



A CRITICAL APPRAISAL OF LEGAL FRAMEWORK ON DEREGULATION OF THE DOWNSTREAM SECTOR OF THE NIGERIAN PETROLEUM INDUSTRY

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ABSTRACT

The study seeks to explore the need for total deregulation of the downstream sector of the Nigerian petroleum industry to address inefficiencies in the sector to promote 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 work adopts a conceptual approach relying on extant literature with the application of the doctrinal legal research method. The study also makes use of primary and secondary sources of laws such as statutory and judicial authorities. The key finding is the overbearing presence of the Federal Government in the sector and inappropriate pricing of petroleum products which have made the sector unattractive to private investors due to excessive regulation of the sector. The research proposed a model to end incessant hike in the price of fuel. The research ends with suggestions based on the findings the need for sophisticated mixture of regulations and non-regulatory incentives for investments in the sector and advocates speedy passage of the Petroleum Industry Governance Bill to encourage private investors and to eliminate subsidy regime being a source of corruption in the sector.

JEL Classifications: Q4, Q5, K32, K12, K2, P28, K42.

Key words: Deregulation, Downstream Sector, Petroleum Industry, Petrol, Nigeria

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1. INTRODUCTION

Nigeria, the Africa's largest oil producer, relies largely on importation of petroleum products as its four crude oil refineries have remained in a state of total disrepair for many years. While diesel and kerosene prices had been deregulated, the Federal Government of Nigeria still pay subsidy to make petrol cheaper at the country's petrol stations.

Nigeria is ranked the sixth largest oil producer in the Organisation of Petroleum Exporting Countries (OPEC) because the country is blessed with vast quantities of oil that generates billions of Dollars in revenues to the Federal Government since oil was discovered in Nigeria. Like other developing oil countries, this has not translated into an improved economy for the country, instead, it has given room for corruption, mismanagement, smuggling of petroleum products to neighbouring countries, pipeline vandalisation and excessive subsidy payments for refined petroleum products in Nigeria thereby giving room for corruption and oil revenues mismanagement among other social vices in the sector.

The Nigerian oil industry is divided into three sectors: the upstream petroleum sector which comprises of exploration, production and the downstream which deals with refining of crude oil for domestic consumption, marketing, transportation and the midstream which deals with the natural gas. The study 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 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.

However, liberalization is the eradication of monopoly and involvement of many participants in the downstream petroleum industry to guarantee healthy competition, availability of petroleum products, fair and reasonable petroleum products prices through encouragement of private sector ownership and development of downstream infrastructure such as refineries, lubricant manufacturing depots and pipelines facilities. Privatization is the total transfer of ownership of government owned oil facilities or enterprises to individuals' investors on shareholding basis, while subsidy regime is the situation where petroleum consumers pay less than the prevailing market price of petroleum per liter with the aid of the Federal Government of Nigeria through subsidization of petroleum products prices to guarantee petroleum availability and affordability for Nigerians.

Moreover, in 1973, the Federal Government of Nigeria introduced another measure called uniform pricing of petroleum products to encourage even distribution of petroleum products in the country. Also, in 1975, the Petroleum Equalization Fund was established to combat price disparities arising from transportation of petroleum products to all part of the country at the uniform pricing policy introduced by the Federal Government with the aim of promoting sufficient refined petroleum products through acquisition of technical expertise in refining, supply and distribution of petroleum products by encouraging indigenous petroleum companies participation in the downstream sector. Similarly, to encourage adequate domestic supply of petroleum products at reasonable prices through appropriate storage facilities for

petroleum products and transportation of refined petroleum products to end scarcity of petrol, kerosene and other refined petroleum products and to boost efficient private sector investments through elimination of NNPC's subsidiaries market dominance in the Nigerian downstream sector.

Due to this, many countries in the world have developed their downstream petroleum sector through liberalization and deregulation concepts which have enhanced private sectors involvement in their downstream petroleum sector and have boosted investments in the sector. The problems of persistent scarcity of petroleum products in Nigeria and inconsistency of petroleum products prices have brought untold hardship on Nigerians which is a major concern for this study. Downstream petroleum sector was selected as case study due to several attempts by the Federal Government of Nigeria to develop the sector through various policies with low levels of success and also due the fact that Nigeria is ranked 10th largest oil reserves in the world with 90% of the Government's revenue originating from the sector and 35% of the government's Gross Domestic Products derived from oil industry and not fewer than 1% of its national Gross Domestic Products emanates from the downstream petroleum sector (Wapner, 2017).

This research assumes the following structure. The literature review, statement of problems, methodology was also discussed. The next section provides a brief overview of the legal framework and regulatory authorities regulating the sector. This followed by the experiences of other countries, the theoretical framework on deregulation of the downstream sector in Nigeria was also elaborated upon with the findings and discussion of results of the research. The research ends with the proposed total deregulation of the downstream petroleum sector model to end fiscal burden on Nigeria's economy and conclusion.

1.1. Petrol Tankers Queuing for Petrol



Figure 1 Petrol Tankers

https://www.google.com/search?tbs=simg:caqsngijx-uoic1skwsakgilelcmpwggaygpgcamskkoykrwygkanta27dakylbiwgk4nht-zp_1siyznsk4i_19tmdp7a5ztkame479wssozl0ykupp8mtfcb77kmv1k1f75zi4i3lwaiqs4x-zjtsdz9_14txnb2ovyaedasqj7-cbokcggiariewowygwlej3twqkaigekfgoecm9hznqlipydcgoil20vmdznmokggohcgfya2luz9qlipydcwojl20vmdfqcdc2chckbhnpg_1apyj2awskcs9tlza5mtfdaoucgnjyxlapyj2awkkby9tlzbrngokjqosy29tbwvvy2lhbc2zwhpy2xl2qwi9gmlcgkvbs8wzmt3amcm&q=aym+shafa+depot+warri&tbm=isch&sa=x&ved=2ahukewj24ench47oahvccxokhdfwdvuq2a4oaxoecaiqjg&biw=1366&bih=608

2. LITERATURE REVIEW

The petroleum sector being the main source of Nigeria's economy is bedeviled with systemic and endemic problem of corruption. This problem has impeded the economic growth of the

country. Notwithstanding the current global trend in relation to the use of alternative energy and the de-emphasis on oil, the Federal Government is exploring various options to effectively resolve this problem through deregulation concept. However, it is expected that the government will make the best use of her oil revenues while it lasts, for a meaningful development of the country by uprooting subsidies payments which have given room for inefficiency and corruption in the sector. This effort of the Federal Government has necessitated the on-going private refineries initiatives such as the Dangote Refinery and Petrochemical Company, Lekki Free Zone, Lagos State and Azikel Refinery in Bayelsa State with the aim of increasing local production of petroleum products from 445,000 barrels per day to end fuel scarcity in Nigeria (KPMG, 2019) but these efforts have not been fully materialized.

According to (Gberevbie *et al*, 2015) deregulation of the downstream sector is the only way to fight corruption, reduce the cost of governance and earn citizens' trust in the activities of the Federal Government and for effective downstream sector. (Kadiri and Lawal, 2016) in their study also emphasized on the necessity for total deregulation of the downstream oil sector to promote economic recovery of the country to end continuous increase in petroleum price, scarcity of petroleum product among others. Also, (Monday, 2016) in his study argued that increase in prices of petroleum products was not due to deregulation but increase in international oil prices. As increase in prices of petroleum products influence economic growth as petroleum products are demand inelastic in the sector. The study failed to emphasize on the benefits of total deregulation. The current authors argued that total deregulation is the panacea to petroleum products scarcity in Nigeria.

Also, (Ezu-Like Maximus, C., 2012) opined that the efforts the Federal Government to reduce negative effects of incessant pump prices increase resulted to fuel subsidy regime with aim of reducing the prices of petrol in the country but, the price persists to escalate despite over ₦1.7 Million spent as subsidy, the sector remain inefficient due to corruption. The study fails to adumbrate on the merits of efficient total deregulation. Another eminent scholar (Sobowole, 2012) asserts that deregulation of the downstream sector will promote efficiency in the sector by ensuring petroleum products availability and healthy competition among downstream petroleum investors thereby eliminating the Nigerian National Petroleum Company's monopoly in the sector. According to (Fidelis and Michael, 2013) the Federal Government expects deregulation to reduce economic waste and to reduce social burdens caused by government control in the sector. This study is of no practical value to this current study because issues relating to the downstream petroleum operations were excluded.

Also, (Bhagavan, 1999) examines the issues relating to the laws governing the marketing of petroleum products but the study is limited to the comparative analysis of the laws governing petroleum products marketing in Nigeria and other African countries. This literature itemized falls short of being relevant in the area of this research because issues relating to total deregulation of the Nigerian downstream petroleum sector were not adequately considered but only provided information for this study. As deregulation policy of the government is not in conformity with the provisions of the downstream petroleum laws.

The various academic scholars who have contributed to the subject matter of deregulation in the downstream petroleum sector failed to emphasize on the benefits of total deregulation of the Nigerian downstream petroleum sector which is the gaps in the literature that this study intend to fill by recommending total implementation of deregulation concept to end perennial scarcity of petroleum products in Nigeria's downstream petroleum sector to enhance efficiency and transparency in the sector through institutional and regulatory reforms, to promote healthy competition by integrating and adopting stringent enforcement of both the hard and soft laws approaches in the downstream petroleum sector.

3. STATEMENT OF RESEARCH PROBLEM

The Federal Government of Nigeria spent approximately ₦1.7million on fuel subsidy annually which is a huge financial burden on Nigeria’s treasury, the Federal Government initiated subsidy programme to make prices of petroleum products in the country cheaper for everybody to purchase. As the four government’s refineries with the capacity of 445,000 barrels have been in total state of disrepair, neglect and recurrent vandalism by saboteurs due to unending agitations for resources control by the youths in the Niger Delta areas due to environmental degradation from oil exploration activities and absence of infrastructure that commensurate with the value of oil revenues generated in the area.

Also due to excessive dependence on imported petroleum products and failure to upgrade the existing refineries facilities to modern ones to avoid disruption in petroleum products supply. Besides, the disparity in prices of refined petroleum products in Nigeria, it encourages smuggling of petroleum products to neighbouring countries thereby enhances corruption in the sector.

Furthermore, it is incontrovertible that the Federal Government of Nigeria cannot continue to subsidized petroleum products a gesture which is unsustainable due to corruption and inefficiency in the supply, distribution, pricing and marketing of petroleum products in Nigeria. The annual budget for subsidy of petroleum products should be used to develop other critical sector such as the power sector to boost Nigeria’s economy. Rehabilitation of the existing refineries could have guaranteed healthy competition, enhances availability and affordability of petroleum products in the country but this have turned to sources of corruption.

Dilapidated refineries and inefficiency in the distribution, marketing of petroleum products due to monopolistic structure of the downstream petroleum sector among others has necessitated the need for total deregulation of the sector to end excessive dependence on importation of refined petroleum products, irregular supply of petroleum products, hoarding of petrol to end long queues in Nigeria’s petrol stations and other problems associated with the downstream petroleum sector.

3.1. Total Deregulation of the Downstream Petroleum Sector will Guarantee Competition and Efficiency in the Sector

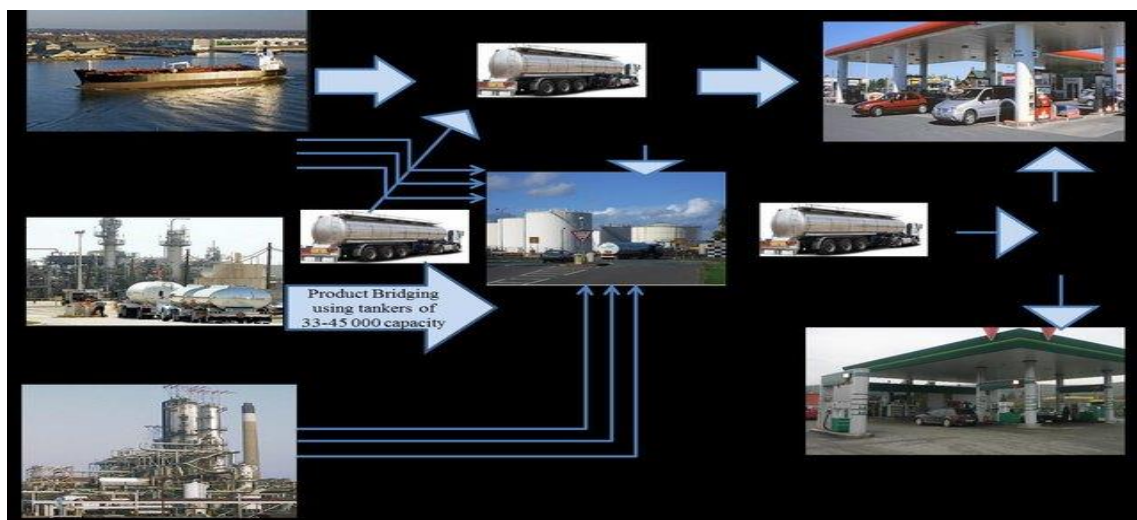


Figure 2 Ambituuni A, Amezaga JM, Werner D. Risk assessment of petroleum product transportation by road: A framework for regulatory improvement. Available at: <https://pdfs.semanticscholar.org/d2e6/8f4039df81682ef7f43cdea7609e7bf95c1b.pdf> , p.3.

4. THEORETICAL FRAME WORK ON DEREGULATION OF THE DOWNSTREAM SECTOR IN NIGERIA

An understanding of theories can give an insight into these problems and, in the context of this study, can assist in combating corruption and inefficiency prevalent in the downstream petroleum sector. Two theories are essential to this study: Resource Curse Theory and Sustainable Development theory. An understanding of these theories can give an insight into these problems and, in the context of this study, can assist in combating some of the challenges prevalent in Nigeria's downstream petroleum sector.

4.1. Resource Curse Theory was formed in 1970-1990

The theory helps the study by emphasizing that developing countries must ensure the promotion and development of the downstream petroleum sector through functioning refineries and coherent legal framework which will protect and prioritize the social, economic and environmental interests of Nigerian to meet the current needs as well as preserving the same for future generation's needs. Developing States must ensure that their downstream petroleum sectors promote efficiency through sound institutional and regulatory reforms to enhance healthy competition, development and to end crises associated with resources rich States such as mass poverty, scarcity and costly petroleum products despite the fact that the countries are endowed with abundant crude oil, poor social and oil infrastructures are the major challenges in the countries. The theories help the study by highlighting the need to conserve and protect the State's downstream petroleum sector for future generation's needs. It also highlights the need to enhance Nigeria's social and economic development through her abundant petroleum resources for sustainability and for the benefits of her citizens.

The theory helps the study by emphasizing on the need for consistent enforcement of the extant legal framework on downstream petroleum sector in all developing petroleum exporting countries. The theory further emphasize that resources wealthy countries lack economic prosperity and developments that is equivalent with their abundant petroleum resources due to prevalent corruption and failure to diversify and deregulate their economies and natural resources to agriculture, solid minerals among others to prevent mono-economy syndromes and to enhance their industrial developments to end the various challenges associated with subsidy payments such as corruption and inefficiency. There is therefore, the need for stringent enforcement of its extant laws on transparency in the extractive industries and other cogent environmental laws to protect social, economic and other environment interests in the sector (Oyewunmi and Olujobi, 2016).

4.2. Another relevant theory to this study is the Sustainable Development theory of 1980

Which originated from Stockholm Conference on Human Environment in 1972 which argues that governments should use their downstream petroleum resources in a sustainable manner for the development that satisfies the current needs without compromising the capacity and the necessities of the future generations. The theory helps the study to comprehend the need for efficient utilization of the downstream petroleum sector, the course of financings, thrust of technological innovations and institutional legal framework in compliance with the international best practice for the sustainability of humanities and nature. The theory emphasizes the need to deregulate the downstream petroleum resources among others for the benefits of life of the present-day generations and for the upcoming generations without damaging the ecosystems. Therefore, there is the need for adoption of total deregulation policy to end subsidy payments, to promote adequate supply of petroleum products in Nigeria

and to enhance efficiency in its energy sector through regulatory reforms that will enhance healthy competition among petroleum marketers for the common good of all Nigerians.

5. THE NIGERIA’S REFINERIES, YEARS OF ESTABLISHMENT AND PETROLEUM PRODUCTION CAPACITIES

Table 1 Nigeria’s Refineries

S/N	Refineries	Years of Establishment	Installed Capacities and Current Capacities	Remarks
1.	The first Port Harcourt Refinery	1965	Originally 35,000 per barrels daily (Bpd) but later expanded to 60,000 per barrels daily (bpd).	Despite having a nameplate refining capacity that exceeds demands, Nigeria is ranks as the 3rd highest importer of petroleum products in Africa, importing over 80% of its petroleum products consumed.
2.	Warri Refiner	1978	Originally it was 100,000 per barrels daily (bpd) but upgraded to 125,000 per barrels daily (bpd) in 1986.	A total shifting from a “net imports” to “net exports”
3.	Kaduna Refinery	1980	It was initiated with 100,000 per barrels daily (Bpd) capacity but later upgraded to 110,000 per barrels daily (bpd) in 1986.	The refinery has not been working optimally.
4.	The second Port Harcourt Refinery	1989	It was commissioned with 150,000 per barrels daily (bpd).	The focus on refining of petroleum products is imperative in Nigeria.

6. METHODOLOGY

The study adopts a doctrinal legal research approach by relying on extant literature on deregulation of the Nigerian downstream petroleum sector with primary and secondary sources of law such as the statutory provisions and judicial authorities on downstream petroleum activities which constitute sources of information for this research. The study also makes use of comparative approach by comparing deregulation experiences of other countries such as Philippine, India, Canada, Malaysia, Jordan and Ghana to gain useful insights to recommend the reform of Nigeria’s downstream petroleum sector. The sources of information for this study were mainly from secondary sources and unstructured interview with some downstream petroleum sector regulatory authorities and some downstream petroleum independent marketers to enhance efficiency and abundant petroleum products in the downstream petroleum sector through private sector participation in the ownership of modular crude oil refineries in Nigeria. It analyzed the issues and drew inferences which culminated in the findings of this study.

7. THE LEGAL FRAMEWORK AND REGULATORY AUTHORITIES REGULATING THE NIGERIA'S DOWNSTREAM PETROLEUM INDUSTRY

Deregulation of the downstream oil industry is being advocated as a policy directive without adequate legislative supports in the sector. A plethora of legislations regulating the petroleum industry have been enacted namely: The provision of section 44(3) of the 1999 Constitution which is the bedrock of the Nigeria's legislation gives the Federal Government of Nigeria exclusive control over petroleum resources and section 1 of the Petroleum (amended) Act, 2004 which confers full ownership and control of petroleum resources on the Federal Government. The Oil Pipeline Act Cap 07, Laws of the Federation of Nigeria, 2004 makes provision for licences to be granted for the establishment and maintenance of oil fields pipelines. The Act empowers the Minister for petroleum to grant permit to any person for the transportation of mineral through oil pipelines. Also, section 8 of the same Act provides for revocation of oil licence by the Minister due to non-compliance with the provisions of the Act. Powers of the Petroleum Minister under sections 6(1) and 9(1)(d)(iii) of the Petroleum Act on petroleum products price fixing are equally conferred on the Petroleum Products Pricing and Regulatory Agency (PPPRA)'s Board under section 7(a) of the Petroleum Products Pricing and Regulatory Agency Act. The Acts should be streamlined to avoid conflict of interest and in conformity with the current economic realities in the sector.

The Petroleum Equalization Fund (Management Board) Act, Cap P11, Laws of the Federation of Nigeria, 2004, section 6(1) provides for the reimbursement of oil marketing companies for any loss sustained as a result of sale of petroleum products at uniform prices fixed by the Minister of Petroleum. Non-compliance or making of false entry in any record require to be produced under the Act with the intent to defraud shall be liable for on conviction to a fine of ₦50,000 or to imprisonment for 5 years. This fine appears unrealistic considering the current economic reality in the sector. The aim of the Act is to promote availability and affordability of petroleum products in Nigeria but the objective of this law have been defeated due to corruption and weak enforcement of the law by the regulatory authorities in the sector.

The Oil Pipelines Act Cap O7, Laws of the Federation of Nigeria, 2004 regulates oil pipelines being the medium of transporting petroleum products. The Minister grant licenses for the establishment and maintenance of oil pipelines. Non-compliance with the Act attracts fine of ₦1,000:00 or 2 years imprisonment or both but weak enforcement has been the challenge. The Petroleum Production and Distribution (Anti-Sabotage) Act, Cap P12, Laws of the Federation of Nigeria, 2004 the Act is to criminalize sabotage and vandalisation of crude oil pipelines in the downstream sector. The penalty for violation of the Act is death penalty or imprisonment for 21 years but weak enforcement and corruption in the sector have resulted to non-compliance with the Act.

The Pre-Shipment Inspection of Exports Act, Cap P.25, Laws of Federation of Nigeria, 2004 regulates the inspection of oil before shipment to any place outside Nigeria to prevent instances of adulteration of petroleum products and to combat sharp practices in the sector but the law needs more of human, regulatory and statutory authorities' efficiency to accomplish its objectives in the sector. The Companies Income Tax Act, Cap C.21, Laws of Federation of Nigeria (LFN) 2004 regulates the downstream and midstream oil operations. The penalties imposed for non-compliance appears not to commensurate with the offence under the Act. The Education Tax Act, Cap.E4, Laws of Federation of Nigeria (LFN) 2004 imposes tax of 2% on the profits of oil companies in Nigeria who engaged in the downstream oil activities for the development of Nigeria's educational sector. Weak enforcement by the regulatory authorities has been the problem in the sector. The Finance Act, 2020 imposes 7.5% value

added tax (VAT) on consumable goods and services in the sector to generate incomes for the Federal Government. There is the need for palliative measures to be put in place to cushioned the effects of sudden increased in VAT from 5% to 7.5% on the Nigerians and to compliance with the Act. The Niger Delta Development Commission (Establishment) Act Cap N86, Laws of the Federation of Nigeria 2004 demanding the payment to the Commission by downstream petroleum companies 3% of their annual budgets for the development of the Niger Delta Areas where crude oil exploration and production are been exploited. Lack of accountability and corruption by the Commission's official has given room for weak enforcement of the law.

The major challenges with listed laws are weak enforcement by the regulatory authorities in the sector. Lack of clear guidelines on the exercise of the Minister's discretionary powers such as consent on oil transactions or licence transfers and absence of time frame for the exercise of such discretionary powers which have giving room for abuse of power. Also, the various Environmental Guidelines and Standards for the Petroleum Industry issued by the Department of Petroleum Resources with the force of law for the regulation of environmental quality control and pollution abatement in the sector. Lack of adequate incentives for compliance with the laws by the downstream petroleum companies. This has discouraged compliance and efficiency in the sector. The court in the case of *Idoniboye -Obu v. NNPC (2002) FWLR (Part 84) 11* affirm that regulatory authorities are to ensure availability of petroleum products and reliable databank to guide policy makers in the enactment and compliance with the various policies decisions on petroleum products in Nigeria.

The Petroleum Product Pricing Regulatory Agency (PPPRA) is to regulate price and distribution of petroleum products through the Code of Conduct issued to regulate petroleum operators in the sector and to set the pricing template for marketing of petroleum products such as petrol and kerosene. The Act should be amended to expunge areas of conflict on the roles of the Nigerian National Petroleum Corporation (NNPC) and PPRRA in the areas of pricing, distribution and marketing of petroleum products which has hindered efficiency of PPRRA in the sector. There is the need to eliminate bureaucracy among the various institutions regulating the sector to combat corruption and inefficiency. There is also the need for strong political will to entrench transparency and accountability in the sector through stringent enforcement of the downstream petroleum laws.

Also, the Nigerian National Petroleum Corporation (NNPC) was created in 1977 as national oil company by the Nigerian National Petroleum Corporation (NNPC) Act, Cap 320, Laws of Federation of Nigeria to participate on behalf of the Federal Government in all stages of upstream and downstream sectors to enhance the petroleum industry efficiency and to undertake other activities that are expedient in giving full effect to the provisions of the Act. Non-compliance with the provisions of the law due to weak enforcement by the Corporation being a player and a regulator in the sector gives room for conflicts of interests and breach of the law. Monopolies of the Corporation in terms of petroleum infrastructure and logistic facilities such as depots and jetties have impeded the activities and participation of other petroleum marketers in petroleum products importation due to the limited private logistic facilities or infrastructure in the sector. There is the need to de-monopolize the downstream petroleum sector through total deregulation to encourage importation of petroleum products by private or independent marketers to enhance healthy competition that will boost Nigeria's economy.

Similarly, the Petroleum Products Pricing Regulatory Agency (PPPRA) Act, 2003 which established the Petroleum Products Pricing Regulatory Agency to determine the pricing policy of petroleum products and to regulate supply and distribution by setting benchmark prices through modulation mechanisms to promote stability in the oil sector. The inefficiency in product transportation system has impeded the efficiency of the agency through ageing

petroleum pipelines, pipelines vandalisation activities, poor road networks and poor remuneration of most petroleum truck drivers which have occasioned sharp practices, inefficiency and corruption in the sector.

The Petroleum Equalization Fund Management Board is empowered to unifying the pump prices of petroleum products across the country is ineffective, its activities is fraught with corruption and has resulted in waste of financial resources and government involvement in the downstream petroleum activities makes law enforcement very weak and ineffective. The agency is to oversee the reimbursement of petroleum marketing companies for losses incurred for sale of petroleum products at uniform prices in Nigeria. There appear to be inconsistencies between this law and what actually obtains in the sector due to massive corruption in the sector. The Petroleum Equalization Fund as agency of government should be repealed and the laws regulating the sector should be reviewed for effective regulation. The Nigerian Content Monitoring Board (NCMB) supervises and manages the development of Nigerian content in the oil sector through approvals of the Board. The court in the case of *Bamidele Aturu v. Ministry of petroleum Resources* in Unreported Suit No: *FHC/ABJ/CS/591/2009* where the court held that the word “downstream” is alien to Nigeria’s law. Therefore, it is imperative that this term should be strengthened with the force of law in Nigeria’s legal framework.

8. DEREGULATION OF THE DOWNSTREAM PETROLEUM SECTOR: THE EXPERIENCES OF OTHER COUNTRIES

Deregulation of the Philippine’s downstream petroleum industry in 1988 was done in two phases, partial where oil importation was liberalized and automatic pricing mechanism was introduced. Under the full deregulation, controls on oil price setting were lifted thereby enhanced petroleum products availability and healthy competition among petroleum marketers (Ogbeifun, L.B., 2009). The Department of Energy, Department of Justice Task Force was set up to prevent excessive charges by oil companies and to review the increase in prices of petroleum products. The Republic Act, 8180 prohibits excessive price with 3years imprisonment with a fine ranging from P500.000 to P1million as penalty for non-compliance. The strict enforcement of their laws promote compliance thereby enhance efficiency and availability of petroleum products in the sector.

In the Republic of India also, after the deregulation of its downstream petroleum sector in 1998 a regulatory body was set up to monitor activities of oil operators by calling the attention of the government to policy changes but this does not interfere with the refinery operations, supply and distribution of petroleum products this reduces fuel supply shortages and over pricing. Similar agency also exists in Canada called the Petroleum Products Pricing Commission (PPPC) whose role is to ensure that consumers of petroleum products are treated fairly in the petroleum products market. The country adopts Automatic Pricing Mechanism (APM) with the maximum allowable prices monthly based on the global price of fuel and Canadian Dollars exchange rate and price changes which were calculated based on the published pricing of refined petroleum products by the regulatory authorities in the sector. According to (Tinubu A., 2009) Ghana deregulated its downstream petroleum sector with about 90% of its petroleum products in 2004 and had about 2.2% GDP subsidy and it completed its deregulation in 2005. Likewise, Malaysia spent 7% GDP on subsidy in 2007 made 41% price increase and 61% diesel price increase in 2008 to deregulate its downstream petroleum sector. Similarly, Jordan spent 32% GDP on subsidy and 32% on subsidisation of petroleum products in 2004 and 25% price increase in 2005 left 3% on subsidy. The Lessons learnt from the selected case study countries are:

There is the need for more Nigerian National Petroleum Corporation’s (NNPC) filling stations, reviving moribund oil refineries and building more modular crude oil refineries with

adequate social infrastructures to cushion the adverse effects of total deregulation of the sector on Nigerians. The Federal Government of Nigeria should remove all administrative bottlenecks at the Sea Ports which has given room for excessive demurrage charges on petroleum products and other fraudulent practices in the sector. There is the need for speedy passage of the pending Petroleum Industry Governance Bill, 2017 and total deregulation of the sector to encourage private investors' initiatives and to end subsidy payments regime being another source of corruption in Nigeria. The downstream petroleum sector laws reform is long overdue to end inefficiency, ineffectiveness and corruption for sustainable national development in the sector.

9. PUMP PRICE (₦) PER LITRE OF FUEL IN SOME CRUDE OIL EXPORTING COUNTRIES

Table 2 Pump Price (₦) per Litre

S/N	Countries	Pump Price Per Litre (₦) 2020	Minimum Wage (₦) in year 2020	Population (2020)	Production "000" BPD in 2020
1.	Saudi Arabia	205	293,159.63	21,607,000	9,683
2.	Russia	217	69,730.00	145,917,921 Million	10,800
3.	Kuwait	126	79,272.00	4.7 Million	2,662
4.	Qatar	170	73,400.00	2.88 Million	810
5.	Canada	257	2,978.02	37,653,690	1,276
6.	United States	248	2,660.75	330,488,351	10,961
7.	Venezuela	0.23	1,277.65	28,435,940	760
8.	Iran	36	78,905.00	83,992,949	2,080
9.	Libya	38.18	115,489.51	6,871,292	146
10.	Algeria	128	53,713.04	43,851,044	1,007
11.	Iraq	239	77,036.10	40,222,493	4,594
12.	Nigeria	₦145.00 but reduced by the Federal Government on March 18, 2020 to ₦125.00 but further reduced to ₦123.5 on April 1, 2020.	30,000	204,76,614	1,789
13.	United Arab Emirate	209	206,825.30	9,890,402	3,040
14.	Angola	116	1,518,193.62	32.87 Million	1,390
15.	Norway	512	5,621.86	5,405,345	1,485
16.	Brazil	328	75,120.83	212,150,100	2,586
17.	China	314	128,133.78	1,408,526,449	3,781
18.	Germany	515	3,707.37	83,712,702	40.652
19.	Sudan	52	2,999.71	43,849,260	215.800
20.	United Kingdom	524	689,188.22	67,886,011	984.879

Source: The table was created by the Author

10. THE POTENTIALS OF DEREGULATION OF THE NIGERIA'S DOWNSTREAM PETROLEUM SECTOR

Global attention is shifting from fossil fuels to renewable energy and there is renewed clamour among Nigerians for the diversification of the country's economy. This has been largely due to the global oil price slump, low demand for Nigeria's crude oil on the international market and the endemic corruption in the oil sector. Oil prices have dropped significantly from \$110 a barrel in 2010 to \$48 per barrel in 2014 increased relatively to \$54.15 per barrel in 2017, \$72.8 in 2018 and \$65.06 in 2019 but dropped to \$30 because of oil market forces. This has decreased the revenues of the Federal Government from oil. Also, there is lack of transparency in the Nigerian oil industry in the way and manner oil contracts were awarded. The case of Halliburton revealed series of corruption on going in the sector (Udibe, K.U, 2018).

Total deregulation of the downstream petroleum sector has the potential to shape the price increases of petroleum products. It will end huge revenues spent on fuel subsidy. It will enhance petroleum products availability in Nigeria and eradicate endless queues at filling stations for non-existent of petroleum products in some part of the country. Full price 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 among others. This will lead to healthy petroleum market, competition among petroleum marketing companies operating in Nigeria as against depending on NNPC for petroleum products and this will encourage establishment of private modular refineries by investors. The Need for the Federal Government to end subsidies payments in the downstream petroleum sector will lessens the burdens on the nation's treasury for subsidies payments which is a huge revenue which could have been spent on social infrastructural such as good road networks, schools and essential social amenities to enhance the nation's economic development and growth through free petroleum products market interplay which will guarantees healthy competition, efficiency and petroleum products availability throughout the country at reasonable market prices.

Besides, there is a serious decline in crude oil price due to the outbreak of the Covid 19 (Corona virus) that has ravaged the Republic of China being Nigeria's major customer after the United States. This has affected her national budget due to her mono-economy status and over reliance on crude oil for national income. Therefore, there is the need for diversification of our economy from crude oil to other mineral as crude appears not to be sustainable due its price volatilities. Subsidies payment also promotes inefficiency in the downstream petroleum sector as it discourage private investors in Nigeria's refineries due to excessive regulation by the Federal Government without considering the changes in prices at the international oil market. This has undermines incentive for private investors for investing in private refineries in the downstream petroleum sector in the country.

Also, the various Committees' reports on fuel subsidies in Nigeria's downstream petroleum sector have revealed that the sector has not been transparent but characterized with corruption and lack of transparency and accountability. Increased competition among marketers will result in lower prices. Adequate supply would eventually cause marketers to compete on services rendered. Prices need to be allowed to be primarily dictated by the market forces. Therefore, there is the need for total deregulation of the sector to encourage private investors building of infrastructure such as new depots, modular crude oil refineries to end fuel scarcity in Nigeria.

11. IMPEDIMENTS TO FULL DEREGULATION OF THE NIGERIA'S DOWNSTREAM PETROLEUM SECTOR

The Nigeria's downstream petroleum industry is strictly regulated with many regulatory authorities such as the Ministry of Petroleum Resources, Nigeria National Petroleum Corporation (NNPC) and Department of Petroleum Resources (DPR) and their effectiveness on refining of petroleum products are not adequate. The delays in the passage of the Petroleum Industry Governance Bill (PIGB), 2017 hinders full deregulation of the downstream petroleum sector, it has dampened investor's confidence in the sector. Crude oil theft, illegal refining operations, and pipeline vandalism are impediments to full deregulation of the downstream petroleum sector among others.

There are significant challenges in the industry such as damaged pipelines and the absence of an effective logistics infrastructure which hampered growth within the downstream petroleum sector. NNPC and its sub-business units function as government parastatals and suffer from poor maintenance of assets or oil infrastructural such as refineries, frequent breakdowns of pipelines and depots, inadequate funding, inadequate commercial incentives for investment in the sector. Significant red tapism and lengthy administrative processes for securing necessary regulatory approvals in the sector with slow pace of infrastructural expansion which is limiting the growth of the oil industry, under-investment and decayed oil infrastructure has affected development in the sector. Others impediments to full deregulation of the Nigeria's downstream petroleum sector are corruption, poor management of fuel subsidy, inefficient downstream petroleum sector regulatory authorities to enforce the legal framework regulating Nigeria's downstream petroleum sector. Also, the differences in cost of fuel importation to Nigeria by the various independent oil marketers, the inefficiencies of petrol price control mechanisms or modules in the sector and bad government and bad leadership are the current factors militating against deregulation of the Nigerian downstream petroleum sector.

12. THE TREND IN NIGERIA'S PETROL PUMP PRICE FROM 1976 – 2020

Table 3 Trend in Nigeria's Petrol Pump

S/N	Administration and Year(s)	Original Price Per Liter	Increment in Price Per Liter and Remarks
1.	General Gowon in 1973	6 kobo	8.45 kobo
2.	Late General Murtala 1976	8.45 kobo	9 kobo
3.	Chief Olusegun Obasanjo October 1, 1978.	9 kobo	15.37 kobo
4.	Alhaji Shehu Shagari again on April 20, 1982, increased the pump price to from 15.37 Kobo to 20 Kobo.	15.37 kobo	20 kobo.
5.	On March 31, 1986, General Ibrahim Babagida increased the pump price from 20 Kobo to 39.5 Kobo.	20 kobo	39.5 kobo
6.	Also on April 10, 1988 General Ibrahim Babagida increased the pump price from 39.5 Kobo to 42 Kobo.	39.5 kobo	42 kobo
7.	The stated administration on January 1, 1989 ordered private car to pay 60 kobo per litre for petrol while commercial cars were to pay 42 kobo per litre.	42 kobo	Private car were to pay 60 kobo per litre while commercial cars 42 kobo.
8.	Likewise, on the 6th of March, 1991 General Babangida administration raised the pump price again from 60Kobo to 70kobo.	60 kobo	70 kobo

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9.	In 1992 the same Babangida's government also increased the pump price from 70 Kobo to ₦3.25 Kobo.	70 kobo	₦3.25 kobo
10.	The price was also increased by Abacha's regime to ₦5.00 but after mass protests by Nigerians across the country, the price was reduced to ₦3.25 on November 22, 1993.	₦5.00	₦3.25
11.	In November 8, 1993 the price was again increased by Abacha's regime from ₦3.25K to ₦11.00	₦3.25k	₦11.00
12.	Similarly on October 2, 1994, it was again raised to ₦15.00 only to be reduced two days later to ₦11.00 by the Gen. Abacha's regime after serious protests by Nigerians.	₦15.00	₦11.00
13.	Equally, on December 20, 1998, General Abdulsalami Abubakar increased the pump price to ₦25.00 but again reduced to ₦20.00 on January 6, 1999.	₦25.00	₦20.00
14.	Also, Chief Olusegun Obasanjo on June 1, 2000 increased the petrol price per litre to ₦30.00 but only to be reduced to ₦25.00 on June 13, 2000, the pump price was further adjusted to ₦22.00 per litre.	₦30.00	₦22.00. Subsidy reform partially Successful.
15.	Again on January 1, 2002, Obasanjo regime increased the pump price of petrol from ₦22.00 to ₦26.00 and to ₦40.00 on June 23, 2003. Also in 2004 the same government increased the pump price from ₦42.00 to ₦50.00 and from ₦50.00 to ₦65.00 in the same year.	₦22.00k	₦40.00. Subsidy reform partially Successful.
16.	In 2007 the government of Chief Olusegun Obasanjo increased the price from ₦40.00 to ₦70.00.	₦40.00	₦70.00 but later reduced to ₦65.00 in May 2007 by the late President Musa Yar'adua
17.	In 2009 President Musa Yar'Adua	Reduction from ₦75,00 to ₦65,00	He withdrew 10 subsidies from petrol. No subsidy reform.
18.	In 2012 President Jonathan increased petrol price from ₦65 to ₦141	₦65	Due to mass protest from Labour Unions it was reduced to ₦86. The subsidy reform partially successful.
19.	In 2016 President Muhammadu Buhari increased the fuel price from ₦86 to ₦145	₦86	₦59.00 subsidy was withdrawn. Price adjusted from ₦97 to maximum of ₦145, no pushback.
20.	2017-2020 President Muhammadu Buhari still maintain the pump price of ₦145 per litre. On March 18, 2020 the government announced the reduction in pump price of petrol from N145.00 to ₦125.00 but further reduced to ₦123.5 on April 1, 2020.	₦145 – ₦123.5	Payment of subsidy on petrol is still ongoing thereby encourage corruption in the sector.

13. FINDINGS AND DISCUSSION OF RESULTS

The study found that the legal framework for the regulation of the Nigeria's downstream petroleum sector is not comprehensive enough, it create opportunity for conflict of statutory roles between the Petroleum Minister, the Nigerian National Petroleum Corporation (NNPC),

the Department of Petroleum Resources (DPR), the Petroleum Products Marketing Company (PPMC), the Petroleum Products Pricing and Regulatory Agency (PPPRA) on setting the prices of petroleum products due to overlapping of functions and this have occasioned instances where the agencies work at cross purposes. This has hindered effective pricing of petroleum products as it does not allow market forces to determine the price of petroleum products. The roles of government agencies should be clearly defined in the enabling laws in the downstream petroleum sector. During the former President Goodluck Jonathan regime, the Petroleum Product Pricing Regulatory Agency (PPPRA) on January 1st, 2012, announced the outright removal of fuel subsidy but it was revised after much protest by the Nigerian Labour Unions without considering the benefits of total deregulation and removal of fuel subsidy which has given room for corruption in Nigerian downstream petroleum sector. Deregulation of the downstream petroleum sector if properly implemented by the regulatory agencies will transform the sector to competitive industry that is market driven. The study further reveals that if the sector fully deregulated, it will enable market forces to determine petroleum products prices; rather than the Federal Government fixing petroleum product prices.

14. CONCLUSION AND RECOMMENDATIONS

This research investigated the deregulation of the downstream sector of the Nigerian Petroleum Industry and advocates the need for total deregulation of the sector. The research relied on extant literature to have a conceptual view of the topic. The reform will turn NNPC to full commercial, viable legal entity that is profit driven with opportunities to raise cash from the capital markets through the provision of the Petroleum Industry Governance Bill, 2017. Nigeria has a large petroleum products supply gaps. Lack of working refineries and heavy pressure on infrastructure from resultant importation has been a key cause of supply shortages. Total deregulation of the downstream petroleum sector will end petroleum products scarcity in Nigeria and promote efficiency in the sector. The following recommendations are proffer:

- Award of oil licences to more investors to establish functioning private modular crude oil refineries which is an off-the shelf solution, it is cost effective supply and investment option for investors. It can be located within the existing refineries or marginal onshore fields. The refineries should be made to work at full capacities to meet up with our daily fuel consumption capacity in the country through turn around maintenance. To end subsidy regime, it requires strong political will, sensitization of all stakeholder and Nigerians on the benefits of total deregulation in the sector.
- There is the need for diversification of Nigeria's economy into Agriculture, solid mineral or renewable energy which is abundant in Nigeria to reduce over reliance on petroleum products. More petroleum marketing companies should be encouraged through tax incentives to participate in petroleum products importation and distribution. The Federal Government owned Refineries should also be privatized to function properly to discourage petroleum products importation. These measures, if adopted will create the enabling environment for deregulation policy to succeed in Nigeria's downstream petroleum sector through strict implementation of palliative measures that would cushioned the adverse effects of total deregulation of the downstream petroleum sector on Nigerians.

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