

AN APPRAISAL OF THE LEGAL FRAMEWORK FOR PETROLEUM PRICING AND DEREGULATION OF THE DOWNSTREAM SECTOR

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Abstract

The Nigerian downstream petroleum sector is a critical component of the nation's economy, yet it grapples with inefficiencies; fuel scarcity, corruption, and management lapses. The paper examined the Legal Framework for Petroleum Pricing and Deregulation of the Downstream Sector. The authors explored the need for total deregulation of the downstream sector of the Nigerian petroleum industry to address inefficiencies in the sector to promote an adequate supply of petroleum products through regulatory reforms and by making reference to the experiences of other relatively advanced jurisdictions to strengthen Nigeria's downstream petroleum sector's laws. The authors analysed the concept of deregulation and the potential a well-planned and deregulation policy has in influencing the desired goals of product availability and minimal pump prices. The authors further highlighted the important role of leadership in the deregulation of the downstream sector of the Nigerian petroleum industry, arguing that the government establish measures to curb corruption and collusion which might disparage on the successful deregulation of the downstream sector. The authors also investigate the necessity for deregulation of the downstream petroleum sector to tackle shortfalls and to enhance quantities of petroleum commodities in Nigeria. The authors recommend the establishment of an independent body tasked with monitoring the implementation of anti-corruption policies within the petroleum sector and the absolute deregulation of the industry to foster private investments.

Keywords: *Deregulation, Legal Frame Work, Nigerian Midstream & Downstream Petroleum Regulatory Authority, Petroleum Pricing*

1. Introduction

The Constitution of the Federal Republic of Nigeria vests ownership and control of all minerals, mineral oils, and natural gas in, under, or upon any land in Nigeria solely in the government of the Federation, to the effect that the federal government has exclusive jurisdiction over the exploration, production, and regulation of oil and gas resources in the country.¹

The battle of deregulation of prices of petroleum in Nigeria has been raging since the 1980s, especially when the structural adjustment programme began in July 1986 to cushion some reform measures. Ever since, successive Nigerian governments have engaged in unprecedented increment in the price of petroleum products. This gesture has always irked the Nigerian citizenry, especially the masses who often stage violent protests and demonstrations as a result of these increments. However, by 1995 the prices began to experience a quantum leap as PMS was sold for N 11.00, diesel sold at 9.00 and kerosene

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) S.44 (3).

6.00. These irregularities in the price of petroleum product kept on which lead to the point where president Obasanjo in his fervent desire and resolute determination to increase the prices of petroleum product or rather to end subsidies on domestic fuel consumption, set up 34-member special committee on the deregulation of petroleum products, supply and distribution, on 1st January 2002 called the Petroleum product pricing and regulatory committee (PPPRC) which finally effected an increase in the fuel pump price of petroleum products². Nigeria is blessed with vast mineral resources, Nigeria joined the OPEC (Organization of Petroleum Exporting Countries) in 1971, becoming the 11th country to join the organization following its founding in September 1960. Nigeria is the most populous country within the OPEC, but in terms of daily oil production, it is ranked sixth within the organization. In terms of oil reserves, Nigeria's OPEC ranking is eighth.³. The petroleum industry has generated billions of dollars in revenue over the past 51 years since oil was discovered in Nigeria, however, this has not translated into an improved economic growth. In the bid to solve such problems characterizing the petroleum industry in many countries, structural reforms of the petroleum sector have become a necessity, hence the recourse to deregulation. Deregulation essentially implies that the role of government in the sector is being redefined, and markets are being deregulated, meaning that state interventions such as special treatment of state-owned oil companies, price controls and monopolies are being broken up. Deregulation policies have been embraced globally by several countries in order to lessen public sector dominance for developing a liberalized market while ensuring adequate supply of products. Such is the story in Peru, Argentina, Pakistan, Philippines, Thailand, Mexico, Canada, Venezuela and USA, all of which have systematically dismantled their state-owned oil companies through deregulation. Deregulation of the downstream sector of the Nigerian petroleum industry, as conceived in 2003, involved the removal of government control on petroleum products prices and the removal of restrictions on the establishment and operations including refining jetties and depots, while allowing private sector players to be engaged in the importation and exportation of petroleum products and allowing market forces to prevail. The Downstream petroleum sector operations cover: crude oil conversion into refined and petrochemical products and finer chemicals; and gas treatment; as well as transportation and marketing of the petroleum products. In furtherance of the deregulation of the downstream sector, the government under the leadership of President Olusegun Obasanjo established the Petroleum Products Pricing and Regulatory Agency (PPPRA) to superintend the deregulation process as part of the recommendations of the Special Committee on the Review of Petroleum Products Supply and Distribution (SCRPPSD) that was set up in 2001 to look into the problems of the downstream sector of the Nigerian petroleum industry.

Deregulation therefore on the other hand can be seen as consisting of a shift to a competitive economic climate by re-orientating or suppressing regulatory mechanism. It entails the following elements; privatization, removal of price control, to a large extent elimination of barrier to participation in all aspects of production, supply and distribution of goods and service by private business. It is believed that a regulated market can lead to shortage in supply which will give rise to hoarding and existence of

² Mohammed A. *An Appraisal of the Deregulation of Petroleum Products Prices and Its Impact on the Nigerian Economy*. 2001.

³ Statista, <https://www.statista.com/statistics/265195/oil-production-in-nigeria-in-barrels-per-day>. accessed 25th January, 2025.

black market in the economy⁴. Deregulation can also be defined as the process of freeing government of its concurrent control and involvement in the business of refining, importation and distribution of refined petroleum products in Nigeria market⁵.

In this article, deregulation will be taken to refer to the reduction or removal of government control, rules and regulations that restrain free operational activities in the downstream oil sector, as such, Petroleum product pricing legislation and the issues of deregulation of the downstream sector will be critically examined.

The Nigerian oil industry is divided into three sectors: the Upstream petroleum sector which comprises of exploration, production, the Midstream and Downstream petroleum sector which deals with refining of crude oil and natural gas for domestic consumption, marketing, and transportation by pipeline, rail, barge, oil tanker or truck, storage, and wholesale marketing of crude or refined petroleum products. Pipelines and other transport systems can be used to move crude oil from production sites to refineries and deliver the various refined products to downstream distributors.⁶ The article focuses on the downstream petroleum industry which has great impact on the lives of all Nigerians. Moreover, deregulation is the opening up of the oil market and the de-monopolisation of the state-owned oil companies which has proved to be inefficient for positive economic turnaround and stability in the sector. It is also a process of freeing the Federal Government of Nigeria of its concurrent control and involvement in the downstream oil market by relaxing the various regulations governing the sector for a free energy market where oil prices are determined by interplay of the forces of supply and demand in the Nigeria's energy market.⁷

2. Conceptual Review

Deregulation

The term deregulation refers to the reduction or elimination of government power in a particular industry⁸. Deregulation is usually enacted by government bodies to create more competition within an industry. The struggle between proponents of regulation and those of government non-intervention has shifted market conditions. Some of the industries that have been deregulated in the United States include trucking, railroad, airline, and finance. According to Oluleye, deregulation is a tool for reducing government intervention in economic activities and providing the relevant structure of incentives that would put the economy on the path of recovery and growth. Sobowole, asserts that deregulation of the downstream sector will promote efficiency in the sector by ensuring petroleum products availability

⁴ T. Bankole, "Nigeria and Perennial Fuel Scarcity" (2001), The Tribune, p.14.

⁵ S. Umoru, "Deregulation: Not Yet Time" (2001) The Vanguard, p. 18.

⁶ Pin Petrochemical Chemical & Energy, 'https://www.petro-online.com/news/fuel-for-thought/13/breaking-news/upstream-midstream-and-downstream-ndash-understanding-the-three-petroleum-markets/32165' accessed on the 10th of June 2024

⁷ Olujobi, Olusola Joshua, Olujobi, Oluwatosin Michael and Daniel E. Ufua, Olujobi, Olusola Joshua, Olujobi, Oluwatosin Michael and Daniel E. Ufua, 'A critical Appraisal of legal Framework on Deregulation of the Downstream Sector of the Nigerian Petroleum Industry' <https://repository.elizadeuniversity.edu.ng/items/9d7ccc49-0233-40d7-bc6e-2a2c1a1fbcc2> accessed 26th January 2025

⁸ W Kenton, 'Deregulation: Definition, History, Effects, and Purpose' <https://www.investopedia.com/terms/d/deregulate> accessed 25th of January 2025

and healthy competition among downstream petroleum investors thereby eliminating the Nigerian National Petroleum Company's monopoly in the sector.⁹

Petroleum

Petroleum literally means 'Rock oil' it derives from Greek and Latin words *petra* and *leum*. Petra stands for rock or stone while oleum is petroleum. The term was first used by the German mineralogist, who described its recovery and refining in 1556. Petroleum is used as a general term for oil and are thus used interchangeably. According to Longman¹⁰, petroleum is used to make petrol, paraffin and various chemical substances. Oxford dictionary defines¹¹ petroleum as a mineral oil that forms under the ground or the sea and is extracted through holes bored beneath it.

Pricing

Price can be described as the value assigned to the utility one receives from a product or service. Usually, price is the amount of money that is given up to acquire a given quantity of goods and services. Pricing also refers to the process a business uses to determine the monetary value at which it will sell its products or services, it is a crucial part of any business plan, and factors like production costs, competitor pricing, and customer perception of value all influence the final price. Some key aspects of pricing are:

Setting the value: Pricing isn't just about how much something costs to make, it's also about the perceived value the customer places on it. The same principles of pricing apply to the petroleum sector, but with some unique considerations due to the complex nature of the industry. Setting the Value: While the cost of extraction, refining, and distribution are all factored in, the perceived value of oil and gas is heavily influenced by global supply and demand. This means factors like economic growth and geopolitical tensions can significantly impact pricing.

Upstream

Upstream is a term for the operations stages in the oil and gas industry that involve exploration and production. Oil and gas companies can generally be divided into three segments: upstream, midstream, and downstream. Upstream firms deal primarily with the exploration and initial production stages of the oil and gas industry.¹² Upstream refers to points in production that originate early on in the processes. Also called exploration and production (E&P), upstream is farthest from the end-user consumer in the oil & gas supply chain. Upstream activities include exploration, drilling, and extraction. Upstream is followed by midstream (transportation of crude oil) and downstream (refining and distribution) phases.

⁹ O. J. Olujobi. Deregulation of the downstream petroleum industry: An overview of the legal quandaries and proposal for improvement in Nigeria < <https://pmc.ncbi.nlm.nih.gov/articles/PMC8095105/> > accessed 25th January, 2025

¹⁰ Longman Dictionary of Contemporary English (Longman, 1995) 3rd edn.

¹¹ Hornby A.S Oxford Advanced Learner Dictionary, 6th edn. (Oxford: Oxford University Press, 1995)

¹² Oil and Gas Industry < <https://guides.loc.gov/oil-and-gas-industry/companies> > accessed on the 8th June 2024

Downstream

The Downstream sector refers to the refining of petroleum crude oil, the processing, marketing and distribution of products obtained. According to Kur,¹³ downstream include refining, subsequent conversion to petrochemical products, transportation, marketing and supply of the finished products. Many products are derived from the refining of crude oil and these may include diesel oil, liquefied petroleum gas (LPG, asphalt, petroleum coke, gasoline, fertilizers, antifreeze, plastics, rubbers, pesticides, synthetic rubber, jet fuel) and many more. The downstream sector of the industry is the sector that relates with the consumers, yet it appears to be the most problematic among the sectors because of incessant crises.¹⁴ Facilities involved in this sector include petrol-chemical plants, oil refineries, natural gas distribution companies, retail outlets and so many.

3. The Petroleum Industry and the Nigerian Economy

The Nigerian petroleum industry has been described as the largest among all industries in the country. This is probably due to the belief that petroleum is one of the major sources of energy worldwide. The size, international characteristic, and role assumed by the petroleum industry were noted to have originated from the notion that petroleum is versatile as it currently satisfies a wide variety of energy and related needs.

Petroleum is the most vital source of energy, providing over 50 percent of all commercial energy consumption in the world. The revenue obtained from crude oil in Nigeria are of absolute advantage to expenditure commitments on various projects at the local, state, and federal levels. The Nigerian economy relies heavily on the revenue derived from petroleum products, as they provide 70 percent of government revenue and about 95 percent of foreign exchange earnings.¹⁵ Apart from this, the contributions of petroleum to national development are numerous and varied; employment generation, foreign exchange earnings, income generation, industrialization, and improvements in other economic variables. While the major investors in the petroleum industry are the international oil companies (IOCs), the principal legislation governing petroleum operations in Nigeria is the Petroleum Profit Tax Act (PPTA) of 2007. Its main fiscal instrument is the Petroleum Profit Tax (PPT). Under the PPT, the tax rate was set at 67.5 percent for the first five years of operations by the oil company and 85 percent thereafter¹⁶.

Oil production by the joint venture (JV) companies accounts for about 95 % of Nigeria's crude oil production. Shell, which operates the largest joint venture in Nigeria, with 55 % Government interest (through the Nigerian National Petroleum Company Limited, NNPC), produces about 50 % of Nigeria's crude oil. Exxon Mobil, Chevron Texaco, ENI/Agip and Total Fina Elf operate the other JV's, in which the NNPC has 60 % stake. The over-dependence on oil has created vulnerability to the vagaries

¹³ Kur, J.J. (2014). Consumer Protection and Deregulation Policy in the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. Benue State University Law Journal, Vol.5, No.1, pp.25-50.

¹⁴ B.S. Sabiu, and R. Kouhy, Effect of the Deregulation of Downstream Oil Sector on the Gross Domestic Product (GDP) and Employment in Nigeria [2014], *The Macrotrends Review: A Multidisciplinary Journal of Global Macro Trends*, Vol. 3(3), 117-134.

¹⁵ Statista, <<https://www.statista.com>>accessed 5th January 2025

¹⁶ Dickie, R.K., "Development of Crude Oil Production in Nigeria, and the Federal Government Control measures" (paper presented to the Institute of Petroleum, London, 1966).

of the international market, as observed in the preceding section that show the contribution of oil to some macro-economic variables¹⁷.

In particular, the place of oil in the mind of the average Nigerian has become more profound since the deregulation of the downstream sector of the Nigerian oil industry in 2003. The contradiction is more glaring now with the recent rise in crude oil prices at the global markets, which meant more external earnings for Nigeria, but also increased the expense burden on imported refined petroleum products. It is such contradictions that make the Nigerian economy appear strange at times, as policies seem to ignore what appears obvious to do. As such, policies designed to address the deficiencies and defects in the structure end up being poorly articulated and/or implemented because of regional, political or rent-seeking selfish interests.

Obviously, it is the same rent-seekers that continually sabotage the reinvigoration of the domestic refineries, making Nigeria to depend on importation of refined products to meet the domestic need. At present, Nigeria has four refineries, with a combined installed refining capacity of 445,000 barrels per day (bpd). These four refineries are:

1. The first Port Harcourt Refinery was commissioned in 1965 with an installed capacity of 35,000 bpd and later expanded to 60,000 bpd¹⁸.
2. The Warri Refinery was commissioned in 1978 with an installed refining capacity 100,000 bpd, and upgraded to 125,000 bpd in 1986¹⁹.
3. The Kaduna Refinery was commissioned in 1980 with an installed refining capacity of 100,000 bpd, and upgraded to 110,000 bpd in 1986²⁰.
4. The second Port Harcourt Refinery was commissioned in 1989 with 150,000 bpd processing capacity, and designed to fulfil the dual role of supplying the domestic market and exporting its surplus²¹.

The combined capacities of these refineries exceed the domestic consumption of refined products, chief of which is premium motor spirit (gasoline), whose demand is estimated at 33 million litres daily²². The refineries are however, operating far below their installed capacities, as they were more or less abandoned during the military era, skipping the routine and mandatory turnaround maintenance that made products importation inevitable. Importation notwithstanding, there have been persistent product shortages that gave strength to the argument for deregulation of the downstream oil subsector in Nigeria²³.

¹⁷ Dickie, (n 16)

¹⁸ Gbadebo O. 'Crude Oil and the Nigerian Economic Performance', [2007] *Journal of Economics and Developmental Studies*, Vol 7. p. 154

¹⁹ Gbadebo (n 18).

²⁰ *Ibid.*

²¹ *Ibid*

²² S. A Madujibeya, "Oil and Nigeria's Economic Development", [1976] *African Affairs*, Vol. 75, No. 300, pp. 284-316.

²³ *Ibid*

The greatest challenge is when Nigeria generates more revenue from crude oil sales than it budgeted, as such excesses have always been monetized, creating market distortions and inflationary pressure²⁴.

4. Petroleum Pricing in Nigeria: Challenges and Prospects

a. Global Oil Price Volatility:

International crude oil prices, influenced by factors like geopolitical events, economic growth, and OPEC policies, directly impact the cost of importing refined petroleum products.²⁵ Also fluctuations in global oil prices can lead to price volatility at the pump. Prices in spot markets send a clear signal about the balance of supply and demand. Rising prices indicate that additional supply is needed, and falling prices indicate there is too much supply for current demand. Futures markets also provide information about the physical supply and demand balance as well as the market's expectations.²⁶

b. Domestic Refineries and Import Dependency:

Nigeria's domestic refining capacity has been historically inadequate, necessitating significant imports of refined petroleum products.²⁷ This reliance on imports makes the country vulnerable to global price shocks and supply disruptions.

c. Exchange Rate Fluctuations:

The naira's exchange rate against the US dollar can impact the cost of importing refined petroleum products.²⁸ A weaker naira can lead to higher fuel prices.²⁹

d. Recent Trends and Challenges

In recent years, Nigeria has moved towards a more market-based pricing mechanism, reducing the role of subsidies. However, this transition has been accompanied by significant challenges, including: High Fuel Prices: Consumers have faced substantial increases in fuel prices, leading to higher transportation costs and inflationary pressures.³⁰ Social and Economic Disruptions: Rising fuel prices can exacerbate poverty, unemployment, and social unrest.³¹

²⁴ A. Biodun 'The Impact of Oil on Nigerian Economic Policy Formulation' [2004] paper presentation on Nigeria: minimizing the pro-poor growth: regenerating the socio-economic database. p.2

²⁵ ORF POLICY BRIEF, 'The Impact of High Crude Oil Prices and Challenges in Pricing of Petroleum Products' <https://www.orfonline.org/public/uploads/posts/pdf/20230724125907.pdf/> accessed 11 November 2024

²⁶ 'Eia, Oil and petroleum products explained Oil prices and outlook' <https://www.eia.gov/energyexplained/oil-and-petroleum-products/prices-and-outlook.php> accessed 12 November 2024

²⁷ O. Iheukwumere and others 'Investigating the challenges of refinery construction in Nigeria: A snapshot across two-time frames over the past 55 years'

https://www.researchgate.net/publication/343547511_Investigating_the_challenges_of_refinery_construction_in_Nigeria_A_snapshot_across_two-time_frames_over_the_past_55_years accessed 12 November 2024

²⁸ Augusto&co, 'Petrol Pricing Paradigm: The Naira Transition in Focus' <https://www.agusto.com/publications/petrol-pricing-paradigm-the-naira-transition-in-focus> accessed 12 November 2024

²⁹ M. Ogi-Olu 'PENGASSAN: Naira Devaluation Core Component of Spiralling Fuel Prices, FG Should Take Action' <https://www.arise.tv/pengassan-naira-devaluation-core-component-of-spiralling-fuel-prices-fg-should-take-action>

³⁰ United Nations General Assembly' Nigeria ends oil subsidy to invest savings in infrastructure development' <https://www.un.org/africarenewal/magazine/august-2023/nigeria-ends-oil-subsidy-invest-savings-infrastructure-development> accessed 12 November 2024

³¹ FEWS NET'High fuel prices, flooding, and conflict drive widespread Crisis (IPC Phase 3) outcomes, <https://reliefweb.int/report/nigeria-key-message-update-high-fuel-prices-flooding-and-conflict-drive-widespread-crisis-ipc-phase-3-outcomes-september-2024>

4.1 Prospects of Petroleum Pricing in Nigeria

To address these challenges and ensure a sustainable petroleum pricing regime, Nigeria may consider the following strategies:

1. Investment in Domestic Refining Capacity: Increasing domestic refining capacity can reduce reliance on imports and stabilize fuel prices.³²
2. Targeted Social Safety Nets: Implementing targeted social safety nets can help mitigate the impact of higher fuel prices on vulnerable populations.³³
3. Transparent and Accountable Governance: Ensuring transparency and accountability in the petroleum sector can help to reduce corruption and improve efficiency.³⁴

4.2 Evaluation of the Downstream Petroleum Deregulation

This evaluation focuses on the downstream sector and issues relating to its deregulation. Hence, the term “evaluation” means to examine or judge something, to consider something in order to judge its values, quality, importance or condition³⁵. Deregulation entails the following elements; privatization, removal of price control, to a large extent elimination of barriers to participation in all aspects of production, supply and distribution of petroleum product.³⁶

Nigerian downstream sector is managed by the government through the Nigerian National Petroleum Company Limited (NNPCL) which was given the obligations in refining, petrochemicals and product transportation as well as marketing. The supply of petroleum products and management of pipeline outlets is done by the Petroleum Products and Marketing Company, (PPMC). The bulk customers otherwise known as dealers supply the products to millions of customers throughout the country. These products include Petroleum Motor Spirit (PMS), Gasoline Automatic (AGO), Household Kerosene (HHK) Fuel Jet and Liquefied Gas (LPG)³⁷.

In the 1990s, due to the increase in demand for oil products, which outweighed its supply, it became necessary for Nigerian National Petroleum Corporation (NNPC) as it then was, to import heavily from abroad to meet the escalating demand, and as a result, the revenue generated from crude oil export had to be used to import refined products into the country³⁸. As at 2011, Nigeria imports 85% of refined petroleum products.³⁹ This has exposed the country to difficulties in funding subsidies on refined

³² O. Agbakoba and C Okeke, ‘Refining Nigeria’s Oil Sector: Legal Reforms and the Path to Increased Domestic Production’ <<https://oal.law/refining-nigerias-oil-sector-legal-reforms-and-the-path-to-domestic-production>> accessed 12 November 2024

³³ K. Pedabo, ‘Assessing the Implication of Fuel Subsidy Removal in Nigeria: Economic, Social and Political Considerations’ <<https://krestonpedabo.com/assessing-the-implication-of-fuel-subsidy-removal-in-nigeria-economic-social-and-political-considerations>> accessed 12 November 2024

³⁴ O.J Olujobi, ‘Nigeria’s upstream petroleum industry anti-corruption legal framework: the necessity for overhauling and enrichment’ <<https://www.emerald.com/insight/content/doi/10.1108/jmlc-10-2020-0119/full/html>> accessed on 12th November 2024

³⁵ Oxford Advanced Learners Dictionary, 2005

³⁶ T. Bankole, “Nigeria and Perennial Fuel Scarcity” *The Tribune*, (2001) Tuesday March 21, p.14.

³⁷ T. Bankole, “Nigeria and Perennial Fuel Scarcity” *The Tribune*, (2001) Tuesday March 21, p.14.

³⁸ *Ibid*

³⁹ *Ibid*

petroleum products, the country had to borrow from international financial institutions to maintain this subsidy and also spent more to service the debts. Consequently, the country entered a difficult situation where meeting the major budget needs of the government became difficult, considering the fact that international oil prices were increasing and the real refined production in the country was dropping, the government decided that it could no longer afford the continued subsidies in the pump price of petrol because it was purchasing refined products at huge international price only to sell at a heavily subsidized rate⁴⁰.

4.3 Objectives of Privatization and Commercialization Programme of Nigeria

The objective of the privatization and commercialization programme in Nigeria stated out as follows⁴¹:

1. To send a clear message to the local and international community that a new transparent Nigeria is now open for business
2. To restructure and nationalize the public sector in order to substantially reduce the dominance of unproductive government investment in the sector
3. To change the orientation of all public enterprises engaged in economic activities towards a new horizon of performance improvement, viability and overall efficiency
4. To raise funds for financing socially-oriented programme like poverty eradication, health, education and infrastructure improvement
5. To ensure positive returns on public sector investments in commercialized enterprises, through more efficient private sector-oriented management.
6. To check the present absolute dependence on treasury for finding by otherwise commercially oriented parastatals and so, encourage their approach to the Nigerian and International capital markets to meet their finding needs.
7. To initiate the process of gradual cession to the private sector of public enterprises that is better operated by the private sector.
8. To create jobs, acquire new knowledge, technology and expose Nigeria to International competition.⁴²

4.4 The Current Nature of the Downstream Petroleum Sector in Nigeria

Sixty-eight (68) years after the discovery of crude oil in Nigeria, the Nigerian downstream sector (petroleum product refining, storing, marketing and distribution) is still evolving and yet to reach its full potential. Ranked as the 13th largest crude oil producer in the world with an average daily output of about 2 million barrels per day, one would expect that the downstream sector would be abuzz with

⁴⁰ Ajumogobia, O. "Deregulation will Boost Products Supply; (2008) *Daily Independence*, Tuesday, April 14, p. 9

⁴¹ Mohammed A. *An Appraisal of the Deregulation of Petroleum Products Prices and Its Impact on the Nigerian Economy*. 2001

⁴² M. Ahmed, 'An Appraisal of the Deregulation of petroleum products Prices and Its Impact on The Nigerian Economy,' <https://kubanni.abu.edu.ng/items/f1da845b-a2a1-46c8-be7c-62c52c390e84/full> accessed on 3rd December 2024.

significant investments and activities. Unfortunately, this is not the case. The sector is currently bogged down with numerous challenges, such as inappropriate product pricing, bridging product supply, insecurity, irregular gas supply, pipeline vandalism, inadequate pipeline infrastructure, non-functional/under functioning refineries. As expected, the journey to sustainable development is not without challenges.

The downstream sector of the oil and gas is currently partially deregulated, making it difficult for prices of petroleum products to be market-determined. The sector was regulated with government maintaining a monopoly of supply of petroleum products and it is dominated by few oil majors. The dominance of these firms in the market has made the petroleum marketing industry in Nigeria an oligopolistic one; it could therefore be described as the survival of the fittest. Due to the market structure, the leading marketers dictate the trends in the market while the fringe independent marketers struggle to match up with the competition⁴³. However, in line with the nation's economic reform agenda that was launched in the 1980s but effected gradually, till date, policy-makers have embarked on a regime of deregulation of the sector which was intended to remove price control mechanisms that have undermined the growth of the sub-sector in previous years, allowing private stakeholders to complement the government's efforts in developing the industry. As a major solution to the economic crises experienced in Nigeria in the 1980s, the Structural Adjustment Programme (SAP) was introduced with the central aim of deregulating the economy; the sub sector is particularly volatile in recent times.⁴⁴

4.5 The Rationale for Deregulation Policy in Nigeria

Government's argument on deregulation of the downstream oil sector is premised on the expectation that it will improve the efficient use of scarce economic resources by subjecting decisions in the sector to the operations of the forces of demand and supply.

Appropriate pricing of petroleum products is one of the major factors that will attract private investment into the Nigerian downstream petroleum sector, thereby increasing competition, promoting overall higher productivity and consequently, lowering prices overtime. Independent oil-marketers would be free to set their prices. This would lead to further reduction in prices for refined oil-products until an appropriate market price is attained. Continued subsidization by the government will not help achieve such appropriate pricing. Deregulation through subsidy removal will lead to adjustments that will push prices towards its market-determined level. "Appropriate pricing achieved through this policy will make activities in the sector more profitable and attractive to private, domestic and foreign investors. The ultimate effect of this chain of activities is increased gains for the citizens who would be getting the most out of their natural resources. For instance, following government's deregulation in the telecommunication, increased the cost of doing business several times over. The resulting scarcity inevitably led to a flooding of the market with adulterated products which caused damages to vehicles and machines. In many parts of the rural areas, some were forced to buy petroleum products at 30% higher than their original price.⁴⁵ Deregulation of the downstream oil sector remains the path forward

⁴³ Ahmed (n 42).

⁴⁴ I. Aigbedion, & S.E. Iyayi, *Diversifying Nigeria's Petroleum Industry*.

Nigerian Economic Summit Group (NESG) Economic Indicators, [2007] Vol.13 No.4, pp.41-50.

⁴⁵ Richard, A., 2012. FAQ on Deregulation of the Downstream Petroleum Sector and Removal of Fuel Subsidy bizhallmark.com/index.php/feed/permalink/6557.txt.

in expanding opportunities for economic growth and a competitive downstream sector. If regulation is limited to oversight and supervisory functions, aimed at guaranteeing quality of products and preventing consumer exploitation, then, the process of deregulation could help achieve greater cost-effectiveness.⁴⁶

Appropriate pricing achieved through this policy will make activities in the sector more profitable and attractive to private domestic and foreign investors. The ultimate effect of this chain of activities is increased gains for the citizens, who would be getting the most out of their natural resources. For example, following government's deregulation in the telecommunication, there has been a reduction in call tariffs. Similar successes have also been recorded in the banking sector with the emergence of stronger banks with unprecedented spread to several other African countries⁴⁷.

Furthermore, government expects deregulation to reduce economic waste and lighten social burdens caused by government control. For several years, Nigeria experienced scarcity of petroleum products that crippled national economic activities and increased the cost of doing business, several times over. The resulting scarcity inevitably led to a flooding of the market with adulterated products, which caused damages to vehicles and machines. In many parts of the rural areas, some were forced to buy petroleum products at 300% higher than their original price⁴⁸.

4.6 Benefits of the Deregulation of the Downstream Sector

Total deregulation of downstream petroleum has the potential to shape the price increases of petroleum commodities. It will enhance petroleum commodities availability in Nigeria and eradicate endless queues at filling stations for non-existent petroleum products in some part of the country. Full deregulation is the bedrock of any long-term reform within the downstream petroleum for transparency in the sector. It will put an end to the practice of hoarding fuel in the regulated economy. Foreign and local investors and marketers may invest in petroleum facilities or infrastructures such as storage tanks, pipelines, retail filling stations, petroleum pipelines, or trucks. It will lead to a healthy petroleum market, competition among petroleum marketing companies operating in Nigeria as against depending on NNPC for petroleum products and this will encourage the establishment of private modular refineries by investors. The end of Federal Government payment on subsidies will lessen the burdens on the nation's treasury this revenue can now be spent on social infrastructural such as good roads, networks, schools, and essential social amenities to enhance the nation's economic development and growth through free petroleum commodities market interplay, guaranteeing healthy competition, efficiency, and petroleum products available throughout the country at reasonable market prices.⁴⁹

4.7 Improving Outcome from Deregulation of the Downstream Oil Sector in Nigeria

Nigeria made more money from petroleum sales from 1999 to 2007 than from 1960 to 1999, yet infrastructure met in 1999 are today in great disrepair⁵⁰. There is therefore a need for the ruling class to

⁴⁶ *Ibid*

⁴⁷ *Ibid*

⁴⁸ Richard (n 45)

⁴⁹ O. J. Olujobi, 'Deregulation of the downstream petroleum industry: An overview of the legal quandaries and proposal for improvement in Nigeria,' <https://www.sciencedirect.com/science/article/pii/S2405844021009518> accessed on 3rd December.

⁵⁰ *Ibid*

become more transparent and accountable to win the trust of the citizens, on its quest for total deregulation of the downstream sector.

Secondly it behooves policy makers to explicitly make the new policy and the reason behind it clear to Nigerians. This explanation should come with enough integrity to win over the 150 million Nigerians. The citizens should not be seen as bearing the brunt of government's inability to curb profiteering by a few bunkering cabals. Thus, the policy must come with palliative packages for the poor.⁵¹

Neo-colonization remains an albatross of African governments. Their uncritical acceptance of the world's financial body is an issue, as the European development fund/IMF agenda does not have sufficient understanding of the Nigerian economy. Removal of subsidy is a direct affront to the development number one goal which has to do with the reduction of poverty by 2025. The Nigerian economy is road-driven and singularly hinged on crude oil export. It is highly sensitive to internal and external market shocks in the oil industry. Thus, a minute rise in the cost of oil has unmitigated ripple effects on the industrial sector and key components of the basic needs indicators such as food housing and health. The hyper effect would be felt in social liberties and most visibly in the private sector. If the subsidy must work, government has to put in place measures and interventions to reduce the incidence of poverty, resulting from hyperinflation and widespread sufferings among the vulnerable group in society. There would be need to increase spending in the areas of transportation and free medical care.

Currently, the issue of power supply needs to be addressed before any meaningful deregulation can be affected because the issue of power generation is a major bane on development and foreign direct investment. The nation is coping with 4,000 megawatts of power, while South-Africa with a fraction of Nigeria's population is looking past 44,000 megawatts. Ghanaians are celebrating years of interrupted power supply⁵². The government needs to push for greater accountability and good governance to ensure a more transparent privatization process that will respond to market enterprise and tickle down effect. This will evidently reassure would-be foreign and domestic investors. The authors are of the view that the current state of the refineries needs to be addressed with all seriousness, because, no deregulation can benefit the citizenry in the face of unabated importation of petroleum products. It is essential that Nigerian government create the enabling environment and take advantage of the difficulties faced by foreign oil companies in finding new sites to build new refineries around the world, due to very stringent environmental requirements in their home countries, which may make it more profitable and strategic to build refineries in Nigeria⁵³.

Nigeria is not only a major crude oil producer, but also centrally located to enable such Nigerian-based refineries supply the whole of Africa, Europe and Asia in terms of market reach. Furthermore, the establishment of short, medium and large-scale industries would know no bounds in boosting the per capital income of the workforce. This will stabilize a nation with a very large percentage of youth

⁵¹Festus A., 'Fuel subsidy removal. The pains and the gains,'

<https://www.researchgate.net/publication/317887502_Subsidy_Removal_The_Pains_And_The_Gains> accessed 2nd December 2024.

⁵² Festus (n 51)

⁵³ G.O. Odularu, 'Crude Oil and the Nigerian Economic Performance,' <https://citeseerx.ist.psu.edu/document> accessed on 3rd December.

unemployment. Hasty deregulation therefore, in a weak environment as that of Nigeria should be avoided, for more sustainable results.

4.8 Contribution of Petroleum Industry to the Nigerian Economy

Over the past 22 years the oil industry has made a variety of contributions to the Nigerian economy. These have included the creation of employment opportunities; local expenditure on goods and services; contributions to government revenues, to gross domestic product, and to foreign exchange reserves; and the supply of energy to industry and commerce.

5.1 Conclusion

In Conclusion, the authors advocate for the deregulation of the downstream sector of the Nigerian Petroleum Industry. It is evident from the foregoing that the Nigerian petroleum products experiences supply gaps, lack of working refineries and heavy pressure on infrastructure from resultant importation have been the major causes of supply shortages. Hence, a total deregulation of the downstream petroleum sector will end petroleum products shortages.

Having observed that the downstream deregulation of the government is characterized by challenges, deregulation policy is a policy option available for improved performance meant to remove the bottleneck that characterize the downstream sub-sector, deregulation will improve the delivery service, this the government will do when it channels the fund previously spend on subsidy to providing social and basic infrastructure. It is also noted that there is need to provide an enabling environment for private individuals and companies to establish refineries. The more refineries, the better for competitive outcome under a deregulated price regime, more so, deregulation will attract a lot of economic benefit to the nation.

One of the greatest challenges facing the downstream petroleum sector in Nigeria is the issue of fuel importation. It is believed that deregulation would address this problem squarely. With deregulation, competition which is an important component of deregulation policy will encourage private sector participation in building new refineries, thereby increasing refining capacities in Nigeria. Nigeria cannot continue to import petrol, when we have the capacity to produce what we can consume as well as for exportation. In other words, Nigeria has the wherewithal, not only to be self-reliant but even enough to export refined products.

5.2 Recommendations

1. It is recommended that Nigeria develop clear regulations on privatization that promote competition and protect investors. This includes repealing laws that inhibit market entry and ensuring that new policies foster an environment conducive to private sector participation. Also, Nigeria should implement measures to ensure transparency in pricing and operations within the sector. Regular audits and public reporting can help build trust among stakeholders and the general public.
2. It is recommended that Nigeria should introduce fiscal incentives specifically targeted at attracting investment in local refining capacity. This could include tax breaks or grants for new refinery projects, which would help reduce dependence on imported

petroleum products and stabilize local prices. Also, establish a clear framework for determining petroleum prices that considers global oil price fluctuations, production costs, and economic conditions. This framework should be transparent and accessible to all stakeholders, including consumers.

3. It is recommended that the PIA be amended to provide clearer definitions and guidelines regarding key terms such as "host community" and "frontier basin." This would reduce ambiguity and help prevent disputes over revenue-sharing and obligations, ensuring a more predictable regulatory environment. Also ensure that the implementation of the PIA does not disproportionately favor certain regions over others. Establish equitable revenue-sharing models that address historical grievances from oil-producing communities, particularly in the Niger Delta.
4. It is recommended that Nigeria should establish an independent body tasked with monitoring the implementation of anti-corruption policies within the petroleum sector. This body should report regularly on progress made, challenges encountered, and recommendations for further action. By implementing these recommendations, Nigeria can work towards reducing corruption in its petroleum sector, thereby improving pricing mechanisms, enhancing regulatory effectiveness, and fostering a more transparent environment conducive to investment and public trust.