The ‘Norwegian model’ is superficially attractive as a means for developing states to organise policy, regulatory and commercial function in relation to their hydrocarbon sectors, but they need to consider carefully whether it is best suited to their specific circumstances.

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‘Norway seems to have avoided the “resource curse” that has dragged down the economies of many nations with big hydrocarbon reserves’. 1  

Although the so called ‘Norwegian Model’ has been considered ‘something of a sine qua non of effective oil sector governance’;3 and at times described as the best practice;4 it may not prove a successful approach for every developing oil sector. This argument is premised on the assumption that the peculiar historical, institutional and political context of some developing countries may render the model ineffective. The essay will analyse the Nigerian situation, making mention of other countries only as necessary to emphasize the point.  

It is noted that whilst there is abundant literature on the subject from political scientists’ and economists, the regulatory dilemma has not received that much attention by way of commentaries. This essay will build upon those foundations however to examine why the model may be ineffective in some circumstances.

**How does the model work?**

It is the administration of petroleum resources using separated government bodies, each having a distinct role.5 For example Norway’s three bodies,6 the National oil company (NOC)7 handling the commercial hydrocarbon operations;8 The Ministry of Petroleum directing policy issues (The ministry);9 and the regulator10 offering oversight and technical expertise.11

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2 The model
5 Thurber (n 3) 2.
6 ibid.
7 Statoil.
8 Thurber (n 3) 2.
9 ibid.
10 The Norwegian Petroleum Directorate (NPD).
11 Thurber (n 3) 2.
It is argued that the model enables NOCs to concentrate on commercial activities, thus increasing financial prudence and returns.\textsuperscript{12} That it leads to specialisation by the separate bodies and eliminate conflicts of interest in NOCs.\textsuperscript{13} Also the Model as used in Norway successfully combined the operation of NOC and regulation of International Oil Companies (IOC’s)\textsuperscript{14} creating the platform for an efficient NOC which is now a leading international competitor.\textsuperscript{15} It also cures the problem of NOC engaging in unfair practices with competitors using a privileged position (as commercial actor and regulator).\textsuperscript{16}

**Why the Model may have been effective in Norway**

Al-Kasim\textsuperscript{17} opines that Norway’s success ‘must be seen in the context of a unique starting position’,\textsuperscript{18} that is:

- a. Well developed system of Governance;
- b. Highly efficient civil service system;
- c. Well-established judicial system;
- d. Strong traditions in international law and human rights;
- e. Traditions for state participation in industrial development;
- f. Rich hydropower resources – less dependence on oil;
- g. Strong position in the Western world;
- h. Proximity to the European Gas Market;
- i. Broad and well-developed education system;
- j. Maritime traditions;
- k. Advanced technological environment; and
- l. Well-developed scientific and industrial research institutions\textsuperscript{19}

Thus ‘Norway had the advantage of entering its oil era with a mature, open democracy as well as bureaucratic institutions with experience regulating other natural resource industries (hydropower generation, fishing, and mining, for example).\textsuperscript{20} Although it is noted that Norway is also not perfect in practice in terms of full separation of functions.\textsuperscript{21}

\textsuperscript{12} NRC, precept 6.
\textsuperscript{13} NRC, precept 6.
\textsuperscript{14} Richard Gordon and Thomas Stenvoll, Statoil; A study of political entrepreneurship (Rice University 2007) 9.
\textsuperscript{15} ibid.
\textsuperscript{16} Thurber (n 3) 3.
\textsuperscript{17} Credited as the brain behind the model; see Martin Sandbu, ‘The Iraqi who saved Norway from oil’ Financial Times (29 August 2009) <http://www.ft.com/cms/s/0/99680a04-92a0-11de-b63b-00144feabd0.html#axzz2IHuRp9U> accessed 21 November 2013.
\textsuperscript{19} ibid.
\textsuperscript{21} ibid.
Following this argument, Teubner’s regulatory ‘trilema’\textsuperscript{22} can be a good base to ask the questions, how ‘effective’, ‘responsive’ and ‘coherent’ has the model or similar approaches been in developing countries? Considering that these countries may not have the ‘advantages’ of Norway’s starting position. Does regulation need to be made having regard to the historic, political and social circumstances of the society for which it is made? The remaining part of this essay will address this.

\textit{Has the model been successful in all cases?}

The model has not been effective in all cases. Nigeria for example started its oil sector management using ‘formally’ separate institutions similar to the model before its implementation in Norway.\textsuperscript{23} However after many years, its performance has been accessed as ‘fair/poor’.\textsuperscript{24} Following the ineffectiveness of the model in Nigeria in the 1970’s the NOC and regulator was merged into the NNPC\textsuperscript{25} in 1977.\textsuperscript{26} The system has been changed back and forth in search of an effective formula.\textsuperscript{27} At the time of this essay, the Petroleum Industry Bill (PIB) which seeks to achieve a commercially viable NOC and entrench a separation of functions (again)\textsuperscript{28} is pending before the parliament.

A study of 5 countries\textsuperscript{29} which have used the model or similar one shows that only Norway and Brazil were the strong performers.\textsuperscript{30} Whereas other developing countries like Angola and Malaysia are considered to have performed well without using the separation model.\textsuperscript{31} The model may therefore not be the answer to every ailing oil sector.\textsuperscript{32}

\textit{Why has the model failed and continue fail in some cases?}

A resource-rich country may copy or adapt laws and governance strategies that work elsewhere and still remain poor because the capabilities required for indigenization of innovations and knowledge either do not exist or are inadequate.\textsuperscript{33}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{22}Christine Parker and John Braithwaite, Regulation (OUP 2005) 127-129 (Parker).
\item \textsuperscript{23}Thurber (n 3) 7.
\item \textsuperscript{24}ibid.
\item \textsuperscript{25}Nigeria National Petroleum Corporation.
\item \textsuperscript{26}Thurber (n 3) 7.
\item \textsuperscript{27}ibid.
\item \textsuperscript{28}ibid.
\item \textsuperscript{29}Norway, Nigeria, Mexico Algeria and Brazil.
\item \textsuperscript{30}Thurber (n 3) 9.
\item \textsuperscript{31}ibid.
\item \textsuperscript{33}Uwem Essia, ‘Oil Revenue and Development Performance in Nigeria: Cursed By Resources, Institutions or Capabilities? (2012)6(2) BJEFMS 65 (Essia).
\end{enumerate}
\end{footnotesize}
Reasons have been advanced for the model’s ineffectiveness in some developing countries. In Nigeria for instance individual actors have been said to subdue the ‘separationist’ idea by subduing decisions of the NOC and the regulator. Another author contends that the system is built on a rent seeking ‘predatory state’ coupled with other social factors like corruption, religious and ethnic violence that unsettles the state and its institutions.

It has been argued therefore that Nigeria lacks the institutional capacity to effectively adopt the model. The importance of institutional capacity for the effectiveness of regulation can be seen in the case of Brazil which did not separate the functions of the different actors in its energy sector when it established its NOC. Rather allowing it to perform both regulatory and commercial functions until it perceived it had the institutional capacity to separate functions.

Again, government instability can make regulations ineffective as it will either not be maintained by succeeding administrations or changed altogether by another. Another commentator termed this problem as ‘strong president, weak institutions and Sisyphean cycles of reform.’ Norway had a constitutional Monarchy since 1814 and a parliamentary system since 1884, that is parliamentary democracy long before the oil discovery in 1969. Norway gained independence in 1960 and experienced civilian government from 1960-1966; military rule from 1966-1979; civilian government again from 1979-1983 and back to military rule from 1983-1999. For Nigeria therefore the oil find in 1970 was under military rule and have endured several regime types and at best a fragile democracy. Not counting out the Nigeria civil war between 1967 and 1970. In the circumstance, it can be said

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34 Thurber (n 3) 7.
35 Essia (n 33) 65.
36 ibid.
38 Thurber (n 3) 10.
39 ibid.
40 Roger R Betancourt, ‘Oil and Democracy in Cuba; Going towards Nigeria or Norway? (presented at the XXII Annual meeting of the Association for the study of Cuban Economy, Miami 2-4 August 2012) 8 (Roger).
41 ibid.
42 ibid.
43 ibid.
44 ibid.
45 ibid.
46 ibid, excluding the interim Government of Ernest Shenokan August to November 1993.
47 ibid.
that Al-Kazim’s starting point was almost totally lacking in Nigeria and one may have been able to predict that it was not workable in that case.

Also Norway’s long history of civil struggles is supported by demanding electorates; in Nigeria, the electorate have not been effective historically. The law also gives a lot of protection to political office holders as state governors and the president enjoy absolute immunity from prosecution while in office with very difficult conditions for their impeachment.

Corruption and political control is another factor. Indeed from 1999 to 2007 the then president Olusegun Obasanjo was also the ‘Minister’ of Petroleum. The minister has the power under Nigeria law to issue licenses without well-regulated award procedures creating opportunities for corruption.

Furthermore, lack of effective checks and balances in Nigeria’s ‘democracy’ weakens the institutional capacity for using the model. Legislators who ought to ensure regulations and checkmate executive excesses are mostly busy with constituency goals over national development; one commentator states:

Aside that the bi-cameral legislature Nigeria operates is quite expensive, the empirical literature supports the view that legislators in majoritarian systems (like Nigeria’s) tend to push for geographical spread of projects instead of strategic national interest.

On management of oil wealth, Essia contends that Norwegians view oil as mere endowments, and the sinking fund accumulated from petroleum exports proceeds is treated as the wealth. The sinking fund is a Pension Fund created in 1990 on which Norway can fall should oil finish. A percentage of the interests from investing the Fund are withdrawn to specifically support social welfare and human development programmes. Whereas non-oil revenues are

48 (n 18).
49 Essia (n 33) 74.
51 ibid Ss 143 and 188;Essia (n 33).
53 ibid.
54 Assuming it is representative leadership, which arguably it is not in the Nigerian experience.
55 Essia (n 33) 75.
56 Ibid, 76.
57 ibid.
58 ibid.
spent on other activities and sectors;\textsuperscript{59} taking the pressure off the oil sector. The total value of the Fund was about 400 billion USD in 2005 and withdrawals from the Fund are based on strict guidelines referred to as the ‘decision rule’.\textsuperscript{60}

On the other hand Nigeria is a low income oil dependent country.\textsuperscript{61} One commentator contends that:

Nigeria is still tinkering with the idea of a Sovereign Wealth Fund,\textsuperscript{62} but there is the Excess Crude Account (ECA) where oil export earnings in excess of the budget benchmark are deposited, and there are no strict guidelines for withdrawals from the ECA.\textsuperscript{63}

From the foregoing, it can be argued that the political environment and institutional framework needed for the success of the model is not in place in Nigeria; so much that it has been counterproductive when adopted.\textsuperscript{64}

\textit{The way forward}

Suffice to say that beyond suggestions in this essay, oil sector reformers in developing countries need study and arrive at ‘context-specific’ guidance on what will work.\textsuperscript{65} It is suggested that such consideration should begin with a team of legal, political and economic analysts and scholars who can study and proffer solution in context of the country.\textsuperscript{66} The process must also seek long standing solutions and not quick fixes as real positive change may require more incremental change over a long period of time.\textsuperscript{67}

For the model or any other approach to be effective, responsive and coherent in Nigeria, a host of legislation concerning all the issues raised in this essay has to be revisited. Thus, attention has to be paid to legal issues including:

1. Laws on accountability of public servants has to be revisited in the light of the trends examined in this essay; more so that a body of rules may be ‘good’ on paper but may

\textsuperscript{59} ibid.
\textsuperscript{60} ibid.
\textsuperscript{62} Equivalent of the Norwegian ‘sinking fund’.
\textsuperscript{63} Essia (n 33) 76.
\textsuperscript{64} ibid.
\textsuperscript{65} ibid.
\textsuperscript{66} See Al-Kasim, Managing Petroleum Resources’ (OIES 2006) for more discussion on how Norway used committees to lay the foundation for framing an effective model.
\textsuperscript{67} Thurber 2010B (n 37) 41.

WORD COUNT: 2,182 words including footnotes.
not be effective in the light of existing social norms. For the same reason, the issues regarding prosecution of offenders and enforcement of the existing criminal laws in Nigeria especially financial and economic crimes have to be revisited.

2. Repeal of immunity clauses in the constitution or create exceptions as far as issue of management of public funds is concerned. Maybe ‘deterring regulations’ may protect regulation aimed for the benefit of society.

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68 Parker (n 22) 128.
69 The HOR in July 2013 voted against the ‘immunity provision, the senate is yet to vote on it.