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CRITICAL LEGAL ISSUES IN STATE PARTICIPATION IN THE OIL BUSINESS IN NIGERIA: ANY SUCCESS?

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ABSTRACT: *Since the finding of oil and independence in Nigeria in the 1960s, State participation in the oil business has been tremendous ranging from the enactment of state ownership of oil legal regimes to the creation of national oil companies and refineries. Change in the ideological climate of ownership due to the end of the cold war has equally underscored renewed incursion of multinational oil companies into the oil business with a variety of joint venture and production-sharing contracts with the national oil company: NNPCL. Further opening of the gates for local content development has also seen the emergence of local content vehicles and private refineries on the Nigerian oil business landscape. This study which employs the doctrinal method critically surveys the international and municipal dynamics that resulted in State ownership theories of minerals, the resource conflicts wars and corruption they have bred and the pernicious tenacity with which multinational oil companies have remained relevant on the oil business landscape without any demonstrable contribution in the downstream sector and gas-flare-down. The study equally underscores the circumstances in which the seven sisters have underpinned and shoved the Nigerian state into blurred privatisation, deregulation and liberalisation policies. The study finds that the participation of the State in business has neither grown the economy by meeting the energy requirement of the people through state refineries nor has it employed its legislative management to get the multinationals to do so through private refineries. What the nation has harvested is a basket of corruption, poverty and underdevelopment concluding that State participation in the oil business has been a failure.*

KEYWORDS: State Refineries, Private Refineries, Multinationals, National Oil Companies and Joint Ventures.

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INTRODUCTION

It is clear that the State's main policy objectives in embarking on oil exploration are to maximise its foreign exchange earnings from petroleum resources, create employment opportunities, train its nationals to acquire technical know-how in the industry and achieve economic development and improved standard of living. As it was comprehensively put by Anyanwu et al (1997, 56), the specific policy objectives of the Nigerian State with respect to petroleum and mining are: active government participation in mining operations, diversification of mineral products, the organisation and regulation of the development of mineral resources so as to optimise their contribution to the overall national development effort, the conservation of the country's mineral resources, research into efficient extraction methods and wider applications and use of minerals manpower development and accelerated transfer of technology, achievement of internal self-sufficiency in the supply and effective distribution of petroleum products, export of petrol-industry products, commercialization of gas and the control of the environmental problems of oil production.

In spite of all the ascension on the learning curves and its consequent improved bargaining position against the multinational oil companies, State's attempts at achieving its policy objectives have remained unsuccessful because, according to Gidado (as cited in Aniko, 2006, p. 6), the petroleum contracts and government policies towards the development of hydrocarbons are not adequately designed to facilitate local control or full participation as well as to have an effective transfer of oil technology. Thus, to Aniko (2006, p. 6), as long as the industry is controlled by the multinationals, the full potential of the industry cannot be realised by the State as only effective control can facilitate the task of integrating the oil sector into the other sectors of the economy and minimise the losses of the earnings from oil. To be able to exert full and effective control, the State needs besides ownership, the necessary technical and managerial know-how in the industry that would be acquired deliberately since technology is 'better stolen' than easily transferred. Having ex-rayed the industry via the NNPCL as the key player standing in for Nigeria, Aniko's observation reveals that for over 30 years of the State's participation in the industry, the entire control of the industry is still in the hands of the multinational oil companies. The required technology to operate the sector is still very much dependent on foreign support and its transfer remains a far cry.

Statement of the problem

Many countries are rich in oil, gas and solid minerals. Studies have shown that when governance is good, these gifts of nature can generate large revenue or foster economic growth and reduce poverty. But when governance and its institutions are weak, the resources may instead cause poverty, corruption and conflict: the so-called resource curse thesis as in the case of Nigeria with pervasive poverty in the Niger Delta that produces oil with attendant problems including hostage-taking for ransom from oil companies.

For Yakubu and Aderibigbe (2004, pp. 18-19) Nigeria continues to confound the world as it shops daily for refined products from outside to meet its domestic demand despite being the sixth world producer of the product with an OPEC daily production quota hovering between 2.5 to 2.8 million barrels of Brent crude oil. This is also in spite of the existence of not less than four refineries in the country. Yet, three decades of experience the country has had in the sector has been that of sleaze and scam. For instance, in the period 1999 to 2004, the Federal Government spent not less than N90 billion on mandatory 'turn around maintenance'.

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The first refinery in Nigeria, the Port Harcourt Refinery Company at Eleme was established in 1965 with an initial installed capacity of 35,000 bpd. This was later expanded to 60,000 bpd. In 1985, another refinery was added with an installed capacity of 150,000 bpd bringing the total to 210,000 bpd. But both plants hardly produce at 20% installed capacity and they had, by 2004, gulped about N26 billion in 'turn around maintenance'. The second, Warri Refinery and Petrochemical Plant were built in 1978 with an initial capacity of 125,000 bpd. By 2004, Dellre Bezons Ltd, a French firm, had carried out a 'turn around maintenance' on it for N14 billion. An investigation into the maintenance showed glaring cases of management ineptitude, flagrant abuse of procedure, gross financial indiscipline and indiscriminate procurement of materials at highly inflated prices, and in many cases, purchases had no relevance to actual needs. The third refinery designed by NNPCL to make refined products readily available in the northern parts of Nigeria, the Kaduna Refinery and Petrochemical Company (KRPC) was established in 1980 with an initial capacity of 100,000 bps (barrels per stream). It was expanded in 1985 to 110,000. As of 2004, it hardly produced 1 million litres of petrol and diesel per day. Its 'turnaround maintenance' by Total took about N22 billion.

When it became public knowledge that NNPC upon becoming NNPC Limited may have left over N136 billion as the operational deficit in its three refineries in Kaduna, Warri and Port-Harcourt and that a total of 1,657 workers had been on their payroll receiving salaries and not producing a single drop of fuel on the admission of Mele Kyari (GMD) that the three refineries had been shut down because of their operational un-sustainability, and that the NNPC Limited had not deposited a dime into the coffers of the State in the past six months (as at September 2022), and that the N2.38 trillion made from crude oil sales within the period under consideration had gone into repairs of refineries, Frontier Exploration Funds, domestic gas development and the Moroccan pipeline project, the average researcher would be appalled. In the circumstances, can it be said that State participation in the oil business in Nigeria has been a success?

THEORETICAL FRAMEWORK

State ownership theory:

According to Gadzama (2005, p. 68), African countries including Nigeria have all had a history of State ownership of enterprises, often in all sectors but particularly in the major sectors of the economy, in the case of Nigeria, oil and gas. The governments had inherited these strategic enterprises from their colonial rulers and also acquired interests in multinational companies during the socialist pull that swept through the 1970s. Government holdings spanned from public utilities to financial institutions, transport corporations, agricultural ventures and manufacturing businesses. In some cases, particularly in the oil and gas sector, States had partial ownership resulting from the nationalisation or indigenization era of the 1970s when the States coercively nationalised foreign-owned businesses with compensation in some cases.

Indigenization theory:

The Indigenization Policy of the Nigerian State in the early 1970s compelled multinationals to sell percentage equity in many enterprises to citizens of Nigeria. This was followed by another in the mid-70s which enabled the government to nationalise foreign-controlled enterprises. Thus, the government became determined that the commanding heights of its economy had to

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be in local hands. These situations no doubt led to the flight of foreign investments. Yet, the States, as in Nigeria, bolstered by huge oil revenues, set up many enterprises supported by State oil revenue.

However, by the 1980s, in an incremental fashion, the laws were amended to widen the area and sectors in which foreigners would hold interest until the last decade when all restrictions on ownership of stakes by foreigners in businesses were completely removed. Indeed, according to Gadzama (2005), economic policies of these African countries, notably Nigeria, have come right around the circle and the demands of the Donor Communities and Agencies for privatisation in many instances, particularly in the oil and gas sector, were seen as solutions from messiahs as they only strengthened the hands of the leaders who could not on their own, as a result of failed promises and existing mistrust, convince their countrymen of the propriety of privatisation.

By the 2000s, the role of the State in enterprises had become widely questioned. The visionary intentions expressed by governments in the past suddenly became a false façade considering the huge amounts of money used as capital and running costs for state-owned enterprises and the horrific outcome thereof. This was equally a period within which most of these African States had the worst economic performance characterised by huge external debts, failed corporate governance, institutions and infrastructure. Given this scenario, the need to restructure along market economy principles became imperative especially as the creditor agencies were not willing to reschedule, restructure or cancel the debts without a comprehensive programme of democratisation.

Privatisation and liberalisation theories:

Privatisation was then seen as a viable option for economic recovery and the key to the transformation of both the private and public sectors. In other words, the decision to sell state-owned enterprises was seen as an attractive option as they were characterised by ineffective and inefficient operations resulting in enormous deficits and sometimes collapsed services. For Obasanjo, the rationale for privatisation is that it permits governments to concentrate resources on core functions and responsibilities while enforcing the 'rules of the game' so that the markets can work efficiently with the provision of adequate security and basic infrastructure as well as ensuring access to key services like education, health and environmental protection. The objective is to assist in restructuring the public sector in a manner that will engender a new synergy between a leaner and more efficient government and a revitalized, efficient and service-oriented private sector.

In his paper, 'Privatisation in Africa: Legal Issues', Gadzama (2005, p. 68) has canvassed that privatisation is often misconstrued with other related terms like conversion, liberalisation, commercialization, deregulation and restructuring. Privatisation does not seem to be a word defined in the dictionary. It is a recent coinage. Many see it as a conversion from public to private ownership. It connotes a process of transformation or transition from one form to another. It involves the conversion of an enterprise owned by 'all' to one owned by a 'few' however the number of the few may be. Thus, it is not only a concept but a process as well as a transaction. It is equally apt to state that the 'private' in privatization refers to the sector rather than the person in the transfer of the enterprises or shares in the enterprises to private sector interests.

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Liberalisation on the other hand is the opening up of public enterprises to be managed in a way designed to make a profit. Liberalisation is thus the opening up of public enterprises with less rigid regulations allowing for private participation and enterprise profiting. Deregulation on the other hand means to free an enterprise from regulations or controls. It is a process that is aimed at reducing or eliminating (where necessary) regulations on state-owned enterprises and market forces are allowed to dictate the situation. Restructuring and reformation are used interchangeably. They mean the reorganisation of the structure and management policies of state-owned enterprises to achieve maximum results.

Nationalisation theory:

However, privatisation is often seen as a foreign agenda devised by International Finance Capital and Agencies aimed at finally routing out the last vestiges of socialist tendencies in the third world. Earlier in the 60s and 70s, nationalism was the trophy of national policy, greatness and true independence. The volt face was inexplicable to the people. A legitimacy and credibility burden arose between economic failure and sentimental attachment to the popular concept of public property. Prices were ridiculously below the actual market prices of the enterprises being sought to be sold such that it was scandalous if not naïve for a government to be associated with such sale transactions. The high incidence of lay-offs that may attend private takeovers of public enterprises was equally considerable. Thus for Gadzama (2005), this in addition to failed promises of good governance accounted for why African states could not on their own without external prodding and stimuli embark on privatisation despite the obvious potential of the option as capable of revamping its economies from the woods. The emerging bourgeois class (the fat rats) feasting on the public property conspired and gradually defaced the positive attraction of privatization processes and narratives. Members of the class, due to their closeness to the government, remain major beneficiaries of the exercise. It was thus common experience in privatization programmes that parent or sector Ministries obstruct, delay, frustrate or pre-empt steps that could bring about privatisation.

LITERATURE VIEW

Traditional concession:

In the paper, 'State Participation in Mineral Exploration in Nigeria', Okene (2006, pp. 1-2) has opined that there was no visible participation of the State in mineral exploration before 1963. The Nigerian oil industry is mainly dominated by seven international oil companies. They are able to remain in control due largely to their sophisticated technology and competence with well-developed integration of their operations both upstream and downstream. As was put by Aboloje (2006, p. 2) these companies are vertically integrated, controlling most of their own requirements and facilities so that it is theoretically possible for a barrel of oil from an interest owned by one of the majors to reach the final consumer in its processed form without change in ownership. In other words, most of the oil traded internationally flows from the ground into the generator and the engines of the final consumers without leaving the ownership, management and control of these majors or seven sisters: British Petroleum, Exxon, Gulf Mobil, Royal Dutch/Shell, Standard Oil and Texaco (Mikdashi, 1972, p. 35.

In the foregoing scenario, State participation consists of granting traditional concessions to the majors in return for receipts of royalties and other payments for crude oil leaving its territory.

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The traditional concession was an agreement whereby the oil company got the exclusive and extensive right to explore for petroleum and all other mineral deposits in the area which often extended over the entire national territory with a duration running in the neighbourhood of a century: usually, a lease of 99 years. The company was to explore, produce and dispose of the product in a manner it deemed fit and proper while the financial benefits accruing to the host State were usually minimal in form of specific costs, taxes, royalties, nominal rents and drinks usually based on output rather than value (Omorogbe, 2003, p. 39).

The traditional concession conveyed a relationship between the weak and the strong. It contained an element of a capitulation in the nature of a gift. As it was put by Okene (2006, pp. 1 - 2) the one-sided nature of the relationship between an ignorant party who knew nothing about the possibilities of the commodity and who was easily satisfied with his royalty and that of a rich, powerful and knowledgeable oil company led Atsegbua (2004, pp. 34-35) to regard the transaction as that in which a monarch undermined the interest of his subjects, gave out too much for too little to foreigners who were only too eager to build a colonial system upon the grant. The characteristic features of the traditional concession were clearly inequitable and skewed in favour of the oil companies the arrangement was unable to survive the furore of decolonization and the new international economic order. It was therefore discredited and gradually abandoned (Omorogbe, 2003, p. 40).

Modern concession:

State participation in the oil industry is inevitable given the importance of the industry and the developmental needs of the Nigerian State. It is directed, therefore, at increasing the State's share of the earnings of the oil industry, giving the State a voice in the policy decisions in the industry and developing the technical and managerial skills of her human resources. State participation, therefore, is a partnership arrangement wherein the State, either directly or through its national oil company, receives an equity or participation interest in the rights and obligations of a contract or a concession.

In a typical concession, the State hands-off a concession and it is given to a consortium of companies in most cases, as in Nigeria, NNPC owns 55 per cent, SPDC owns 30 per cent, Elf has 10 per cent and Agip has per cent. The concession in such a regard is that Shell would explore it and develop it to produce petroleum products; and that is all the State asks from Shell (Wink, 2002, p. 40). It could be equity or non-equity. Equity participation or equity joint venture is usually by a majority shareholding of the State or its national oil company. Non-equity participation is a joint venture-type agreement between the government and the oil company (Atsegbua, 2004, p. 86 & Barrows, 1983, p. 28).

The modern concession is essentially a radical variation of the terms of the traditional type. The oil company retains the rights to explore, produce and sell but the state grants it the license or the lease to do so with a shorter but renewable duration of a year in the case of an oil exploration license, five years in the case of oil prospecting license and 20 years in the case of oil mining lease. The area granted is drastically reduced with specific dimensions that must be mapped and surveyed with straight lines on the four cardinal points. The license or lease is no longer a blank cheque for all mineral resources but for specific products such as crude oil or natural gas. The financial obligations of the company are equally increased to cover not only rents, taxes, and royalties but corporate social responsibilities towards the host communities in the form of manpower training, scholarship schemes, sustainable development projects and

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programmes and a policy thrust that makes the host communities stakeholders in the contractual joint venture.

Participation and joint ventures:

State participation goes beyond State regulation of the activities of the industry to descending into the arena of the business enterprise as a partner. The resultant effect of State participation is the emergence of a variety of contractual relationships between the State and the oil companies and more significantly, the establishment of a national oil company, in the case of Nigeria, the Nigerian National Petroleum Corporation Limited. These contractual agreements can generally be referred to as joint venture agreements and concessions in the form of production-sharing contracts, service contracts, and risk service contracts.

Oil production through Joint Venture accounts for about 95 per cent of Nigeria's crude oil production. Shell, which operates the largest joint venture in Nigeria with 55 per cent Government interest through the NNPC produces about 50 per cent of Nigeria's crude oil. ExxonMobil, Chevron-Texaco, Eni/Agip and Total-elf operate the other joint ventures in which the NNPC has a 60 per cent stake (Soeze, 2005, p. 56).

Production sharing contracts:

In the oil industry, two major funding mechanisms exist. One is the Joint Venture (JV) arrangement where each equity holder contributes according to the level of ownership to project funding. The other is the Production Sharing Contract (PSC) which allows the operator to fund all operations and is given time to recoup its money after the first oil (Yakubu, 2005, pp. 1-2). By 1993, the first generation of Production Sharing Contracts (PSC) had been signed for a total of 12 blocks and by 2000, great discoveries had been made including Bongo (in 1996 with over 1.2 billion barrels); Erha (in 1997 with over 600 million barrels); Abo (in 1998 with over 800 million barrels); and Agbami (in 2000 with over one billion barrels) (Yakubu, 2004, pp. 1-2).

Production Sharing Contract said to have been pioneered in Indonesia, is a legal arrangement in which the crude oil is shared by the parties in a predetermined ratio or proportion. It defines the relationship between the host State and the company. The company bears all the risks of exploration and is in charge of the operation and management of the contract area and when oil is struck, the company is entitled to recoup its investments from the oil produced from the contract area called the cost recovery oil and the remaining production is shared between the parties called the production split (Omorogbe, 2003, pp. 41-42).

The basic feature of a Production Sharing Contract is that the oil company is appointed by the host State as a contractor in a certain area definite. It operates at its sole risk and expense under the control of the host State. The production of oil if any belongs to the host State. The company is entitled to a recovery of its operating cost out of the production oil from the contract area as the cost oil, and thereafter, the profit oil is shared in a predetermined percentage split between the company and the State called the product split. The company's income is available for taxation and the equipment and installations are the property of the host State either from the on-set or as the contract progresses (Atsegbua, 2004, p. 117).

Joint Venture and Production Sharing Contracts have their own purposes as petroleum arrangements. A Production Sharing Contract essentially means the State cannot fund its own

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part of the venture for the time being. The contractor, therefore, takes the risk of exploration, development and production. If oil is not found, the contractor takes all the losses. If oil is found, then the State will have an arrangement with the contractor whereby the contractor recovers costs, taxes, royalties and all other fiscal arrangements, the balance, which is the profit oil, would be split in the agreed ratio. Such a ratio would ensure that the contractor earns a reasonable return on its capital investment. Thus, if the State can fund, it is better because even the equity share of crude could be lopsided in favour of the contractor which has to lift crude to reflect all that it had invested including cost oil, profit oil and royalty oil. When all these are aggregated, the contractor's liftable oil becomes substantially disproportionate when compared to a Joint Venture petroleum arrangement (Kupolokun, 2005, pp. 56-57).

For Sibinga Mulder (as cited in Yakubu, 2005, 56-57) of Addax Petroleum, Nigerian production sharing contracts encourage investment in oil exploration and development; it provides for commercial clarity and development of oil reserves. It is transparent and commercially acceptable for the mature fields in operation but any new venture particularly in the light of the new fiscal regime for gas has to be appraised in its entirety. The more difficult the development of oil and gas is, the more marginal the economics, and the more favourable the production-sharing contract terms need to be.

Yet, it is difficult to convert from one arrangement to the other because of the inherent peculiarities of each arrangement. The conversion would involve consideration and evaluation of the potentials and volatility of the reserve; what future production would be; what future crude prices would be; whether the fiscal incentives would change and the motley of other intangible and subjective variables. Thus, every project must be viewed from its own merit and each project, depending on the issues and its surrounding circumstances, "If you are talking of high-cost project in difficult terrain, in frontier areas, I have no doubt in my mind I will go with a Production Sharing Contract and will let somebody take all the risk on my behalf. But if you are talking of a low-cost scheme, easy to produce or a producible acreage in shallow water, I will rather fund it myself. So you would want to look at the project on its own merit. And if I have the funding, I will put it in" (Kupolokun, 2005, pp. 56-57).

However, conversion is not impossible. Over the years, since the inception of the joint venture funding arrangement in the 1970s, the State had tended to fall behind on its share of cash calls standing at about 9 billion dollars annually in 2007. In order to ensure continued growth in the sector while attempting to reduce the funding burden on NNPC, the State began to pursue alternative measures that progressively converted the existing joint venture arrangements to production-sharing contracts which were basically designed to pursue a high-case activity programme without the constraint of cash-call developing same to a standard commercial arrangement for the upstream oil and gas sector (Dankoru, 2006, pp. 42-43).

Typologies of production sharing contracts:

Examples of production-sharing contracts are many in Nigeria. An indigenous oil marketing and trading company, Oando Plc and its Co-ventures had signed a production sharing contract with NNPC for its first operated oil field development in Nigeria (Yakubu, 2006, p. 21). The PSC which covered OPL 278 located in the offshore Niger Delta region was signed at the NNPC Towers, Abuja giving the Oando Consortium the right to the field and to commence development. The consortium made up of Oando Production and Development Company (OPDC), Camac International Ltd, Allied Energy Resources and First Axis Oil and Gas Ltd

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have a holding ratio of 60:15:15:10 per cent respectively. Being the lead investor with 60 per cent, Oando became the first indigenous oil company in the 2005 bid round to become a viable local content vehicle to meet the DPR's deadline to pay its signature bonus of about N3.5 billion. Oando was equally projected to have invested over 40 million dollars in gas distribution in the Lagos zone.

A foreign independent oil and gas exploration and production company, Pioneer Natural Resources Company had also signed a production sharing contract with two indigenous companies: Oranto Petroleum and Orandi Petroleum on oil block OPL 320 in deepwater Nigeria, gaining exploration rights from the NNPC (Salau, 2004, 54). The 442,000 acres (1,790 Sq km) block is located about 90 miles southeast of Lagos with its water depth ranging between 6,900 to 8,900 feet. Pioneer as the technical operator of the block had 51 per cent working interest Oranto had 32 per cent and Orandi 17 per cent. Under the PSC, Pioneer and the other participants would carry out a work programme that includes acquiring a minimum of 1,790 Sq km of 3D Seismic data and drilling at least one exploration well by 2007. Pioneer was reputed as a large independent oil and gas exploration and production company based in Dallas, USA with operational interests in Canada, Argentina, South Africa, Tunisia, and Equatorial Guinea.

Production sharing contracts are largely associated with the Nigerian deep offshore defined to extend from 200 to 3,000 meters of water depth. Deepwater exploration in Nigeria was first opened in 1990 with a non-exclusive, speculative seismic survey that drew subscriptions from the five majors: Shell, ExxonMobil, ChevronTexaco, Elf (Total) and Agip (ENI). However, the actual campaign started in 1993 and by 2004, over 25,000 km and 30 Sq km of 2-dimension (2D) and 3-dimension (3D) seismic data had been acquired. Also, 40 exploration wells had been drilled as of 2003 out of which 23 oil and gas reserves had been discovered (Yakubu, 2004, p. 1-2).

Typologies of service contracts:

A typical service contract was the development of the Okono-Okpoho fields both located 55 kilometres offshore Nigeria in OML 119 between Nigerian Petroleum Development Company (NPDC) a subsidiary of NNPC and Agip Energy and Natural Resources (AENR) a subsidiary of ENI-Agip. Although the Okono-Okpoho fields were discovered in 1983 by NPDC with an estimated reserve of 56 million STOIIP, it was not until 1999 that the NNPC-NPDC opted for open competitive bidding to choose a partner for the development of the fields. The service contract which brought in Agip Energy did not only develop Okono fields within a world record time of 10 months, but with the application of advanced technology, it discovered 5 additional zones increasing the reserves from 56 million barrels to 240 million barrels.

The service contract included novel provisions for the conduct of operations, joint management through the project management committee, a defined time of change of operator-ship and the introduction and transfer of new technology. The service contract provides a joint team of the two companies to carry out operations for the development of the fields. It also provides that a staff of Agip Energy should lead the team for the first three years of the operation and would be assisted by a staff of the NPDC as the Deputy Project Manager. This arrangement is to change after three years with the Deputy Project Manager from NPDC taking over. At five years, NPDC takes over fully.

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Agip Energy did not get the Okono-Okpoho fields on a platter of gold. The journey into the fields began in 1999 when it responded to an advertisement and was invited to bid in 2000 which was successful and commenced negotiations for the service contract with NPDC which ended with the payment of a 40 million dollar signature bonus. It is equally noteworthy that as provided by the service contract, Agip Energy provided the entire 85 million dollars spent on the project.

By the terms of the service contract, Agip Energy, as the contractor, was expected to fund the project 100% and recoup its investment along with the agreed interest as cost oil within a maximum period of five years. What is remaining after the cost of oil must have been deducted along with royalty and petroleum profit tax is the profit of oil which is expected to be shared by NPDC and Agip Energy in an agreed percentage of 70 percent to Agip Energy and 30 per cent to NPDC during cost oil and 40 per cent to Agip Energy and 60 per cent to NPDC after Agip Energy had recouped its investment. The Okono-Okpoho field was to be produced through the FPSO 'James Town' a vessel which has an oil processing capacity of 20,000 bpd, water processing capacity of 7,000 bpd, gas processing capacity of 35 to 40 million standard cubic feet per day and oil storage capacity of 200,000 barrels (Tell, 2002, p. 37).

Pure service contract:

This is a simple contract of work with the host State bearing all the risks and the oil company performing all stipulated services and is paid a flat fee for the services. Under a service contract, according to Atsegbua (2004, p. 117), the State hires the services of the oil company as a contractor, not as a concession holder or a partner but merely as a hired agent. They are similar to the production sharing contracts except in the mechanism of recovering cost oil and remuneration of the contract other than through the profit oil or production split. Thus, the essential features of a service contract are that the national oil company is the sole owner of the oil discovered and the role of the company is limited to rendering financial and technical services and resources. But this does not imply a transfer of technology to the State.

Risk service contract:

The risk service contract is essentially the same as the pure service contract but the oil company contractor provides the entire risk capital for exploration and production and if no oil is discovered, the contract ceases to exist with no obligation on either party. In the chance of a commercial discovery, the expenses of the contractor are recouped and are equally paid for the services. In other words, all risks and investments are placed on the oil company until commercial oil is discovered before it can be entitled to reimbursement of its financial investment in the venture. Upon the completion of the development or at the beginning of the commercial stage, the host state is authorised to take over the operations while the contract may provide for the payment of the oil company contractor over several years. However, as noted by Omorogbe (2003, 61), the risk of the pure service contract may be accompanied by a legally unconnected but parallel purchase contract for a part of the oil produced in the venture to be bought by the contractor that may equally export same at the world price.

State Participation through the NNPC

Citing Etikerentse (1985, pp. 10-11) in his paper, 'State Participation in Mineral Exploitation', Aniko (2006, p. 1) has argued that Nigeria like other colonial dependencies had had its economic lifeline tied to the apron strings of Great Britain and the old international economic

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order in which investment for the exploitation of natural resources is in the hands of multinational corporations of Euro-American origin. And that the Mineral Oils Act of 1914 was designed to grant exploration licenses to such corporations until the 1960s when the Act was repealed to pave way for other corporations. Yet, after flag independence, the Nigerian State realized that significant change has not resulted despite the increasing discovery of crude oil in commercial quantity making Nigeria's interest in the sector merely limited to nominal ownership of petroleum in its original state underground without any special rights attached except entitlements to taxes, royalties, rents and rates that were largely determined by the multinational corporations.

The realisation of the disadvantageous position of the Nigerian State in the control and exploitation of her natural and mineral resources was equally being observed by other third-world countries and debates for a shift and a change were held in several international fora leading not only to the formation of the Organisation of Petroleum Exporting Countries but also an unprecedented pressure mounted on the General Assembly of the United Nations to make Resolution 1803 of 1962 on the permanent sovereignty over natural resources, declaration of the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States (Aniko, 2006, p. 1). Many countries took advantage of these developments to establish national oil companies like Sonatrach of Algeria, Petrobras of Brazil, Petronas of Malaysia and Natural Gas Commission of India.

The foregoing developments and the aftermath of the Nigerian civil war that threw up the need to raise funds to implement reconstruction and rehabilitation programmes made state participation in the oil sector inevitable leading the Military government to promulgate the Petroleum Act of 1969 and in 1971, the Nigerian National Oil Corporation was established as the Nigerian representative in the industry acquiring about 35% in 1973 and another 20% of the existing foreign companies' interests. In 1977, it was reorganised into the Nigerian National Petroleum Corporation and by 1979 another 5 per cent interest was acquired making the Nigerian State the majority interest holder of 60 per cent. Armed with a two-pronged function of participating in searching, working, winning, producing and marketing petroleum products on the one hand and supervising and regulating the activities of all other oil companies in the industry on the other hand, Section 5(1) of the NNPC Act (Cap N 123 LFN 2004) creates the following duties for the Corporation: exploring and prospecting for working, winning or otherwise acquiring, possessing and disposing of petroleum; refining, treating, processing and generally of engaging in handling petroleum for the manufacture and production of petroleum products and its derivatives; purchasing and marketing petroleum, and its products and by-products; providing and operating pipelines, tanker ships or other facilities for the carriage or conveyance of crude oil, natural gas and other products and derivatives, water and any other liquids or other commodities related to the corporation's operations; constructing, equipping and maintaining tank farms and other facilities for the handling and treatment of petroleum and its products and derivatives; carrying out research in connection with petroleum or anything derived from it and promoting activities for the purpose of such research.

Furthermore, the NNPCL is conferred with an agency status on behalf of the Federal Government of Nigeria. It is the statutory body that oversees the nation's interests in the oil and gas industry and concert with the Federal Ministry of Finance, the NNPCL ensures that all revenues derivable from the sector are paid into the Federation Account that is exclusively managed or overseen by the Central Bank of Nigeria. Under Section 5 (1) of the Act, the Corporation can do anything required for giving effect to agreements entered into by the

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Federal Government with a view of securing participation by the Government or the Corporation in activities connected with petroleum; engaging in activities that would enhance the petroleum industry in the overall interest of Nigeria; and undertake such other activities as are necessary or expedient for giving full effect to the provision of the Act. Thus, in NNPC vs. Okonkwo Okiwor & Ors (1998 Vol. 7 NWLR Pt. 559, 637 at 641) it was held that the NNPC is an organ (agent) of the Federal Government within the provisions of Section 7(1)(a) of the Federal High Court Act and under Section 1 (3) of the NNPC Act, its Chairman shall be a Minister in the Government of the Federation to be known and styled as the Minister of Petroleum.

Nigerian national petroleum corporation limited (NNPCL):

The NNPC Limited was established in April 1977 under Decree No 33 of 1977 by a merger of NNOC and the Federal Ministry of Mines and Power. It was envisaged then that by 2007, the organisation would have become a peer of Norway's Statoil or Brazil's Petrobras as a fully integrated oil and gas company able to independently finance its operations and meet her obligations to her partners without recourse to the government. Between 1978 and 1989, NNPC limited constructed refineries in Warri, Kaduna and Portharcourt. It took over the 35,000 barrels of Shell Refinery established in Port-Harcourt in 1965. By 1988-1989 it went through an elaborate restructuring, an exercise that was managed by Anderson Consulting. It was meant to position it as a world-class oil and gas company, commercialising it into eleven to twelve strategic business units covering the entire spectrum of the oil industry operations including exploration and production, gas development, refining, distribution, petrochemicals, engineering and investments. The Strategic Business Units were NAPIMS, NPDC, NGC, PPMC, IDSL, NLNG, NETCO, HYSON, WRPC, PHRC, DPR, and EPCL. The subsidiary companies were created each with a management team and a Board of Directors with a mandate to develop into a niche champion in its area of specialisation.

Critiquing the NNPCL

For Avuru (2007, p. 57), the mission of NNPCL has not become real. The issue of what to do with the NNPC limited had always agitated the State for a long time. For a State that derives more than 90 per cent of its revenue from oil, NNPCL is not only crucial as the collector of its revenue it is also the main determinant of how well the nation would continue to benefit from its oil resources. It is also symptomatic of the afflictions of the nation's energy sector including loss of revenue from systemic leakages (oil theft), the inefficiency of institutions such as refineries and distribution depots and gross financial mismanagement. The NNPCL is not only misunderstood but it is also said to be unwieldy; an organisation made up of several disjointed parts. According to Ogunbunmi (2007, p. 21) an expatriate oil executive disgustedly referred to the organisation's staff as 'a bunch of overpaid civil servants living off the sweat and glory of multinational oil companies'. For K. Soremekun, (as cited in Ogunbunmi, 2007, p. 21) the problem of NNPCL is more attitudinal than institutional. It is between the bureaucratic and the technocratic elites in the industry. The bureaucrats have a rental attitude towards the industry while the technocrats want the nation to develop its own industrial capabilities. The bureaucrats are on top and thus, the industry is prostrate.

Avuru (2007, p. 57) had equally classified the problems of the NNPCL and indeed the energy sector into three. Firstly is the problem of non-functioning refineries. Since 1992 when age and poor maintenance became manifest in the refineries, they had failed to recover despite several

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bouts of Turn Around Maintenance. Secondly is the problem of the product distribution infrastructure of the NNPCL which had completely collapsed. Initially, NNPCL had an elaborate network of 19 storage depots throughout Nigeria with interconnecting pipelines designed such that a truck could pick up products from any of the depots within three hours but by 2007, the infrastructure had completely collapsed with only one point at Lagos; and at that, the PPMC which was the products distribution subsidiary of NNPCL, had abandoned its primary function to that of wholesale importation of products. Thirdly is the problem of inefficient domestic gas distribution and a blurred gas-pricing framework that hindered domestic supply.

For Okpue (2007, p. 24), the Nigerian National Oil Corporation limited established in 1971 was transformed into NNPC in 1977 and reorganised in 1988 as a commercially integrated oil company with a mission statement to profitably explore, develop, produce, process and market crude and refined petroleum and its by-products and derivatives at internationally competitive prices both at home and abroad. But it would hardly be an understatement to say that the NNPCL has not accomplished this mission. Its underperformance in the downstream sector where it had had a virtual monopoly has been a cause of serious national concern due to the negative impact it has had on the vital sectors of the national economy. Its wholly owned exploration and production subsidiary, NPDC established in 1988 has production assets of less than 50,000 bpd even this, in association with foreign multinational companies. For Okpue, why NNPCL has not been able to secure achievements comparable to those of developing oil-producing countries like Petronas of Malaysia, Petrobras of Brazil, PDVSA of Venezuela and Pemex of Mexico is because it is principally controlled by the Federal Government.

The Act establishing the NNPCL provides for its organisational structure. It has a board of directors composed of a Chairman, an alternate Chairman and five other Directors-General or Permanent Secretaries of the Federal Ministry of Finance and Economic Development, the Managing Director of the NNPC and three other persons to be appointed by the National Council of State. But despite the above organisational structure, the management of the Corporation has been left to the whims of the Nigerian Heads of State who in most cases have demonstrated absolute power arrogating to themselves, the office of the Minister. A Minister of State for Petroleum Resources was only appointed after legal action was instituted against the Federal Government of Nigeria by Akpo Mudiaga Odje Esq and for the better part of the 4th Republic under Chief Olusegun Obasanjo and the current Buhari administration no substantive Minister of Petroleum Resources was appointed.

Thus by 2005, a new policy of unbundling the NNPCL had started to emerge. Unbundling is the breaking up of a large organization into parts for more effective management and performance. The idea was first hinted at by Philip Chukwu (cited in Hassan, 2005, p. 13) Group General Manager of NAPIMS in the middle of 2005. According to him, the privatisation exercise was to be in phases starting with the oil giant’s downstream activities with the shares and stock of the constituent companies floated on the Nigerian Stock Exchange. The policy was to make the NNPCL function purely as a profit-oriented, commercial and duly capitalized limited liability Company with the right to raise funds for its projects and operations just like its peers around the world.

In other words, the NNPCL was to come out stronger since its Strategic Business Unit would be enabled to go to the capital market to raise money and offer Nigerians the opportunity to buy shares in the SBUs. Because of the reforms envisaged by the Federal Government in 2005,

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it inaugurated a reform implementation committee to work towards five proposed institutions to be created from the unbundled NNPCL. The reforms were said to be imperative to attract the desired investment for the growth and development of the sector. The five proposed institutions were National Petroleum Directorate (NPD), Petroleum Inspectorate Commission (PIC), National Oil Company (NOC), National Petroleum Research (NPR) and Petroleum Products and Distribution Authority (PPDA). The NPD was to replace the Ministry of Petroleum Resources; the PIC was to replace the Directorate of Petroleum Resources; the PPDA was to replace PPMC; and the National Oil and Gas Assets Holding Company (NOGAHC) was to replace NAPIMS (Guardian, 2005, p. 15 & 21).

Neiti initiative:

NEITI aims to check the curse and improve transparency and accountability. The lack of transparency in Nigeria's extractive industries is illustrated by the common knowledge that the quantum of crude oil that is produced and exported daily is not known. This led the Obasanjo Administration in 2000 to commission a World Bank study on the oil and gas sector which revealed four lapses in crude output and disposal, funds inflows, funds outflows and institutional effectiveness. Three audits were instituted: first, an audit aimed at reconciling information on payments and receipts; second, an audit focused on accounts of oil and gas produced, lifted, lost, refined and exported; and third, an audit on the transparency and appropriateness of the industry processes and recommendations for improvement (Sulaiman, 2006, p. 65)

The then Minister of Solid Minerals, Oby Ezekwesili (as cited in Okwe et al., 2005, p. 3) had claimed that the regulatory corporations had been deceiving Nigerians on the facts and figures of its operations especially the falsification of figures for the amount of crude oil generated per oil well, the royalties and grants to oil yielding communities and the amount of money accruable to the Federal Government. The primary objective of the initiative was to ensure transparency and due process in the payment made by extractive industries to the Federal Government and its agencies. It was also to ensure accountability in the revenue receipts of the Federal Government and eliminate all forms of corrupt practices in the determination of payment receipts and postings of money coming to the government from extractive industries.

Since 2004, the Nigerian Extractive Industry Transparency Bill sought to codify the reform programme of the government in the sector. The Bill was aimed at voiding, the gagging clauses in licence agreements and ensuring disaggregated financial data as required by law in every developed country. It was to ensure due process and transparency in the payment made by extractive industries and ensure accountability in the revenue receipt of the Federal Government from the companies. It was to eliminate all forms of corrupt practices in the determination, payment, receipts and posting of revenue accruing to the Federal Government from the companies. Government can request from companies an accurate record of the cost of production and volume of sale of oil and gas to ensure that all payments are duly made.

Lack of transparency and accountability in the oil and gas sector had led to a high level of corruption and in turn, created desperation, especially among the communities that produce the bulk of the nation's wealth. Without transparency in revenue management and overall governance, the nation faced the risk of not just corruption and inequity but also the vicious cycle of poverty, instability and under-development (The Guardian, 2007, p. 4).

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For Onyekakeyah (2005, p. 65), the rot started from the oil boom era in the 70s when the Gowon administration failed to lay a solid foundation for the management of the oil economy. The wealth that accrued to the nation from oil over three decades was squandered and stashed away by successive administrations leaving only a shadow of what Nigeria stood for. Over the years, the operation and administration of the industry had been shrouded in secrecy. Few Nigerians actually knew what was happening. The rest were fed with huge revenue pictures that had no direct bearing or impact on their daily lives. Rather than see improvement in their lot, Nigerians were being asked to pay beyond their capacities to be able to use fuel. There was therefore the need to show more openness, transparency and accountability in the industry leading to the audit of the accounts of the NNPCL and CBN.

Auditing the industry:

Auditing the industry was more confounding. According to the Hart Group of the United Kingdom engaged to audit NNPCL (Akande, 2005, pp. 1-4), there were difficulties in assessing crude lifting contractors licensed by the Federal Government and given the authority to transport and sell crude oil in the open market on behalf of NNPCL due to problems of lack of information as to their names, addresses and the amount of freight income received by them. The auditors found that incorrect data was being applied in the computation done by the Department of Petroleum Resources (DPR) of royalties paid by the international oil companies to the federal account which meant that the government's income from the royalty had been undermined because the information used by the DPR to 'fiscalize' oil production varied from the volume at the oil wellhead. The Hart Group lamented that there was an inadequate interface between FIRS, CBN and other government agencies in the oil sector making FIRS unable to assess crude oil lifting contractors for tax purposes and creating difficulties of various kinds in tracking, monitoring and reconciling payments between FIRS and the CBN. The CBN was equally said to be unable to reconcile NNPCL payments for domestic crude to its constituent elements be it crude consumed by local refineries or exported and ultimately paid for by NNPCL.

The Hart Group listed the taxes in the oil and gas sector as including Petroleum Profit Tax (PPT), With-holding Tax (WHT), Value Added Tax (VAT), Royalties, Licensing Fees and Company Income Tax (CIT) among others, noted that the foreign currency payment of WHT, VAT and CIT were collected by locally designated banks, which instructed their correspondent banks to remit the taxes to the relevant CBN foreign account. All these taxes were lumped under the miscellaneous column such that FIRS could not reconcile foreign currency payments of WHT, VAT and CIT to the tax types and the payers.

To Akande (2005, pp. 1-4), the audit of NNPCL proved to be the most devastating evidence for an overhaul of the industry as the summaries indicated that the figures thrown up by the probe were essentially irreconcilable and the business scenario was clumsy. Akande had canvassed that after OPEC's quotas have been satisfied, the Presidency, being the first culprit, granted excess crude oil allocations to favoured and influential Nigerians including top government officials, spiritual leaders and foreigners who sold on behalf of the NNPCL at a discount in non-transparent circumstances such that a shady deal began when the influential persons began to source for a line of credit for NNPCL to facilitate the sale of the crude oil in the international market to international buyers. The question that a bank in the USA would ask was: Why was it not the NNPCL itself that was opening the account?

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Since the 2001 terrorist attacks on the USA, there had been a major push internationally to stifle money laundering and this had meant that banks in developing countries and diplomatically friendly nations have notched up regulations that make it difficult to open an account or a line of credit for an individual or a private firm to sell crude oil on behalf of a country. According to ABZ Integrated Ltd, an appointed consultant by the Economic and Financial Crimes Commission (EFCC) (Eno, 2005, p. 15) to help in identifying lost government revenue through tax evasion and fraud, Nigeria had lost a staggering sum of 10.8 billion dollars to unethical activities of Chevron committed in concert with corrupt Nigerian government officials. The Firm alleged that after investigations lasting over a year, it discovered that some subsidiaries of Chevron failed to pay a total of 66 instalments of the monthly Petroleum Profit Tax (PPT) thereby denying the government revenue worth millions of dollars. The Consultant also claimed that officers of the Federal Inland Revenue Services were colluding with like minds in Chevron to credit the oil company for payments it never made using treasury cash receipt No PP36337 of 14th August 1997 for the sum of 22.4 million as an example. Furthermore, some payments claimed to have been made by the companies in the Chevron group were not traceable to the Federal Reserve bank account for the domiciliation of Petroleum Profit Tax revenue as well as the use of illegal revisions of their Petroleum Profit Tax estimate to manipulate their tax liabilities.

The Chevron case was viewed as just a lead into the pattern in the extractive industry, especially, the oil and gas sector. The operators took advantage of the size and complexity of their transactions to indulge in large-scale unethical and unwholesome practices robbing the government of billions of dollars. The schemes of the illegal practices were legendary. For instance, to evade tax, the firms simply shot up their cost of production to receive unmerited joint venture cash calls from the government making the cost of production of crude oil in Nigeria the highest in the world.

Chevron was alleged to have overshot its cost of operation and thereby evaded Petroleum Profit Tax by 994 million dollars and made the government lose 1.431 billion dollars through payment of unmerited cash calls to Chevron. In the area of claims to unmerited tax credits such as Reserve Addition Bonus (RAB) and Intangible Drilling Cost (IDC), the company also allegedly evaded tax to the tune of 222 million dollars; and through conspiracy, the Chevron group of companies assessed to lower amount of tax than expected by 95 million dollars.

Thus for Ezekwesili, it was public knowledge that the state of information asymmetry, opaqueness, corruption and revenue embezzlement that had characterized the extractive industry could not have happened if multinational companies and previous governments had been required to disclose publicly their dis-aggregated basic payments and receipts for extractive resources. These huge financial improprieties showed that the business elite had a vested interest in avoiding disclosure and publication, showcased by their continued insistence on confidentiality clauses on dated exploration and production contracts. It was the intransigence of the corrupt few and their cronies that denied the Nigerian public basic information to call their governments to account for the management of resources revenue. Listing the gains of opening up the flow of information in the sector, Ezekwesili submitted that disclosure and publication would enable Nigerians to hold their governments to account for the management of their wasting resources and ensure that the questions were transparently answered and bring about improved corporate governance and energy security as opaque governance leads to disruptions of productions as evident in the Niger Delta. In other words, the industry had become one that most Nigerians knew little about in terms of the way it

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operates, how resources are generated, what revenues are generated and how these revenues are accounted for. The Hart Group audit was thus aimed at throwing up the hitherto secretive sector to public scrutiny. A lot of information which had previously been regarded as commercial secrets was to be brought into the public domain.

State refineries

The building of refineries is a major area that State participation in the oil business in Nigeria can be identified and it is equally an aspect that it had over the years performed abysmally. After the construction of the Port Harcourt refinery, Nigeria began to experience an upsurge in the demand for petroleum products averaging a yearly increase of about 23.4 per cent between 1970 and 1978 leading in 1978, to the construction of the Warri refinery which was officially opened with a total capacity of 100,000 bpd and by 1979, its capacity was increased to 160,000 bpd. It is another subsidiary of the NNPCL that refines crude. Presently, it is the largest petrochemical plant with a refining capacity of about 125,000 bpd. The plant produces 35,000 metric tons of polypropylene that are used to manufacture carpets, automotive components, bottle crates, jerry cans, cups, plates, textiles, medicines vials and hypodermic syringes. It also produces 18,000 metric tons of carbon black which is used in the production of tires, tubes, hoses, fan belts, conveyor belts, printers ink, gaskets, batteries, carbon paper and electrodes etc.

The continued demand pressure for petroleum in Nigeria especially in the northern part of the country led to the building of a third refinery in Kaduna in 1980. This subsidiary of the NNPCL has a refining capacity of about 110,000 bpd with a potential capacity of 260,000 bpd (Gidado, 1999, p. 205-206). The Kaduna plant produces 30,000 metric tons of such basic materials as linear alkyl benzene, heavy alkalytes and solvents which are used by downstream secondary industries to manufacture a wide range of consumer products such as soap, shampoo, detergent, dry cleaning agents, paints, aerosols, insecticides, lubricating oils, greases, transformer oil and thermal fluids amongst others.

Privatisation of the refineries:

According to the Public Affairs Division of NNPCL, recurrent social and economic destabilizing hiccups in the downstream sector of the Nigerian petroleum industry led the Federal Government to inaugurate a 34-member committee in August 2003 to review all aspects of product supply and distribution in Nigeria. The committee submitted a report which in part, recommended the complete deregulation of the downstream sector of the industry. Deregulation means to free trade, business or any other activity from certain rules and controls. In a deregulated market, prices respond to market forces. It was canvassed that the deregulation of the downstream sector of the industry became necessary in order to open up the sector to competition among all the participants and to improve product supply and service delivery. In other words, participants could refine or import petroleum products for sale in the Nigerian market as long as the products met specified quality.

Hitherto, the NNPCL had the monopoly of providing all the petroleum products used or needed in the country. The monopoly created the problem of insufficient products, lack of adequate storage facilities, inappropriate pricing of products, vandalism of pipelines and other facilities, diversion and smuggling (theft) of products due to high price differential between Nigeria and her neighbours where prices were higher, hoarding of products with attendant safety hazards,

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lack of returns on investments and profits. Furthermore, the sector became unattractive to investors and unfriendly to consumers.

7.2. Deregulation and private refineries:

The Nigerian oil sector is categorised into three main sub-sectors namely; upstream, downstream and gas. The most problematic over the years has been downstream which is the distribution arm and connection with final consumers of refined products in the domestic economy. The incessant crisis in the supply of products culminated in the decision by the government in 2003 to deregulate it. The government opened the sector to private refineries when its four refineries with a combined capacity that exceeded the domestic consumption of refined products operated far below their installed capacities and became almost abandoned during the military interregnum skipping the routine and mandatory turnaround maintenance that made products importation inevitable (Soeze, 2005, p. 56).

As a prelude towards the implementation of the deregulation and privatisation of the refineries, the State increased the domestic production of crude oil from 300,000 bpd to 445,000 bpd which was the combined installed capacity of the four existing refineries in the country. PHRC has 210,000 bpd. WRPC has 125,000 bpd and KRPC has 110,000 bpd. Another step the State took was to terminate all the maintenance contracts of the refineries as a step towards the privatisation of the refineries. The implication of the planned sale of the refineries was that the new owners of the plants would be buying crude oil from NNPCL for refining (Sementitari, 2003, p. 40).

It was claimed that ex-President Olusegun Obasanjo who was reported to have bought a controlling share in Transcorp, allocated 4 Oil blocks to it (Mabamalu, 2007, p. 15). Transcorp made a breakthrough when, through Blue-Star Oil Services Ltd Consortium, it acquired 51% of the Port-Harcourt Refinery Company Limited (PHRC) and Kaduna Refinery Company Limited (KRPC). The Blue-Star Oil Services Company Ltd comprising Transcorp, Dangote Group, Zenon Oil and Rivers State Government had paid 561 million dollars for 51% of the Federal Government's equity stake in the ailing Port-Harcourt Refinery Company and has emerged as the preferred bidder at the financial bid opening. The consortium also paid 60 million dollars for 51% of the Federal Government's stake in Kaduna Refinery Petroleum Company which was an increase of 58 million naira over the 102 million dollars offered by China National Petroleum Corporation CNPC the only bidder as at the time of opening the bid.

Apart from other issues bordering on due process, one major criticism that continued to attend the government's privatisation project was the alleged concentration of public enterprises in a few hands some of which were suspected to be government cronies. For instance, Dangote was said to have contributed 200 million naira to the Obasanjo re-election campaign and 200 million naira to the Presidential library. According to Mohammed (2007, p. 4), the privatization of the Kaduna refinery coming after the sale of that of Port-Harcourt, which generated so much heat in the oil industry showed that the government had a hidden agendum for rushing the exercise in the last days of its tenure without due process. It was suspicious that an administration that had failed to turn around the fortune of the refineries in 8 years had suddenly embarked on their quick disposal as a last resort. To Nnimmo Bassey (2007, p. 5) the sale of the Port-Harcourt Refinery in the last days of the Administration of Olusegun Obasanjo for far below its market price was shameful. For an administration that claimed to be fighting corruption to turn around on the eve of its exit and departure to embark on a hurried sale of the

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national heritage and wealth to a political cabal without due consideration for the best interest of the nation was wrong and ought to be reversed.

The public outbursts against the controversial sale of the Kaduna and Port Harcourt refineries led the Bluestar Oil Services Consortium to bow out of the deal reached on 28 May 2007. The Consortium demanded from the Federal Government the refund of 721 million dollars paid for the refineries claiming that in the event that the NNPCL was unable to turn the plants around within 12 months, it reserved the right to renegotiate its re-entry into the refineries. The decision to withdraw from the sale was informed by the controversy that had trailed the privatisation of the refineries and the alleged campaign by NNPCL against the sale. While the sale was faulted for lack of transparency, due process and the fact that the plants were under-valued, the Consortium on the other hand claimed that it was pulling out of the deal due to the outcome of its due diligence on the plants disclosing that it had discovered that the amount it had offered for the refineries was far above their real value (Yakubu & Okwe, 2007, pp. 1-2).

Private petroleum refining:

Among the private refineries licensed to operate are Akwa Ibom Refining and Petro-chemical limited, Amakpe Modular Refinery, Badagry Petroleum Refinery Ltd, Clean Water Refinery, Ilaje Refinery and Petro-chemical, Niger Delta Refinery and Petroleum Company Ltd, NSP Refineries and Oil Services Ltd, Ode – Aye Refinery Ltd, South West Refinery and Petroleum Company, Starex Petroleum Refinery, Chasewood Consortium, Tonwei Refinery, Total support Refineries, Union Atlantic Petroleum Ltd, Orient Petroleum Resources Ltd, Owena Oil and Gas Ltd, Rivgas Petroleum and Energy Ltd, Sapele Petroleum Ltd and Southland Associates Ltd.

Each licensee was to submit a preliminary feasibility study as well as pay the license fee as prescribed in Part V of the Petroleum Refining Regulations. The general feasibility must include the market plan, product specifications, site selection, proposed crude oil (or feedstock) supply plan, product evacuation plan, preliminary safety and environmental impact statement as well as organisational plans. The report was also to have a list of proposed process technologies, infrastructure support strategies, preliminary financial and economic analysis as well as local content. An endorsement of an applicant's feasibility study report by the Minister of Petroleum may lead the applicant to proceed with the basic design or front-end engineering.

To facilitate the approval for granting of a license to construct, the applicant was to submit to the Minister, the basic design package that must contain the following information: a list of applicable standards and codes; a detailed process and instrumentation diagram for each process plant, utilities and offsite; and crude oil (feedstock). Also to be included was a list of product fiscalization system and proving procedures, preliminary plot plan, proposed project implementation schedule, as well as preliminary hazard and optimality (HAZOP) report. Having fulfilled these requirements, the applicant may then be granted a license to construct a refinery, consequent upon which the investor may proceed with the detailed engineering, procurement and construction of the refinery, which must be accomplished in concert with the officials of the DPR (Yakubu & Aderibigbe, 2004, pp. 18-19).

For Vincent Zubero, work on a 12,000 bpd capacity private refinery was to begin operation in July 2007 after approvals by the Department of Petroleum Resources. It was employ 150 Nigerians. It was initiated by Akwa Ibom State Government and Akwa-Ibom indigenes in the

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USA under Amakpe International Refineries Nigeria Limited (Vanguard, 2007, p. 8). The anticipated benefits of the project were adequate reward or profit for investment, employment of citizens and improved investment in petroleum exploration. But it was short-lived as the governor, Victor Attah, announced the liquidation of the oil refinery as a practical step towards the recovery of initial investment from the low result-yielding venture due to the failure of the co-financier, the US Exim bank to release its own counterpart funding of the project. The decision to partner with Amakpe Refinery according to the State Government was borne out of the vision to increase the tempo of petroleum activities in the state, adding that the government was to achieve the same by encouraging the establishment of upstream and downstream petroleum industries. This equally led to the establishment of Akwa Ibom Petroleum and Energy Ltd in 2000 to facilitate the active participation of the State and its indigenes in the oil and gas business resulting in equity investment in Universal Energy Ltd which was awarded 100% right to develop and produce the Stub Creek marginal fields (Olagoke, 2007, pp. 15-16). It has been canvassed by the Public Affairs Department of the NNPC that there is no alternative to deregulation and that apart from providing fuel for use in the country, private refineries would create jobs for the teeming population of the country and produce surplus fuel for exportation.

It is incomprehensible why the Federal government has been dodging direct involvement in the operation and running of the refineries Onyekakeyah (2005, p. 65). The lack of interest by the government in the operation of the refineries was partly responsible for their shoddy management and blatant sabotage of the facilities making them never anytime to produce at full installed capacity. The ray of hope that is expected from private refineries is yet to be realised. Only Orient Petroleum Resources out of about 14 private concerns registered was working towards opening the first refinery in 2006. The reasons for their inactivity were not far-fetched. It was one thing to register a private refinery but another to give them the necessary incentives to enable them to work. Government should package hitch-free incentives for the operators and their foreign partners to operate in Nigeria.

Critiquing the downstream sector

In the downstream sector, the State's interest was first established under the *Oil Pipelines Act* (Cap 07 LFN, 2004) with the construction of pipelines for the conveyance of crude, and the construction of refineries to refine crude both for domestic consumption and export. However, it has been noted that despite the proximate capacity of 445,000 bpd of the refineries in Nigeria, issues surrounding the downstream sector have left much to be desired. To Yar'Adua Abubakar (as cited in Olayinka, 2007, pp. 1&4) Executive Director, NNPC (as it then was), foreign oil companies are only interested in the upstream oil sector which is more financially rewarding than the downstream sector. He canvassed before the National Assembly, that it would be difficult to have private refineries in Nigeria because the oil majors are not interested. They are interested in the upstream sector which offers more money the investment. Building a refinery would take about four years and requires about 700 workers with the implication that the refinery would be helping in putting people to work and the oil majors are not ready for that.

Corroborating the foregoing position, Tony Chukwueke (as cited in Olayinka, 2007, pp 1&4) a Director in the Department of Petroleum Resources had also submitted to the National Assembly that seven years after 18 licenses had been issued to private companies to build and operate refineries, no single firm had taken any step towards the realization of any of the projects. Canvassing for the way forward by compelling oil majors to build oil refineries in

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Nigeria, Tony Chukuweke submitted further that in the time past, oil licenses were renewed after 40 years but have been reduced to 20 years and that the current licenses are due to be renewed in the next few years and thus, proposed that a condition for issuance and renewal of a license should be ownership of an oil refinery by the company.

The foregoing arguments and submissions informed the position of Edmund Daukoru, (as cited in Igbikiowubo, 2007, p. 23) Energy Minister in 2007 when he felt concerned about the way and manner the multinationals were going about implementing the downstream objectives. The State claimed that it had an agreement in place and the expectations were that the development of the oil blocks won in the 2005 and 2006 bidding rounds would be benchmarked with particular downstream projects and that the government would stick to the letters of the production sharing contract agreements reached and that in the event where the operators' efforts do not tally with the benchmark, the process for the revocation of the oil blocks would be triggered. The State had maintained the position that it had been very tolerant and most of what the multinationals were doing in Nigeria by not developing the downstream sector cannot be done in places like Venezuela and that the days when the multinationals could do anything they liked and get away with it were effectively over. The State thus gave indications that it had concluded plans to withdraw oil blocks of multinationals operating in the country over failure to develop downstream projects in line with initial agreements. The government also gave indication to the energy and petroleum operators in the country to domesticate their upstream operations as a means of guarding against a dearth of technical expertise in the sector.

On the contrary, Zira Maigida (as cited in Omoh & Dayo, 2007, 23), Managing Director, African Petroleum, had argued that it was not that majors were not interested in local refining of products. There were refineries in the country that were not working or operating. It was not because NNPCL or government did not want them to operate, it was because of the vandalization of pipelines supplying the with crude oil. The crude oil pipes had been vandalised. For instance, according to Maigida, the pipeline that supplied crude to Warri and Kaduna refineries had been vandalized and it had been impossible to reach the location to effect repairs because it had not been safe due to hostage-taking and kidnappings of oil workers. Thus, it is not feasible to set up refineries until the political situation in the Niger delta is resolved and the country has to virtually rely on the importation of products.

Yet, the State is also not interested in building refineries. Responding to the question of why Government cannot build more plants to refine petroleum, the Public Affairs Department of the NNPCL submitted that in the first place, Government should not engage itself in such businesses because our past experience has shown that Government cannot manage it properly. Government should concern itself with providing the enabling environment for entrepreneurs to establish such plants. A key element in that environment is that it must be possible for the entrepreneurs to recoup their investment and make a reasonable profit on their investment to pay their workers, pay taxes, maintain the plants and still be able to build more plants as the market requires. And only a deregulated environment can make that possible (NNPC, p. 6).

Recent trends

New trends have emerged in the NNPCL with the emergence of Project PACE, an acronym for a development plan for the expansion, standardisation and transformation of the NNPCL into a world-class oil and gas company capable of competing favourably with its counterparts like Petrobras, Brazil and Petronas, Malaysia. The project, (Aniko 2006, p. 6) is geared towards

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positioning and aligning the company for higher performance, creating appropriate processes for global competitiveness and enabling and empowering the people. The project is also addressing asset and hydrocarbon management and broader skills development issues to ensure that the gains of the downstream sector are sustained. Thus, for the learned scholar, all hope is not yet lost.

The reorganisation of the NNPCL, the institution of the Project PACE, the deregulation of the downstream sector and the decisive Nigerian content initiative would boost the State's participatory status from mere joint venture agreements to an integrated one as the platform for transforming and translating huge oil and gas investments into the significant domestic economy would be created. The State's resolve to deregulate the downstream sector of the industry has also come on board with the result that huge savings are made from subsidies, local investors are encouraged to participate in the industry and more private investors are coming onstream to invest in the refineries and become players in the sector.

In an attempt to balance the cleavages, so much effort and resources have gone down the drains in search of oil in the northern fields of the Niger Benue trough and the Lake Chad basin. The hope that oil can be found in those areas has not been lost on the northern elites controlling the political levers of power in Nigeria. In fact, it has become a monumental challenge that the north is characterised as barren predating on the oil of the south. The economic reasons given by the British for the 1914 amalgamation seem to still hold water to date. All the laws being fashioned out in the oil sector appear to be guided by these fundamental misgivings and cleavages. It was not surprising therefore that Akpan (2021, p. 13) in "How Kyari-led NNPCL boosts exploration, gas development in 2 yrs" stated that the Group Managing Director of NNPC was so determined to increase the nation's oil reserves to 40 billion barrels by galvanizing NNPCL to rev-up exploration work in the inland basins with the drilling of the Kolmani River 11 Well culminating in oil find in commercial quantity in the Upper Benue Trough. As soon as the find was made, the north appeared to have woken up from lumber and the agility with which the Buhari administration got up to unveil the national oil company, NNPCL, into a limited liability was unprecedented. The north and the Buhari administration appeared to have broken the jinx in which the north had been kept since modern Nigeria as a 'barren woman.'

It is, therefore, in the context of the foregoing that the passage of the Petroleum Industry Bill has to be understood. It is also in these regards that the sudden appearance of the concept of the Frontier Fund must be understood. Bitterly opposed to it, antagonists of the fund termed it a 'fraudulent jargon' meant to rob Peter to pay Paul. The Frontier Exploration Fund which became charged on the profit of NNPC Ltd was hiked from 10 per cent to 30 per cent without the consent of the members of the Senate Joint Committee on Petroleum (downstream and upstream) and Gas Resources according to Umoru and Nwabughiogu (2021, p. 12). They argue that throughout deliberations and consultations with host communities in Niger Delta, which Mohammed Tahir Muguno chaired, the issue and concept of Frontier Exploration Fund never came up on the cards. It came from the blues! However, to have acknowledged that it was 'hiked from 10 per cent to 30 per cent betrays the fact that it was not entirely new. Or, it could be considered as being within the thematic agitation of 10 per cent for host communities.

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CONCLUSION

The question to ask is, has State participation in the oil business brought about any phenomenal success in terms of development in Nigeria? All the refineries are prostrate with decay and corruption. The NNPCL has merely found oil in the north and how that can transform the economy (of the north remains to be seen and the indicators are not positive). The advent of private refineries has also not brought a significant breakthrough in the downstream sector. The Dangote refinery which is taunted for this is (and not directly discussed in this study) yet to come upstream and how private it remains to be seen in view of the indications of State involvement in it.

The influence of multinationals on the State's participation in the oil business has been tremendous but has been negative. The refusal of the multinationals to be committed to the downstream sector has left much to be desired in the determination of the nation to develop. The inability of the State to assert itself in its regulation of the activities of the multinationals has been gravely hampered by corruption. On the whole, State participation in the oil business has been stunted and its leadership in the desire of the nation to develop is now suspicious.

REFERENCES\

Aboloje, H.A. (2006) The United Nations Organization and mineral resources legislation and exploration. Seminar Paper presented for LL.M Degree Programme, Delta State University, Oleh Campus.

Aniko, T.A. (2006). State Participation in Mineral Exploitation, Seminar Paper presented for LL.M Degree Programme. Delta State University, Oleh Campus.

Anyanwu et al. (1997). The Structure of the Nigerian Economy (1960 – 1997). Onitsha: Joanee Educational Publishers Ltd.

Barrows, G.H. (1983). World Wide Concession Contracts and Petroleum Legislation. Tulsa, Oklahoma: PennWell Publishing Co.

Etikerentse, G. (1985). Nigerian Petroleum Law. London: Macmillan.

Gidado, M. (1999). Petroleum Development Contracts with Multinational Oil Firms. ED-LINFORM. Services, University of Maiduguri.

Igbikiowubo, H. (2007). Unexecuted downstream projects: FG to withdraw oil blocks, Vanguard.

Iweriebor, E.E.G. (2004). Nigerian Technology Development since Independence. Ibadan: BookBuilders.

Mikdashi, Z. (1972). The community of oil exporting countries. New York: Cornell University Press.

Okene, E.K.A. (2006) State participation in mineral exploration in Nigeria. Seminar Paper presented for LL.M Degree Programme, Delta State University, Oleh Campus.

Olayinka, C. (2007). The government may compel oil firms to own refineries. The Guardian.

Omoh, G. & Dayo, B. (2007). The private refinery is not feasible now in Nigeria until the Niger Delta issue is resolved. Vanguard.

Omorogbe, Y. (2003). Oil and Gas Law in Nigeria. Lagos: Malthouse Press Ltd.

Yakubu, L. & Okwe, M. (2007). Dangote, Otedola Hands off Refineries. The Guardian.

Wink, M. (2002, January 14). Shell: A Model in Partnership. Tell.

Article DOI: 10.52589/AJESD-QQZ8DUFK
DOI URL: https://doi.org/10.52589/AJESD-QQZ8DUFK

N.A. (2002, February 25). Agip/NPDC partnership achieves historic feat: Puts Okono field on stream. Tell.
Semenitari, I. (2003, October 13). Fears over a new regime, Tell, October 13, 2003, at 40.
Yakubu, L. & Aderibigbe, Y. (2004, July 4). The Guardian, Wednesday, July 14, 2004, at 18-19.
Yakubu, L. & Aderibigbe, Y. (2004, July 14). Refineries: A story of intrigues and failure. The Guardian.
Yakubu L. (2004, September 6). Nigeria unveils oil potentials, 27 Deep-Water blocs for bidding. The Guardian.
Yakubu L. (2005, January 17). Sibinga Mulder: Nigeria's oil production sharing contract favourable to exploitation, development. The Guardian
Yakubu L. (2005, January 31). New Funding Policy for Oil, Gas Sectors Coming, the Guardian.
Salau, S. (2005, April 13). Foreign firm signs PSC Pact with indigenous companies. The Guardian.
Soeze, S. (2005, April 27). Impact of oil on Nigeria's economic policy formation. The Guardian.
Hassan, T. (2005, May 30). BPE Set to nbundle NNPC for Privatization. The Guardian.
Kupolokun, F. (2005, June 6). Our long-term objective is to extend NNPC retail outlets to West Africa. Sub-region, Says Kupolokun. The Guardian.
The Guardian, Thursday, June 23, 2005, at 15 and 21.
Eno A. (2005, August 8). For oil companies, a time of reckoning. The Guardian.
Okwe et al. (2005, September 8). British Firm to Probe NNPC, Central Bank. The Guardian.
Onyekakeyah, L. (2005, September 13). Incessant Petrol Price Increases: The Refinery Option, the Guardian.
Akande, L. (2005, October 23). NNPC probe runs into a hitch: How influential Nigerians, foreigners mess up NNPC accounts. The Guardian.
Gadzama, J.K. (2005, October 25) Privatization in Africa: Legal Issues, the Guardian.
Akande, L. (2005, November 20). How Nigeria lost millions of dollars. The Guardian.
Yakubu, L. (2006, February 1). Oando consortium, NNPC sign pact on OPL 278. The Guardian.
Dankoru, E. (2006, May 5). Contemporary issues and challenges facing the oil and gas industry. The Guardian.
Sulaiman, F. (2006, November 6). NEITI in Need of Legal Muscle, The Guardian.
Okpue, P. (2007, May 2). Local content in the Nigerian Energy Insurance market, Vanguard.
Olagoke, A. (2007, May 25). Akwa Ibom Liquidates Oil Refinery. The Guardian.
Alhaji Lai Mohammed, The Guardian, Tuesday, May 29, 2007, at 4.
Nnimmo Bassey, The Guardian, Tuesday, May 29, 2007, at 5. Atsegbua, L. Op. Cit. at 34-35.
N.A. (2007, June 20). Private Refinery Construction Begins Soon in Eket, Vanguard.
Mabamalu, M. (2007, July 8). Privatization: Few men bought Nigeria. The Guardian.
N.A. (2007, August 30). Mohammed Abubakar, Yaguda, Ribadu Canvass Transparency in Oil, Gas Sector.
The Guardian. NNPC, Deregulation of the Downstream Sector of the Nigerian Petroleum Industry: Questions and Answers: Information for all Stakeholders, A Newsletter of the Public Affairs Division, NNPC, Abuja.

Article DOI: 10.52589/AJESD-QQZ8DUFK
DOI URL: https://doi.org/10.52589/AJESD-QQZ8DUFK

Avuru, A. (2007, September 5). NNPC: Complicating a Simple Problem. The Guardian.
Salau, S. (2007, September 5). NNPC hails new oil and gas policy. The Guardian.
Ogunbumi, K. (2007, September 9). Unbundled NNPC. The Guardian.
Umoru, H and Nwabughiogu, L. (2021, July 1). PIB: S-south Senators, others set for showdown today.Vanguard.
Akpan, U. (2021, July 13). How Kyari-led NNPC boosts exploration, gas development in 2 yrs.Vanguard.

Article DOI: 10.52589/AJESD-QQZ8DUFK
DOI URL: https://doi.org/10.52589/AJESD-QQZ8DUFK