LEGAL AND ECONOMIC FRAMEWORK OF THE DEREGULATION OF THE NIGERIAN DOWNSTREAM OIL AND GAS SECTOR*

Abstract
The crude oil business is without doubt the most active, lively and planned industry of nation's economy. The deregulation of the downstream sector has been a long-time issue that has not been resolved in Nigeria. Nevertheless, notwithstanding the profits, the oil sector is overwhelmed by many issues which the federal government thinks that deregulation is the solution. The major problem with deregulation of the downstream oil sector in Nigeria is the fact that the legal framework has been bedeviled with so many inadequacies which has led to difficulties in the implementation. The main aim of this study is to examine the legal framework and its inadequacies on the deregulation of the Petroleum downstream sector in Nigeria. The work also explored the economic policies of deregulation on the entire country. The work adopted the doctrinal research methodology in the analysis of the legal framework on deregulation of the downstream oil sector in Nigeria. It is recommended in this work that the current government in Nigeria should review its deregulation policies and execute the provisions of the newly enacted petroleum industry act so as to ameliorate the sufferings experienced by Nigerians because of the current deregulation policies. It is concluded in this study that the downstream deregulation of the petroleum sector in Nigeria, there is yet too much economic development in agriculture, health and education. Conclusively, deregulation of the Nigerian oil and gas industry cannot bring economic succour to the citizens except unfitting prices of petroleum products, oil smuggling, corruption and fraud, amongst others are effectively handled.

Keywords: Deregulation, Downstream, Oil Sector, Economic Policies, Gas Sector

1. Introduction

Nigeria is rated as the first crude oil manufacturer in the continent of Africa, but the country depends on importation of purified petroleum products for its citizens' utilization since the four petroleum refineries have been running below the optimal level for decades.[1] For many years in the modern history of the Nigerian economy, the oil business is without doubt the most active, lively and planned industry of nation's economy.[2] The oil sector can be said to be divided into two; the upstream and the downstream. The upstream deals with exploration and production of oil while the downstream deals with marketing refining and distribution of crude oil for domestic use.[3] Before 1965, the use of importation on domestic product was met under a deregulated environment. By 1965, the nation realized that they could no longer rely on importation for its product's needs.[4] Accordingly, the initial refinery in Nigeria - the Old Port Harcourt Refinery was manufactured in 1965 as a marketable project to deliver petroleum products at market related prices. It was a 35,000 barrels per day refinery cooperatively owned by Shell (25%), British Petroleum (BP) (25%), the Federal Government (20%), and the three regional governments (10% each).[5] Nigeria is gifted with massive natural resources as well as such minerals like petroleum, limestone, tin, natural gas and others. All these minerals have stayed untouched, except petroleum which has dominated Nigeria's economy since the 1970s.[6]

Presently, the Nigerian petroleum industry is believed to be the anchor of the Nigerian economy and the pivot in which the other sectors rotate around, the industry generates 90% of the nation's foreign exchange and also contributes 70% of revenue.[7] There has been a remarkable increase in national wealth but this sector has also contributed to multifarious problems and responsibilities especially in areas of revenue accounting as well as leadership, managerial, ecological, social and environmental problems.[8] Currently, petroleum is by distant the most extensively used energy resource worldwide. Its production and distribution affect the relations among nations and even the purchasing power of some individual citizens.[9] The legal framework of the oil industry in Nigeria basically was the Petroleum Act (2004), as amended and some other statutes have been faced with several issues especially as it relates to deregulation of the downstream sector in terms of policies and implementation.[10] In order to ameliorate the shortcomings of this Act, the

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[1]Olujobi Olushola. (2020). The Legal Sustainability of Energy Substitution in Nigeria's Electric Power Sector: Renewable Energy as alternative, *Protect. Contl. Mod. Power Syst.* Volume 5, Issue 2, 1-12.
[2] Adeoye, Yinka (2010), 'Deregulation: Solution to Constant Petroleum Supply Shortages', *The Nigerian Vanguard*, Nigeria.
[3] Ibid.
[4]Agboola, Justin (2015). Why downstream oil sector must be deregulated. The Nation, July 22. Retrieved 26/1/2016 from http://thenationonlineng.net/why-stream-oil-sector-must be-deregulated/.
[5] ibid
[6]Ayayi efiong (2009). Nigerian Content Policy in the Oil and Gas Industry: Implications for Small and Medium-sized Oil Services Companies. Proceedings of the 10th Annual Conference. IAABD
[7]Braide, Kamara (2003). *Modes of Deregulation in the Downstream Sector of the Nigerian Petroleum Industry*, Nigeria: Port Harcourt
[8] ibid
[9]Adeoye, yinka (2010), 'Deregulation: Solution to Constant Petroleum Supply Shortages', The Nigerian Vanguard, Nigeria.
[10] ibid

Petroleum Industry Act 2021 was enacted. Notwithstanding the massive potential the oil sector is involved in, its downstream sector production has unsuccessfully derailed in meeting up with the needs and wants of the citizens which leads to fuel shortage long queues and a large wave of subsidization in the importation of fuel by the government to catch up with the demands.[11] To change this trend and work on the issues in the downstream, the government deregulated the sector. Issues such as fire, sabotage, poor management, lack of turn-around, maintenance and corruption mean that the refineries frequently function at forty percent of full capacity.[12] This brings about lack of refined products and the necessity to increase imports to meet domestic demand.[13]

Oil and gas sector has progressed in helping the country's economy. Nevertheless, notwithstanding the profits, the oil sector is overwhelmed by many issues which the federal government thinks that deregulation is the solution.[14] The sector is currently facing so many issues such as under functioning refineries, inadequate pipe line infrastructure, pipeline vandalism, bridging product supply.[15] The major problem with deregulation of the downstream oil sector in Nigeria is the fact that the legal framework has been bedeviled with so many inadequacies which has led to difficulties in the implementation. This calls for concern not just to the law makers but to consumers as well. Another issue with the deregulation of the oil industry is the partial involvement of government through the payment of subsidy despite the laws in place. The economic policies of deregulation are also having several effects and consequences on the entire economy which affects the ultimate consumer as well.

This study will therefore examine the legal framework and economic policies on deregulation of the downstream oil sector. It will also explore some policy objectives to help in saving the nation's economy through deregulation of the entire downstream oil industry. From the foregoing, it can be seen that both the legal framework and economic policies on deregulation in Nigeria is an intractable problem.

2. The Meaning of Deregulation

The foundation for deregulation is an important use of resources, human freedom in open tight competitive markets, expanded choice and consumer gains. Deregulation has been an influential catch cry behind a couple of important economic policy changes in Nigeria over the past couple of years. The most current calls for deregulation have been aimed at the oil sector this was after other deregulation programs in fields such as industrial relations, telecommunications and finance. But this is mostly the doublespeak of irrelevant and confusing market economics.[16] This is referred to as re-regulating the market so as to ensure that there is distribution to new market and cost-effectiveness of prevailing markets to big, controlling companies.[17] It means that a subsequent rearrangement of public grants and wealth, which is a government held enterprise with capital and assets which conjures with the decision of the state to allow the huge gain of those big companies. It is related with a different misunderstood term is 'efficiency'. Reregulating markets to be on the same page with big private companies, nevertheless keeps watch on the efficiency of the business which will enlarge and tolerate monopoly revenues. Both efficiencies are not similar and, in most cases, equally exclusive.[18] The continued productivity of large corporation is linked to the greater good. Deregulation has been carried out by successive government to varying degrees, broadly in check with the liberal project which deems fit profits to fund new investments and this new investment funds economic growth and economic growth which provides employment and affordable commodities, through which there will be some distribution of the benefits of the projects.[19] Deregulation of a country's economy could also mean divestiture, marketization and privatization of the economy. In other words, no government, but private participation in the country's economic activities.[20] This is Important to ensure competitive economic system devoid of monopoly and give room for the price mechanisms of supply and demand for the principle of demand and supply's principle of economy to succeed.[21] It entails rendering more weight to the private sector as the main objective of the economy opposed to the prominence of only the private sector. In order to attain this, bigger roles are given to market influences as against the implications of universal managerial controls. It is used for steadying and restructuring

[11]Monday James and Ekpavahire Moses, (2016) 'Downstream oil deregulation and Nigerian Economy', *Ecoforum*, Volume 5, Issue 11, 124.

[12] ibid

[13]Monday James, (2013), Downstream deregulation policy and economic growth: a case of Nigeria. IRC's *International Journal of Multidisciplinary Research in Social and Management Sciences*, Volume 1, Issue 4, 8.

[14] ibid

[15]Wale Ajayi, (2019), Downstream Oil Sector, Retrieved on 11 June 2024 from https://home.kpmg/ng/en/home/insights/2019/09/downstream-oil-and-gas-sector-watch.html.

[16] Tim Anderson, (1999), *Journal of Australian Political Economy*, Volume 45, Pg 1.

[17] ibid

[18] ibid

[19] ibid

[20] Akintoye Nureni Opeyemi, (2014) *Original Scientific Paper*, volume 11, issue 3, Page 208.

[21] ibid

the foundation of the economy and putting it on a suitable and durable path to growth.[22] As a primary answer to the country's economic crisis, in 1986 the Structural Adjustment Program was founded with the deregulation of Nigeria's economy as the chief goal.[23] Privatization also means deregulation which is one important part of market and price restructurings which innards unleashing development in the private sector by means of elimination of government restriction of economic activity in the private sector and divestiture of government's assets, most especially State Owned Assets into the possession of private companies.[24]

The major aim of deregulation entails: increasing government revenue, introducing a market economy, guaranteeing political freedom, increasing economic efficiency and establishing democracy.[25] It is also said that economics based on private gains are much better institutions for keeping individual freedoms than economies where the product apparatus is socially owned.[26] However, for a government to be fully functioning, it has to put itself in check to areas of governance and in the course of such service make provisions for a guiding principle essential for carrying out of monetary activities which can be carried out by private firms. This is essential in situations wherein deregulation of the economy is introduced in Nigeria.[27] So by urging So by influencing output and efficiency gains, financial deregulation in the long run adds to the general upsurge in economic growth. The surge in growth is expressed by means of improved rate of employment and real wages.[28] This affects the capital stock in the economy which also then affects both production and consumption through increased investment.[29] Moreover, a modern view on good organization, profits from deregulation in less developed economies. The main argument in the new line of collected works is that deregulation restructurings as a toll on different economies differently, depending on the position of technological advancement and quality institutions,[30] e.g. there are claims that there is a possibility of restriction on competition which may benefit the technologically less developed countries.[31] This also makes claim which finds that the optimal regulatory policies in developed and in developing countries are not the same because of the differences in the overall institutional qualities in those countries.[32] Deregulation is the reduction or oval depletion of government regulations in a specific industry. The aims are to benefit industries to operate business more freely and remove corporate restrictions. Basically, the primary aim is to remove barriers to competition so that particular industries can go head-to-head in the global markets without difficulty. Deregulation in an establishment happens only by means of issuance of a Presidential decree, when a ministry ceases implementing the regulation or only through legislation.[33] Deregulation is the gradual step of reducing state regulation, usually in the economic sector of Nigeria's petroleum sector. Removal of petroleum subsidy by the federal government is a case study in Nigeria which tolls on the inefficiency of the oil subsidy by Nigeria elites making imperatives for the government to deregulate the oil downstream.[34]

3. How Deregulation Works

The theoretical basis of deregulation is gotten from the general equilibrium theory which point out the significance of efficient pricing and guaranteeing the optimum distribution of society's resources for the efficient production of the numerous needs of the society and efficient circulation of the commodities and services among the numerous consumers. In consequence, the concept of perfect competition and free market suggest that the general equilibrium analysis will be likely to result to an optimal. Monetary policy and interest rate have a very vital role to play in the growth and development of a country's economy. The Central Bank of a nation has the responsibility of formulating and effecting the country's economic policies. Under the deregulated interest rate system, the interaction of market forces of both supply and demand control the interest rate. The chief motive at each point in effecting of these monetary policies have

[22]Ahamed, A. (1993). 'Forward', *Central Bank of Nigeria: Perspectives of Economic policy Reforms in Nigeria*, Ikeja: Page Publishers Services Ltd.

[23] Akintoye Nureni Opeyemi, (2014) *Original Scientific Paper*.

[24]Ayodele, A. S. (1994). 'Elements of the Structural Adjustment program: privatization and Commercialization' in *The Nigerian Journal Economics and |Social Studies,* Volume 36, Issue 1, pg. 68.

[25]Dhanji, F. and B. Milanovic (1991). 'Privatization in Eastern and Central Europe: objectives, Constraints and Models of Divestiture', A World Bank Research Working Paper, No. 770

[26]Ijaiyi, G.T. (1999). 'Privatization and Commercialization of public Enterprises in Nigeria' in Killick, T. (1989). 'Economic Development and the Adoptive Economy'. Overseas Development Institute Working Paper, No. 31.

[27]Akintoye Nureni Opeyemi, (2014) original Scientific Paper

[28]Winston, C. (1993). Economic deregulation: Days of reckoning for microeconomists. *Journal of Economic Literature*, Volume 31, Issue 3, 1263–1289.

[29] Olivier Blanchard and Francesco Giavazzi, (2003), *Quarterly Journal of Economics,* volume 118, Issue 3, pg. 879-907

[30]Alesina, A., Ardagna, S., Nicoletti, G., & Schiantarelli, F. (2005). *Regulation and investment. Journal of the European Economic Association*, Volume 3, Issue 4, pg. 791 – 825.

[31]Petar Stankov, (2010), Deregulation, Economic Growth and Growth Acceleration, *Working Paper Series* 424 (ISSN 1211-3298), Charles University, Academic of Sciences of the Czech Republic

[32]Acemoglu, D., Aghion, A., & Zilibotti, F. (2006). Distance to frontier, selection, and economic growth. *Journal of the European Economic Association*, 4(1), 37–74.

[33]Deregulation: The Removal or reduction of government regulation in a specific Industry. Accessed on 11 July, 2021, from https://corporatefinanceinstitute.com/resources/knowledge/other/deregulation/.

[34] Alfred E. Kahn, (1990). 'Deregulation: looking backward and looking forward.' *Yale Journal on Regulation* 7: pp. 325.

at all times comprised of the regulation and control of the volume and cost of money, in addition to the right direction for the credits so as to attain the set out macroeconomic policy goals.[35]

4. Economic Impact of Deregulation

'Oil and gas' is strategic to the growth and national development of the country. It constitutes 90% of Nigeria foreign exchange earnings and 83% of the GDP.[36] Nigeria has been known as OPEC's sixth largest crude oil producer, with her rich natural resources, yet the country still imports and pays international prices for this natural resource. The Nigerian government stated that the cost of subsidizing importation was estimated at about $1.5 billion on a yearly basis.[37] Nigeria depends heavily on the importation of refined petroleum products because its four refineries are not functioning efficiently for years. However, kerosene and diesel have been deregulated, subsidy that was proposed to make the price of petroleum affordable and accessible to Nigerians have created opportunities for corruption, thus hindering the country's economic growth and development.[38] There are certain philosophies allied with the deregulation of the petroleum sector by the Federal Government of Nigeria. These are; the Federal Government is well acquainted with the insufficiencies of the prevailing state-owned oil companies and wishes to make the most of the sources of supply for the market of refined petroleum products in the country; local and private sector investors would be willing to take control of state owned facilities in their current rundown state and operate them competently and cost-effectively; the abolishment of government monopoly with respect to the refining and distribution from the state owned depot; that refineries owned by those in the private sector would acquire crude oil at competitive prices and gainfully market their refined products at international rates both within and outside the shores of the country as preferred by that operator; that access would be made available for private investors to government owned facilities like reception jetties in Calabar, Okrika, Effurun, Atlas Cove, Escravos and storage tanks at Kaduna, Port-Harcourt and Warri for accelerating the logistics of improving the accessibility of petroleum products in the country; that potential private operators must have the much needed financial and practical abilities and be answerable to the rules and regulations, and that needless barriers, such as over-bearing techniques for granting licenses to potential private operators and other potential investors in the sector that need to be detached may perhaps remain, given the nature of bureaucracy in the country.[39]

The beginning of deregulation of the Nigerian economy could be considerably linked to the economic crises suffered by the country. This can be traced back to the irregularity faced by the country from 1945 when the country was under colonial rule. The relationship the country had with foreign powers encouraged import-substitution industrialization. This was done by making use of peasant surpluses to finance the import of the tools needed for the growth and expansion of the manufacturing industry.[40] As a result of a series of rises in the global oil prices from 1973, there was significant economic growth in services such as construction, production, transportation and governance.[41] The resultant effect of this was rural/urban migration, which resulted in a significant drop in the agricultural production capacity. This further affected the export power of the country as the production of cash crops such as cotton and groundnut suffered.[42] Since 1975, Nigeria was forced to import essential food crops such as rice and cassava, as a result of the fall in the country's production capacity. If the revenue from exporting crude oil was steady, this won't have been much of an issue, however since the 1970's the agricultural sector suffered some crises due to the changing oil markets and the country's fast population growth.[43]

The Federal Government of Nigeria has harmonized the prices of petroleum products in a bid to promoting uniform distribution of oil products. The Petroleum Equalization Fund was initiated in 1975 to tackle price equality brought about by the transport of petroleum products to states across Nigeria at the uniform estimating policy introduced by the Federal Government of Nigeria to increase the supply of refined petroleum products through the refining, trade and distribution of oil commodities so as to boost the local oil companies involved in the downstream oil sector. Similarly, to increase the adequate control wide supply of petroleum products at equitable values by means of appropriate storage condition for fuel commodities and transport of refined oil products to remove the shortage of fuel commodities and other oil

[35]Akingunola Richard, Adekunle Adetokunbo and Ojodu Hameed, 'Impact of interest rate on capital market growth: A case of Nigeria', (2012), *Universal Journal of Management and Social Sciences*, Volume 2, Number 11, 1-24.

[36]Ogbeifun, Labour Crises in the Oil and Gas Sector: Challenges to Development in the Oil and Gas Sector. Paper Presented at a Workshop Organized by NIM, Jos, 2008.

[37] Ifiok Ibanga, 'Economics of privatizing, deregulating the Nigeria downstream oil sector', (2006), *Valore International*

[38]Olujobi Joshua, 'Analysis of the legal framework governing gas flaring in Nigeria's petroleum sector and the need for overhauling, (2020), *MDPI J. Soc. Sci*, Volume 9, Number 132.

[39]Agbebaku, Edeko Ebalunegbe and Aghemelo Thomas, *The effect of deregulation in the downstream sector of the oil industry on corruption in Nigeria* In Sunday Akpotor, Ebhodaghe Omohan, Benson Iganiga, Oziegbe Aigbokhaevbolo and Ayobami Afolabi (Eds). *Deregulation and Globalization in Nigeria: Issues and Perspectives*, (Ambrose Alii University 2005)

[40] Adebayo Olukoshi, *The Politics of Structural adjustment in Nigeria*, (J. Currey 1993)

[41] Rasaki Dauda, *The paradox of persistent poverty amid high growth: the case of Nigeria*, (Oxford University Press 2019)

[42] Jayeola Olabisi, Adeboyega Afolabi, Sunday Kajola and Oluwaseun Ariyibi, 'Effect of currency depreciation on financial performance of Nigerian deposit money banks', (2019), *Izvestiya*, Volume 2, 104-116.

[43] Ibid

commodities to improve private sector investment by means of the elimination of NNPC's branches oil market domination and regulation of the industry.[44]

5. Challenges of Deregulation Policy

There are numerous impediments to the actualization of full deregulation in Nigeria. Below are challenges faced in the implementation of the deregulation policy in Nigeria:

Corruption

More than two thirds of the difficulties faced by a society are a consequence of the decaying leadership culture in the overall running of the country.[45] Corruption and bad leadership are two key problems facing Nigeria.[46] Mismanagement of public resources and inept leadership has resulted to the social and political instabilities that are facing the country. It is deeply emphasized that corruption is the chief cause of poverty in the country and this has paralyzed the country socially and economically in spite of the production of two million barrels of crude on a daily basis, which has the prospective of conferring massive wealth in the nation through the export of petroleum products.[47] The unfortunate reality is the fact that Nigeria made over $300 billion within the span of twenty years from the sale of their major source of export, crude oil, in the international market with no serious development in the country to show for it.[48] This means that corruption is conspicuous in Nigeria's pubic management and highlights elite connivance in the plundering of resources as documented by the following instances; the panel of enquiry introduced by the late General Sani Abacha's military government found General Babangida's military government (1985-1993) guilty of mismanagement or looting of public funds of over $12 billion.[49] Another example of financial impropriety is seen in the case involving the former Governor of Delta State from 1999 to 2007 who pleaded guilty to a ten count charge embezzling State funds of over £250 million,[50] accruing credit card bills of over $200, 000 on conspicuous consumption, to a life of basic opulence.[51] An audit report by KPMG showed that the cost of subsidy payment for petroleum product not used by end users as a result of losses from embezzlement and those not provided between 2007 and 2009 accumulated to over ₦11.8 billion.[52] Nigeria has had a history of corruption in the oil and gas sector, from the military government of the 1990's. Operation of the Nigerian oil refineries gradually deteriorated as a result of the military's lack of administrative expertise. The refineries thus become derelict leading to the importation of refined petroleum products. An estimated sum of over $400 million was invested into the restoration of the refineries in just a six-year interval.[53] Corruption is a serious challenge to the deregulation of the oil sector.

Lack of Transparency

The lack of transparency in numerous agencies or government bodies in Nigeria also poses a great challenge to the institution of the deregulation policy in the country. This lack of transparency displayed by Nigerian government authorities led to a lack of trust. They are numerous instances where this lack of transparency has acted as an impediment to certain policies in the country, the deregulation policy not being an exemption. The Nigerian Government Agency charged with the duty of marketing public companies BPE made as much as ₦510billion from the sale of 145 government-owned firms but the Bureau of Public Enterprises haven't made public the report of the post privatization evaluation exercise it carried out in 2010. The Bureau of Public Enterprises stated that is yet to be for the public.[54]

High Cost of Governance

In the 2012 budget of Nigeria, 70% of the recurrent expenditure was devoted to the maintenance of those occupying public offices. In line with this, the Presidency has a feeding allowance of $6.45 million, with a Billion naira being allocated for powering the Presidential Villa, with the dinning set at the Villa taking over $1.94 million and $1.8 Million being budgeted for the purchase of Bullet Proof Automobiles for the presidency. This is a nation with the highest paid

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[44]Okafor Loretta, 'Deregulation Of The Nigerian Downstream Oil Sector; Keeping Faith With A Global Trend' (PPPRA Nigeria) http://www.pppra-nigeria.org/articledetails.asp?ArticleID=16

[45] Gunther Schust, *Supportive Leadership: The New Role of Executives in the 21st Century* (Ventus Publishing Aps 2011)

[46] Adeshina Animashaun, 'Path to Corporate Governance, National Development by Stakeholders' *The Guardian*, (17 April 2012)

[47]Werlin Herbert, 'Poor nations, rich nations: A theory of governance', (2003), *Public Administration Review*, Volume 63, Number 3, 329-342.

[48]World Bank, 'Nigeria: Poverty in the midst of plenty; the challenge of growth with inclusion', (1996), Report No. 14733 - *UNI Washington D. C., USA: Work Bank*, 38, Ikelegbe Augustine, 'Crisis of resistance: Youth militias, crime and violence in the Niger Delta Region of Nigeria', (2004), *The Netherlands: African Studies Centre Seminar*, 5.

[49]Omotola Shola, 'Policing corruption in Nigeria: The ICPC and EFCC compared', (2008), *International Review of Politics and Development,* Volume 8, Number 1, 69-85.

[50] Adesina Debo, 'Britain to return Ibori's seized assets to Delta' *The Guardian Newspaper* (28 February 2012).

[51]Obiagwu Kodilinye, 'Ibori: From fame to custody' *The Guardian Newspaper* (28 February 2012). Onyekwere Joseph, 'Wife, sister, mistress, Lawyer serving time for fraud' *The Guardian Newspaper* (28 February 2012).

[52]Agbo Anayochukwu, 'The Rot in NNPC' *Tell Magazine* (30 January 2012)

[53]Kukenya (n 1)

[54]Abubakar Jibrin, 'How Privatized Companies are Collapsing' (Allafrica, 6 January 2011) https://allafrica.com/stories/201101060386. html, Accessed 15 October 2021

law makers in the world, with approximately $19.35 Million being spent on a single Senator in just four years.[55] The insensitivity of Nigeria's Public Office Holders as demonstrated by the aforementioned data and analysis greatly slows the development of the country and explains the absence of support by the populace for the economic policy of deregulation.

Another key challenge is the differences in the cost of importing petroleum products to Nigeria by the independent marketers. This inefficiency of the price control mechanisms is a factor militating against the total deregulation of the downstream oil sector.

6. The Legal Framework

Petroleum Industry Act

The new Petroleum Industry Act 2021 was signed into law by President Muhammadu Buhari on August 16th 2021 comprises of a selection of provisions and innovations that will have an effect on the Public and Private Sectors of the country's economy as well as the stakeholders in the oil and gas industry. It is an Act that annuls the Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation (LFN)2004, and its amendments; The Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 LFN2004; The Motor Spirits (Returns) Act, CAP M20 LFN2004; The Nigerian National Petroleum Corporation Act No. 94 of 1993, CAP N124 LFN2004; The Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123LFN as amended, (when NNPC ceases to exist pursuant to section 54(3) of this Act); The Petroleum Products Pricing Regulatory Agency Act 2003; The Petroleum Equalization Fund (Management Board etc.) Act No. 9 of 1975, CAPP11 LFN 2004; The Petroleum Equalization Fund Act,1975; The Petroleum Profit Tax Act Cap P13 LFN 2004, (PPTA); and The Deep Offshore and Inland Basin Production Sharing Contract Act (DOIBPSCA), 1993 CAP D3 and The LFN 2004. The Petroleum Industry Act 2021 has five chapters, eight schedules and three hundred and nineteen (319) sections. This Act passes a strong message to international investors about our petroleum industry. The Act is planned to increase investor confidence in Nigeria while also increasing employment opportunity to members of the host community.[56] The Petroleum Industry Act was passed to make provisions for the regulatory, legal, governance and financial framework for the Nigerian framework, the establishment and development of host communities and other allied issues in the upstream, downstream and midstream sectors of the petroleum industry. Contained in this act are; the introduction of dual regulatory agencies, setting up of the Nigerian National Petroleum Company Limited, General Admission of the Petroleum Industry, General Administration of the Upstream Petroleum Operations and Environment/License and Leases Under the Act, General Administration of the Midstream and Downstream Petroleum Operations, Administration of Midstream and Downstream Gas Operations, General Communities Development, Petroleum Fiscal Industry Framework and Introduction of Hydrocarbon Tax.[57] The Act begins with governance and the creation of an institutional framework for the Nigerian Petroleum sector. This chapter comprises of the following sections; The Upstream Petroleum Operations and Establishment of The Commission, Creation of Frontier Exploration Fund, Midstream and Downstream Operations and Establishment of The Authority, Creation of Midstream Gas Infrastructure Fund and The Incorporation of Nigerian National Petroleum Company Limited.[58]

The Act starts from the position and functions of the Minister to the two newly created regulatory bodies. According to Section 3 of the Act, the Minister of Petroleum has all authority vested in him or her, however the Act inter alia, limits the discretion of the Minister. But it emphasizes that such authorities be implemented following the recommendation of the Commission. The provisions of Section 4 establish the Nigerian Upstream Regulatory Commission, which is in charge of the technical and profitable activities of the operations in the upstream sector. The Commission is also in charge of implementing compliance with the terms of lease, authorizations, licenses and permits allotted to companies in this industry. The provisions of Section 7 and 8 are on the roles of the Commission. Under Section 10 is the provision that emphasizes on the authority of the Commission to exercise the provisions of any regulations, guidelines or policies that were formerly implemented by the Department of Petroleum Resources or the Petroleum Inspectorate Division, with regards to the upstream petroleum operations.[59] In summary, the Commission is a replacement for the Department of Petroleum Resources and the Petroleum Inspectorate Division. Section 52 of the Act creates a Midstream Gas Infrastructure Fund to: 'Make equity investments of Government-owned participating or shareholder interests in infrastructure related to midstream gas operations aimed at – (a) increasing the domestic consumption of Natural Gas in Nigeria in projects which are financed in part by private investment, and (b) encouraging private investment.'[60] The Midstream Gas Infrastructure Fund would be gotten from a 0.5% tax on the wholesale price of petroleum and natural gas products sold in Nigeria.[61]

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[55] Soyinka Adejuwon, 'Tackling the subsidy mess' *Tell Magazine* (16 January 2012)
[56] Petroleum Industry Act, 2021
[57] Ibid
[58] Ibid
[59] Section 10 of the Petroleum Industry Act
[60] Section 52 of the Petroleum Industry Act
[61] Ibid

Section 53 of the Act makes provision for the incorporation of Nigerian National Petroleum Company Limited ('NNPC Limited') under Companies and Allied Matters Act in a period of six months from the beginning date of the new piece of legislation. The Ministry of Finance Incorporated and Ministry of Petroleum Incorporated will be charged with the responsibility of managing the liabilities, assets and interests of the NNPC Limited for the Nigerian Government.[62] Section 59 further states that the makeup of the NNPC Limited Board shall be determined in harmony with the provisions of the Companies and Allied Matters Act and its Articles of Association. What NNPC will earn from the proceeds of the trade of profit oil and gas and additional fee for management will be 10%, while 30% will be sent to the Frontier Exploration Fund for the growth of frontier properties, in addition to 10% of rent payment on petroleum prospecting licenses and mining leases.[63] On account of the Petroleum Prospecting License, there is a provision for it in Section 72 of the Act. Applicants who are qualified are granted the aforementioned license. The stated time for the petroleum prospecting license for onshore and shallow water acreages is not more than six years, with three years set aside for the initial exploration phase and another three set aside for a potential extension period. The stipulated term for deep offshore and frontier acre is not more than ten years. It is important to note that this license is comparable to the current Oil Prospecting Licence (OPL).

Section 81 of the Act has a provision for the Petroleum Mining License (PML). This license is approved to qualified applicants to hunt and win, discover, haul off and dispose crude oil, natural gas and condensates. It will last for a maximum period of twenty years and possibly renewable for additional duration of not more than twenty years each, subject to meeting definite circumstances.[64] This license is equal to the current Oil Mining Lease (OML). Contained in session 92 of the Act is the provision for holders of OMLs and OPLs to convert their PPLs and PMLs without restrictions and voluntarily.[65] The Fiscal of the Petroleum Industry Act comprises of Hydrocarbon Tax (HT); Application of CIT to Petroleum Operations; Capital and Production Allowances; Calculation of royalties sand Gas supply & pricing. Section 22 of the Act introduces the Hydrocarbon Tax which shall be relevant and imposed upon the revenues of businesses involved in the upstream petroleum operation in the deep offshore, the offshore and shallow waters, due during each and every accounting season.[66] According to Session 262 of the Act, the proceeds of the oil and gas company shall be valued like any chargeable oil in step to the measuring point based on the earnings gotten from the sale of chargeable oil and the worth of all chargeable oil disposed of by the company. The taxes shall be 30% of the proceeds from crude oil for petroleum mining leases with respect to shallow waters and 15% of the proceeds from crude oil for shallow water and onshore for petroleum prospective licenses. The Company Income Tax (CIT) is now pertinent to contractors, licensees, concessionaire, companies and lessees involved in the downstream, upstream, or midstream petroleum operations. There is a provision in Section 297 of the Act which states that when an individual is found wanting, such an individual is under obligation to pay Ten Thousand Naira, and where there are no specific provisions for penalty a guilty penalty is liable.[67]

Contained in Chapter 3 of the Act is the provision for Petroleum Host Community Development. This chapter prioritizes the development of host communities. It comprises of the incorporation of host community development trust and the introduction of the host community trust fund. Under Section 235 of this Act is the provision for the establishment of a trust for the benefit of the pertinent host community and in a situation whereby the settlors carrying out their operations under a joint operating arrangement, the operator selected under the agreement is accountable for compliance with this chapter on behalf of the settlors. This Act defines settlors as 'a holder of an interest in a petroleum prospecting license or petroleum mining lease or a holder of an interest in a license for midstream petroleum operations, whose area of operations is located in or appurtenant to any community or communities'.[68] Section 240 of this Act recommends the source of financial backing for the Trust and states that each settlor is expected to make a contribution of a certain percentage of its actual working expenditures in the earlier economic year to the fund. Section 256 and 257 makes it clear that fund is exempted from taxation and settlor contributions are deductible for income tax and hydrocarbon tax purposes. According to Section 251 of this Act, the settlor is obligated to carry out a needs assessment of the host community to gauge their needs and design a Community Development Plan to fulfill those needs. Also contained in this Act are schedules which deals with the following eight schedules: Dealing with Rights of Preemption; Incorporated Joint Ventures; Domestic Base Price and Pricing Framework; Pricing Formula for Gas Price for the Gas Based Industries; Capital Allowances; Production Allowances and Cost Price Ratio Limit; Petroleum Fees, Rents and Royalty and Creation of the Ministry of Petroleum Incorporated.[69]

[62] Section 53 of the Petroleum Industry Act
[63] Ibid
[64] Section 81 of the Petroleum Industry Act
[65] Section 92 of the Petroleum Industry Act.
[66] Section 22 of the Petroleum Industry Act
[67] Section 297 of the Petroleum Industry Act
[68] Section 235 of the Petroleum Industry Act
[69] The Petroleum Industry Act 2021

Another notable point in this Act is the overhaul of the NNPC. NNPC limited replaced the NNPC going by the provisions of this Act. NNPC limited is to function commercially without funding from the government and it must publish yearly reports and audited accounts. The shares in the newly formed NNPC Limited are owned by the government and the government controls the selection of its managing team. Section 53 of the Act provides that 'The Minister shall within six months from the commencement of this Act, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be capped the Nigerian Petroleum Company Limited'.

In summary this Act provides the regulatory, legal, governance and fiscal framework for the Nigerian oil and gas industry and the development of host communities.

Nigerian National Petroleum Corporation Act

The Nigerian National Petroleum Corporation Act brought about the establishment of the NNPC. This Act empowered the NNPC to directly participate in petroleum operations on behalf of the Federal Government of Nigeria. This Act empowers the Nigerian National Petroleum Corporation to take part in all commercial activities relating to the oil and gas industry and to implement all regulatory measures that relates to control of the sector by means of its Petroleum Inspectorate Department. A Council of Ministers are to appoint a Managing Director of the Corporation.[70]

Petroleum Equalization Fund Act

The Federal Government of Nigeria legal backing on February 17, 1975 to its 1973 declaration by promulgating the Petroleum Equalization Fund Act. The aim of the Act is to promote the affordability and accessibility petroleum products in the country. However, this is not the reality of things as a result of corruption and weak execution of the Act by the regulatory authorities in the sector. The Petroleum Equalization Fund Management Board, PEF(M)B plays the role of a revenue generator and disbursement agency in the downstream oil and gas sector of Nigeria. What factored into its establishment was the lack of uniformity in the prices of petroleum products in Nigeria. The job of the Board is that of ensuring that there is uniformity in the prices of petroleum products. The strategy to be employed is that of refunding marketers their transportation costs for the movement of petroleum products from depots to sale outlets.[71] Another strategy employed by PEF has to do with 'bridging payment scheme to complement the Nigerian National Petroleum Companies Pipeline distribution network of petroleum products to all the depot areas nation-wide, during breakdown/maintenance of local refineries and or pipeline breaks/vandalisation'.[72] The penalty for non-compliance is a fine of Fifty Thousand Naira (N50, 000) or a jail term of Five Years. However, this fine appears impractical due to the current economic reality of the oil and gas sector in the country.

From the Petroleum Industry Act, it is stated that PEF will be scrapped whenever

> The government decides that the petroleum product markets have been effectively deregulated'. During such a situation, the Minister of Petroleum shall take the required actions to ensure that the Equalization Fund ceases to exist and its assets and liabilities transferred to the government to be controlled and managed by the Ministry and at such time the provisions of the sections of the Act shall stand repealed.[73]

The aforementioned provisions are built on the expectation that with the full deregulation of the oil and gas sector in Nigeria, petroleum products would be sold to consumers at prices determined by the petroleum market that level out all kinds of subsidy and non-subsidy associated costs. During such a situation, marketers will be given the leverage to market out their products at limits that are reflective of insurance and transport costs.

7. Conclusion and Recommendations

The deregulation of the Nigerian economy as discussed in this study is no doubt has a capitalist undertone with the notion that capitalism produced colonialism and imperialism. Unfortunately, right from the time the Nigerian economy began to be deregularized as part of Structural Adjustment programme in 1986, it had only succeeded in pauperizing a larger population of the country. And even with the emphasis on the deregulation of the economy of the economy of the present civilian government in the country the material condition of the citizens is yet to improve. The effects from deregulation on living standards and on growth vary across economies and across the timing of the deregulation reform. The countries that lagged behind in their deregulation reform in the late 1970s and in the 1980s but accelerated the reform in the 1990s and early in the new century had lower per capita GDP levels than the early reformers and those countries that reformed extensively in both periods. All stake holders must ensure that there is strict compliance with the newly enacted Petroleum Industry Act 2021. The strict compliance to the law will enable the new reforms and control of the downstream oil sector to be well implemented. Government should also consider the impoverished Nigerian citizens before implementing total or absolute deregulation of the downstream oil sector. The government should be transparent in the implementation of the deregulation of oil sector. Also, they should be accountable to all concerned; with process void of

[70] Nigerian National Petroleum Corporation Act 1990
[71] Section 2 Petroleum Equalization Fund (Management Board etc) Decree Number 9 of 1975
[72] Gurin Abdulkarim and Hamidu Ribadu, *Petroleum Equalization Fund (management) board, PETB service delivery charter* (2011)
[73] Section 100 (4) of the Petroleum Industry Act 2021.

corruption and other bias. Based on the development, that deregulation of the Nigerian Economy implies privatizations and privatization is based on maximization of profit. Consequently, majority of Nigerians 70% of whom are below poverty line might not be able to afford those deregulated goods and services. Therefore, the current government in Nigeria should review its deregulation policy. This is because an economic system that could not improve the material condition of the majority of the citizens of a country is not a good economic system.

There is however need for strict enforcement of its existing laws on transparency in the oil and gas industry and other strong ecological laws to defend the societal, ecological, commercial strength The study findings must be seen considering limitations; there was a lack of prior studies on the soundness of scientific literature on the topic of energy reform, regulation, and energy sector deregulation. The study evaluated how deregulation has affected innovation, the creation of an open market, power prices, and competitiveness. Attitudinal changes towards leadership are required at different levels in both public and private spheres of our national life. There must be good governance. People in governance, private and public, and the petroleum industry should have a re-orientation on offering service(s) to the society. They must be selfless and not see public service as an avenue for self-aggrandizements, or to amass wealth.