FROM STATE MONOPOLY TO CORPORATE AUTONOMY: OWNERSHIP RESTRUCTURING AND THE STRATEGIC REALIGNMENT OF THE NIGERIAN NATIONAL PETROLEUM COMPANY UNDER NIGERIA'S PETROLEUM INDUSTRY ACT (PIA) 2021

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ABSTRACT

This study examines the structural and governance transformation of Nigeria's state-owned oil entity from the Nigerian National Petroleum Corporation (NNPC) to the Nigerian National Petroleum Company Limited (NNPC Ltd) under the 2021 Petroleum Industry Act (PIA). Employing a doctrinal research methodology, the analysis centers on a systematic review of legal frameworks, statutory instruments, and policy documents to evaluate the ownership dichotomy and governance reforms. The NNPC, historically marred by inefficiencies and political interference, is contrasted with NNPC Ltd, a corporatized entity governed by the Companies and Allied Matters Act (CAMA), to interrogate shifts in legal structure and operational autonomy. International precedents such as Norway's Equinor and Malaysia's Petronas are examined through a comparative legal lens to identify best practices in state-owned enterprise (SOE) transitions. Primary sources include the PIA, CAMA and legislative reports, while secondary sources encompass scholarly critiques, audit findings, and policy analyses. The doctrinal approach reveals persistent tensions between state ownership and commercial autonomy, highlighting risks of regulatory ambiguity and political influence. The study posits that NNPC Ltd.'s efficacy depends on strict adherence to corporate law principles. Policy recommendations prioritize legal reforms to insulate governance from political interference and clarify regulatory roles. By grounding the analysis in statutory interpretation and comparative law, this research contributes to discourse on legal frameworks for SOE reforms, proposing strategies to align Nigeria's oil sector with global governance standards and sustainable growth objectives

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1. Introduction

The Nigerian National Petroleum Corporation (NNPC), once a dominant force in the nation's oil and gas sector, has long been plagued by mismanagement and inefficiencies. Historically, the corporation was characterized by poor governance and exclusive ownership by the Federal Government (FG), with minimal external stakeholder engagement.[1] This lack of separation between the FG and the NNPC eroded the corporation's autonomy, undermining its potential as an independent corporate entity. Despite various reforms and restructuring efforts, the NNPC continued to face systemic challenges.[2]

The enactment of the Petroleum Industry Act, 2021 (PIA) aims to address these issues by transforming the NNPC into the Nigerian National Petroleum Company Limited (NNPCL), a commercially driven and self-sustaining entity guided by economic imperatives. While this shift holds the promise of operational stability and a more favorable climate for private investment, its long-term success hinges on how the new ownership framework fosters true autonomy and resilience. Without this, the transformation risks becoming little more than *old wine in new skins*. Therefore, to what extent does the new ownership framework of the NNPCL under the PIA enhance autonomy and operational resilience in Nigeria's petroleum sector? This study integrates a doctrinal legal analysis with empirical insights to evaluate the effectiveness of NNPCL's restructuring under the PIA 2021, drawing on a careful study of global models of State-Owned Enterprises (SOEs) transitioning to corporate models. A comparative analysis of Norway's ownership frameworks with Malaysia's Petronas model offers Nigeria a spectrum of

[1]. Ofuani B, & Adebisi S." Corporate Governance Practices: A Comprehensive Study of Selected Public Corporations in Nigeria" Cited in Adamu Ahmed and Bilal Celik, "Should NNPC be Privatised" [2019] 3[15] International Journal of Social Sciences. Pp 371-388

[2]. The first reorganization was initiated following the findings of the Irikefe Commission of Inquiry, which was established to investigate a US$2.8 billion fraud involving the NNPC's accounts. This led to the creation of the Ministry of Petroleum and Energy. The second reorganization occurred in 1988, resulting in the separation of the Petroleum Inspectorate from the NNPC and its integration into the Ministry of Petroleum. During this phase, the NNPC was designated for commercialization, and six divisions were established: Upstream and Gas Development, Downstream, Finance and Accounts, Commercial, and the National Petroleum Investment Management Services (NAPIMS). The third reorganization involved the restructuring of the NNPC into six directorates: NAPIMS, Nigerian Petroleum Development Company, Integrated Data Services Ltd, Nigerian Gas Company Limited, Refining and Petrochemicals, and the Corporate Services Directorate, which encompassed Engineering, Commercial Investments, Finance and Accounts, and other support services. See Yinka Omorogbe, *Oil and Gas Law in Nigeria (Malthouse Law Books, 2001) pp 103*

lessons both aspirational and cautionary rooted in the realities of institutional strength, transparency, and political economy. These comparisons are pragmatic tools to navigate Nigeria's unique challenges, where vast oil wealth coexists with systemic corruption, environmental degradation, and social inequality. While incorporating a comparative analysis, the study will primarily focus on resource governance, ownership and commercial autonomy reforms under the PIA 2021, without assessing NNPCL's financial performance due to limited post-reform data.

This article is organized into nine interconnected sections, each designed to systematically unravel the complexities of NNPC Ltd's transition under the Petroleum Industry Act (PIA) 2021. Section I has established the contextual foundation of this article, Section 2 provides the methodology, Section 3 delineates the theoretical underpinnings and statutory frameworks governing the NNPC's transformation, anchoring the analysis in corporate governance theory and the PIA's legislative architecture. Section 4 interrogates the legal and operational ecosystem of the NNPC/NNPCL duality, scrutinizing legacy inefficiencies and the evolving commercial mandates post-incorporation. Section 5 critically evaluates the PIA's transformative potential, identifying ambiguities in its provisions that risk undermining its objectives. Section 6 explores the tension between state ownership and corporate autonomy, drawing comparative insights from Norway (Equinor) and Malaysia (Petronas) to propose strategies for balancing public oversight with market-driven efficiency. Section 7 shifts focus to institutional arrangements, dissecting path dependencies in Nigeria's bureaucratic culture and their implications for NNPCL's operational independence. Section 8 crystallizes the discourse into recommendations to align with global best practices. Finally, Section 9 synthesizes and concludes by reiterating the criticality of robust petro - governance to secure Nigeria's energy future, while underscoring the broader lessons for resource-dependent economies navigating SOE reforms.

2. Methodology

This study employs a doctrinal legal research methodology to analyze the legal transformation of Nigeria's state-owned oil entity from NNPC-to-NNPC Ltd under the Petroleum Industry Act (PIA) 2021. The methodology focuses on systematically identifying, interpreting, and critically evaluating authoritative legal sources, primarily statutes like the PIA and the Companies and Allied Matters Act (CAMA) to clarify governance structures,

ownership frameworks, and operational mandates. Its core objectives are to expose the legal reforms, analyze tensions between state control and commercial autonomy, and critique the effectiveness of the new framework in mitigating historical issues like political interference and inefficiency. Key to the analysis is statutory interpretation, applying legal techniques to contrast NNPC's pre-PIA structure with NNPC Ltd.'s corporatized model. This is augmented by a comparative legal analysis of international SOE transitions, specifically examining Norway's Equinor and Malaysia's Petronas to identify governance best practices and benchmarks for balancing state interests with commercial viability.

Insights from international precedents inform the assessment of NNPC Ltd.'s potential efficacy. The method is chosen because the research question is inherently legal, requiring rigorous analysis of statutory texts and governance principles. This approach grounds policy recommendations such as legal reforms to insulate governance and clarify regulation in concrete legal analysis, contributing to broader discourse on SOE reform and aligning Nigeria's oil sector with global standards.

3. Contextualising the Theoretical and Statutory Framework of NNPC To NNPCL

The NNPC, established under the Nigerian National Petroleum Corporation Act of 1977[3] was granted exclusive rights and control over the country's extensive petroleum resources. The corporation was formed as a result of a merger between the Ministry of Petroleum Resources and the Nigerian National Oil Corporation.[4] This positioned NNPC as a dominant player in Nigeria's oil and gas industry, serving as the state-owned entity responsible for the exploration, production, and distribution of petroleum resources.[5] This move was part of the government's broader efforts to assert national sovereignty and derive maximum economic benefits and independence over its natural resources, a trend that was prevalent across many resource-rich developing nations during this period. [6] In this historical epoch, a nationalization strategy was instigated, which facilitated heightened indigenous engagement and imposed stipulations for

[3] . Act No 33 of 1977 (repealed).

[4] . See 'History of Nigerian Petroleum Regulatory Commission' Available at https://www.nuprc.gov.ng/history-of-dprAccessed 5th November 2024.

[5] . The NNPC became the largest asset holder within the Nigerian oil and gas industry and the overseer of the federations interest and became a central SOE to the Nigerian economy. See G.U Nwokeji "The Nigerian National Development Corporation and the Development of the Nigerian Oil and Gas Industry: History Strategy and Current Directions". (James Baker III Institute for Public Policy and Japan Petroleum Energy Center, March 2007) p 6.

[6] . See Omorogbe, (n 2) pp.97&98.

every economic investment to have a minimum of 60% Nigerian Equity participation.[7] Therefore, state participation continued but with private partnership involvement and such participation were carried out through non-incorporated interest that are still operative as Traditional Joint Ventures (JV) and Production Sharing Contracts (PSCs).[8] Thus, ownership and control rights are granted to the State with significant equity interest.

The recent transition to the NNPCL in 2022, established under Section 53 of the PIA, has introduced significant changes to the regulatory and operational framework of the industry. NNPCL is now structured as a limited liability company[9] and operates in accordance with the provisions of the Companies and Allied Matters Act (CAMA) 2020. Consequently, the NNPCL now operates as a commercially-driven entity guided by economic imperatives and falls within the Corporate Affairs Commission's (CAC) purview. Again, this alignment is rooted in the regulatory framework laid out by CAMA, the Nigerian Code of Corporate Governance (NCCG) 2018, the Competition and Consumer Protection Act, (FCCPA) 2018 and the Companies Income Tax Act (CITA)[10] amongst others. In light of this regulatory context, NNPCL is legally bound to adhere to the stipulations and provisions outlined in these governing laws. This necessitates that NNPCL pays the same fees, rents, royalties, profit oil shares, taxes, and other payments as any other company in Nigeria to the FG.[11]

To understand the implications of this transition, it is crucial to also contextualize the theoretical framework that has shaped the NNPC and its evolution into the NNPCL. The theoretical basis of the NNPC stemmed from the concept of state-led development reflecting resource 'nationalism' where the state plays a central role in guiding the nation's economic path. The NNPCL, on the other hand, operates under a different framework. It's responsible for coordinating and managing the commercial aspects of petroleum operations, including renewable energy investments and promoting domestic natural gas use.[12] This shift reflects a

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[7] . G.U Nwokeji (n 5).

[8] . Section 65(1) PIA provides that "parties to Joint Operating Agreements (JOA) in respect of upstream petroleum operations can on a voluntary basis restructure their JOAs to incorporated joint ventures"

[9] . The benefits of limited liability for the NNPCL are to separate the assets from the State itself. Hence a government can use its resources as collateral to secure funding for economic development. See Laura Ani *Ownership Structure of the Nigerian National Petroleum Company Limited Under the Petroleum Industry Act, 2001* (Obafemi Awolowo University, PhD Thesis, 2024) p.317.

[10] . CAP C1 LFN 2004.

[11] . Section 53(8) PIA 2021.

[12] . See BudgIT, The NNPC LTD: What does the new era mean for the entity and Nigerians? Available at https://investdata.com.ng/the-nnpc-ltd-what-does-the-new-era-mean-for-the-entity-and-nigerians/ Accessed 20th November 2024.

move towards market fundamentalism (*central to the invisible hand of the market*)[13] or neo institutionalism,[14] aiming to position the NNPCL competitively in a globalized market and to ensure efficient allocation of resources and services. While this shift promises stability within the industry's operational and regulatory landscape, its long-term sustainability is critical. This pertinence emanates from prevailing challenges encompassing dwindling investment inflows, the gradual departure of multinational oil entities, and the imperatives ushered by the ongoing global energy transition.

Historically, the relationship between the NNPC and the FG had significantly undermined the corporation's autonomy as an independent corporate entity. This erosion of autonomy is observable through multiple facets, encompassing non-disclosure practices regarding contracts, operational inefficiencies within refineries,[15] a weakened audit function, and a conspicuous absence of robust commercial initiatives.[16] These factors have detrimentally

[13] . The concept was first introduced by Adam Smith in the *Theory of Moral Sentiments* in 1759 and he used it again in his book *An Inquiry into the Nature and Causes of the Wealth of Nations. See https://corporatefinanceinstitute/resources/knowledge/economics/what-is-invisible-hand/* Accessed *24*th November 2024.

[14] . Leocours. A, *New Institutionalism: Theory and Analysis* (Studies in Comparative Political Economy and Public Policy (University of Toronto Press. 2005).

[15] . See KPMG Oil and Gas report (2014) cited in Nigerian Refineries: Challenges and the Privatization Option Energy Mix Report. <https://www.energymixreport.com/nigerian-refineries-challenges-privatization-option/> Accessed 24th August 2024.

[16] . The NNPC had been inundated with scandals, commercial inefficiencies and political patronage along with a defective operational governance model that has made it to become a 'state within a state' and cesspit of financial irregularities and corruption. This can be discerned from the Crude oil sales Tribunal of 1980. The Tribunal was set up to investigate 182.95 million barrels of crude oil which the NNPC had failed to collect its equity share of oil being produced by Shell, Mobil and Gulf, causing Nigeria to lose $2.8/bn in uncollected equity. See Natural Resource Governance Institute "Inside NNPC Oil Sales" (August 2015). p.29. Also, the =N=77.9 billion naira under remitted funds to Federation Account in 2019 which involved a $5.5 billion undervaluation of assets. See "NEITI wants NNPC's transfer of assets to NPDC probed" The Guardian (Lagos, 18th April 2017). <https://m.guardian.ng/news/neiti-wants-nnpcs-transfer-of-assets-to-npdc-probed/> accessed 25th November 2024. Other scandals include, $1 million dollars bribe by ABB Vaetco Gray to officials of the NNPC subsidiary NAPIMS in exchange for obtaining confidential bid information and favourable recommendations from the Nigerian government agencies in 2004. See "Why NNPC board was dissolved" The Nation (Lagos, 27 June 2015) <https://thenationonlineng.net/why-nnpc-board-was-dissolved/> assessed 28th November 2024; $6.3 million dollar bribe admitted by Willbros Group Inc to officials of the NNPC and its subsidiary NAPIMS in return for assistance in obtaining and retaining contracts for work on the Eastern Gas Gathering System (EGGS) in 2008. See "NNPC Profile, Law, Structure and NNPC Unremitted Funds"<https://www.aziza.com.ng/nnpc-profile-law-structure-nnpc-unremitted-funds> accessed 30th August 2024; In 2018, the NNPC reported that it had a budget to spend N3.78trillion naira across 14 subsidiaries, with a revenue projection of N5. 04trillion naira and a projected operating surplus of N1.26 trillion and 80% of the surplus to be paid into the Consolidated Revenue Fund as required by 22(1) (2) of the Fiscal Responsibility Act and section 80(1) of the 1999 Constitution as amended. As at December 2018, it was observed that NNPCs budget expenses surged to N4.87tn and its revenue projection dropped to N4.94trillionn from N5.04trillion, the implication is there was no operating surplus to be paid into the Consolidated Revenue Fund. See budgit "NNPC: The burden of Africa's Oil and Gas Giant" www.yourbudgit.com 30th November 2024. In 2014, the then Governor of Nigeria's central bank, Lamido Sanusi II, reported that N4 trillion ($20 billion) in NNPC oil-sale revenue was not accounted for. See The Extractives Hub 'National Oil Companies'. <extractiveshub.org/servefile/getFile/id/4220> Accessed 30th August 2024.

impacted the corporation's funding mechanisms over an extended period, resulting in adverse consequences. Consequently, the newly incorporated NNPCL, now a product of private law adopts principles from corporate governance (CG), emphasizing transparency, accountability, independence, profit maximization, board efficiency and firm performance.

In Summary, the transition from NNPC to NNPCL under the PIA 2021 represents a paradigm shift in Nigeria's oil and gas sector. It moves from a state-controlled, bureaucratic framework to a market-driven and profit-oriented statutory model. While challenges such as resistance to change and operational inefficiencies can persist, the new framework ought to provide a foundation for sustainable growth, improved governance, and enhanced revenue generation for Nigeria.

4. Addressing the Key Legal and Operational Ecosystem for NNPC and NNPCL

4.1 Ownership Model

NNPC

As a state-owned corporation, the NNPC was wholly owned by the FG. The government, through the Ministry of Petroleum Resources, exercised direct control over the corporation's operations and strategic decisions. This model reflected the state-led development approach prevalent at the time of its establishment. The 1977 establishment Act granted NNPC extensive powers over the entire value chain of the oil and gas industry, from exploration and production, refining, distribution, petrochemicals, products, transportation, marketing, engineering, pipelines and data

support services.[17] Therefore, the NNPC became the largest asset holder and the overseer of the federations interest and became the central SOE to the Nigerian economy. Similarly, the Petroleum Act, 1969 (repealed), granted the government ownership and control over petroleum under its land and waters,[18] including off-shore and onshore revenue from petroleum resources.[19]

[17] . Nwokeji (n 5) pp.6.
[18] . Section 1(1) & (2) Petroleum Act (Cap 350 LFN 1990) Repealed.
[19] . See preamble to the 1969 Act. (Repealed)

Under its operational system, the NNPC was characterized as a state-controlled model and was then commercialized in 1998 through the NAPIMS, giving the NNPC majority stake in TJV operations and management control of the Nigerian Liquified Natural Gas (NLNG) JV[20], thus making the SOE a holding company with eleven subsidiary limited liability companies.[21] The corporations revenue was derived from daily allotment of crude which was reviewed periodically. [22] The NNPCs major producers were Shell, Chevron, Pan Ocean Oil, Chevron and Total. Also, several smaller indigenous companies carried out upstream operations on a Sole Risk basis.[23] The FG, through the NNPC and TJVs contributed capital in proportion to the equity distribution and the funds were placed in an escrow account for financing projects. However, production sharing contracts (PSCs) had become the preferred contractual device due to NNPCs inability to meet its side of the obligation under the JVs.[24] Therefore, shifting exploration activities from onshore to capital intensive offshore deepwater exploration.

NNPCL

A Key aspect of the legislation is the 'ownership structure' of the NNPCL. This is crucial, because it will determine essentially if the newly incorporated entity will run as an independent commercial entity. Specifically, the Act provides that:

> *Ownership of all shares in the NNPC shall be vested in the Government at incorporation and held by the Ministry of finance Incorporated and Ministry of Petroleum Incorporated in equal portion.*[25]

[20] . Nwokeji (n 5).

[21] . Eleme Petrochemicals, Warri Refining and Petrochemicals Co. Ltd, Kaduna Refining and Petrochemicals Co. Ltd; Port Harcourt Refining and Petrochemicals; Nigerian Petroleum Development Co Ltd; Integrated Data Services Ltd; Pipelines and Products Marketing Co Ltd, Nigerian Gas Company, Nigerian Engineering and Technical Co Ltd Nigeria LNG Limited and Hyson Nigeria Limited.

[22] . Natural Resource Governance Institute (n 15).

[23] . See Joint Venture Contractors. Available at https://napims.nnpcgroup.com/our-services/Pages/joint-Venture-Contractors.aspx> Accessed 8th January 2025.

[24] . As activity moved into deep water drilling, with increasingly expensive exploration and development costs which Nigeria was not familiar with, new acreages was awarded in the form of PSCs as the appropriate upstream petroleum contract for the development of offshore and Inland Basins. See Ogunleye, T.A. A Legal Analysis of Production Sharing Contracts Arrangements in the Nigerian Petroleum Industry. *Journal of Energy Technologies and Policy* [2015] Vol 5(8). Pp1-11. See also Omorogbe, Y. Contractual Forms in the Oil Industry: The Nigerian Experience with Production Sharing Contracts *JWTL* Vol 20.

[25] . 53(3) Petroleum Industry Act, 2021.

It is pertinent to note that the entity is commercialised. Commercialisation does not require any change of ownership structure and there is no transfer or sale of assets or the function or activity from the public to the private sector.[26] However, the Act mandates the NNPCL to carry out petroleum operations on a commercial basis comparable to private companies and is exempted from the Public Procurement Act, Fiscal Responsibility Act and the Treasury Single Account.[27] However, the Federal Government remains the primary shareholder. This structure is meant to provide a degree of autonomy in its operations and decision-making, aligning with its commercial focus and framed to improve CG and operational efficiency.

4.2. Governance Architecture

NNPC

The governance of the NNPC was led by a board of directors, chaired by the Minister of Petroleum Resources, who played a significant role in the board's decisions. According to section 1(2) of the 1969 Act (repealed), other members included the Director General of the Ministry of Finance, the Managing Director of the Corporation, and three persons to be appointed by the National Council of Ministers. The Ministry of Petroleum Resources had significant influence over NNPC's strategic direction and operations. This level of government control often led to concerns about transparency and accountability.[28]

NNPCL

The Act provides for the constitution of a management team led by the Chief Executive Officer and the board of directors to perform its duties in accordance with CAMA and the Memorandum of Articles of Association.[29] Principally, the Act provides that the board must consist of a non-executive chairman, a chief executive, the chief financial officer, representatives of the ministry of petroleum and finance, (not below the rank of a director) and six non-executive members to essentially ensure professional and independent oversight.[30]

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[26] . Awadalla, A.Safwat, 'Privatisation and Economic Development: Study on the Effect of Privatisation on the Economic Efficiency in Developing Countries: Egypt As a Case Study [2003] 18(1) *Arab Law Quaterly*. P5

[27] . Section 64(a) PIA.

[28] . Gelb, Alan, Benn Eifert, and Nils Borje Tallroth. "The political economy of fiscal policy and economic management in oil-exporting countries." Available at SSRN (2002).

[29] . *Id* Section 58.

[30] . *Id* Section 59(1) & (2).

Hitherto, the Act does not make provision for an independent director. This is divergent from the provisions of CAMA which stipulates that a company must have at least three 'independent directors', [31] and the NCCG Act, which outlines its principal recommendations for the appointment of Independent Non- executive directors (INED).[32]

Though shareholding is held by the line ministries on behalf of the Federation, the level of direct government intervention is to an extent reduced, compared to the previous NNPC governance model. Consequently, whether the extant governance model would establish a more robust and independent governance structure to promote transparency, accountability and commercial viability is further analysed hereunder.

4.3 Financial Management and Revenue Retention

NNPC

The NNPC Operated under a system where a significant portion of its revenue was remitted directly to the Federation Account.[33] This model often led to limited financial autonomy and challenges in funding critical investments. The process lacked transparency and was subject to political influence.[34] The corporation's complex structure and opaque accounting practices made it difficult to track revenue flows and expenditures.[35] This contributed to public distrust and hindered effective oversight.

NNPCL

As a commercially oriented entity, the NNPCL retains a portion of its revenue, allowing for greater financial flexibility and investment capacity.[36] This model aims to incentivize

[31] . Section 275(1) CAMA.
[32] . See principle 5,6 and 7 Nigerian Code of Corporate Governance 2018.
[33] . See Section 162(1) 1999 Constitution of the FRN (as amended). The Federation Account is owned by the three tiers of government but operated by the Federation Accounts Allocation Committee which distributes the revenue to the three tiers of government accordingly.
[34] . Politics can affect economics in terms of how oil rents are collected, allocated and used. See Auty. R.M. 'The Political State and the Management of Mineral Rents in Capital-Surplus Economics: Botswana and Saudi Arabia' *Resource Policy* [2001]27(2) pp 77-86.
[35] . See Inside NNPCs Oil Sales: A Case for Reform Available at https://resourcegovernance.org/sites/default/files/NRGI_InsideNNPCOilSales_CompleteReport.pdf> Accessed 10th January 2025.
[36] . See section 64 (c) PIA. The NNPCL has recently announced a corporate finance funding agreement with Africa Export-Import Bank (Afreximbank) for $5 billion to grow it investment in new and existing upstream assets. Available at https://www.thisdaylive.com/index.php2022/01/28/nnpc-secures-5bn-funding-from-afreximbank--for-upstream-business-others/. Accessed 10th January 2025. Therefore, access to funding through corporate

efficiency and profitability. The company is subject to corporate taxation, contributing to government revenue through a different mechanism.[37] The management operates under standard corporate governance and financial reporting requirements.[38] This promotes transparency and accountability, enabling better tracking of revenue and expenditures. The company is expected to publish audited financial statements, enhancing public trust and investor confidence.[39] The shift to a more commercially driven model is intended to foster a culture of transparency and accountability, crucial for building public trust and attracting investment. However, the effectiveness of these changes remains to be seen, and continued monitoring and evaluation are essential.

5. Transformatory Ambit of the Legal Reforms to the NNPCL

5.1 Challenges and ambiguities with the Petroleum Industry Act 2021

If properly implemented, the PIA holds the promise of bolstering Nigeria's economic growth by attracting and creating investment opportunities for both local and international investors. This is especially noteworthy due to Nigeria's position as the largest market in Africa, marked by an expanding and dynamic population. Regardless, to achieve its reformatory ambitions, the PIA needs to be backed by effective enforcement mechanisms and strong regulatory bodies. Though we acknowledge that the challenges in the Nigerian Petroleum sector are plethoric, the discussion under this section, will be limited to the challenges arising from the concentration of power of the NNPCL.

A key challenge of the PIA is the concentration of power in the hands of the Minister of Petroleum, who has discretionary powers to grant licenses, leases and permits.[40] This concentration of power can lead to arbitrary decision-making and undermine the principles of transparency and accountability. Profoundly this presents legal, economic and governance-related issues. For instance, the broad discretionary powers granted to the Minister may lead to inconsistent decision-making, creating uncertainty for investors. Investors prefer predictable and rule-based decision-making in oil and gas governance. If the Minister has too much

finance is a strategy to gain corporate efficiency and divest itself of government funding. In addition, the retention of 20% earnings as provided under the Act should enable debt servicing and reinvestment.

37. Section 53(8) PIA 2021
38. *Id* Section 61.
39. *Id* Section 62.
40. Section 3(1) PIA 2021.

discretion, there is a risk of arbitrary decisions, creating uncertainty about contract enforcement, fiscal terms, and investment security. Previously, the 1969 Act gave the Minister of Petroleum wide discretionary powers that gave the minister unfettered power to use whatever method to allocate oil block that eventually led to challenges such as corruption, lack of transparency, and inefficiency. [41]

In addition, the PIA establishes regulatory bodies like the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)[42] and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).[43] However, if the Minister overrides their functions, it weakens the independence of regulators and could lead to political interference in technical decisions.[44] Consequently, licensing rounds, divestments, and contract approvals could become subject to political considerations rather than merit-based evaluations that favour politically connected entities. There is need for clearer guidelines and checks on the Minister's discretionary powers in licensing, fiscal policies, and regulatory oversight. A more robust approach would be to introduce public accountability mechanisms, such as parliamentary oversight or judicial review, to scrutinize the Minister's discretionary decisions. Therefore, without clear guidelines, policy shifts may occur depending on the preferences of different Ministers, affecting long-term industry stability.

The PIA grants full ownership and control of the NNPCL to MOPI and MOFI. This concentration of ownership and control can create opportunities for corruption and abuse of power, underinvestment in the company as the government may prioritise other public sector projects over investments. It can also lead to the lack of transparency and accountability in the company's operations, which can undermine trust and confidence in the industry and inflexibility to respond to market changes, hence, creating bureaucratic decision making. The section below elaborates extensively on the challenges of full government control.

5.2 Evaluating Government Control vs Commercial Autonomy

As earlier discussed in the preceding sections, Part V of the Act, delineates the

[41] . Mark Amaza, Discretionary Awards of Oil Blocks in Nigeria: A State Capture Culture Passed Down from the Military Government. Heinrich Boll Stiftung. Available at https://za.boell.org/en/2019/08/21/discretionary-awards-oil-blocks-nigeria-state-capture-culture-passed-down-military> Accessed 26th February 2025.
[42] . Section 4(1) PIA 2021
[43] . *Id* Section 29(1).
[44] . Momodu Kassim Momodu, Exercise of Ministerial Powers under Nigeria's Petroleum Industry Act. *Journal of Energy and Natural Resources Law*. 4(1) pp 1-11.

governance framework for the NNPCL. The corporate entity has undergone formal incorporation with the CAC, with an initial capital of N200 billion to become a limited liability company. Pursuant to the Act's provisions, NNPC Ltd is enjoined to conduct its operations with profitability and operational efficiency as paramount objectives, without recourse to government financial support. The governing Memorandum and Articles of Association of NNPC Ltd are mandated to encompass explicit restrictions that delineate its operational parameters. Additionally, the Act mandates the declaration of dividends to its shareholders,[45] while concurrently retaining a reserved portion amounting to 20% of the company's profits. [46] Therefore, the establishment of sound corporate governance frameworks and the regulatory frameworks of CAMA, the (FCCPA) and the NCCG as regards shareholding, competition, compliance, share capital, appointment of directors, annual reports and auditor obligations will be essential in rebranding the NNPCL to make it more profitable. This will only be actualised if the NNPC is managed like the private sector, devoid of vested government interests and able to take decisions without interference from the executive.

A key aspect of the legislation is the 'ownership structure' of the NNPCL, this is important because this will essentially determine if the newly incorporated entity will run as an independent commercial entity. In addition, disclosure of the ownership structure is important for investors and the decisions they take, as insider-dominated enterprises are considered flawed in CG. From the provisions of section 53(3), the Government has a majority share, which can significantly control the direction of the company as there are no outside interest to oversee the entity. It should be underscored that the baseline for CG is the protection of shareholders interest and the maximization of value for shareholders by way of long- term profitability for the company. Thus, the ownership structure of an enterprise is linked to its CG performance, that is changes in a company's CG performance will unequivocally start with the 'owners'. If the owners have an interest in long term profitability, they are most likely going to engender good CG to attract foreign capital, strategic alliances, or partnerships, internationalise and emerge into new markets and restructure the firm to maximise value. However, this is not always the case with companies with a centralised ownership structure, especially when the government is a sole or controlling shareholder. What prevails in such structures is government owners will be conflicted with other public policy goals which can then undermine

[45]. Section 53(7) PIA 2021.
[46] . *Id.*

investments.

Under the PIA, it is pertinent to mention that the entity is commercialised and not privatised or operating under the mixed ownership framework.[47] Commercialisation does not require any change of ownership structure and there is no transfer or sale of any asset or the function or activity from the public to the private sector".[48] Essentially commercialisation seeks to bridge fiscal deficit in the company and is not based on the property rights theory which promotes wider share ownership and neither does it reduce government ownership. Therefore, commercialisation only seeks to bring the goods to the marketplace, which makes the entity an 'undertaking' for the purpose of making profit only and comes under the purview of the CAMA, 2020, the FCCPA, 2018, CITA etc.[49] In summary, the NNPCL is still wholly owned by the FG. Therefore, the ownership structure will go a long way in determining how far the objectives of profit and commercial viability are achievable. Where the owners and managers are run by the government, it becomes a lofty idea to be certain the entity can run efficiently. In essence who owns the companies and how they own and perform their roles as owners are critical for corporate performance. [50]

The reality is that most state ownership bodies combine multiple roles, including exercising rights, formulating policies and regulations, that may more often than not create conflict of interest and undermine the ability of the government to effectively manage the SOEs. Consequently, state authorities will pursue short term objectives with SOEs, by using the entities to maximise revenue for various political interests. Unclear separation of powers and responsibilities between shareholding ministries, such as the MOPI and MOFI and the corporate entity, (the NNPCL) provides opportunity for undue political interference or excessive intervention. The NNPCL will have to answer to multiple and competing requests from the ownership line ministries in addition to meet its commercial mandate. This can reduce accountability amongst the managers who may be unclear to whom they are to answer or be accountable to. Evidently, there will be a lack of separation between ownership and

[47] . Sections 53 (7) and 64 PIA 2021.

[48]. Awadalla, A. Safwat 'Privatisation and Economic Development: Study on the Effect of Privatisation on the Economic Efficiency in Developing Countries: Egypt: As a Case Study' [2003] 18(1) Arab Law Quarterly p 35.

[49] . See Part XVIII of the Federal Competition and Consumer Protection Act 2018, which "provides that an undertaking includes a person involved in the production of trade in goods or the provision of services". It is further submitted that when an enterprise engages in offering goods and services in the marketplace and it yields profit, then it becomes an undertaking and falls within the ambit of competition laws

[50] *Id*.

control and the commercial interest in the NNPC will conflict with state social policies and regulatory functions.

In addition, conflicts of interest between the government owner and the fiduciary obligations of the directors will be endemic. In this scenario, officers might not be held accountable. What can prevail is appointing directors and officers that would succumb to governments whims and caprices. In essence the government as owner and controller of the NNPCL has the ability to appoint, reappoint and remove directors including independent ones.[51] This reveals that directors would refrain from any action that would compromise their security of tenure and leadership progression as well as avoid deviating from any key government interests. Therefore, CG in the NNPCL would need to be reformed through the enactment of a framework to take into consideration the overarching States ownership portfolio. This would ensure long term value for the entity and significantly reduce competing interests that would undermine the performance of the entity.

6. Evaluating the Ownership Structures of Malysia (Petronas) and Norway (Equinor)

6.1 Malaysia (Petronas)

Malaysia is one of the most dynamic oil and gas producers in the South East Asia in terms of her gross domestic product (GDP) with a contribution of 20.0% and proven oil reserves of 3.6 billion barrels, ranking the country as the second-largest oil and gas producer in the region. [52] It is the fifth-largest exporter of LNG in the world, constituting 7% LNG exports worldwide.[53] The peninsular, Borneo states, Sabah and Sarawak regions of Malaysia are the most prolific in natural resource deposits. [54] In 2020, the country produced 73.2 billion cubic metres of natural gas and holds 41.8 trillion cubic feet (Tcf) of proven natural gas reserves.[55] Currently, natural gas accounts for approximately 36% of Malaysia's primary

[51] . Section 59(1) PIA 2021 provides that the Board of directors shall be appointed by the President, who is also the Minister of Petroleum and the controlling shareholder.

[52] . See South East Asia Oil and Gas Upstream Market-Growth, Trends, COVID 19 Impact and Forecasts (2023-2028. Available at https://www.mordorintelligence.com/industry-reports/southeast-asia-oil-and-gas-upstream-market. Accessed 4th March 2024.

[53] . Oil and Gas Laws and Regulations-Malaysia 2022-2023. Available at <https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/Malaysia> Accessed 4th March 2024.

[54] . The Malaysian Federation was the product of three colonial states of British North, Borneo, Sarawak and Singapore to the Federation of Malaya which became an independent nation in 1957. See N.E. Groves, The Constitution of Malaya – the Malaya Act' [1963] *MAL. L.R*, 245.

[55] . Oil and Gas Journal "*Worldwide Look at Reserves and Production*, (2nd Edition December 2019)

energy consumption, Oil and other liquids account for 37%, coal 21% and renewable energy 6%.[56] The majority of Malaysia's oil comes from offshore fields off the coast of Terengganu, Sabah and Sarawak[57] The country also boasts of high quality crude blends, such as kimanis, Miri, Tapis and Kikeh mostly found in the offshore fields.[58]

In 1964 Oil was discovered in the Baram field, just 14 kilometres from the Sarawak coast.[59] This was a very prolific time for Malaysia and a period when Multinationals began seeking exploration licenses. By 1966 there were over ten companies tendering for licences in the Malacca, to include the Royal Dutch Shell group of companies who were actively searching for oil in Malaysia.[60] However, the legal enactments to cope with the large-scale oil discovery were insufficient. Like Nigeria emphasis had been on mining and other minerals and the legal enactments that regulated the mining industry in Malaysia were insufficient to regulate the new discovery. For instance, the term 'Petroleum' did not appear in the Mining Enactment (F.M.S. Cap. 147).[61] The provisions regarding mining leases were contained in the enactment, particularly section 14 is of general application, though there is an exception for mineral oil. Section 14(1) provides that the mining lease grants the lessee the right to extract all metals and minerals (except mineral oil and oil shales) found on or below the land. Therefore, there was nothing in the provisions that dealt with mineral oil. At the time, foreign companies prospecting in Malaysia worked under the concession system within the state governments jurisdiction which they carried out operations.[62] This gave the IOCs laxity to

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[56] . BP 2020 Statistical Review of World Energy. Available at https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statitical-review/bp-stats-review-2020-full-report.pdf> Accessed 5th February 2024.

[57] . Oil and Gas Journal (n. 56).

[58] . *Id.* (n 55).

[59] . *Id.*

[60] A. Krishnan, The Legislative Framework for the Development of Petroleum in Malaysia: An Overview [1985] 12 *JMCL* 109.

[61] . The Petroleum Mining Act 1966 (Revised 1972) was established and repealed all the provisions of the Mining enactment regarding oil prospecting licences and oil mining in the Mining enactments of the States of West Malaysia. With reference to East Malaysia, laws to be repealed were laws that relate to the exploration, prospecting, or mining for petroleum in 'offshore land' defined as the Continental Shelf

[62] . At the time and under Malaysia's Federal Constitution 1963, Ninth Schedule, List II 2(c) of the State List, provides that "permits and licenses for prospecting for mines; mining leases and certificates is within the province of each state. Even though Section 8(j) of the Federal List gives the Federation power to deal with development of mineral resources, this power is subject Section 2 (c)of the State List. Under the Malaysian National Land Code 1965, Petroleum interest are an interest in Land and in Malaysia 'land' is within the jurisdiction of the various States. Therefore, the rights of ownership of the petroleum resources of a State is dependent on whether such resources are in a land area which is within the jurisdiction of the State. This was also contained in s.7, Mining Enactment (F.M.S. Cap 147). *The North Sea Continental Shelf Cases* [1969] *I.C.J.* Reports 3, 22 had expressed the opinion as follows:

> The rights of coastal state in respect of the area of the Continental Shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio by virtue of its sovereignty over the land as an extension of its sovereignty rights for the purpose of exploring

manage the resources as they pleased, leaving the role of the state to the collection of taxes and royalties.[63]

Petronas was established as part of the nationalistic ideology that occurred throughout the 1970s, comprising the South Asian East region, Sub-Saharan Africa, the Middle East and Eastern Europe.[64] In addition, to prevent foreign companies from taking over the petroleum resources, establishing a corporate entity was crucial. As a result, countries can both meet the social and economic needs of their citizens and generate profits from their resources through ownership and control. Therefore, possessing political independence and economic control is essential for resource ownership. In 1974, the Government enacted the Petroleum Development Act, 1974 (herein referred to as the 1974 Act) as a framework to grant the entire ownership in petroleum whether offshore or onshore of Malaysia with the government.[65] In the same year, PETRONAS was created as a specialized business arm to handle petroleum operations and its establishment brought an end to the concession system and started the PSC model. The entire ownership, and exclusive rights, powers, liberties, exploring, exploiting, winning and obtaining petroleum is vested in the State-run oil company.[66] Accordingly, section 9(1) of the 1974 Act put an end to the old concession system.

The 51-year-old Act continues to regulate the petroleum industry till date with PETRONAS having oil and gas operations in 35 countries. A contractor seeking to explore

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the sea bed and exploiting its natural resources. In short, there is an inherent right. In order to exercise it, no special process has to be gone through, nor have any special legal acts to be performed.

By the time the prospects of oil discovery became a reality, the Federal Government realized there was a greater need to exercise greater centralized control over petroleum resources in order to ensure a multiplier effect on the rest of the economy. This led to the enactment of the *Emergency (Essential Powers) Ordinance 1969 (No.10).* The ordinance amended the Continental Shelf Act No. 57 of 1966 and the Petroleum Mining Act, 1966 so that it altered the rights of Eastern and Western Malaysian states to ownership of petroleum resources. Therefore, the proprietary interest in the natural resources, including petroleum in the Continental shelf of these states' vests in the Federal Government. This was done so the Federal Government could assert absolute and unfettered control over the petroleum industry. See V.K. Moorthy., Changes in the Federal State-Ownership and Exploitation of Petroleum Resources in Malaysia. [1982] 24(1) *Malaysia Law Review*. pp 186-204.

[63] . Bruce Gale, Petronas: Malaysia's National Oil Corporation. [1981] 21 (11) *Asian Survey*. pp. 113

[64] . The nationalisation era was more focused on the establishment of energy policies aimed at exploiting and controlling the nations resources to ensure equitable distribution of resource wealth as opposed to the commercial interests of IOCs. This can only be achieved if the government has full control of the industry from exploration, marketing to distribution.

[65] . Section 2(1) Petroleum Development Act, 1974. No 144

[66] . The key laws and regulations relating to the oil and natural gas industry in Malaysia, apart from the Petroleum Development Act, though not exhaustive are: The Petroleum Regulations, 1974, the Gas Supply Act, 1993, the Atomic Energy Licensing Act, 1984, the Communications and Multimedia Act, 1998, the Continental Shelf Act, 1996, the Customs Act, 1967; the Environmental Quality Act, 1974; the Exclusive Economic Zone Act; the Factories and Machinery Act, 1967; the Merchant Shipping Ordinance, 1952; the Occupational Safety and Health Act, 1994; the Petroleum (Income Tax), 1967; and the Petroleum (Safety Measures) Act, 1984.

and produce petroleum is required under the Act to apply for a license from the Malaysia Petroleum Management division (MPM) of PETRONAS. [67] The 1974 Act did not establish PETRONAS, but rather it was established by Companies Act of 1965(now 2016).[68] Section 2(1) of the 1974 Act provides that:

> The entire ownership in, and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia shall be vested in a Corporation to be incorporated under the Companies Act 1965 or under the law relating to incorporation of companies.

Petronas was incorporated under the Companies Act 1965 on the 17th August 1974 to operate as a public company limited liability by shares.[69] The Act further provides "that the Corporation shall be styled as the *Petroleum Nasional Berhad* (PETRONSA)".[70] From the nation's standpoint, PETRONAS is one of the most significant economic entities due to its legal form, its mandate, its powers, functions and objectives. The uniqueness of the entity is easily discernible from the fact that it is the first public corporation and till date, to be established under the Companies Act, 1965 (now 2016). The company is subject to all provisions applicable to companies and is simultaneously conferred with special powers, rights and privileges under the 1974 Act. Therefore, the corporation can be referred to as a 'hybrid company' as firstly, it is wholly owned by the government of Malaysia and directly answerable to the Prime Minister of Malaysia and secondly, it is incorporated as a Limited Liability Company with the Malaysian Federal government as the sole shareholder of the company. Therefore, PETRONAS has all the rights, powers and privileges not otherwise available to other companies.

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[67] . Regulation 3, Petroleum Regulations 1974, PU (A) 432/1974.

[68]. Now Companies Act, 2016. See also Section 2(1) Petroleum Development Act, 1974.

[69] . Section 2(1) Act 125 (Revised 1973), now Act 777; Companies Act of 2016. It is critical to state that it had been proposed but later rejected that the NOC adopt the acronym 'HIKMA', meaning Hydrocarbon Malaysia, as it gave the impression of nationalization. See Nordin Ramli, The history of Offshore Hydrocarbon Exploration in Malaysia, [1985] 10(3-4) *Energy*. Pp. 457-473. The government also rejected that the organization be set up as a statutory body based on the same grounds, but rather preferred PETRONAS was incorporated under the companies Act, to operate as a commercial enterprise based on sound economic principles, governance structures and accountability and transparency. Nasarudin Md Idris, 'Oil for Development: The Experience of Malaysia (Third OPEC International Seminar: OPEC in a New Energy era: Challenges and Opportunities' (12-13 September 2006. Hofburg Palace, Vienna, Austria)

[70] . Section 3(1) Companies Act, 2016.

concentration is profoundly found in non-Anglo-Saxon economies as compared to Anglo Saxon's dispensation model. The structure of ownership has two mutually related dimensions: the 'ownership concentration' and the 'beneficial ownership'. The degree of concentration among Malaysian firms is notably high, characterized by the dual role of the owners as directors of the company. In Malaysia, participation in equity ownership is an important political agenda arising from the government's policy to ensure the socio-economic income distribution of resources to different races. The reason for this is that the political climate in Malaysia is biased towards the *Bumiputera* and does not promote the fair distribution of resources, competition, and open trade that are commonly seen in Anglo-Saxon corporate practices.[71] Regardless of Malaysia's non-Anglo Saxon ownership structure, it adopts the corporate governance promoted by multilateral institutions such as the World Bank, Organisation for Economic Co-operation and Development (OECD) and International Monetary Fund (IMF) which are largely Anglo-Saxon.

Malaysia's legal system is heavily influenced by British colonial legislation. For example, the Companies Act of 1965 is based on the UK Companies Act of 1948. In 2000, Malaysia implemented the Corporate Governance Code and established listing regulations for the Malaysian Stock Exchanges that adhere to the Anglo-Saxon model. Contrarywise, the Petroleum Development Act of 1974 essentially puts the ownership and control of PETRONAS in the State Government, whilst also incorporating PETRONAS under the Companies Act of 1965 (now 2016). Evidently, there are procedural differences as the 1974 Act is at variance with the Anglo-Saxon Corporate governance model of the Companies Act. This is can be attributed from the paradoxical system of governance in Malaysia, which is democratic as well as authoritarian. Malaysia's economy heavily relies on the government and family-controlled firms, which account for more than 50% of its GDP.[72] As a result, the national institutional arrangements, including the legal, political, and social environment, are structured differently from the Anglo-Saxon governance system.

[71] . How, J, Verhoeven, P and Wahab, E, 'Political Connections, Corporate Governance and Earnings Predictability (2009)' Available at http://www.business.uq.edu.au/download/.../verhoev frid830_samford.pdf at 6. See also 'The Politics of Business' (The Star Newspaper, 2008). Available at http://biz.thestar.com.my/news/story. asp?file-/2008/12/6/business/2717319&sec-business. Accessed 8th February 2025.

[72] . Ngui, C.Y.K., Asian Family Businesses: From Riches to Rags? [2002] 2 *Malaysian Business*, p.27 Cited in Noor Afza Amran and Ayoib Che Ahmad, Board Mechanisms and Malaysian Family Companies' Performance [2011] 2 *Journal of Accounting and Finance*. pp. 16.

The sole shareholder of PETRONAS is the Government of Malaysia, which means that the control over the company is exercised solely by a single body or person, the Government, or through a representative, such as the Prime Minister (PM).[73] Generally, under Company Law shareholder activism is exercised at the annual general meeting,[74] but the fact that PETRONAS has one shareholder, makes it easier to obtain shareholder approval as the control of PETRONAS is maintained by the Government. The general meeting may lay down issues of audited financial reports,[75] election of directors[76] and general policy, but the management and administration of the company must be left to the Board of Directors (BOD) taking into consideration the needs of all shareholders and stakeholders.

The extent to which the Government controls Petronas is statutory based. By section 3(2) of the 1974 Act, the Act provides that, "the Corporation shall be subject to the control and direction of the PM who may from time to time issue such direction as he may deem fit". Further Sub section 3 further provides that "the direction so issued shall be binding on the Corporation." Therefore, the PM has legal backing to ensure that Petronas adheres to the Government's policies. Though one can appreciate the need for close scrutiny over the entity, the role of the PM goes against the conventional company law definition of a corporation as provided under the Companies Act, which provides that; -

> …any reference to "corporation…*does not include* (a) a body corporate that is incorporated in Malaysia and is by notice of the Minister published in the Gazette, declared to be a *public authority* or *an instrumentality or agency of the Government of Malaysia* or of any State or to be a body corporate which is not incorporated for commercial purposes. (emphasis mine).[77]

The hybrid governance structure of Petronas pioneered by the Malaysian Government, i.e. incorporation under the Companies Act 1965 (now 2016) would have been considered catastrophic as a result of conflicts of interests between the governments interest on the one hand and the need to achieve commercial viability. Thus, PETRONAS has to handle both

[73] . Section 3(2) Petroleum Development Act, 1974
[74] . Section 340, Companies Act 2016
[75] . *Id* Section 340(1)(a).
[76] . *Id* Section 340 (1) (b).
[77] . Section 3, Companies Act, 2016.

executive and administrative duties of the Government. For example, though it is the PM charged with the responsibility of granting permits and licenses under the 1974 Act, such permits and licenses are granted based on the recommendation of PETRONAS.[78] This also includes the role of policing the conditions and terms of the licenses.[79] Ideally, this is not suitable for the traditional company form, being that a company is established to maximize shareholders value and maximum commercial viability in addition to other stakeholder interest such as creditors, suppliers, customers etc. Therefore, regulation is *ultra vires* the company's mandate or objectives. Primarily, the role of policing lies with the PM, but by virtue of the 1975 Amendment Act, the Minister can delegate his powers and this would be to PETRONAS.

Malaysia's Petronas presents a hybrid structure, blending commercial and regulatory roles under a single entity. While this centralized model enabled rapid decision-making and aligned oil operations with national development goals, it also introduces inherent risks. Petronas, as both a profit-driven corporation and a quasi-regulator, faces conflicts of interest. For instance, its authority to recommend licenses to the Prime Minister while simultaneously policing compliance creates opportunities for favoritism or lax oversight. In Malaysia's context, where institutions are moderately robust, this system has functioned but not without criticism over transparency and cronyism. For Nigeria, where institutional fragility are pervasive, adopting a Petronas-like model would be perilous.

6.2 Norway

Historically, at the beginning of the 21st century, Norway was once recorded as the poorest country in Europe, but now retains a status as one the wealthiest nations.[80] Since 1972, Norway has implemented and maintained the "Norwegian model" or "tripartite model," which separates policy, regulatory, and commercial functions in institutions. This model is considered the ideal bureaucratic design for the hydrocarbon sector.[81] Apart from the Hydrocarbon sector, Norway uses this governance model for all sectors of the economy. The PIA is

[78] . Regulation 3, Petroleum Regulations 1974, PU(A) 432/1974.
[79] . *Id.*
[80] . Duruigbo, E. "The World Bank, Multinational Oil Corporation and the Resource Curse in Africa" [2005] 26(1) *Journal of International Economic Law* p..35-50
[81] . Thurber, M.C. et al "Exporting the Norwegian Model" The effect of administrative design on oil sector performance" [2011] 29 *Energy Policy* p. 5366-5378. Pp 5366.

essentially modelled after this system.

The success story of Norway is perhaps attributable to the governance structure of the oil sector which establishes three state - controlled institutions each serving its own purpose and ensuring the clarity of roles, rules and institutions. First, there is established the commercial entity, the NOC Equinor (formerly known as Statoil) which is involved in oil operations in Norway and overseas. Secondly, there is the policy making body, known as the *Ministry of Petroleum and Energy (MPE)*. The Ministry works closely with political leadership in setting the goals for the oil sector, develops strategies for achieving these goals and regulating the licensing system. Finally, there is the regulatory and technical advisory agency, known as the *Norwegian Petroleum Directorate* (NPD), having the responsibility to compile data on hydrocarbon activities on the Norwegian Continental Shelf,(NSC), collection of fees from operators, acts in an advisory capacity to the Ministry on technical matters, and provides regulation geared towards resource management.[82] This separation of roles, rules and responsibilities came to be known as the Norwegian Model/ tripartite system of oil sector governance to prevent political interference, conflict of interest and overlap of responsibilities between the institutions.

This model works by placing a requirement on the NOC to focus mainly or exclusively on its commercial activities, operational performance in view to increasing short term or long-term financial returns to the State.[83] Secondly, the regulatory and policy institution will improve the State's ability to monitor the NOC as well as other operators.[84] Lastly, conflict of interest which can arise by the NOC abusing its powers by restricting competition or granting favourable commercial interests over States socio-economic needs will be reduced.[85] Equinor was established as an autonomous company using the company form, to operate as a State-owned Public Limited Liability Company, in which the directors have independence to fulfil Equinor's commercial mandate free from political interference.[86]

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[82] . Al Kassim, F., *Managing Petroleum Resources: The Norwegian Model in a Broad Perspective* (Oxford Institute for Energy Studies 2006, Oxford, UK)

[83] . *Id.*

[84] . Thurber M.C. and Istad., *Norwegian Evolving Champion: Statoil and the Politics of State Enterprises. In Oil and Governance: State- Owned Enterprises and the World Energy Supply* (New York, 2012) pp 599-655.

[85] . Al Kassim (n 82) p. 457.

[86] . Mestad, O., *Statoil og Statleg Styring og Kontroll, Marius Nr* 105, PhD Thesis, (Norwegian Institute for the Laws of the Sea, University of Oslo, 1985). Cited in Alvik, I "Should the Norwegian Model of Direct State Participation in Petroleum activities be used in resource rich developing countries as part of the Solution to the 'resource curse' (University of Oslo, Faculty of Law, 2012).

Equinor, formerly known as *Den norske stats oljeselskap AS*, was established in 1972 as a state-owned oil company. Throughout the period of the 1970s there was a global political consensus on the need to establish a state-owned oil company to ensure that the state could pursue its national objectives. However, the challenge the Norwegian government faced was how to balance political control whilst at the same time ensuring an autonomous operation for the State Oil company in its commercial operations.[87] Important reforms were introduced to adjust the control and role of Equinor. For instance, the Mongstad scandal,[88] provided the impetus for both the NOC and the State to restructure the legal framework governing the NOCs role and power and to ensure it remains commercially resilient. [89]

Equinor is incorporated as public limited liability company, with the State having a majority stake of 67%. It was listed on the New York and Oslo stock exchange in 2001 and has many licenses on the Norwegian Continental Shelf. [90] Equinor ASA is a major player in the petroleum industry and has made significant contributions to Norway's development as a modern industrial nation.[91] The country's petroleum sector is prolific and has excelled in developing technology for offshore oil and gas activities accounting for about 40% of Norway's exports and 14% percent of GDP. [92] Equinor markets and sells oil and gas from the SDFI portfolio and its own volumes, as required by its articles of association.[93]

The Norwegian Government aims to boost employment, reduce greenhouse emissions by 55%, promote low-carbon solutions, and enhance public resilience to create a sustainable

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87 . Richardson, J.J. "Problems of Controlling Public Sector Agencies: The Case of Norwegian Oil Policy" [1981]29(1) *Political Studies*. p.39

88 . Statoil's Mongstad Story. Available at http//:https://equinor.industriminne.no/en/statoils-mongstad-story/> Accessed 20th February 2025. The Mongstad scandal occurred between 1979-1985 over the Mongstad refinery and was the biggest industrial scandal in Norwegian history.

89 . Stenvoll, T. and Gordon R, *Statoil: A study in Public Entrepreneurship* (James Baker Institute for Public Policy 2007) p.1-66.

90 . Al Kassim *Op Cit* (n 200) p.88

91 . Since the North Sea oil industry's infancy in the early 1960's, the Nordic nation has managed its petroleum revenue to benefit its 5.4 million people. Early on, the Norwegian Parliament laid down preemptive economic and ethical principles to guide the use and exploitation of Norway's oil and gas for the benefit of current and future generations of Norwegians. See International Monetary Fund (2002) Available at <https://www.imf.org/en/Publications/fandd/issues/2022/12/POV-putting-oil-profits-to-global-benefit-isachsen-gylfason#:~:text=Norway%20is%20unique%20among%20the,the%20OECD%20as%20a%20whole>. Accessed 20th February 2025.

92 . Norway's Oil and Gas Sector will not be dismantled new government says. (BBC News, 13th October 2021) Available at < https://www.bbc.com/news/world-europe-58896850> Accessed 20th February 2025.

93 . See Article 10, Equinors Articles of Association. Available at <http:// equinor-asa-articles-of-association 2018-05-15 (2).pdf> Accessed 20th February 2025.

economy.[94] This will ensure that the Norwegian economy is conducive for its citizens as well as making Norway a competitive and innovative business destination. Similarly, these goals are central to the rationale for the Norwegian government actively participating in its state-owned enterprises. The White Paper outlines the objective of state ownership for developing green value chains and creating profitable jobs.[95] Specifically, the State as owner is an active, responsible and a long – term owner in promoting climate change and sustainability, wages, employment and work conditions, multiplier effects, value creation, profitability and development of companies and moderation in executive pay.[96] Thus, Norway's social model is characterised by a flexible, inventive and competitive business sector, and an actively involved government.[97]

Norway is the largest oil and gas producer in Western Europe and has a prolific energy and natural resource base, which is subject to government regulation. Therefore, regardless of ownership, the State will control and manage the resource.[98] Generally, the State uses ownership to collect more revenues from energy and natural resources, promoting long-term development in their country's interest.[99] States ownership of companies is managed directly by a Ministry, which warehouses an 'ownership department'. This Unit, under the Ministry of Trade, Industry and Fisheries, serves as a resource centre for states ownership.[100] Norway has two types of ownership: Category 1: Competitive companies seeking long-term sustainable

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[94] . Lie, E., Context and Contingency: Explaining State Ownership in Norway. [2016] 17(4) *Enterprise & Society*, p. 904 -930.

[95] . See Greener and more active State Ownership: The States direct ownership of companies. (Meld. St. 6, 2022-2023) Report to the Storting white paper. Available at <https://www.regjeringen.no/contentassets/b45b4a63e301435293bd1b10d1ede45b/en-gb/pdfs/stm202220230006000engpdfs.pdf> Accessed 23rd February 2025.

[96] . *Id*.

[97] . *Id*.

[98] . Section 1-2 Norwegian Petroleum Act, 1996, Act No. 72.

[99] . Oil, gas, seafood and products from energy-intensive industries are the main export commodities of Norway. The sea areas are six times the size of land, and ocean based industries account for almost 40% of total value creation and 70% of exports. "The Norwegian Economy and Business Sector" Norwegian Ministries of Foreign Affairs. Available at http://www. https://www.norway.no/en/central-content/en/values-priorities/the-norwegian-economy-and-business-sector/#:~:text=Oil%2C%20gas%2C%20seafood%2C%20and,and%2070%20%25%20of%20our%20exports. Through the introduction of resource rent tax on aquaculture (40 per cent tax rate) and wind power (40 per cent tax rate), there is an increase in resource rent tax on hydropower and an extraordinary tax on wind and hydropower at 37 to 45 percent due to high electricity prices. The Government has increased tax revenues by NOK 33 billion annually. This is to ensure that the values that come from natural resources are distributed equally to the central and local government sectors. See Profits from Natural Resources will be better distributed" Ministry of Finance, Office of the Prime Minister. Available at https://www.regjeringen.no/en/aktuelt/profits-from-natural-resources-will-be-better-distributed/id2929123/> Accessed 23rd February 2025.

[100]. Simon C.Y. Wong., The State of Governance at State-Owned Enterprises (IFC Corporate Gvernance Knowledge Publication) Available at https://documents1.worldbank.org/curated/en/564891520946563480/pdf/NWP-State-of-Governance-PSO-40-PUBLIC.pdf> Accessed 23rd February 2025.

returns and Category 2: companies owned by the state with a goal of efficient attainment of public policy goals. Companies in category 1 are placed under the Ministry of Trade, Industry and Fisheries, whilst the second category is managed under the relevant sector ministries. This has been a successful model in Norway and has strengthened national ownership. [101]

The Government's White Paper on ownership, explains *why* the State has direct ownership, *what* the State owns, the States *rationale* for ownership, the States *goal* as the owner and *how* the State will exercise ownership. [102] The State takes ownership in certain instances when the market fails to meet socio-economic objectives, to reduce market failures. For instance, the State's active participation in public goods delivery, especially in health care, education, natural resources, civil protection, and emergency preparedness, increases society's benefit. In some companies, State ownership is no longer necessary, and ownership is dynamic, leading to changes in State ownership interest through corporate transactions.

In summary, Norway aims to achieve the highest possible return on investment over time while contributing to public policy goals in a sustainable manner as an owner. This is exercised through electing competent boards, voting at general meetings, and transparency in the exercise of ownership as provided under company Law and the ten principles of corporate governance. This is further expatiated to mean that the State shall not be an obstacle to the board exercising of its mandate and critically, the State must be transparent about its ownership, because in the States capacity as owner the States manages substantial assets on behalf of the citizens.

The reason the State owns 67% of Equinor's shares is to ensure it becomes a leading energy company based in Norway. As an owner, the State's goal is to achieve sustainable growth and the highest possible returns over time. The marketing arrangement requires Equinor to market and sell oil and gas from the State Direct Financial Interest (SDFI) along with its

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[101]. At the end of 2021, the value of States ownership where States goal as an owner is the highest possible return over time in a sustainable manner (Category 1) was estimated to be at NOK 999 billion. The States shares listed on the Oslo Stock Exchange accounted for NOK 844 billion. The State's share of book equity less minority interests in companies where the State has public policy goals (Category 2) was NOK 180 billion at the end of 2021.See "What the State Owns" Available at https://www.regjeringen.no/en/topics/business-and-industry/state-ownership/hva-staten-eier/id2604524/ Accessed 26th February 2025. See also Norway's State Ownership White Paper (n. 217).

[102] .The Norwegian Government Policy for Reduced and Improved State Ownership (Storting White Paper, No.22 2001-02) Reduced and Improved State Ownership. Available at <https://www.regjeringen.no/globalassets/upload/kilde/nhd/rap/2002/0015/ddd/pdfv/157550-white_paper_no_22_2001-2002.pdf> Accessed 5th August 2024

own volumes due to the States ownership.[103] The arrangement aims to maximise the total value of SDFI and Equinor's volume.[104] It is crucial that the government retains majority ownership in light of the marketing arrangement, in order to maintain control and stability in the relevant sector.

7. Institutional Arrangement and Path Dependency

The underlying purpose of company law is to protect minority shareholders from the adverse activities of the majority shareholders. It serves as a corporate democracy where decisions are taken by majority votes, [105] using the apparatus of the annual general meeting[106] or an extra ordinary general meeting as the need arises.[107] In other words, corporate law is synonymous with the dispersed ownership system, where shareholders are vast and fiduciary governance becomes imperative. This means that the directors are required to control the company in the best interest of the owners (the shareholders) to limit agency conflicts. This is essentially the foundation of corporate governance.

The challenge lies when the owners and directors are one and the same (i.e., the shareholders are the directors) creating a concentrated ownership system characterised by high private benefits of control. Essentially, the legal apparatus and principles of corporate law and CG respectively are not applicable in this ownership structure and it is arguable that there should be no agency problems. The Anglo-American system of governance is characterised with minimal governmental intervention, dispersed ownership, shareholder activism, viable legal institutions and the legal infrastructure to enforce the laws. Similarly, free trade, competition and deregulation are embodied in the Anglo-American model. Therefore, CG models only apply to a country's institutional arrangement which are shaped by its history. [108] Institutional theory suggests that the relationship between national institutions and the development of CG can be complex.[109] Nigeria/s legal system is heavily influenced by the

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[103]. The State Ownership Report 2015. Norwegian Ministry of Trade Industry and Fisheries. . Available at <http://equinor.com/en/about-us/corporate-governance/the-norwegian-state-as-shareholders.html>Accessed 5th August 2024.

[104]. *Id*.

[105] . Amupitan, J.O., *Corporate Governance: Models and Principle* (Hilltop Publishers, 2008) pp. 59.

[106] . Section 237 Companies and Allied Matters Act, 2020.

[107] . *Id* Section 239.

[108] . The institutional theory posits that the behaviour of firms is deeply rooted in and reflects various contexts, including the legal framework, existing political environment, culture and social conventions.

[109] . This theory is well discussed in the context of Asian countries in Carney, M, Gedajlovik, E and Yang, X.H., Varieties of Asian Capitalism: Toward an Institutional Theory of Asian Enterprise' [2009] 26 Asia Pacific *Journal of Management,* p 361.

British system, resulting in many laws based on British governance models. CAMA 1968 (Amended 2020) is based on the UK Companies Act of 1948, (amended 2016); the adoption of the NCCG and the most recent 2018 code is based on the UK Cadbury Code. It would be illusory to expect CG to operate efficiently in an institutional system that is concentrated and expect it to produce outcomes. Transplanting rules or governance models without considering institutional context is counter-productive. Hence, the ownership structure is influenced by protection of "minority shareholders from directors and controlling shareholders.[110]

Also, the nature of the institution, in this case the NNPCL which is a critical national asset, will be determined by the extent of the ownership concentration and how it will affect ownership and by extension CG. Therefore, adopting the Anglo-Saxon corporate governance system to an institution that is concentrated in ownership can be problematic to comply. This arises because various aspects of the institutional arrangement of the NNPC Ltd are at variance with CG. Therefore, the effectiveness of CG in increasing accountability, reducing opportunistic behaviour, improving firm performance and restoring investor confidence in the NNPCL will be problematic. This arises because the Anglo-Saxon model of CG is based on the relationship between the BOD and the shareholders.

It is important to recall that the BOD, being the agent, is appointed and responsible to the shareholders, who are the principal/owners of the firm. As pioneered by the 1932 seminal work of Berle and Means, the Anglo-Saxon model of shareholding typically involves dispersed ownership, resulting in ineffective shareholders monitoring of directors.[111] The theorists warned of the concentration of power brought about by the rise of large companies and a powerful class of directors.[112] Consequently, the results are agency costs arising from the directors managing the firm to their own advantage. However, the Berle and Means theory, arguably may not explain the corporate governance difficulties that will arise in the NNPCL. It is submitted that a protectionist system where the Ministry of Petroleum and Ministry of Finance is both regulator, policy maker and majority shareholder of the NNPC,[113] is at variance

[110]. Such legal protections are contained in CAMA. Section 138 (the rights and liabilities attached to shares) section 140 (Prohibition of non-voting and weighted shares); Section 241 (Notice of Meeting); Section 248 (Voting); Section 343 (Protection of Minorities). See also Lopez-de-Silanes, F., La Porta., R, Shleifer, A and Vishny, R. ', Investor Protection and Corporate Governance' [2000]58 (3) *Journal of Financial Economics.* For example, the authors suggest that countries in which shareholders have strong legal protection tend to be largely dispersed, conversely where shareholder protection is poor, companies are typically concentrated.

[111] . See Adolph. A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (1932);

[112] . Id.

[113] . See 53(3) PIA 2021.

with CG and can lead to loss of value creation. Consequently, it will not be astounding if the owners decide to advance politically motivated policy interests, as opposed to the maximisation of value. Therefore, at the heart of this controversy is the tension or conflict between the governments mandate to operate in the public interest and the desire to maximise the value of the firm.

8. Pathways to Sustainable Resource Governance

Under the section 53(1) of the PIA, the NNPCL is also established as a commercial entity, but with a limited liability status that enshrines legal separation of the entity from the government through incorporation under company law. Incorporation entails that an SOE is now a commercial entity and is subject to the same legal requirements of the private sector. For instance, in Norway, the government acknowledges that under incorporation, the State relinquishes its rights to directly influence the enterprise day-to-day operations.[114]

Consequently, the NNPCL now a State -owned Limited Liability Company is subject to the general provisions of CAMA. This can be heralded as a laudable initiative on the part of the FGN to make the entity operate autonomously without government interference in its operations. Notwithstanding, the presence of ownership and control residing in the government and the issues of double agency, without an ownership framework to reflect how the FGN will exercise its ownership is evidently lacking.[115] This arises because control over an entity is a tool that can be used to control the direction of the board or achieve state objectives through shareholdings. Also, where two-line ministries exercise sectoral regulation and ownership rights, it can influence the operations of the NNPCL and create uncertainties for other stakeholders.

Nigeria, as a nation rich in oil and gas resources yet grappling with the challenges of sustainable resource management, can draw profound insights from Norway's structured and strategic approach to governing its energy sector. Norway's success lies not only in its vast reserves but in its institutional frameworks, transparency, and commitment to long-term national development. By adapting Norway's principles to its unique socio-political context,

[114] . Storting White Paper (n 102).
[115]. Double agency arises where there are self-interested behaviours on the part of the managers and politicians. This differs from single agency where self-behaviour is carried out by the managers or controlling shareholders.

Nigeria could chart a transformative path toward harnessing its hydrocarbon wealth for enduring prosperity.

Central to Norway's model is the dual-category system for state-owned enterprises (SOEs), which Nigeria could emulate to streamline its own institutions. By restructuring entities like the NNPCL into distinct commercial and policy-driven arms, Nigeria could resolve conflicting mandates. Commercial entities, akin to Norway's Category 1, would focus on profit-driven activities such as refining and exploration, operating under market principles to maximize returns. Policy-driven entities (Category 2) could prioritize public objectives like expanding energy access to underserved regions or advancing environmental remediation. Such a separation would clarify roles, reduce inefficiencies, and align operations with national priorities. To oversee Category 1, Nigeria might establish a centralized Ownership Entity (OE) separate from the extant line ministries. This will require establishing an entirely independent new unit that is void of government influence, by vesting all ownership rights into the OE, with the possibility of divesting shares to the public in the long term. Hence, the OE will be tasked with strategic governance, performance monitoring, and ensuring accountability, mirroring Norway's Category 1. Further we recommend that the policy driven arm which will form the category 2 will remain under the Ministry of Petroleum Incorporated.

The OE should have budgetary autonomy and sufficiently funded to enable it recruit and renumerate competent staff to engender the required expertise. The OE should exercise full ownership rights and coordinate the portfolio of the NNPCL. Careful placement of the OE should be made to ensure autonomy of operations to avoid excessive intervention and influence from the government to ensure public assets are managed and developed to the highest standard. Above all, this should not constitute an obstacle to value creating ownership. It is imperative that the OE is made accountable through aggregate quarterly annual reports on its performance of the to the Accountant General of the Federation (AuGF). This would ensure accountability and transparency in the management of funds.

Transparency and fiscal discipline are pillars of Norway's model that Nigeria urgently needs to adopt. Norway's sovereign wealth fund, built on oil revenues, is a global benchmark for intergenerational equity. Nigeria's Sovereign Investment Authority (NSIA) could be fortified through legislation mandating a fixed percentage of oil income to be channeled into the fund, insulating budgets from volatile oil prices and ringfencing savings for infrastructure,

healthcare, and education. Crucially, public trust in these institutions hinges on transparency. Regular audits of SOEs and the NSIA, coupled with accessible public reports, would deter corruption and build civic confidence. Nigeria's fiscal framework also requires reform to mirror Norway's prudence. Enacting laws to cap annual oil revenue spending, for instance, limiting budget reliance on oil to a sustainable percentage would curb reckless expenditure during price booms and cushion the economy during busts. Policy consistency is equally vital. Norway's cross-party consensus on resource management ensures stability despite political shifts. Nigeria could institutionalize similar agreements to prevent disruptive policy reversals and foster long-term planning.

However, Nigeria must adapt these lessons to its realities. Phased reforms, such as piloting dual-category SOEs or incremental SWF contributions, would allow adjustments without destabilizing existing systems. Success also hinges on political will: leaders must champion these reforms, leveraging public support by demonstrating tangible benefits, such as infrastructure projects funded by the SWF. Challenges like bureaucratic inertia, weak judiciary systems, and demographic diversity require tailored solutions. Strengthening institutions, engaging communities in dialogue, and ensuring equitable resource distribution will be key. In essence, Norway's model is not a *one-size-fits-all* solution but a repository of principles structured governance, transparency, fiscal discipline, and social responsibility that Nigeria can reinterpret. By anchoring reforms in these values, Nigeria could convert its resource wealth from a curse into an engine of inclusive growth, ensuring that today's oil revenues become tomorrow's legacy of prosperity. Finally, investing in capacity-building programs for SOE personnel through linkages, partnerships and industrial clusters would cultivate expertise in governance, technology, sustainable practices and lead to resource based industralisation.

9. Conclusion

The NNPCL holds a pivotal role within the FG, making institutional governance, performance optimization, and operational efficiency critical priorities. Achieving these objectives has far-reaching implications not only strengthening the national economy but also fostering a competitive business environment that attracts private sector investment. Effective resource governance, therefore, becomes essential in ensuring NNPCL functions efficiently, enhancing its contribution to national socio-economic development and energy security.

Within this framework, the transformation from NNPC to NNPCL represents a

cornerstone of Nigeria's broader reform agenda. Recognizing the inherent complexities and challenges of such reforms, the implementation of robust governance mechanisms offers a pathway to transition the company from a historically loss-making entity into a profitable, commercially-driven organization. As such, this transformation is central to redefining NNPCL's role and performance within the energy sector. However, the path to sound governance is not without its challenges. Balancing socio-political obligations with commercial objectives presents significant complexity, particularly within the context of political oversight. As a petro-state, Nigeria depends on NNPCL to deliver both public policy and commercial outcomes and while this dual mandate is not inherently contradictory, it risks undermining commercial performance if not carefully managed.

Ultimately, Nigeria must forge a hybrid path. From Norway, it can adopt transparency mechanisms, sovereign wealth safeguards, and a clear and not blurred division between commercial and regulatory roles. From Malaysia, it might borrow operational efficiency but must rigorously avoid conflating profit-seeking with public oversight. This synthesis requires parallel institution-building: strengthening anti-corruption agencies, empowering civil society watchdogs, and investing in grassroots governance. By anchoring reforms in local realities prioritizing accountability, inclusivity, and adaptive learning, Nigeria can pivot toward a future where oil wealth becomes a foundation for equitable growth, rather than a relic of wasted potential.

Finally, the Norway-Malaysia comparison, therefore, is not about choosing a model but understanding principles. Nigeria's journey hinges on recognizing that resource governance is as much about institutions and values as it is about technical policies. By learning from global successes and failures alike, Nigeria can craft a system that turns its oil into a legacy, one that heals divides, fuels prosperity, and endures for generations.