industry for several decades. The imposition of fines and sanctions on IOCs imply government picking up some bills, the quantum of potential fines and levies grew in proportion to the equity held by the Nigerian State in the JV and PSCs (Ukiwo 2018). Participant “E” submitted that ***“there are role conflicts between DPR and NNPC, institution in Nigeria is very weak and submissive, it depends on the President directives, they just obey instructions from the top”***.

The NNPC subsidiary, NAPIMS supervises government interest in the JVCs, PSCs and SCs which amply demonstrates that the NNPC is both the operator and the regulator. According to (Muller 2010), the NNPC is not sufficiently asserting its authority in operation matters, thereby incapable of enforcing standard and



compliance. Historically, oversight and monitoring of IOCs operations were continually hampered by lack of political will to prosecution because Nigeria absolutely and wholly dependent on oil and gas revenues for economic development (Ukiwo 2018). Undoubtedly, the nature of the JV and PSCs operation allows the IOCs too much leverage over operations, hence compromise over governance (Obi 2010) and the pervasiveness of institutional incapacity glaringly suggests that governance may be subjected to some external influence by the IOCs who are economically influential and politically powerful (Muller 2010). This support the argument postulated by Amundsen (2011) that poor governance hampered competition in an industry largely dominated by the OICs and to some degree reinforces political monopolistic tendencies in the Nigeria oil and gas industry.

### **Inadequate Funding**

Notwithstanding the wide scope of functional responsibilities by the regulatory agencies, available evidence suggest that governance suffers low budgetary allocation to infrastructure (Odunjo 2013). According to the UNDP (2006), financial recorded from the Federal Ministry of Finance revealed that in 2011 the DPR was allocated a budget of ₦30,224,693.445. Of the total, a whopping sum of ₦25,438,390,659 was allocated for recurrent expenditure (payment of salaries/wages and operating expenses), while a paltry sum of ₦4,786,302,786 was allocated for capital expenditure. Similarly, the 2012 and 2013 financial records revealed a decline in capital expenditure of ₦4,786,302,790 and ₦3,470,000,000 respectively, as against the total allocation of ₦35,997,149,841 and ₦34,743,189,286 respectively during the same period under review. This largely indicates that the NNPC and DPR are poorly funded hence unable to hire competent, highly skilled and resourceful manpower and buy necessary equipment to enforce governance (Muller 2010). This is consistent to the views expressed by Odunjo (2013) that there are considerable evidences to show that even the little financial input to institutional governance in most developing countries are not properly managed and misdirected. Consequently, Mehlum (2006) succinctly argued that larger budgets allow the political elites to grab more natural resource rents, hence in many oil and gas developing countries political rents are more attractive to individuals (Savoia and Sen 2021). Participant “O” opined that ***“not only the federal ministry that are poorly funded, almost all sector suffers the same faith, even the little funds released are embezzled by some corrupt government officials”***.

Some colossal governance responsibilities such as large-scale oil and gas degradation requires the mobilization of human and material resources to enforce but are often stalled due to inadequate budget and funding. Historically, with insufficient operating resources, political support is most often generally weak or absence and only happen after a catastrophic event (Odunjo 2013). In planning inspection visits to oil and gas operation facilities of the IOCs particularly offshore, the DPR and NNPC are almost at the mercies of the IOCs and wholly relied on them for logistical support. The DPR and NNPC neither have a helicopter nor a boat to monitor onshore and offshore oil and gas operations given the scale and topography of the Niger Delta region made up of mainly swamps, creeks and deep seas (Muller 2010). Accordingly, Ukiwo (2018) argued that the DPR and NNPC routinely relied on the IOCs to access the hard-to-reach creeks thus compromising on its governance role, legitimacy and trust. They also rely on the IOCs for motor vehicles, boats and helicopters, and have neither a method of computing the levels of gas flared nor a functional and well-equipped laboratory for analysing soil and water samples (Muller 2010). This is strikingly inconsistent with the huge oil and gas revenue accruing to the government from the industry for several decades.

### **Systemic Gap in Management of Oil and Gas Revenue**

In many developing countries, natural resource abundance has weakened state capacity apparently due to political selection process (Robinson et al 2006). From historical perspective, oil and gas windfall increases corruption, lower the quality of state institutions, enlarges governance gaps (Savoia and Sen 2021), foster authoritarian regimes, authoritarian rulers and ward off democratic pressures (Mehlum et al 2006). Having greater income from oil and gas have no clear relationship with development as in many instances with Nigeria (Mehlum 2006; Savoia and Sen 2021). However, the audit reports of the Nigerian Extractive Initiative Transparency Initiative (NEITI) of 2006 and 2009 documented an appalling poor governance outcome in the Nigeria oil and gas industry ((Shaxson 2009; Muller 2010). It revealed that due to poor governance and oversight

the IOCs self-assesses themselves on royalties, signature bonus, NDDC levy and petroleum profit taxes (PPT) and other taxes (Muller 2010). Also, payment of USD\$1,076,011,589.00 the NNPC received from the NLNG was not properly accounted for, including missing payments of almost USD\$10 billion of which quarter of the amount had been recovered (Brockyer et al 2015). This is corroborated by (Muller 2010) that due to inefficiency the DPR and NNPC have little or no metering capacity to determine the actual daily production of oil and gas at wellheads by the IOCs, and had to relied on the data supplied by the IOCs for payment of royalties and PPT from oil and gas operations based on export rather than production figures. This prompt Shaxson (2009) to conclude that issues in the Nigeria oil and gas industry is sui generis with lower absorption capacity and the incentives to manage natural resources optimally are generally weak. Thus, table 3 below depict the Nigeria oil and gas industry policy vulnerability to corruption, warning signal and recommendations.

**Table 3: Summary and the breakdown of the oil and gas industry policy vulnerability to corruption, warning signals and recommendation to eliminate corruption practices in the Nigeria oil and gas industry**

Petroleum sector	Corruption vulnerability	Warning signals	Recommendation
Exploration	<ul style="list-style-type: none"> <li>- Policy formulation - Laws, contracts, fiscal terms</li> <li>- Licensing, contract awards - Permits, approvals</li> </ul>	<ul style="list-style-type: none"> <li>- Lack of policy clarity</li> <li>- Opaque incomplete large, fiscal framework</li> <li>- Direct, nontransparent negotiation of licenses</li> <li>- “Unbalanced”, “odd” awards</li> <li>- Delays on permits, approvals</li> </ul>	<ul style="list-style-type: none"> <li>- Clear, publicly announced policies</li> <li>- Best practice legal, fiscal framework.</li> <li>- Transparent, simplified bids for license awards, published results</li> <li>- Transparent public reports on permitting approvals</li> </ul>
Development and production	<ul style="list-style-type: none"> <li>- Permits, approvals</li> <li>- Procurement</li> <li>- Theft of production or revenues</li> <li>- Breaking of oil pipelines</li> </ul>	<ul style="list-style-type: none"> <li>- Permitting delays</li> <li>- Limited international competitive bidding,</li> <li>- Nontransparent bids</li> <li>- “Odd” or repeat procurement awards</li> <li>- Aggressive local content rhetoric</li> <li>- Volume discrepancies</li> <li>- Absence of metering</li> </ul>	<ul style="list-style-type: none"> <li>- Transparent public reports on permitting.</li> <li>- Transparent, competitive procurement</li> <li>- Publication of results</li> <li>- Credible channels for complaint or challenges</li> <li>- Regular volume audits and reconciliation</li> </ul>
Trading and transport	<ul style="list-style-type: none"> <li>- Under reporting of value or volume</li> <li>- Illegal rent extraction for infrastructure access</li> </ul>	<ul style="list-style-type: none"> <li>- Prices below reference benchmarks</li> <li>- Volume discrepancies</li> <li>- Opaque or lack of reporting on sales</li> <li>- Unusual reliance on middleman</li> <li>- Queues for access to infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>- Full transparent reporting of trade sales.</li> <li>- Transparent bidding for selection of middle man</li> <li>- Regular audit of sales</li> <li>- Volume audits, reconciliations</li> <li>- Transparent public rules and tariff for infrastructure access</li> <li>- Appeal, complaint procedures</li> </ul>
Refining and marketing	<ul style="list-style-type: none"> <li>- Downstream policy formulation, such as price controls</li> <li>- Black marketers, smuggling</li> <li>- Product adulteration</li> </ul>	<ul style="list-style-type: none"> <li>- Price controls</li> <li>- Nontransparent product procurement</li> <li>- Queues for products, product shortage</li> <li>- Volume discrepancies</li> </ul>	<ul style="list-style-type: none"> <li>- Policy clarity</li> <li>- Price liberalization (transparent allocation of proceeds</li> <li>- Competitive transparent tendering</li> </ul>
Corporate accounting and finance	<ul style="list-style-type: none"> <li>- Inaccurate reporting</li> <li>- Tax evasion</li> <li>- Diversion of funds</li> <li>- Money laundering</li> </ul>	<ul style="list-style-type: none"> <li>- Limited transparency, secrecy</li> <li>- Tax immunity or unusually low tax burdens</li> <li>- Inadequate audit</li> </ul>	<ul style="list-style-type: none"> <li>- Fully, transparent publicized audits</li> <li>- Qualified, independent tax and cost audits</li> </ul>

Source: McPherson and Mac-Searraigh (2007)

Neither the DPR nor the Federal Inland Revenue Service (FIRS) have access to the contract for the JV/PSCs/SCs operations with the IOCs/oil companies, it is kept within the ambit of the NNPC whose operations are shrouded in secrecy (Esiedesa 2010). This implies that the NNPC still holds some regulatory and oversight functions in the oil and gas industry (Muller 2010). They are sometimes involved in contract negotiation with the IOCs, approve licenses for pre-qualifications and consults with the Ministry of Petroleum and DPR on legislation for effective governance of the industry (Shaxson 2009; Okwechime 2013). Respondent “K” maintained ***“that poor management of natural resources is historical and has become increasingly worst by the day. The issues of the NNPC mismanagement of oil and gas resources and there are questions mark on subsidies payment for imported petrol running into several billions of dollars which put government finances on cliff edge”***. Thus, Rotimi and Abdul-Azeez (2013) profoundly asserted that the NNPC was said to owned the federal government a whopping sum of US\$4.7 billion for domestic crude

supplies, a claimed refuted by the NNPC that it is owned US\$1.7 billion in subsidies payment by the government.

### **Poor Contract Management**

The optimal management of natural resources and indeed the vast oil and gas resources could incentivize development outcome to the point of eliminating poorly coordinated institutions, regulatory bottlenecks and inefficient political and governance structure (Shaxson 2009). Unfortunately, the trajectory of Nigeria economic development has been badly shaped and hampered by poor institutional governance structures of its natural resources. Thus, Alstine et al (2014) logically described the natural resource extraction process in Nigeria as poorly misunderstood by the political elites, and the expectations of the supposedly revenue windfalls have been greatly affected by the dynamics of poor contract management in the oil and gas industry. Little wonder that Nigeria had faced litigation in the international court in recent times arising from a gas supply processing agreement (GSPA) it entered into with Process and Industrial Developments Ltd (P&ID) in January 2010 to build a gas processing facility. Arising from the above, in January 2017 a private arbitration tribunal seating in the UK ordered Nigeria to pay P&ID the sum of \$6.6 billion beginning from March 20, 2013 at 7% fixed rate of interest accumulated to \$11 billion from a collapsed oil and gas contract it entered with the Nigeria government.

However, in December 2023 the order was quashed as Nigeria continue to argued that P&ID paid bribed to the Ministry of Oil official making it a victim, an argument that was upheld by the UK Judges which has ditched the USD\$11 billion damages previously awarded to P&ID in their earlier judgement as more facts emerged about the bribery case (UK High Court of Justice 2023). According to the High Court of Justice (2023) judgement, P&ID officials had unfertile access to Nigerian internal legal documents received at various points during the arbitration which enabled P&ID to track Nigeria's internal consideration of merits, strategy and settlement during the arbitration (UK High Court of Justice 2023). Piecing this puzzle together largely underscores the realities and intrigues of natural resource governance in Nigeria.

Several breaches were glaringly evident in the gas contract agreement including lack of appropriate governance, weaknesses and loopholes in existing policy framework, corrupt practices, ineptitude, poor management of oil block and inability to uphold a consensus on and out of court settlement. Earlier in the failed gas project, P&ID sought a compensatory award for loss of "potential" income and offers of \$850 million in compensation was made, negotiated down from an initial proposal of \$1.5 billion by a government committee by was abandoned with a new government in 2015 which prompt P&ID to proceed to arbitration court. However, other countries with similar peculiarities may glean useful insights from this experience, particularly the inequitable power relations and the pervasive commoditization and appropriation of its benefit to the very few in the society. This arguably resonate with Okpaleke and Abraham-Dukuma (2020) argument on the possibility to export the Norwegian model of institutional governance and regulatory compliance as best practice for other resource-rich jurisdictions like Nigeria where institutional governance have proven to be highly questionable.

### **CONCLUSION**

The study curiously provides evidence and a framework to expand the current body of knowledge of institutional and regulatory compliance gaps in the oil and gas industry in Nigeria. The analysis laid the foundation to established a correlation between poor natural resource governance and inherent set of poor development outcomes. More interestingly, the findings of the review highlight weaknesses in policy framework, corrupt practices, poor contract management, compromised professional integrity, inadequate funding, poor contract management and systemic gap in revenue management as a consequence of gaps in natural resources governance. It explains this on the basis of existing mechanisms and current empirical evidence. This typify that Nigeria has struggled for several decades with compliance capacity as the presence of oil and gas does not translate or appear to systematically support any meaningful development. It is not the huge natural resources based of a country that determine its growth rather, it is the management of the resources

within the existing policy and institutional context. Thus, the study recognizes the importance and role of governance within the existing institutional framework.

Furthermore, the more nuanced understanding of the politics of institutional governance points towards the behavior of the political elites who are more self-centered and with no nationalistic agenda but perverse motives to undermine compliance. More specifically, the study noted that those entrusted with the instrument of state are themselves using such instrument for their own personal desire to promote selfish agenda. Effective governance is pivotal and translate to how natural resource becomes instrument of national transformation instead of current status of patronage mechanisms and clog in the will of progress. Consequently, there is urgent need to disentangle institutional governance from political patronage in order to foster economic development. Finally, there is need for collaboration between the different agencies of government to overcome gaps in natural resource governance.

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