

**AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE
REGULATION OF UNIFORM PRICING OF PETROLEUM
PRODUCTS IN NIGERIA**

BY

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LAW, AHMADU BELLO UNIVERSITY, ZARIA.**

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**A THESIS SUBMITTED TO THE SCHOOL OF
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**DEPARTMENT OF COMMERCIAL LAW, FACULTY OF
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JANUARY, 2017

DECLARATION

I declare that the work in this thesis entitled: **An Appraisal of the Legal Framework for the Regulation of Uniform Pricing of Petroleum Products in Nigeria** has been performed by me in the Department of Commercial Law under the supervision of Dr. A.A. Akume. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at any University.

John Angibi Ajegena Signature_____ Date_____

CERTIFICATION

This thesis entitled: **AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE REGULATION OF UNIFORM PRICING OF PETROLEUM PRODUCTS IN NIGERIA** by **MR. JOHN ANGIBI, AJEGENA** meets the regulations governing the award of the degree Doctor of Philosophy of Law, Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

To the Niger Delta people and those who lost their lives pursuing resource control, environmental degradation, human rights violation and other social and natural disasters caused by Multinational Oil Companies operating in Nigeria.

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ABBREVIATIONS

| | | |
|---------|---|---|
| ABJ | - | Abuja |
| AGO | - | Automotive Gas Oil |
| ACN | - | Action Congress of Nigeria |
| bpd | - | Barrel per day |
| BPE | - | Bureau of Public Enterprises |
| CAC | - | Corporate Affairs Commission |
| CBN | - | Central Bank of Nigeria |
| CS | - | Civil Suit |
| DPK | - | Dual Purpose Kerosene |
| DAPPMA | - | Depot and Petroleum Products Marketers Association |
| DPI | - | Department of Petroleum Inspectorate |
| DPR | - | Department of Petroleum Resources |
| EFCC | - | Economic and Financial Crime Commission |
| EGASPIN | - | Environmental Guidelines Standards for Petroleum Industry in Nigeria |
| EOPM | - | Expected Open Price Market |
| FCT | - | Federal Capital Territory |
| FHC | - | Federal High Court |
| FRN | - | Federal Republic of Nigeria |

| | | |
|---------|---|---|
| GDP | - | Gross Domestic Product |
| IMF | - | International Monetary Fund |
| IPMAN | - | Independent Petroleum Marketers Association of Nigeria |
| IOC | - | International Oil Companies |
| JEPTFON | - | Jetties and Petroleum Tank Farms Owners of Nigeria |
| KB | - | Kings Bench |
| LFN | - | Law of the Federation of Nigeria |
| LPG | - | Liquefied Petroleum Gas |
| MAN | - | Manufacturer Association of Nigeria |
| MOMAN | - | Major Oil Marketers Association of Nigeria |
| MPR | - | Ministry of Petroleum Resources |
| MTA | - | Marine Transport Average |
| NACCIMA | - | National Association of Chambers of Commerce, Industries Mines and Agriculture |
| NBS | - | National Board of Statistics |
| NCP | - | National Council on Privatization |
| NCLR | - | Nigeria Constitutional Law Report |
| NDR | - | National Data Repository |
| NEW | - | North West Europe |
| NLC | - | Nigerian Labour Congress |
| NLR | - | Nigerian Law Report |
| NNOC | - | Nigerian National Oil Corporation |
| NNPC | - | Nigerian National Petroleum Corporation |
| NPA | - | Nigerian Port Authority |
| NTA | - | National Transportation Average |
| NUPENG | - | National Union of Petroleum and Natural Gas Workers |
| NWLR | - | Nigeria Weekly Law Report |
| OMP | - | Open Market Price |
| OMC | - | Oil Marketing Companies |

| | | |
|-----------|---|---|
| OPEC | - | Organization of Petroleum Exporting Countries |
| OSP | - | Official Selling Price |
| PEFMB | - | Petroleum Equalization Fund Management Board |
| PENGASSAN | - | Petroleum Employee and Natural Gas Association of Nigeria |
| PIB | - | Petroleum Industry Bill |
| PMS | - | Premium Motor Spirit |
| PPMC | - | Petroleum Products Marketing Company |
| PPPRA | - | Petroleum Products Pricing Regulatory Agency |
| PPPRC | - | Petroleum Product Prices Regulatory Committee |
| PSF | - | Petroleum Support Fund |
| RFID | - | Radio Frequency Identification |
| SCRPPSD | - | Special Committee on the Review of Petroleum Products Supply and Distribution |
| SAP | - | Structural Adjustment Programme |
| SON | - | Standard Organization of Nigeria |
| TAM | - | Turn Around Maintenance |
| TCPC | - | Technical Committee on Privatization and Commercialization |
| TDZ | - | Transport Differential Zones |
| TUC | - | Trade Union Congress |
| WAP | - | West Africa |
| WB | - | World Bank |
| WTO | - | World Trade Organization |

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ABSTRACT

This thesis examined why the prices of petroleum products continues to be priced differently in Nigeria despite the existence of uniform pricing law on petroleum products. The study also examined the principle of deregulation of downstream petroleum sector in Nigeria in order to posit the key argument of how the policy affects economic activities in Nigeria. Arising from this, the study pay attention to the introduction of uniform pricing law from 1973 and the application of subsidy regime as a social welfare scheme to assist consumers have easy access to the product and also enable industries reduce cost of production of goods and services. The introduction of deregulation policy by the Federal Government was to cured the failure of the uniform pricing law in determining prices of petroleum product, however, the policy is faced with growing challenges in supply and distribution of petroleum products that has led to variation in prices of petroleum products all over the country. The research adopted doctrinal and empirical research methodologies by reviewing all principal statutes, subsidiary legislations and analysis of data collected from field survey on aspect of deregulation introduced into the downstream sector in order to resolve the problems of variation in price of petroleum products in the country. All issues relating to the study were carefully analyzed and examined, which culminated into findings and recommendations. From the analyses carried out, the study revealed that there are apparent conflicts between the Petroleum Act and the Petroleum Products Pricing Regulatory Agency Act with respect to price fixing of petroleum products. In the downstream petroleum sector though prices of petroleum products are fixed uniformly throughout the country the later introduction of deregulation policy by the government has caused variation in prices of petroleum products. Findings from this study further revealed that subsidies on petroleum products are only provided in the yearly budget estimates submitted to the National Assembly by the President of the Federal Republic of Nigeria instead of making such provision in the Uniform Price Law. The equalization schemes put in place by government to re-imburse marketers the cost of transporting petroleum products all over the country has not been able to stabilize petroleum products prices at a uniform price because of the inability of government to promptly pay marketers the cost incurred in transporting the products to different locations in the country. The lack of enforcement of the uniform pricing policy as contained in the Uniform Price Law by the various regulatory agencies in the downstream sector has caused scarcity and hoarding of petroleum products, which breeds sharp practices ranging from adulteration and increase in the price of petroleum products. Therefore, it cannot be concluded that prices of petroleum products are regulated only by the government under Section 6(1) of the Petroleum Act but by other variable factors that varies price of petroleum products. The thesis ends up with the recommendations that the National Assembly should harmonize the provisions of Petroleum Act and the Petroleum Products Pricing Regulatory Agency Act relating to price fixing in order to address the problems of variation in the price of petroleum products in the country. The repeal of the Petroleum Equalization Fund Management Board Act is overdue because the operation of equalization schemes is bedeviled by corruption and inefficiency. The Petroleum Products Pricing Regulatory Agency Act is not an efficient legislation that will deregulate prices of petroleum products in the country therefore it calls for more vibrant legislative interventions.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

There are two sectors of the Nigerian oil industry: the upstream and the downstream sectors. The concern of this research is focused on the downstream sector, which cover pricing, supply and distribution of petroleum products. In the beginning of petroleum production in Nigeria, the attention of government was focused mainly on the upstream sector of the Nigerian oil industry.¹ However, due to rapid expansion in economic activities in the country after the civil war, the attention of the Federal Government was later extended to the downstream sector through the regulation of pricing, supply and distribution of petroleum products in the country. In the downstream oil sector, it is the government that set the policy of regulation in pricing, supply and distribution of petroleum products in the country.

The history of petroleum products' pricing can therefore be traced to the early colonial legislation called the Mineral Oils Act of 1914 that was later repealed by Military Decree No. 51.² Some of the provisions of the Decree were later replicated into the Petroleum Act.³ Prior to 1973, petroleum product pricing was not uniform throughout the country as the pricing was under the control of domestic multinational oil companies who determined the price of petroleum products to

¹ Owoye, T. and Adetoye, D. (2016). Political Economy of Downstream Oil Sector Deregulation in Nigeria. *International Journal of Economics, Commerce and Management*, Vol. IV, Issue 5. United Kingdom, pp. 674-689.

² Petroleum Decree No. 51 of 1969 (now Petroleum Act, Cap. P.10, Vol. 13, Laws of the Federation of Nigeria, 2004)

³ Cap. P.10, Vol. 13, L.F.N., 2004.

reflect cost of refining and distribution locally.⁴ The cost of pump price at which a litre of petrol was sold depended on point of sale and this affected the distribution of petroleum products in the country. The Federal Government therefore took over the regulation of the downstream sector in order to encourage even distribution of products to all parts of the country through a uniform pricing system for all grades of products. In implementing the uniform price policy, the Federal Government decided to grant subsidy on petroleum products in order to allow marketers distribute petroleum products to all parts of the country without additional cost to consumers.

The Uniform Price Law introduced into the downstream sector was aimed at subjecting the demand and supply of petroleum products to a fixed price so that the product is sold at a uniform price all over the country. The reason government adopted a uniform price on petroleum products throughout the country, which started from 1973, was based on social welfare policy of making the product easily accessible and affordable by all consumers in the downstream sector. Three factors identified⁵, which influenced government position are; (a) the desire to protect the interest of the poor who could be hurt as a result of higher energy prices, (b) the need to reduce industrial cost as energy products are seen as critical inputs in production process and (c) the potential inflationary impact of higher energy prices. Thus, a major role of the government in introducing the uniform price

⁴ Nwaobi, G.C. (1992). Oil Policy in Nigeria. A Critical Assessment (1958-1992) (available at: www.core.ac.uk/download/pdf/9312754 - last visited 6/10/2016).

⁵ Adegunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. International Journal of Energy Economics and Policy. Vol 3, No. 4, pp. 459-472.

policy was to foster and sustain rapid socio-economic development and improvement in the living standard of the people in the country.

Petroleum products play a significant role in the development of Nigerian economy, therefore, any break in its chain, availability or price rationality, automatically follows a negative effect on the living standard of the citizens as their economic life shift downwards.⁶ An increase in the price of petroleum products essentially leads to increase in the cost of transportation, and the final consumer bears the effect through the purchasing of domestic food items or necessities, which in turn affect the living standard of the people.

The Federal Government depends on petroleum products as one of the major sources of revenue, yet it continue to provide subsidies in the pump price of premium motor spirit (PMS), dual purpose kerosene (DPK), and automotive gas oil (AGO) to cushion the effect of poverty and underdevelopment.⁷ This explained why the structure of the Nigerian economy had evolved to position the downstream petroleum sector as petroleum products provide the internal energy requirements of the country for domestic and industrial use.

Section 15(1) of the Petroleum Act⁸ defines petroleum products to include; motor spirit, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant.

⁶ Uhumwuangbo, S.O. and Aibieyi, S. (2012). Policy of Deregulation and Liberalization of the Downstream Oil Sector in Nigeria: The Implication on the Nigerian Economy in the 21st Century. *Current Research Journal of Economics Theory* 4(4): 112-119.

⁷ Chiemezie, D. (2013). Importation Pricing of Petroleum Products in Nigeria: The Shame of a Nation. *The Economist Magazine*, 4th Edition, Vol. 4. A Publication of the Nigerian Economics Students Association (NESA), Uniben Chapter. (Also available at: <http://www.theeconomistng.blogspot.com/2013/02/importation-pricing>, last accessed: June, 2014).

⁸ Cap. P.10, Vol. 13, Laws of the Federation of Nigeria 2004.

Petroleum products are the juice that oils the Nigerian economy. Most of the energy needed for urban house-hold and industrial consumption come from these products, which total consumption contribution is estimated to be 6.9 metric tonnes.⁹ Therefore, the aim is to remove any fetter which restricts free pricing, distribution and control of any of these products in the market.

The first step taken to regulate petroleum product prices in Nigeria was through the Petroleum Act,¹⁰ which introduced the first uniform prices on petroleum products in 1973, where petrol, popularly known as premium motor spirit (PMS) was sold for 6½ kobo per litre all over the country. The Minister of Petroleum Resources acting under Section 6(1) of the Petroleum Act¹¹ fixed 88 kobo and 18 kobo per litre of automotive gas oil (AGO) and dual purpose kerosene (DPK), respectively throughout the country.¹² In order to ensure that marketers sell the products at uniform prices all over the country, government established the Petroleum Equalization Fund Management Board (PEF&MB) Act¹³ principally to reimburse marketers of petroleum products (PMS, AGO and DPK) the cost of transportation from the supply point to the retail outlets, in order to facilitate sell of these products at government control price throughout the country. By 1975 and in furtherance to its objective of selling petroleum products at uniform price throughout the country, government established the Pipelines Products Marketing

⁹ Industry Report/Oil and Gas Downstream. A publication of Augusto & Co. Limited, 2008.

¹⁰ Cap. P.10, Vol. 13, Laws of the Federation of Nigeria 2004.

¹¹ Ibid

¹² Salami, O. and Ayoola, K.A. (2010). The 'War of Appropriate Pricing of Petroleum Products: The Discourse of Nigeria's Reform Agenda. Linguistic Online 42, 2/10 (Ile-Ife).

¹³ Cap. P.11, Vol.20, Laws of the Federation of Nigeria, 2004.

Company (PPMC) as a subsidiary of the Nigerian National Petroleum Corporation (NNPC) to transport and market petroleum products all over the country. However, with the increasing incidence of bridging of products which was necessitated by pipeline failures and shut down of refineries and during Turn Around Maintenance (TAM), the Federal Government transferred administration of the bridging scheme hitherto administered by the NNPC to Petroleum Equalization Fund Management Board (PEF&MB) in 1998.

In 1986, government introduced the Uniform Retail Prices Order of 1986 under the Petroleum Act¹⁴ that regulate prices of petroleum products in Nigeria where products were reviewed upward to 39½ Kobo, 29½ Kobo and 10½ Kobo per litre for premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK), respectively.¹⁵ In addition, there were existing agencies like the Department of Petroleum Resources (DPR)¹⁶ and the Nigerian National Petroleum Corporation (NNPC),¹⁷ which were conferred with the powers to regulate the supply and distribution of petroleum products in the downstream sector.

To actualize the policy objective in regulating prices of petroleum products in the downstream sector, a Special Committee on the Review of Petroleum Products Supply and Distribution (SCRPPSD)¹⁸ was set up in 2000, which led to the establishment of Petroleum Products Pricing Regulatory Agency (Establishment)

¹⁴ Cap. P.10, Vol. 13, Law of the Federation of Nigeria, 2004). The Order came into force on the 1st January, 1986.

¹⁵ S.1 Petroleum Products (Uniform Retail Prices) Order of 1986. A Subsidiary Legislation under the Petroleum Act, Cap. P.10. Laws of the Federation of Nigeria, 2004.

¹⁶ The Department was previously known as Department of Petroleum Inspectorate Division (DPID).

¹⁷ Nigerian National Petroleum Corporation Act, Cap. N.123, Vol. 12, Laws of the Federation of Nigeria, 2004.

¹⁸ The 34 Man Committee was set up on 14th August, 2000 under the Chairmanship of Chief Rasheed Gbadamosi and was inaugurated by the Secretary of the Federation, Obong Ufot Ekaete.

Act¹⁹. This was the beginning of a phased liberalization or deregulation of the downstream oil sector where the selling price of premium motor spirit (PMS), diesel (AGO) and kerosene (DPK) were set at a control price of ₦26, ₦26 and ₦24 per litre, respectively.²⁰ The aim of this policy was to allow Nigerians enjoy the fruits of competition as obtainable in some other sectors of the nation's economy, such as telecommunication, banking, aviation, and among others.²¹

The analysis of the provisions of these principal statutes will reveal who has the power to fix prices of petroleum products. Is it the "Minister" as envisaged in the Petroleum Act or the "Board" as stipulated in the Petroleum Products Pricing Regulatory Agency Act? This is in view of the fact that the Petroleum Product Pricing Regulatory Agency Act did not repeal the power of the Minister under the Petroleum Act.

The shift to deregulation policy by the Federal Government was as a result of the failure of the uniform price law to address the perennial problems associated with pricing of petroleum products. The question is; can government effectively carry on with the policy of deregulation under the extant laws? Petroleum under Section 44(3) of the Constitution²² is a Federal Government property. Even if licence is given to individuals, will they sell as they like, or the Federal Government has to say how individual refine and distribute and how to sell?

¹⁹ Cap. P.43, Vol.14, L.F.N., 2004

²⁰ Lawal, Y.O. (2014). Subsidy Removal or Deregulation: Investment Challenge in Nigeria's Petroleum Industry. *American Journal of Social and Management Sciences*, 5(1): 1-10.

²¹ Kalejaiye, P.O., Adebayo Kudus and Lawal, O. (213). Deregulation and Privatization in Nigeria: The Advantages and Disadvantages so far. *African Journal of Business Management*, Vol. 7(25), pp.2403-2409.

²² Constitution of the Federal Republic of Nigeria, 1999 (as amended).

To address the problems associated with loss in production, pollution and production shut-down caused by oil bunkering, pipeline vandalism and sabotage in the distribution and marketing of petroleum products, government promulgated the Petroleum Production and Distribution (Anti-Sabotage) Act.²³ Under the Act, various offences and punishment for those who obstruct the production and distribution of petroleum products were provided under Section 1 of the Act.²⁴

Apart from the legal frame work set in place by government to control the sale of petroleum products in Nigeria at uniform price, other variable factors also compete with the legal frame work in determining the price at which petroleum products are sold in the downstream sector. Such factors include, strikes by organized labour unions, demand and supply of petroleum products, smuggling of petroleum products to neighbouring countries, the state of the economy, cost of production and external factors. All these add to increase in price of petroleum products in the downstream sector.

1.2 Statement of the Problem

Despite the existing law on uniform pricing, petroleum products continued to be priced differently in Nigeria. This research is to find out why petroleum products continued to be priced differently in view of the law regulating the sale of petroleum products at uniform price throughout Nigeria.

²³ Cap. P.12, Vol. 20, L.F.N., 2004

²⁴ The Act defines a saboteur as any “person who does, aids another person, or incites, counsels or procures any other person to do any thing with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria, or willfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products.”

In view of the foregoing, this research has formulated the following research questions:

- (a) Whether the provision of subsidies on petroleum products has been able to stabilize petroleum products prices in Nigeria.
- (b) Whether other variable factors also influence the pricing of petroleum products apart from the regulatory mechanism adopted by the government in respect of pricing of petroleum products.
- (c) Whether there is deregulation law on petroleum products or not, and whether these deregulation frameworks are really functioning satisfactorily, if not, why are the deregulation frameworks not functioning.
- (d) Whether the implementation of deregulation policy will bring improvement in the supply and distribution of petroleum products that will lead to forces of demand and supply determine the price of petroleum products in the country.
- (e) Whether there are limitations in the legal frameworks in respect of enforcement of uniform pricing of petroleum products in the country.

1.3 Aim and Objectives of the Research

The main aim of this research is to examine the legal framework for the regulation of uniform pricing of petroleum products in Nigeria.

The objective of this study is to provide answers to the research questions by:

- (1) Examining the law of uniform pricing policy and the implications of subsidies on petroleum products in the country.
- (2) Examining the legality of deregulation policy on petroleum products pricing in order to determine whether it has legal backing in Nigeria.
- (3) To provide findings and recommendations on lack of uniform pricing on petroleum products in Nigeria that will address the application of uniform pricing law on petroleum products.

1.4 Justification for the Research

Various literature that were examined in the area of this research concentrated attention to the upstream sector during the early period when the federal government started producing crude oil in the country. When government started the refining, supply and distribution of petroleum products in order to meet domestic consumption, the issue of pricing received pre-eminent attention by the government. This research is justifiable because the issue of pricing of petroleum products has dominated public discourse over the years in Nigeria, which is focused on subsidy and deregulation or appropriate pricing. Some time the implementation of policy objectives under the regulatory laws were distorted, especially with respect to pricing that are not in consonance with the supervisory and regulatory provisions in the principal statutes. The findings and recommendations that will come out from this research will assist government harmonize the laws that will lead to efficient implementation of its policy objectives

concerning the uniform pricing of petroleum products. This research will also serve as a future reference material in the area of pricing of petroleum products in Nigeria.

1.5 Scope and Limitations of the Research

This research covers the periods of 1970 to 2016, which within these periods the Federal Government introduced the uniform price policy. The discussions, which covered these periods, analyzed the pattern of increase in prices of petroleum products in Nigeria. The following statutes were therefore examined.

- (a) The Petroleum Act.²⁵
- (b) The Petroleum Products Pricing Regulatory Agency Act.²⁶
- (c) The Petroleum Product (Uniform Retail Prices) Order 1986.²⁷
- (d) The Petroleum Equalization Fund Act.²⁸
- (e) The Petroleum Production and Distribution (Anti Sabotage) Act.²⁹
- (f) The Price Control Act.³⁰
- (g) The Nigerian National Petroleum Corporation Act.³¹

In realizing the objectives of this research, efforts were made towards visiting some organizations and operators in the downstream sector in order to solicit information that will aid in the write-up of the thesis. This involved additional

²⁵ Cap. P10, Vol. 13, Laws of the Federation of Nigeria, 2004

²⁶ Cap. P43, Vol. 14, LFN, 2004

²⁷ Under Petroleum Act, Cap. P.10, Vol.13, op. cit.

²⁸ Cap. P.11, Vol. 20, LFN, 2004

²⁹ Cap. P.12, Vol.20, LFN, 2004

³⁰ Cap. P.28, Vol. 20, LFN, 2004

³¹ Cap. N.123, Vol. 12, LFN, 2004

expenses in terms of transportation to these establishments. Another limitation was the problem encountered with some respondents that refused to return the questionnaire given to them within the selected areas. Their inability to respond promptly to the request provides another limitation on information that would have been necessary for wider interpretation of the data that were collected. Most opinions of scholars in the area of research were not readily available because majority of these researches were not conducted in Nigeria and where it was conducted, the core area relating to the law of Uniform Pricing was overlooked. The lack of case law on the subject also serves as a limitation to this research.

1.6 Research Methodology

This research involves a multi-disciplinary approach. The approach adopted in carrying out this research is principally doctrinal methodology where primary and secondary sources of law relating to the area of the study were analyzed. As part of the primary source, relevant statutes and judgments of courts were analyzed including data generated through an empirical methodology from a random study on the aspect of deregulation policy introduced in the downstream oil sector through structured interviews and questionnaire. The secondary sources of information were derived from opinions of jurists, experts that were contained in journal papers, conferences and seminar papers, textbooks, newspapers and magazines, and internet materials in the area of the research.

1.7 Literature Review

The downstream petroleum sector has attracted a lot of studies. In Nigeria, the literature on the sector is growing. A study of this nature can only make a selective review of the relevant and related studies. In the course of reviewing these materials, many scholars have proposed different theories in analyzing the effect of uniform pricing of petroleum products and the relationship among different variables. Many scholars have dwelt extensively on the subject of deregulation policy introduced in the downstream oil sector and were of the views that the policy has not witnessed impressive impact because there is no legal framework backing the policy. Therefore some related theories were reviewed to provide a framework within which to investigate the effects of price changes of petroleum products in Nigeria.

Olorunfemi, et.al.³² traced Federal Government involvement in the downstream sector of the petroleum industry as well as products pricing from 1973, in the era when money was not a problem to the country. The book also attempts to review a number of government policies on petroleum and by emphasizing what the government intended to achieve. It also provides insiders' experiences, explaining how ambitious and well-intended government policies have suffered avoidable setbacks by those who wield power in government. Lack of political will in implementing policies honestly and effectively is some of the reasons why the Nigerian National Petroleum Corporation (NNPC) has failed to reach its full

³²

Olorunfemi, M.A., Adetunji, A. and Olaiya, A. (2014). Nigerian Oil and Gas – A Mixed Blessing? A Chronicle of NNPC's Unfulfilled Mission. Published by Kachifo Limited, Yaba, Lagos, Nigeria.

potentials. This work therefore provides some information that is relevant to this study.

Salvatore's work³³ is relevant to this study because it discussed the variable factors affecting oil price in the international market, which has come to be linked with the forces of demand and supply. In understanding oil prices, the author identified some key players; Russian and United States of America who through their competing interests have influenced the price of oil in the international market. Despite these challenges facing the oil producing countries, they were able to explore other decisions to scale down refining capacity in the face of increasing demand and the effects of global shortages of petrol, diesel, jet fuel, fuel oil and other lubricants.

Toyin and Ann³⁴ examined the petroleum industry in the context of it being the most lucrative impact within the realm of international politics. Taking a well-balanced and objective approach to the complicated web of political and economic threads, the authors explained the relationship of international politics and the global oil industry as it affects every nation. A brief history of the major oil-producing countries, followed by a discussion of the Oil Producing and Exporting Countries (OPEC) were also examined by the authors, which provided some relevant insight to this study.

³³ Salvatore, C. (2011). *Understanding Oil Prices: A Guide to What Drives the Price of Oil in Today's Markets*. Published by John Wiley & Sons Inc., USA.

³⁴ Toyin, F. and Ann, G. (2005). *The Politics of the Global Oil Industry: An Introduction*. Praeger Publishers.

Irina³⁵ in his book examined the vital role played by the Nigerian oil sector in developing the economy, especially during the oil boom era of 1970. Despite the contributions made in the economic development of the country, Nigeria ranked the third highest number of poor people in the world, after China and India, which can be seen from the low human development level, social conflicts and environmental degradation that have characterized the current state of development. This work will provide information on how the revenue derived from oil was mismanaged because of corruption that has eaten deep into the industry.

Olayiwola³⁶ in his book examined the development that took place in Nigeria after independence and asserted that the country has undergone profound changes, by transforming the economy from primary agricultural society to an industrialized nation as result of the emergence of petroleum economy. Despite this performance, the author asserted that the structure of Nigeria's political economy is nearly the same as it was at independence. This work will not be useful to this study

Khan³⁷ painfully examined the position of Nigeria as the most populous nation in the African continent with vast oil resources and the largest petroleum producer in the continent. As a key exporter of oil to both Western Europe and the United States (US), the political economy of Nigeria remains one of gross indebtedness, inefficiency and mismanagement. Here, the author brings together these issues in a far-ranging account of the Nigerian oil industry and explored the fraught

³⁵ Irina, R. (2007). *Oil Boom in Nigeria and its Consequences for the Country's Economic Development*. Published by Munich, GRIN Verlag.

³⁶ Olayiwola, P.O. (1987). *Petroleum and Structural Changes in a Developing Country: The Case of Nigeria*. Praeger Publishers, New York.

³⁷ Khan, S.A. (1994). *Nigeria: The Political Economy of Oil*. Oxford University Press for the Oxford Institute for Energy Studies.

relationship between the government and foreign oil companies in one hand; and the financial constraints on domestic investment and the tragic lessons of an economy dependent on oil on the other. This literature falls short of being relevant in the area of this study, in that issues relating to uniform pricing policy introduced since 1973 were left out of the analysis.

Dogarawa³⁸ in his book examined the politics of prices of crude oil in the international market which he warned that the current world oil price situation could further increase the pressure and struggle for reliable and big customers by oil producing nations in order to sustain the level of their oil revenue in foreign exchange. He observed that the delivery price and other factors will lead to wide disparities in the prices of crude oil in the international market, which he advised that Nigeria should align its economic policy on what is happening in the global. The short coming in the literature is that no detailed analysis was made concerning the downstream sector.

Ahmed's work³⁹ provides useful information to this study by examining the law of deregulation introduced into the downstream sector in Nigeria. The book, which uses a multidisciplinary approach x-rayed the official reasons given by government to justify its fervent drive towards deregulation even though the requisite macro-economic policies that would make deregulation to flourish were

³⁸ Dogarawa, L.B. (1999): Politics in Oil Shipments in Nigeria. Printed and published by Ibladain Enterprises, Kaduna-Nigeria, p.66.

³⁹ Ahmed, M. (2011). The Deregulation of the Downstream Oil Sector in Nigeria: An Appraisal of its Impact on the Economy. LAP Lambert Academic Publishing, Germany, 2011.

not put in place. In doing so, the book contended that, price hikes which appear to be the vogue and the main drive is not analogous with deregulation.

Toju⁴⁰ in his book examined the prices of petroleum products in the Nigerian downstream oil sector, which have been a source of contention. The controversies surrounding the implementation of uniform price policy, the low refining capacity and product smuggling were some of the issues the author identified as probable causes of scarcity of petroleum products in the downstream sector. The literature is a good source material that will provide information necessary for this study.

Igbinovia's⁴¹ book provides necessary information concerning the nature of criminal activities taking place in the downstream sector, and how vandalisation of oil pipelines, oil thefts and bunkering around the Niger Delta region has caused the Federal Government substantial loss in oil revenue. The book presents a scholarly evaluation of the evolution, etiology, causes, nature, extent, characteristics, legal aspects that transcend rationale and modus operandi of the phenomena in the country. This work therefore preferred some solutions to these problems by suggesting proper enforcement of the necessary provisions of the law against offenders to serve as a deterrent to others.

Ajogwu and Nliam⁴² dissects the conflict associated with crude oil exploration, which inevitably comes with an environmental consequences through oil spills, well blown outs, fires and consequent ecological damage to land, vegetation and to

⁴⁰ Toju, A. (2011): Deregulation of the Downstream Petroleum Sector in Nigeria: A Critical Analysis of Petroleum Product Prices and Subsidies. LAP Lambert Academic Publishing, Germany.

⁴¹ Igbinovia, P.E.. (2014). Oil Thefts and Pipeline Vandalization in Nigeria. Safari Books Nigeria Limited, Ibadan, 2014.

⁴² Ajogwu, F. and Nliam, O. (2014). Petroleum Law and Sustainable Development. Published by Centre for Commercial Law Development, Lagos, Nigeria.

aquatic life from direct pollution through oil on land, in water or from flare associated gas. This work is more relevant to the upstream sector than the downstream sector, which is the focus of this study.

Ukeje's work⁴³ provides good information that is relevant to this study by examining the relationship of the Nigerian State with oil; and of the oil communities' engagement in violent conflict that have caused the State lose substantial amount of revenue. The work provides some suggestions on how Nigeria can improve its revenue base through agreement with Organization of Petroleum Exporting Countries (OPEC). The downstream sector, which has assumed alternative source of revenue for the state, government needs to promote peace and stability within the oil producing states of the Niger Delta Region.

Okechukwu's⁴⁴ paper provides useful information to this study through his examination of the history of petroleum industry and the time government started regulating the prices of petroleum products in the downstream oil sector in Nigeria. The work also provided a history of uniform pricing regime and the functions of the newly introduced Petroleum Products Pricing Regulatory Agency Act and with very useful contributions on how to resolve the conflict of functions of Minister under the Petroleum Act and that of the Board of PPPRA, especially in determining the pricing policy on petroleum products.

⁴³ Ukeje, C. (2003). Oil and Violent Conflicts in the Niger Delta. Obafemi Awolowo University Press.

⁴⁴ Okechukwu, I.A. (2006). Petroleum Products Pricing: A Critique of the Legal Framework and the Fallacy of Subsidy in the Oil and Gas Sector. Ahmadu Bello University Law Journal, Volumes 24-25, pp.156-170

Biodun,⁴⁵ Bagheba and Niyekpemi⁴⁶ examined the refining capacity of the three refineries built in the country in the eighties; in Warri, Port-Harcourt and Kaduna whose combined capacity of 33 million barrel litres of petrol could not meet demand of petroleum consumption in the country. This work provides necessary information on how the downstream sector has been constrained by the poor state of the refineries and inability of government to meet demand of consumers of petroleum products in the country.

Another work that provides necessary information for this study is that of Okogu,⁴⁷ which examined the controversy surrounding the adoption of an appropriate petroleum product pricing regime in Nigeria, against a background of poor public finances and endemic cross-border product smuggling, which has resulted in domestic shortages. According to the author, while the case for subsidy removal is overwhelming, the issue was unnecessarily politicized by governments, thus arousing great suspicion among the public that they cannot trust the government because of its poor records and financial accountability of money realized from the removal of subsidies on petroleum product.

Similarly, Lawal's work⁴⁸ which is relevant to this study, presents the argument why subsidy removal on petroleum products has not generated investment in the downstream sector but rather violent reaction from the people.

⁴⁵ Biodun, A. (2004): The Impact of Oil on Nigeria's Economic Policy Formulation. A paper presented at the Conference on Nigeria: Maximizing Pro-Poor Growth: Regenerating the Socio-economic Database. Organized by Overseas Development Institute in collaboration with the Nigerian Economic Summit Group, 16-19 June.

⁴⁶ Baghebo, M. and Niyekpemi, O.B. (2015). Dynamics of the Downstream Petroleum Sector and Economic Growth in Nigeria, Vol. 3 No.4. Published by Redfame Publishing, pp. 134-144.

⁴⁷ Okogu, B.E. (1995): Issues in Petroleum Product Pricing in Nigeria. *Journal of African Economics*, Vol. 4, Issue No. 2, pp.378-305.

⁴⁸ Lawal, Y.O. (2014). Subsidy Removal or Deregulation: Investment Challenge in Nigeria's Petroleum Industry. *American Journal of Social and Management Sciences*, 5(1), pp. 1-10.

Though deregulation will have negative effects on real household income, adequate palliative measures and effective education can reduce the problems.

Frynas⁴⁹ traced the history of litigation in the oil industry in Nigeria, especially in the upstream sector where there was a remarkable rise in litigation between oil companies and those affected by oil operations in Nigerian courts from the periods of 1981 to 1999. Most of the litigations involved were claims for compensations for oil spillage in the oil producing areas of Niger Delta region. This work will not be of value to this thesis.

Nwoko's work⁵⁰ provides necessary information on the role of trade union activities in Nigeria since the return to democracy in 1999 and was of the view that trade union has been a platform for the Nigerian people to query government policies, actions and inaction. Trade Unions in Nigeria played these roles actively during the introduction of the privatization and commercialization of public institutions and services, incessant fuel hikes, retrenchment of workers and implementation of prescribed conditions and unfavourable policies of international institutions into the downstream sector.

Oladipo and Kehinde's work⁵¹ is another necessary literature in the area of this study. According to the authors, the history of 'appropriate' pricing of petroleum product between 1999 and 2004 where petroleum products were fixed at uniform

⁴⁹ Frynas, J. G. (1999). Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria. *Journal of African Law*. Vol. 43, No. 2. Published by Cambridge University Press, pp.121-150.

⁵⁰ Nwoko, K.C. (2009): Trade Unionism and Governance in Nigeria: A Paradigm Shift from Laour Activism to Political Opposition. *Information, Society and Justice*, Volume 2 No. 2, June, pp 139-152.

⁵¹ Oladipo, S. and Kahinde, A. A. (2010): The 'War' of Appropriate Pricing of Petroleum Products: The Discourse of Nigeria's Reform Agenda. *Linguistik Online* 42, 2/10.

prices throughout the country has become a source of concern to every government in Nigeria. Accordingly, prices of petroleum products became problematic from 2000 to 2007 as result of series adjustment in prices of petroleum product embarked by the Federal Government. From thereon, there were arguments by those who were in favour and those that were against the policy of subsidy removal on petroleum products in the country.

Oyinshi et al.⁵² provides more relevant information to this study why the removal of subsidy on petroleum product is not necessary now because of opposition by the Nigerian populace. The reason why there is opposition to deregulation policy is that not many people understood the difference between deregulation and subsidy removal, yet government is bent in implementing the policy.

Abu and Chidi⁵³ examined why there is different perception by Nigerians on the deregulation and privatization policy of government in the downstream sector. This is because many hold the notion that such government policies will lead to job losses as well as high cost of living. Accordingly, the authors emphasized that for government to carryout its policy successfully, it need to carry the people along.

The view expressed by Owoeye and Adetoye⁵⁴ provides relevant information to this study why oil has assumed political dimension. Whenever there is a slight

⁵² Onyisi, A.O., Okechukwu, I.E. and Ikechukwu E.E. (2012). The Domestic and International Implications of Fuel Subsidy Removal Crisis in Nigeria. Kuwait Chapter of Arabian Journal of Business and Management Review. Vol. 1, No. 6, February, pp. 57-80.

⁵³ Abu, I.N. and Chidi, O.C. (2012). Deregulation and Privatization of the Upstream and Downstream Oil and Gas Industry in Nigeria: Curse or Blessing? International Journal of Business Administration, Vol.3 No.1, 5th January. Published by Sciedu Press.

⁵⁴ Owoeye, T. and Adetoye, D. (2016). Political Economy of Downstream Oil Sector Deregulation in Nigeria. International Journal of Economics, Commerce and Management, Vol. IV Issue 5. Published in United Kingdom.

increase in the price of petroleum products, it always attracts debate by those in favour and against the policy. The fierce debate between opponents and proponents of deregulation policy in the downstream sector shows political undertone; and different interpretations in the mind of the people as whether such policy should be regarded as increase in price of petroleum products or subsidies removal.

Kur⁵⁵ evaluate consumer activities with specific interest in petroleum products manufacturing, distribution, retailing, marketing and products sourcing. Much of this work will be useful in the comparative analysis of the laws governing consumer protection and the law governing petroleum products marketing and distribution in Nigeria. This will help to balance the law relating to consumer protection and the impact of non-active consumer protection policies in the downstream sector, which breed sharp practices ranging from under dispensing, to selling adulterated petroleum products.

Adeola and Niyi⁵⁶ opined that the growth in energy demand was taking place in Nigeria at a time of declining supply. Before the introduction of uniform pricing policy, the market was doing well by mediating the supply and demand of petroleum products. Premium motor spirit (PMS) was generally available at filling stations and there was nothing like hoarding, adulteration or smuggling of petroleum products. The authors brought out some silent issues that are relevant to

⁵⁵ Kur, J.J. (2014). Consumer Protection and Deregulation Policy in the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered, *Benue State University Law Journal*, Vol. 5 No. 1, pp.25-50.

⁵⁶ Adeola, F.A. and Niyi, F. (2006). *Macroeconomic and Distributional Consequences of Energy Supply Shocks in Nigeria*. AERC Research Paper 162. Published by the African Economic Research Consortium and Printed by Modern Lithographic (K) Ltd., Nairobi, Kenya, p.6.

this study by explaining why government introduced the uniform pricing policy in 1973 and how it took over the supply and distribution of petroleum products from the multinational oil companies in the downstream sector.

Arinze⁵⁷ expressed concern on the upward adjustments in petroleum products prices and its impacts on inflation, high cost of living and inequitable distribution of income in Nigeria. This valuable material, which form the subject of this study revealed that between 1978 and 2007 various regimes in Nigeria increased prices of petroleum products a total of 18 times, mostly from 1990 to 2007. This brought negative impact on the economy as result of high cost of living.

Fiona, et al.⁵⁸ took a look at the dilapidated infrastructure in the downstream sector of the Nigeria oil and gas industry and observed that despite being Africa's biggest oil producer, Nigeria imports more than 80% of its domestic fuel consumption. This was as a result of dilapidate state of the four refineries that cannot produce at full capacity. This makes the country vulnerable by importing petroleum products at increasing international crude oil prices that further increase domestic subsidies. This work provides necessary information for this study by exposing the inefficiency of the regulatory bodies address these critical issues that will resolve the problems.

⁵⁷ Arinze, P.E. (2011): The Impact of Oil Price on the Nigerian Economy. Journal of Research and Industrial Development, JORIND (9)1. (Also available at: www.transcampus.org/journals or www.Ajol.info/journals/jorind, last accessed: July, 2012).

⁵⁸ Fiona, S., Maja, G., Caroline, H. and Miguel, N. (2011). Food, Finance and Fuel: The Impacts of the Triple F Crisis in Nigeria, with a Particular Focus on Women and Children, Overseas Development Institutes, p.1.

Manson, et. al.⁵⁹ analyzed the cost of subsidies on petroleum products in Nigeria and explained the reasons why a jump in fuel price is never welcomed by the general populace. This work, which confirmed the views of other authors in the area of research conducted will formed part of the discussion in this study where effort will be taken to review the powers and duties of the various regulatory agencies in the downstream sector in order to determine how they have been able to enforce the law against those that contravened the regulations.

The work of Taimur, et. al.⁶⁰ on domestic petroleum prices and subsidies show that the most robust pricing mechanism to avoid or surge in subsidies is to keep prices liberalized or otherwise to make suppliers compete for the market in a context of supporting institutional arrangements. The authors observed that the market for petroleum products is dominated by the public sector therefore price liberalization is necessary in order to reduce government control in the downstream sector. This work is relevant because it provides information that is necessary towards the write-up of this thesis.

Ovaga's work⁶¹ critically analyzed the effect of fuel subsidy removal on petroleum product in the downstream sector by providing some necessary information for this study why the introduction of the policy run contrary to the objective of uniform price laws that were introduced in 1973 and 1986. Much as this

⁵⁹ Manson, N., Kennayo, O. and Robert, O. (2006). Does Subsidy Removal Hurt the Poor? The Case of Fuel Subsidies in Nigeria. In: Secretariat for Institutional Support for Economic Research in Africa (SISERA) Working Paper Series No.2 and published by African Institute for Applied Economics, Enugu, Nigeria.

⁶⁰ Taimur, B., Amie, M., David, C. and Joseph, N. (2007): Domestic Petroleum Product Prices and Subsidies: Recent Development and Reform Strategies. International Monetary Fund (IMF) Working Paper – WP/07/71, Fiscal Affairs Department.

⁶¹ Ovaga, O.H. (2012). Subsidy in the Downstream Oil Sector and the Fate of the Masses in Nigeria. Kuwait Chapter of Arabian Journal of Business and Management Review, Vol. 1, No.6, pp.15-33.

examination of the law is necessary, it will be limited to the power given to the Ministry under the Petroleum Act only.

Enebeli, et. al.⁶² provided useful information on the exploration and oil price dynamics in the Nigerian petroleum industry. The author explained how Nigeria, in a quest to exploit her natural resources efficiently adopted various strategies and policies relating to licensing, taxation, royalty and general legal instruments to ensure orderly development of petroleum exploration and production. Since the elements of Nigerian petroleum exploitation strategy are rooted in its legal and fiscal system, government adopted a concession agreement by allowing the Nigerian National Petroleum Corporation (NNPC) acquired equity interest in the concessions on its behalf.

Maitumo⁶³ and Asuguo⁶⁴ works revealed an impeding problem in the supply of petroleum products in the downstream sector, which constrained consumers' demand in the country. The gap created in the supply of crude oil to the refineries invariably mean a reduction in the quantity of refined product for consumption in the downstream sector. This literature, which is a relevant material for this study, explained why the distribution of petroleum products through the pipelines has not been able to improve supply in the downstream sector because of its constant vandilization.

⁶² Enebeli, E.E., Cheng, J. and Wang X. (2012). Petroleum Exploration and the Oil Price Dynamics: A Case Study of Nigerian Petroleum Industry. *African Journal of Business Management*, Vol. 6(9), pp. 3342-3348.

⁶³ Maitumo, M.M. (1999): Impact of Impediments to Petroleum Products Supply. In: *Energy Crisis in Nigeria: Causes, Effects, Solutions*. Published by the Group Executive of PENGASSAN in collaboration with Softsolid Communications Limited, Lagos, pp. 77-78

⁶⁴ Asuguo, E.I. (1999): National Energy Crises: An X-Ray. In: *Energy Crisis in Nigeria: Causes, Effects, Solutions*. Published by the Group Executive committee of PENGASSAN in collaboration with Softsolid Communications Limited, Lagos, p. 93.

Obi⁶⁵ argued that the abundant oil endowment in Africa has largely been associated with high levels of violence and corruption based on the political economy of oil. The conflict in the Niger Delta oil producing region of Nigeria offers a good case for an analysis of the nexus between oil and violent conflict. Thus, the roots of this violent conflict is linked to the manner in which oil is produced and extracted; and by alienating the people from their lands and livelihoods, the highly skewed distribution of its benefits to the people were some of the likely causes of conflicts.

Owarieta⁶⁶ analyzed the effects of scarcity of petroleum products that is always experienced whenever there is slight increase in the pump price of petroleum products. The danger posed by this ugly situation is that motorists always resort to panic buying and hoarding of the products by dealers in order to cause artificial scarcity. This in turn leads to increase in the pump price of petroleum products in the black market and high cost in transportation and other goods and services. This work is useful to this study by revealing the causes of scarcity of petroleum products and what the law is concerning hoarding, adulteration and diversion of petroleum products to black market.

Akpotaire⁶⁷ assessed the concept of privatization and deregulation policy in Nigeria by tracing its origin to 1980s. The analysis revealed that the concept, even

⁶⁵ Obi, C.I. (2014). Oil and Conflict in Nigeria's Niger Delta Region: Between the Barrel and the Trigger. The Extractive Industries and Society. Vol.1, Issue 2., pp.147-153. Published by Elsevier Ltd.

⁶⁶ Owarieta, G. (1999): Industrial Relations Implication of Economy of Scarcity of Petroleum Products. In: Energy Crisis in Nigeria: Causes, Effects, Solutions. Published by the Group Executive Committee of PENGANSSAN in collaboration with Softsolid Communications Limited, Lagos.

⁶⁷ Akpotaire, V. (2004): Privatization and Deregulation of the Downstream Sector of the Oil and Gas Sector; Challenges for Labour.

though was a recent phenomenon introduced into Nigeria to dismantle the various laws that entrenched economic regulation or deregulation. This work provides a useful material to this research by tracing the history and reasons behind the policy of deregulation that was introduced into the downstream sector.

Said⁶⁸ however explained that the policy of deregulation emanated from the International Monetary Fund (IMF), the World Bank and the Paris Club, who seek to reconstruct the object, nature and basis of social welfare services from a social and public orientation to a private one, which has implication for efficiency, social and class inequalities. This work explained how the World Bank's policy influenced the macro-economic policy of Nigeria, which has formed part of government policy of deregulating the downstream oil sector.

Ogunbodede, et. al.⁶⁹ identified multiple negative effects of incessant increase in the price of petroleum products in downstream oil sector, which always affect the cost of transport fare, hoarding, and long queue, lose of man-hour at work and diversion of petroleum products to the black market. The authors identified the following problems as causes of scarcity of petroleum products in the downstream sector, which include; irregular maintenance of the refineries, smuggling of petroleum products, pipeline vandalization, strikes by oil workers.

Faculty of Law Lecture Series No.3, University of Benin, Benin-City, Nigeria.

⁶⁸ Said, A. (1999): Privatization Policy and the Delivery of Social Welfare Services in Africa: A Nigerian Experience. *Journal of Social Development in Africa*, Vol. 14 No. 2, pp. 87-108.

⁶⁹ Ogunbode, E.F., Illesanmi, A.O. and Olurankinse, F. (2010): Petroleum Motor Spirit (PMS) Pricing Crisis and the Nigerian public Passenger Transportation System. *Scientific Research Publishing Company, Ibadan*, Vol. 5 No. 2.

Osi and Dele⁷⁰ expressed concern on the declining and erratic supply of petroleum products in the country, which was caused by the dilapidated infrastructural facilities in the downstream sector. This impacted negatively on the lives of consumers who spent most of the earnings in purchase of other goods and services at a high cost. Factor this is responsible for this due to scarcity in the supply and distribution of petroleum products. This explanation provides a better understanding of the nature of the problems associated with petroleum distribution in the country and how to proffer possible solutions that will reduce these problems.

Onwioduokit and Adenuga⁷¹ identified inadequate energy planning by government in Nigeria as a factor that has compounded the scarcity of petroleum products in the country. The inability of government to make proper forecast in energy demand is responsible for crises whenever there is slight increase in the pump price of petroleum products. This work will serve a good source of material in this study by providing a comparative analysis on energy demand and supply in the country.

Eme and Onwuke⁷² work made valuable contributions to this study by examining the challenges facing the downstream deregulation policy, which include; lack of sincerity on the part of government to deploy the revenue derived from subsidy removal to other sectors of the economy, corruption going on in the

⁷⁰ Osi, A.A. and Dele, B. (2006): Petroleum Product Scarcity: A Review of the Supply and Distribution of Petroleum Products in Nigeria – OPEC Energy Review. Published by John Wiley and Sons.

⁷¹ Onwioduokit, E.A. and Adenuga, A.O. (2002): Empirical Analysis of the Demand for Petroleum Products in Nigeria. Published by International Economic Relations Department, Central Bank of Nigeria Annual Report on The Persistent Shortages of Petroleum Products in Nigeria: A Re-Appraisal of Causes and Possible Remedies. Special Economic Review Series, Vol. 1 No.1, p.1.

⁷² Eme, O.I. and Onwuke, C.C. (2011). Political Economy of Deregulation Policy in Nigeria: The Challenges Ahead. Journal of Business and Organizational Development, Vol. 2.

downstream sector and lack of access by the targeted beneficiaries of the programme. The Nigerian Labour Congress (NLC) and other pressure groups in the country argued that introduction of deregulation into the downstream sector is a process that is either inadvertently or deliberately conceived to take money away from the pockets of all Nigerian income earners who live below N360.00 per day that are the real victims of the programme.

Adagba, et. al.⁷³ examined deregulation in the context of anti-subsidy removal strikes embarked by NLC from 2000 to 2012, which grounded economic activities. These crises have resulted in production shutdowns, high cost of obtaining fuel from the black market and scarcity or unavailability of petroleum products leading to N1.3 trillion in revenue loss. This work represents a pioneer effort in both direction and focus, which will be helpful in this study.

Onyekpe⁷⁴ observed that the concepts of liberalization and deregulation are aimed at achieving unobstructed economic activities, which seeks to remove all obstacles to trade, production and investment. By emphasizing the importance of freedom of economic activities and dominance by private enterprises, the author was able to explain how Nigeria government stands to benefit from the policy of liberalization and deregulation of the downstream sector. This is a useful material that provides the necessary understanding of the legal framework for privatization and commercialization generally.

⁷³ Adagba, O., Ugwu, S.C. and Eme, O.I. (2012). Deregulation and Anti-Subsidy Removal Strikes in Nigeria 2000-2012. *Arabian Journal of Business and Management Review (OMAN Chapter)*, Vol. 1, No.7, February, pp.69-83.

⁷⁴ Onyekpe, N.J.G. (2001). Globalization and Liberalization of the World Economy: Concepts, Historical Development and Implications for the Less Developed Countries and Labour Movement, in Sylvester Odion-Akhaine (ed.), *Globalization, United Nations and the Fringe Players*, Lagos: CENCOD.

Okanla⁷⁵ examined the role of Government's involvement in the development of oil industry in Nigeria, which he traced to the early period when crude oil was discovered in commercial quantity in 1956. By that time, government policy was centred mainly on the regulation of the upstream sector through the issuance of permits and licenses for oil exploration, drilling, oil pipelines and for the construction of oil-field installation and inspection in order to promote the smooth operation of the international oil companies doing business in Nigeria. This work only provided scanty information concerning the activities of the downstream sector, especially in the area of importation, storage and distribution of petroleum products.

Biol, et. al.⁷⁶ directed their attention in examining the crucial issue concerning energy markets in oil exporting countries and the high level of subsidies on petroleum products. This work provided a case study of Algeria, Iran and Nigeria where the impact of subsidy phase out was examined. In a comparative analysis the authors were able to point out that removing subsidy on petroleum products will help government re-direct such revenue for development of other sector. Much as this work will be useful in this study, it will be limited to the role of governments in subsidy removal.

Saboohi's work⁷⁷ explained the important of subsidy on petroleum products and how it helped the Islamic Republic of Iran to assist the poor. However, he

⁷⁵ Okanla, O.A. (1977): Development of Government Role in the Oil Industry. Paper presented at the Sixth Nigerian Institute of Journalism Oil Seminar, Lagos. *Nigeria Trade Journal*, Vol. 24, No. 3, July 28th, p. 31.

⁷⁶ Biol, F., Aleagha, A.V. and Ferroukhi, R. (1995). The Economic Impact of Subsidy Phase Out in Oil Exporting Developing Countries: A Case Study of Algeria, Iran and Nigeria. *Energy Policy*, Vol. 23, No.3, pp. 209-215. Published and Printed by Butterworth, Great Britain.

⁷⁷ Saboohi, Y. (2001). An Evaluation of the Impact of Reducing Energy Subsidies on Living Expenses of Households. *Energy Policy*,

observed that subsidizing petroleum products in Nigeria causes market distortion and the best thing to do is to eliminate the policy because of the huge indebtedness of the Federal Government to the Paris Club, World Bank and International Monetary Fund, who required that the government implement structural adjustment programme. This work is useful to this study because it provided some useful insights on why government decided to replace the uniform price policy with deregulation policy.

Javier et. al.⁷⁸ observed that, though the provision of subsidy on petroleum product have some benefits in the provision of social welfare services to every household, it has indirect impact through higher prices for other goods and services consumed by households as result of diversion of products to black market. Though this work is a useful source of material for this study, its attention is focused on economic analysis without examining the law of deregulation of petroleum product in Nigeria.

Akin, et. al.⁷⁹ provides a model and estimate of petroleum products demand dynamics in Nigeria in order to improve a more robust estimate of price and income elasticities. According to the authors, there was a rapid increase in aggregate petroleum product consumption from 1977 to 1982 due to economic activities and increase in population but from 1981 to 1985 the aggregate growth rate began to

78 Vol. 29, pp.245-52. Published by Elsevier Science Ltd. (available at: www.elsevier.com/locate/energy, last visited: May, 2013).

Javier, A.D., David, C. and Robert, G. (2010). The Unequal Benefits of Fuel Subsidies: A Review of Evidence for Developing Countries. International Monetary Fund (IMF) Working Paper No. WP/10/202. Published by Fiscal Affairs Department.

79 Akin, I., Adeola, A. and Babatunde, M.A. (2010). Estimating Petroleum Products Demand Elasticities in Nigeria: A Multivariate Cointegration Approach. Energy Economics, Vol. 32, pp.73-85. Elsevier Publication, 2010. (available at: www.elsevier.com/locate/eneco, last visited, July 2012).

slow down markedly and this trend continued up to 2002. The frequent price increase and political instability witnessed these periods partly provides an answer to the consumption pattern observed.

Nwachukwu and Chike⁸⁰ examined the various opinions expressed on the continued existence of fuel subsidy in Nigeria and its inability address poverty reduction. The argument is that subsidizing petrol will allow consumers consume more quantity of petroleum products. With these facts, government can rethink on how to implement its economic policy in downstream oil sector for the benefits of the people. The contribution of this paper to this research showed that subsidy on petroleum products is unsustainable.

Onyemaechi⁸¹ provided a descriptive analysis of the various petroleum policies in Nigeria since the discovery of crude oil in 1956 and was of the view that there were no recorded economic benefits from petroleum policies in the country. The data on relevant variables, which were collected that formed the basis of this analysis revealed three major economic implications: first the rapid expansion of the number of economic actors in Nigerian petroleum industry; secondly, rapid development of the transport system, and thirdly, improvements in the gross domestic product (GDP). Much as this work is relevant to this study, it only examined the economic benefits to be derived from petroleum policies, which it left out completely discussion of the relevant laws that will make these policies work.

⁸⁰ Nwachukwu, M.U. and Chike, M.H. (2011). Fuel Subsidy in Nigeria: Fact or Fallacy. *Energy Journal*, Vol. 36, pp.2796-2801. Elsevier Publication (available at: www.elsevier.com/locate/energy, last accessed, September, 2012).

⁸¹ Onyemaechi, J.O. (2012). Economic Implications of Petroleum Policies in Nigeria: An Overview. *American International Journal of Contemporary Research*, Vol. 2 No. 5 (available at: www.ajcrnet.com, last visited, January, 2012)

Aigbedion and Iyayi⁸² evaluate the contributions of the downstream sector, which has overtaken agriculture as the cornerstone of the Nigerian economy. The detailed analysis provided an evaluation on how revenue derived from the consumption of domestic products contributes to the bulk of Federal Government foreign exchange earnings. This paper further exposed Nigeria's extreme reliance on crude oil market by neglecting the downstream sector, which has further triggered structural difficulties for the economy due to fluctuation in international oil price.

Monday⁸³ opined that the oil and gas industry has continued to serve the mainstay of Nigerian economy when oil was discovered in the Delta region in 1956. Today, the industry is widely acknowledged as the nation's live-wire because it created employment opportunities for Nigerians. Similarly, Chinyere and Casimir⁸⁴ argued that the discovering of crude oil in 1956 also led to the abandonment of other sources of revenue for Nigeria and crude oil became a determinant Nigeria's mono-economic status. The information derived from the views of these authors will provide useful explanation why the issue of appropriate pricing and removal of subsidy on petroleum products became a controversial policy for every successive government in Nigeria.

⁸² Aigbedion, I. and Iyayi, E. (2007). Diversifying Nigeria's Petroleum Industry. *International Journal of Physical Sciences*, Vol. 2(10). pp. 263-270 . Published by Academic Journals.

⁸³ Monday, J.U. (2013). Downstream Deregulation Policy and Economic Growth: A Case of Nigeria. *International Journal of Multidisciplinary Research in Social and Management Sciences*. Vol. 1, Issue 4.

⁸⁴ Chinyere, T.N. and Casimir K.C.A. (2013). Fuel Subsidy Removal in Nigeria: Socio-Religious and Value Implications Drawn from the Theistic Humanism of Professor Dukor. *Open Journal of Philosophy*, Vol. 3 No.1A. pp. 240-247. Published by Scientific Research, 2013. (available online : www.dx.doi.org/10.4236/ojpp.2013.31A039, last accessed, July,2014).

Abang, et. al.⁸⁵ adopted a scientific approach in analyzing the effect of fuel subsidy removal on the value of Naira and the lack of local raw materials for production. This paper is relevant to this study because it tried to explain the effect of inflation as result of increase in the price of petroleum products. The empirical field survey in which data were collected and analyzed also confirmed the fact that an increase in price of petroleum products has an adverse effect on the standard of living of the people.

Balogun's work⁸⁶ focused on the fierce opposition to the economic policy of removal of petroleum subsidy, which has led to mass revolt. This paper, which is relevant to this study, presented scholarly information on why people no longer trust the government in matter regarding fuel subsidy removal in the country. Significant opposition to elements of the reforms comes from certain key stakeholders and a cross section of the Nigerian public. Opposition is particularly strong against the removal of subsidies on petroleum product, but it is not always short of constructive ideas. Opponents of the increase (including numerous state governors) argued that price liberalization had little meaning without liberalizing the fuel import market.

Christopher and Adeleke⁸⁷ examined the nature of petroleum products distribution in Nigeria and the various actors in the distribution channels, which include the private independent marketers and major (foreign) marketers. The

⁸⁵ Abang, I.S., Elufisan, T.O. and Okwubunne, A.C. (2012). Linear Function Application: Enlightenment to the Impact of Fuel Subsidy Removal in Nigeria. *American Journal of Economics*, Vol. 2(3), pp.57-60. Scientific and Academic Publishing. 2012.

⁸⁶ Balogun, J.B. (2012). Removal of Subsidy: A Question of Trust. *Developing Country Studies*. Vol. 2 No.5. (Available at: www.iiste.org, last accessed, January, 2013).

⁸⁷ Christopher, E. and Adeleke, A. (2012). An Assessment of the Distribution of Petroleum Products in Nigeria. *E3 Journal of Business Management and Economics*, Vol. 3(6). Pp. 232-241. (available at: www.e3/journals.org, accessed, May, 2013).

author examined the concept of independent marketers and their activities in the downstream sector as far back to 1978; and competing side by side with the major marketers and other big foreign multinational oil companies in the country. Though the paper failed to examine the law of marketing of petroleum products, however, the work is relevant to this study as it provided a comprehensive information concerning the activities of oil marketers operating in the downstream sector in Nigeria.

Akinwale, et. al.⁸⁸ study provides another relevant material that is useful to this study. The authors observed that the removal of fuel subsidy on premium motor spirit (PMS) from 1980 to 2005 brought a lot of arguments, either for or against the removal. The arguments against the removal of subsidy came mainly from the labour unions, particularly those of oil workers NUPENG and PENGASSEN. They oppose reduction or removal of fuel subsidies on the basis that access to fuel at affordable prices will be restricted.

Oseni's work⁸⁹ exposes the problems associated with subsidy removal on petroleum products and the parameters adopted in arriving at such conclusion. He anchored his analysis on how the cost of a litre of fuel is calculated based on the template released by the Petroleum Products Pricing Regulatory Agency (PPPRA). While the costing methods previously adopted have changed due to some variable

⁸⁸ Akinwale, Y.O., Olaopa, .O.R. , Ogundari, I. and Siyanbola, W.O. (2013). Political Economy of Phasing Out Fuel Subsidy in Nigeria. *Energy and Power*. Vol. 3(4). pp. 37-43. Academic and Scientific Publishing.

⁸⁹ Oseni, M. (2013). Fuel Costing in Nigeria: The Need for Interrelated Party Transactions Pricing Method. *Journal of African Macroeconomic Review*. Vol. 3 No. 2.

elements, the costing equation in manufacturing is now focused on quality, flexibility and responsiveness in meeting customer needs.

Isa, et. al.⁹⁰ reviewed the daily demand of petroleum products in Nigeria and opined that before the discovery of crude oil, the consumption of energy came mainly from fire wood, charcoal, agricultural wastes or residues, popularly referred to as biomass and solar radiation. However, the structure of energy consumption drastically changed when the country started using petrol and diesel. The daily demand for petroleum products according to the author, in 2010 was: petrol – 30 million litres, dual purpose kerosene (DPK) – 10 million litres and diesel – 1.8 million litres, which continued to grow daily. This work is useful because the analysis that will come out of this study will form part of the recommendations that will lead to proper planning by the government in order to address the problem of supply and demand of petroleum products.

Adagunodo⁹¹ analyzed petroleum products pricing reform in Nigeria, which was based on a survey conducted on 5000 households in order to estimate the demand system for premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK). Petroleum policy in Nigeria especially that which has to do with implementation of uniform pricing became a feature of government policy since 1970 when subsidy was introduced. Consequently, consumption of petroleum products keep on increasing with economic growth, which was further encouraged

⁹⁰ Isa, A.H., Hamisu, S., Lamin, H.S., Ya'u, M.Z. and Olayande, J.S. (2013). The Perspective of Nigeria's Projected Demand for Petroleum Products Journal of Petroleum and Gas Engineering. Vol. 4(7). pp.184-187 (available at: www.academicjournals.org/JPGGE last accessed, May, 2014).

⁹¹ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. International Journal of Energy Economics and Policy. Vol. 3 No. 4, pp.459-472.

by its low prices. The bulk consumption was the premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK), which accounted for 60% of the total petroleum products.

Umeanozie, et. al.⁹² observed that consumption of petroleum products in Nigeria grew tremendously from the middle of 1980s reflecting the rapid growth rate in the number of automobiles, industries, households, rural-urban migration, economic and political developments. The bulk of consumption has been premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK). As price of kerosene rose, people in the rural areas resorted to fire wood.

Habibu and Umar⁹³ examined the direct welfare impact of fuel subsidy reform in Nigeria from survey conducted on household expenditure in 2010 in order to measure the impact of higher fuel prices on different socio-economic groups in the country. The analysis was done by segregating households into three different income groups and the welfare impact due to subsidy reduction was measured. The increase in price of petroleum products led to reduction in welfare services for the middle group than the top and bottom group. This is because the middle income group has a larger budget share on fuel consumption, while fuel subsidies were found to be costly in protecting poor households due to substantial leakage of benefits to higher income group. Consequently, the welfare loss for the lower

⁹² Umeanozie, A.O., Eleanya, K.N. and Jude, O.C. (2014). Subsidies and the Demand for Petroleum Products in Nigeria. *International Journal of Sustainable Energy and Environmental Research*. Vol. 3(2). Pak Publishing Group, Pp.100-109.

⁹³ Habibu, M.U. and Umar, M.S. (2013). An Assessment of the Direct Welfare Impact of Fuel Subsidy Reform in Nigeria. *American Journal of Economics*. Vol.3(1), pp.23-26. Scientific and Academic Publishing.

income group due to subsidy cut was somewhat higher due to the smaller size of their income.

Khalid, et. al.⁹⁴ observed that petroleum sector in Nigeria contributes substantially to the country's economic growth; however the potential benefits are diminished due to the existence of significant subsidies on imports of petroleum products. Though subsidy was considered as an important instrument to keep the cost of living low, the costs of these subsidies have risen dramatically and became volatile in recent years that call for alternative policies measures to address them.

Ehikwe, et.al.⁹⁵ examined the various actors in the distribution of petroleum products in the country, which include the Nigerian National Petroleum Corporation (NNPC), Department of Petroleum Resources (DPR), Pipelines Products Marketing Company (PPMC), Petroleum Equalization Fund (PEF), Petroleum Products Pricing Regulatory Agency (PPPRA) and other private and multinational oil companies. The authors postulate to some extent the law guiding the operation involving the activities of the downstream sector and by establishing the relationship between the various marketers and government on one hand, and their activities with consumers on the other. This work provides valuable information on the activities of oil marketers that operate in the downstream sector and how they help in the distribution of petroleum products to all parts of the country.

⁹⁴ Khalid, S., Angel, A., Harald, G., Peter, M. and Terrie, W. (2014). Impacts of Removing Fuel Import Subsidies in Nigeria on Poverty. *Energy Policy*. Vol. 69, pp.265-178. Published by Elsevier.

⁹⁵ Ehikwe, A.E. and Uzonna, O.N. (2013). The Effect of Cost of Distribution on the Pump Price of Petroleum Products in the South East Nigeria. *Journal of Economics and Sustainable Development*. Vol. 17.

The views expressed by Ismail, et. al.⁹⁶ provided an insight why government began a gradual removal of subsidies on petroleum products from 1970 and how it affect the transportation sector. The inability of the four refineries to meet domestic demand of petroleum products consumed in the country forced the Federal Government to rely on importation of refined products at international price thereby increasing the amount of subsidies pay by government to oil marketers. This work provides some basic information and explanation why scarcity of petroleum products refused to abate in the country, which this information will form part of the recommendations in this study.

Bello's work⁹⁷ deals with the effects of deregulation in the downstream oil sector and by examining the policy from the angle of law and economics. He opined that the huge amount of money spent by the Federal Government on subsidizing petroleum products has caused economic distortion. According to the author the importance of law is that it lay a sound economic policy that promote social justice and economic efficiency. Regrettably, the law of deregulation is yet to be entrenched in the downstream sector due to some obstacles. This work is a relevant material that pin-point clearly the weakness of the deregulation policy strictly from the point of law rather than from economic angle.

⁹⁶ Ismail, O.S., Hezekiah, T. and Bilquis, M. Y. (2014). The Impact of Gasoline Subsidy Removal on the Transportation Sector in Nigeria. *America Journal of Energy Research*, Vol. 2 No.3, pp. 60-66.

⁹⁷ Bello, A.T. (2014). Law and Economics of Deregulation in Downstream Sector of the Nigerian Oil and Gas. *The International Journal of Science and Technology*. Vol.2 Issue 8, pp. 99-104.

Amagoh, et. al.⁹⁸ provides another useful source of material for this study, when they determined the impact of petroleum product prices based on economic variables and how they impacted on the Nigerian economy. From data sourced from the Central Bank of Nigeria (CBN) bulletin, Petroleum Products Pricing Regulatory Agency (PPPRA) pricing template, the National Bureau of Statistics bulletin and United Nations online showed that premium motor spirit (PMS) has significant impact on all economic variables. The automotive gas oil (AGO) has significant impact on only gross domestic product (GDP), while dual purpose kerosene (DPK) has significant impact on GDP.

Rowland⁹⁹ argued that deregulation is the best option that will address the problem of insufficiency in supply and distribution of petroleum products in Nigeria. The adoption of deregulation will also address the challenges posed by uniform pricing policy that will allow competition amongst petroleum marketers.

Uhunmwangho and Aibieyi¹⁰⁰ argued that since the emergence of deregulation of petroleum product prices in the downstream sector only few Nigerians benefitted from the policy. By adopting deregulation into the downstream sector, it has brought abject poverty as result of high increase in prices of petroleum products, which affect the cost of transportation of goods and services in the country. Similarly, Nenpominyi¹⁰¹ argued that deregulation of the downstream oil sector only

⁹⁸ Amagoh, M.N., Odoh, C.M. and Okuh, B.A. (2014). Modeling Petroleum Product Prices and the Nigerian Economy. *Journal of Mathematics (IOSR-JM)*. Vol. 10, Issue 1, pp. 72-79.

⁹⁹ Rowland, E.K.W. (2006). Deregulation and Appropriate Pricing of Petroleum Products in Nigeria: Challenges and Opportunities. *International Journal of Economic and Development Issues*. Vol. 6 No. 2, Pp.157-165

¹⁰⁰ Uhunmwangho, S.O. and Aibieye, S. (2012). *Current Research Journal of Economic Theory* 4(4): 112-119, 2012.

¹⁰¹ Nenpominyi, S.A. (2012). The Political Economy of Oil Deregulation in Nigeria's Fourth Republic: Prospects and Challenges. *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)* 3(3): 193-198.

favour the ruling elites and as long as government depend heavily on importation of petroleum product into the country, deregulation at this point will compound more problems to the people rather than solving the problems.

Anyandike¹⁰² analyzed the arguments that sprung when the deregulation policy was announced by the Federal Government. By highlighting the main thesis of the opponents and proponents of deregulation or fuel subsidy removal, the author carefully evaluate the two divergent opinions concerning the deregulation policy and was able to conclude that both parties adopt a kind of polarized language and arguments in order to support their views. This paper provides relevant information to this study by pointing out clearly the political angle of the policy rather than the legal aspect of the policy.

Olumide, et. al.¹⁰³ opined that issues that need to be addressed in order to make petroleum products available to consumers in the downstream sector are: revamping of the dilapidated infrastructure in the distribution system, address issue of corruption and oil smuggling. The paper also presented some useful arguments why government decide to remove petroleum subsidy and the weaknesses of the current subsidy regime; the likely impacts of the reform measure and arguments canvassed against its withdrawal; possible options for the reform of the petroleum sector and suggestions for successful implementation of the oil sector deregulation policy.

¹⁰² Anyandike, N.O. (2013). Assessment of the Implication of Full Scale Deregulation of the Downstream Oil Sector on the Nigerian Economy: The Neoliberalism Approach. *Global Journal of Political Science and Administration*. Vol. 1 No.2, pp.23-48. Published by European Centre for Research Training and Development, UK.

¹⁰³ Olumide, S.A., Obafemi, F. N. and Ebong, F. S. (2013). Deregulating the Downstream Sector of the Nigeria Petroleum Industry. *British Journal of Economics, Finance and Management Sciences*. Vol. 8(2).

Kalejaiyi, et.al.,¹⁰⁴ observed that not many people understood the concepts of deregulation and privatization in Nigeria when it was first introduced in the 1980s. The author provided a detailed definition of these concepts and by examining some probing questions concerning the nature, practice and the context of deregulation and privatization in Nigeria and the expected benefits and challenges that characterized the concepts. From the brief analysis of the concepts, deregulation and privatization have both positive and negative socio-economic consequences. The authors were able to examine the legal issues relating to liberalization and deregulation from a pure legal perspective. Much as this work will be useful in the comparative analysis of the laws governing deregulation of petroleum products, it will also provide some insight whether there is legal framework provided for the policy to take place in Nigeria.

Arong and Ikechukwu¹⁰⁵ observed that the perception on deregulation and privatization by Nigerians has been indifferent as many hold the notion that such government policy will lead to job loss as well as high cost of living in the country. By adopting a survey research on the policy, the study was able to demonstrate that 77.8% of the respondents believed that the deregulation and privatization of the oil and gas industry will be a blessing while 80.6% of the respondents do not believe that the deregulation and privatization of the oil and gas industry will be a curse to Nigerians.

¹⁰⁴ Kalejaiyi, P.O. Kudus, A. and Olufemi, L. (2013). Deregulation and Privatization in Nigeria: The Advantages and Disadvantages so Far. *African Journal of Business Management*. Vol. 7(25). Pp.2403-2407. Published by Academic Journals.

¹⁰⁵ Arong, F. E. and Ikechukwu, E. M. (2013). The Perception of Nigerians on the Deregulation and Privatization Moves of the Government in the Oil and Gas Industry in Nigeria. *International Journal of Public Administration and Management Research (IJPAMR)*. Vol. 2, No. 1.

Ezie and Beida¹⁰⁶ asserted that deregulation of the downstream oil sector would discourage the importation of refined petroleum products as well as encourage foreign direct investment in the oil and gas sector because of lack of enabling law provided for its take-off in Nigeria. On further examination of the policy, the authors opined that deregulation and privatization is a concept of neoliberal school of thought, which doctrine is based on competition and profit motive that is founded on free market pricing and freedom from interference by regulation. This is one of the few works that has ever been presented by an author in this study.

Nkogbu and Okorodudu¹⁰⁷ opined that good leadership is very important on successful implementation of the deregulation policy in the downstream sector. The authors took time to examine the concepts of “leadership” and “policy” in order to explain how important the two concepts are in promoting good governance that will stem corruption out from the downstream sector.

1.8 Organizational Layout

This thesis covers seven Chapters.

Chapter one is the introductory part of the thesis. It gives a background to the study, statement of the problem, aim and objectives of the research, justification for

¹⁰⁶ Ezie, O. and Beida, O.J. (2013). Nigeria’s Downstream Oil Sector Deregulation and Efficient Petroleum Pricing. *International Journal of Social Sciences and Humanities Review*. Vol.4 No.4, pp.84-93.

¹⁰⁷ Nkogbu, O.G. and Okorodudu, O. (2015). Deregulation of the Downstream Sector of the Nigerian Petroleum Industry: The Role of Leadership. *European Journal of Business and Management*. Vol. 7 No.8.

the research, scope and limitation, research methodology, literature review and organizational layout.

Chapter two is a Conceptual and Philosophical base chapter where some key terminologies were defined and clarified.

Chapter three treats the various determinants of prices of petroleum products in Nigeria, with specific focus on demand and supply, smuggling of petroleum products, politics of appropriate pricing of petroleum products, state of the economy, external factors, cost of production and transportation in the downstream oil sector.

Chapter four examines the legal framework for the determination of prices of petroleum products in Nigeria with particular reference to uniform pricing regime, appraisal of Petroleum Equalization Fund Management Board Act as a stabilizer of uniform prices of petroleum products, the roles of Petroleum Equalization fund Management Board Act, ease of enforcement of uniform prices by Petroleum Equalization Fund Management Board were all examined in this chapter.

Chapter five examines the Legislative and Institutional framework for the regulation of uniform pricing of petroleum products in Nigeria, with particular focus on the roles of the National Assembly to make laws for peace and good governance on any matter and under the Exclusive Legislative List, the role of Petroleum Products Pricing Regulatory Agency and Nigerian National Petroleum Corporation in regulating supply and distribution of petroleum products in Nigeria were all examined in this chapter.

Chapter six focuses on the enforcement of the Uniform Price Law under the regulatory agencies in the downstream oil sector in Nigeria.

Chapter seven is the final chapter, which summarizes issues as canvassed in the previous chapters. Findings and recommendations were made based on issues canvassed from the law or policy objectives put in place by the government in the downstream oil sector.

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF KEY TERMS

2.1 Introduction

Nigeria is blessed with abundant natural resources¹⁰⁸ of which petroleum products are important factors in her domestic economy. The report released by the World Bank¹⁰⁹ shows that the Nigerian economy is heavily dependent on petroleum products, which account for over 95 percent of export earnings and about 85 percent of government revenues.¹¹⁰ The Petroleum Act¹¹¹ in Section 15(1) defines petroleum products to include; “motor spirit, gas oil, diesel oil automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant.”¹¹² Petroleum products are the juice that oils the Nigerian economy. Most of the energy needed for urban house-hold and industrial consumption come from these products.

In the downstream sector, petrol or premium motor spirit (PMS), diesel or automotive gas oil (AGO) and kerosene or dual purpose kerosene (DPK) are the basic products used in road transport services, manufacturing industries, power generation, household cooking and private vehicles. Because of the importance of these products as a contributor to the nation’s economy, government rolled out

¹⁰⁸ Isyaka, M.S. (2014). The Implication of Price Changes on Petroleum Products Distribution in Gwagwalada Abuja, Nigeria. *Journal of Energy Technologies and Policy*, Vol. 4 No.7, pp. 1-15.

¹⁰⁹ World Bank Report (2010). *The Work Fact Book*. A Publication of World Bank.

¹¹⁰ Ibid.

¹¹¹ Cap. P.10, Vol. 13, *Laws of the Federation of Nigeria*, 2004

¹¹² Section 9 of the Petroleum Production and Distribution (Anti-Sabotage) Act, Cap. P.12, Vol. 20, *L.F.N.*, 2004

various legal instruments and policies to regulate the products in the downstream sector for easy affordability in line with Section 16(2c) of the Constitution.¹¹³

2.2 Definition of Key Terms

It is important for proper appraisal and appreciation of the study to define some key terms as used in the frame work in this thesis. Though the definitions given to some of the terms in this thesis are not exhaustive, wider or restrictive but to understand and appreciate the subject better.

2.2.1 Appraisal

The word “appraisal” is a noun and it means,¹¹⁴ a statement or opinion judging the worth, value, or condition of something. This study aimed to critically appraise the policy of government as it relate to the implementation of uniform pricing system and the facilities in the downstream sector that regulate the supply and distribution of petroleum products in the country. Uhunmwangho and Aibieyi¹¹⁵ observed that the economic reforms of the Federal Government in the downstream sector since 1999 have always attracted public resistance, especially the frequent adjustment in prices of petroleum products.

The introduction of deregulation policy is another key issue that has received wide discussion and debate in Nigeria because of lack of enabling law that has not

¹¹³ The Constitution of the Federal Republic of Nigeria, 1999 (as amended). This section provides that “the country’s economic system shall not be operated in such a manner as to concentrate wealth or means of production in the hands of few individuals, and government shall manage and operate the major stay of the economy.”

¹¹⁴ Dictionary of Contemporary English for Advanced Learners (New Edition) (Fifth Edition), 2009, p. 696.

¹¹⁵ Uhunmwangho, S.O. and Aibieyi, S. (2012). Policy of Deregulation and Liberalization of the Downstream Oil Sector in Nigeria: The Implication on the Nigerian Economy I the 21st Century. Current Research Journal of Economic Theory 4(4): 112-119.

been established for the policy to fully take off in the downstream oil sector. This will require an inquiry or scrutiny of the laws guiding the downstream sector activities in Nigeria.

2.2.2 Legal Framework

These words “legal” and “framework” if examined one after the other, have different meanings. The word “Legal” according to the Black's Law Dictionary¹¹⁶ means something or relating to law; falling within the province of law. This means that anything that is done and do not fall within the province of law is not legally done because it is not the law that regulates the conduct of the person doing that particular thing at that moment but his own conscience.

The word “framework” as defined by Dictionary of Contemporary English¹¹⁷ means the structure of a society, a legal or political system. By simple interpretation of the two definitions, it simply means that an action that is done within the law and flow through the society or system. Every society has a system of laws that regulates their conduct. In the downstream oil sector it is through the law that government regulates the pricing, supply and distribution of petroleum products and every action or decision of consumers on petroleum products are control by law.

¹¹⁶ Garner, B.A. (2004). Black's Law Dictionary (9th Edition). Published by West Publishing Co., p. 975.

¹¹⁷ Dictionary of Contemporary English for Advanced Learners (New Edition) (Fifth Edition), 2009, p. 696.

2.2.3 Regulation

The Black's Law Dictionary¹¹⁸ defined regulation as an act of controlling by rule or restriction. Such rule is set down by an Act of Parliament or By Law made under the power of a controlling authority, usually government ministry, department or a corporation. Such regulation or rule has the force of law and failure to obey the law or rule attract punishment. In Nigeria, there are many laws that control the sell of petroleum products, such as; the Petroleum Act¹¹⁹, Petroleum Products (Uniform Retail Price) Order¹²⁰, the Petroleum Products Pricing Regulatory Agency Act,¹²¹ the Petroleum Equalization Fund Act¹²², the Petroleum Production and Distribution (Anti-Sabotage) Act¹²³, the Nigerian National Petroleum Corporation Act¹²⁴ and many others.

In the downstream oil sector, it is the government that regulates the pricing, supply and distribution of petroleum products.

2.2.4 Public Policy

Policy may be defined¹²⁵ as a course of action intended to be followed by government with a view to achieving certain objectives. Thus, a major role of government policy is to foster and sustain rapid socio-economic development and

¹¹⁸ Garner, B.A. (2004), op. cit.

¹¹⁹ Cap. P.10, Vol.13, Laws of the Federation of Nigeria, 2004.

¹²⁰ Ibid.

¹²¹ Cap. P.14, Vol. 14, L.F.N, 2004

¹²² Cap. P.11, Vol. 20, L.F.N., 2004

¹²³ Cap. P.12, Vol.20, L.F.N., 2004

¹²⁴ Cap. N.123, Vol. 12, L.F.N., 2004

¹²⁵ Nwaobi, G.C. (1995). Oil Policy in Nigeria: A Critical Assessment (1958-1992) (Available at: www.core.ac.uk/download/pdt/9312754 - last accessed 26/1/2016)

an improvement in the living standards of the population of a country. According to Parsons¹²⁶ public policy is concerned with how issues and problems are defined and constructed and placed on political and policy agenda. According to the author, public policy is the study of how, when and to what effect governments pursue particular course of action and inaction. Dye¹²⁷ asserted that public policy is what government's do, why they do it and what difference it makes.

The economic reform in the downstream sector by the Federal Government justifies a fundamental public policy. But the issues or problems attached to this policy are whether the increases in fuel pump prices over the years were necessary? The fact that Nigerians have suffered under some economic reforms during military regimes up to 1999, government ought to have considered the timing of increase in fuel pump price in the country. The economic reform policies of the Federal Government since 1999 have always attracted public resistance. Timing seems to be a major problem of the government, looking at the way and form its programmes and policies are packed.

2.2.5 Pricing

The term pricing means¹²⁸ to fix or determine a fee, fare, rate, interest, toll, premium, honorarium, bribe, salary, commission, wages pay to someone. Price is the exchange values of a product or service from the perspective of both buyer and

¹²⁶ Parsons, W. (1995). *Public Policy: An Introduction to the Theory and Practice of Policy Analysis*. Edward Elgar, Aldershot, U.K.

¹²⁷ Dye, R. (1996). *What Government Do, Why they do it, What Difference it makes*. University of Alaama Press, Tuscaloosa, Alabama.

¹²⁸ Isyaka, M.S. (2014), op. cit.

the seller.¹²⁹ Price can also be described as the value assigned to the utility one receives from a product or service. Usually, price is the amount of money that is given up to acquire a given quantity of goods and services. The concept of price is described as that which the buyer gives up in exchange for something that provides satisfaction.

Historically, prices were set by buyers and sellers negotiating with one another. Sellers would ask for higher price than they expect to receive and buyers would offer less than they expected to pay. Through bargaining they would arrive at an acceptable price. In the downstream sector, the concept of pricing is not open for negotiation between government and consumers but it is the government that determines the pricing policy as set down under Section 6(1) of the Petroleum Act¹³⁰ that; “the Ministry may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.”

In the modern business ideals, especially in marketing, one unit price of a commodity is set for all buyers and that is done according to the prevailing forces of demand and supply. This is because non price factors have become more relatively important in buyer choice in recent times.¹³¹ Under the prevailing circumstances, it is the government that determines or regulates the price of petroleum products and the buyer has no choice of negotiating the price, this is because petroleum product

¹²⁹ Reddy, R.J. (2010). Dictionary of Business, A.P.H. Publishing Corporation, New Delhi Indian - 110,002.

¹³⁰ Cap. P.10, Vol. 13, L.F.N, 2004

¹³¹ Kotler, P. (2000). Principles of Marketing (Fifth Edition).

is exclusively owned by the government that does not guarantee freedom to individual ownership.¹³² Pricing a product is crucial because; (a) it affects the salability of the product, and (b) it affects profitability of the firm and product image.

2.2.6 Uniform Pricing

This refers to the phenomenon of fixing the same price for each of the petroleum products sold in the market. By introducing the uniform pricing into the downstream sector, uniformity in the pricing of petroleum product throughout the country had been ensured and sustained because of the control and the regulation of the industry by the government agencies.

2.2.7 Subsidy

Subsidy is defined¹³³ as money that is paid by government or an organization to reduce the cost of producing goods and services so that their prices can be kept low. Subsidy according to Agu¹³⁴ is the payment made by government to producers of certain goods and services, to enable them produce and sell at lower prices than they would otherwise. According to Nkogbu and Okorodudu,¹³⁵ subsidy is the lowering of the price of a commodity (e.g petroleum products) below the commercial price, those whose buying power is beyond the reach of that essential

¹³² S.44(3) of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

¹³³ Hornby, A.S. (2005). Oxford Advanced Learners Dictionary, New York; Oxford University Press, International Students' Edition.

¹³⁴ Agu. C.C. (2009). Principles of Economics, Enugu: Immaculate Publication Limited.

¹³⁵ Nkogbu, O.G. and Okorodudu, O. (2015). Deregulation of the Downstream Sector of the Nigerian Petroleum Industry: The Role of Leadership. European Journal of Business and Management, Vol.7, No. 8, pp. 35-46.

commodity are able to afford it. Oparah¹³⁶ asserted that a situation of subsidy exists when consumers are assisted by the government to pay less than the market price for the product they are consuming. In the same vein, Igbikiowubo¹³⁷ conceptualizes subsidy as the loss of revenue that should otherwise have accrued to the Federation Account if petroleum products were sold to consumers at prices above the cost of refining or importation of products, including distribution charges.

From the various definitions provided above, subsidy is economic benefit such as duty rebate or financial aid provided by government or organization to support a desirable activity. The basic characteristic of all subsidies is to reduce the market price of an item below its cost of production. Thus, fuel subsidy is the difference between the price a consumer pays for the pump price of fuel and the actual total cost of producing or importing it. Subsidizing petroleum products amongst other key commodities had its origin when government in the late 1980s took the decision to cushion the effects of the Structural Adjustment programme which initiated the deregulation of the monetary system thereby decreasing the buying power of majority of ordinary Nigerians. The idea government introduced subsidy on petroleum products was to fulfill its mandate under the Constitution¹³⁸ that income should be distributed evenly to narrow the existing gap between the

¹³⁶ Oparah, A. (2004). What Manner of Subsidy? The Daily Trust Newspaper, Thursday 25th July.

¹³⁷ Igbikiowubo, H. (2011). Nigeria's Unending Flirtation with Deregulation. Sweet Crude, October.

¹³⁸ See also Section 16(2c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

rich and the poor, even if the resources are not distributed fairly, government should show some level of intervention.¹³⁹

2.2.8 Downstream Oil Sector

The downstream sector refers to the refining of petroleum crude oil, the processing, marketing and distribution of products obtained. According to Kur,¹⁴⁰ downstream include refining, subsequent conversion to petrochemical products, transportation, marketing and supply of the finished products. Many products are derived from the refining of crude oil and these may include diesel oil, liquefied petroleum gas (LPG, asphalt, petroleum coke, gasoline, fertilizers, antifreeze, plastics, rubbers, pesticides, synthetic rubber, jet fuel) and many more. The downstream sector of the industry is the sector that relates with the consumers, yet it appeared to be the most problematic among the sectors because of incessant crises.¹⁴¹ Facilities involved in this sector include petrol-chemical plants, oil refineries, natural gas distribution companies, retail outlets and so many.

2.2.9 Upstream Oil Sector

The upstream oil sector is a term commonly used to refer to the searching for and the recovery and production of crude oil and natural gas. The upstream oil sector is also known as the exploration and production (E&P) Sector.¹⁴² The

¹³⁹ Agu, C.C. (2009), *op. cit.*

¹⁴⁰ Kur, J.J. (2014). Consumer Protection and Deregulation Policy in the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. *Benue State University Law Journal*, Vol.5, No.1, pp.25-50.

¹⁴¹ Sabiu, B.S. and Kouhy, R. (2014). Effect of the Deregulation of Downstream Oil Sector on the Gross Domestic Product (GDP) and Employment in Nigeria. *The Macrotheme Review. A Multidisciplinary Journal of Global Macro Trends*, Vol. 3(3), pp. 117-134.

¹⁴² Retrieved from [http://en.wikipedia.org/wiki/Upstream_\(oil_industry\)](http://en.wikipedia.org/wiki/Upstream_(oil_industry)) - last accessed, October, 2010)

upstream sector includes the searching for potential underground or underwater oil and gas fields, drilling of exploratory wells, and subsequently operating the wells that recover and ring the crude oil and natural gas to the surface. The upstream sector is the single most important sector in the country's economy because it produces the total export of crude oil.¹⁴³

2.2.10 Midstream Oil Sector

The midstream oil sector deals with crude oil storage, transportation and trading. In the Nigerian context, however, midstream oil sector also consists of gas and power, renewable energy, engineering and technology.¹⁴⁴ By this description of the midstream oil sector it suffices to say that this sector perform some elements of the upstream and downstream oil sectors. Oando oil PLC is an example of a midstream company in Nigeria.

2.2.11 Privatization

Privatization means the transfer of the ownership (and all the incidence of ownership, including management) of a public enterprise to private investors.¹⁴⁵ The Bureau of Public Enterprises Act defined privatization as the relinquishment of part or all of the equity and other interests held by the Federal Government or any of its

¹⁴³ Sabiu, B.S. and Kouhy, R. (2014). Effect of the Deregulation of Downstream Oil Sector on the Gross Domestic Product (GDP) and Employment in Nigeria. *The Macrotheme Review. A Multidisciplinary Journal of Global Macro Trends*, Vol. 3(3), pp. 117-134.

¹⁴⁴ Ibid.

¹⁴⁵ Iheme, E. (1997). *The Incubus: The Story of Public Enterprises in Nigeria*. The Helmsman Associates, Abuja.

agencies in enterprises whether wholly or partly or partly owned by the Federal Government¹⁴⁶

The reason for the initial funding of public enterprises in Nigeria emanated immediately after independence, which Nigerian government inherited a system of state control of enterprises from its colonial master. This idea¹⁴⁷ itself was the product of the philosophy or ideology of the Labour Government of the post-war United Kingdom. By the late seventies it became clear that Government as an entrepreneur had not succeeded because most of the investments in the public enterprises became a colossal waste of government revenue.¹⁴⁸ The philosophical position inherited from the United Kingdom began to shift. The idea of government in Nigeria divesting itself of its interest in commercial enterprises commenced in the early 1980s.

The word “privatization” is a concept as well as a process.¹⁴⁹ As a concept, it is not only emotive but controversial. As a process, the methods adopted vary from sector to sector. It also has both a narrow and broad meaning. Yet at another level, it can mean the privatization of a sector or the entire economy. As a concept it is the process of transferring ownership and sometimes control of a business, an enterprise, an agency, a sector or public enterprise from the public sector to the

¹⁴⁶ Section 14, Cap. P.38, Laws of the Federation of Nigeria, 2004

¹⁴⁷ Kalejaiye, P.O. Adebayo, K. Olufemi, L. (2013). Deregulation and Privatization in Nigeria: The Advantages and Disadvantages so Far. *African Journal of Business Management*, Vol. 7(25). Published by Academic Journals, pp.2403-249.

¹⁴⁸ Adeyemo, D.O. and Adeleke, S. (2008). A Review of Privatization and Public Enterprises Reform in Nigeria. *Contemporary Management Research*, Vol. 4, No. 4, pp.401-418.

¹⁴⁹ Idornigie, P.O. (2012). Privatization and Commercialization of Public Enterprises in Nigeria. A paper presented at the National Conference on Law and Economic Transformation in Nigeria, Organized by the Faculty of Law, Obafemi Awolowo University, Ile-Ife, 11-13 July.

private sector.¹⁵⁰ Some transfers will involve the introduction of private entry, often by the abolition of monopolies or barriers to entry and the introduction of competition. In a narrow sense, privatization implies permanent transfer of control from the public sector to the private sector.

As a process, privatization describes the sequencing of transactions and the methods of sale. From the definition above, the following strategies¹⁵¹ can be adopted:

- (i) How do you determine the public enterprise or sector to be privatized?
- (ii) How do you determine the strategy to be adopted in privatizing a public enterprise?
- (iii) How do you attract investors – local or international?
- (iv) How do you determine whether it is full or partial privatization?
- (v) How do you carry out due diligence on the enterprise?
- (vi) Who and how will the transactions documents be prepared.

In a similar vein, Starr¹⁵² conceives privatization as “a shift from the public to the private sector, not shifts within sectors.” According to the author, the conversion of a state agency into an autonomous public authority or state owned enterprise is not privatization, neither is conversion of a private non-profit organization into a profit making form on its own connotes privatization. Privatization can be done by a sale of government-controlling share in a business to a single company.

¹⁵⁰ Iheme, E. (1997). *The Incubus: The Story of Public Enterprises in Nigeria*. The Helmsman Associates, Abuja.

¹⁵¹ Arowolo, D.E. and Ologunowa, C.S. (2012). Privatization in Nigeria: A Critical Analysis of the Virtues and Vices, *International Journal of Development and Sustainability*, Vol.1 No. 3, pp.785-796.

¹⁵² Starr, P. (1998). *The Meaning of Privatization*. (Available at: <http://www.paulstarr> – last accessed 15 May, 2015).

2.2.12 Commercialization

Section 14 of the Privatization and Commercialization Act¹⁵³ defines Commercialization to mean the reorganization of enterprises wholly or partly owned by the Federal Government in which such commercialized enterprises shall operate as profit-making commercial ventures and without subventions from the government. A commercialized enterprise is expected to:¹⁵⁴

- (i) Fix the rates, prices and charges for goods and services it provides;
- (ii) Capitalize its assets;
- (iii) Borrow money and issue debenture stocks; and
- (iv) Sue and be sued in its corporate name.

It is clear, therefore, that when a public enterprise is fully commercialized, the expectation is that it should operate as a purely commercial enterprise without subventions from the Federal Government. The difference between a commercialized enterprise and privatized enterprise is that under a commercialized enterprise, government still maintains some level of control over it, but not so with a privatized enterprise whose ownership and control has been transferred to private owners.

Section 33 of the Act¹⁵⁵ defines public enterprise as any corporation, board, company or parastatal established by or under any enactment in which the Government, a Ministry or extra Ministerial department or agency has ownership, or equity interest.

¹⁵³ Cap. P.38, Laws of the Federation of Nigeria, 2004

¹⁵⁴ Section 6, Commercialization and Privatization Act, Cap. P.38, L.F.N, 2004

¹⁵⁵ Commercialization and Privatization Act, Cap. P.38, L.F.N, 2004

2.3 Privatization and Commercialization Law in Nigeria

In Nigeria¹⁵⁶, the state is a key factor in the political economy; it determines the direction of production, distribution and allocation of resources. Privatization has been the most controversial policy dominating the political agenda in Nigeria. It has received so much criticism from organized labour, academia, civil society and individuals.¹⁵⁷ There were numerous strikes against proposed sell-offs of some government owned enterprises by unions fearing loss of jobs. For instance, in the 1980s privatization were the policy choice and preferences as well as the new wave of Babangida's regime as early as in 1986 when Structural Adjustment Programme (SAP) was introduced into the country. Kalejaiye, et.al.¹⁵⁸ observed that the policy trust of SAP was focused on economic reconstruction, social justice and self-reliance through the alteration and re-alignment of aggregate domestic expenditure and production.

Given this scenario, the Federal Government¹⁵⁹ set up an 11-man Technical Committee on Privatization and Commercialization (TCPC) in 1988 to co-ordinate the rehabilitation of government enterprises and oversee Nigeria's privatization programme. The TCPC encountered numerous challenges between 1988 and 1993 when the programme was suspended.¹⁶⁰ The Federal Government replaced the

¹⁵⁶ Oji, R.O., Nwachukwu, E.C. and Okechukwu, E.I. (2014). Privatization of Public Enterprises in Nigeria: A Thematic Exposition. Singaporean Journal of Business Economics and Management Studies, Vol.3 No.2.

¹⁵⁷ Oji, R.O., Nwachukwu, E.C. and Okechukwu, E.I. (2014), op. cit.

¹⁵⁸ Kalejaiye, P.O., Adebayo, K. and Olufemi, L. (2013). Deregulation and Privatization in Nigeria: The Advantages and Disadvantages so Far. African Journal of Business Management, Vol. 7(25), Published by Academic Journals, pp.2403-249.

¹⁵⁹ Ibid.

¹⁶⁰ Jerome, A. (2008). Privatization and Enterprise performance in Nigeria: Case Study of Some Privatized Enterprises. AERC Research Paper 175, African Economic Research Consortium, Nairobi.

TCPC with Bureau of Public Enterprises (BPE) by a Decree promulgated in 1993. Following some challenges and criticisms by foreign investors, the scheme was dropped. The legal framework¹⁶¹ within which BPE commenced operation is through the Public Enterprises (Privatization and Commercialization) Decree No. 28 of 1999, which created the National Council on Privatization (NCP).¹⁶²

2.3.1 Privatization and Commercialization Act of 1988

Nigeria's privatization effort is essentially a product of economic and social needs borne out of the dwindling revenues of government, huge amounts of subventions required for the sustenance of state owned enterprises and inefficiency engendered by their continue operation as public enterprises.¹⁶³ The background to this state of affairs may be summarized as a product of post-independent legislative action meant to stimulate and accelerate national economic development.¹⁶⁴ Coupled with the oil boom periods of 1970s and 1980s, large public enterprises were established and solely financed by government. Privatization with reference to business units has come primarily to mean two things:¹⁶⁵ (a) any shift of activities or functions from the state to the private, (b) any shift of the production of goods and services from public to private. The indices to

¹⁶¹ Adeyemo, D.O. and Adeleke, S. (2008). A Review of Privatization and Public Enterprises Reform in Nigeria. *Contemporary Management Research*, Vol. 4, No. 4, pp.401-418.

¹⁶² Kalejaiye, P.O., Adebayo, K. and Olufemi, L. (2013), *op. cit.*

¹⁶³ Arowolo, D.E. and Ologunowa, C.S. (2012). Privatization in Nigeria: A Critical Analysis of the Virtues and Vices. *International Journal of Development and Sustainability*, Vol. 1, No. 3, pp. 785-796.

¹⁶⁴ Etieyibo, E. (2011). The Ethics of Government Privatization in Nigeria. *Thought and Practice. A Journal of the Philosophical Association of Kenya (PAK)*, New Series, Vol.3, No.1, pp.98-112.

¹⁶⁵ Vincent, A. (2004). Privatization and Deregulation of the Downstream Sector of the Oil and Gas Sector: Challenges for Labour. *Faculty of Law Lecture Series No. 3*, University of Benin, Benin City, p.2.

measure such private enterprise are: private, growth, efficient use of resources, competition and profit.

Invariably, privatization is essentially the act of reducing the role of government and increasing the role of the private sector in a business activity or in the ownership of assets.¹⁶⁶ In this respect, Section 14 of the repealed Privatization and Commercialization Act of 1988 defined privatization as “the relinquishment of part or all of the equity and other interest held by the government or any of its agencies in enterprises whether wholly or partly owned by the government.” Iheme,¹⁶⁷ Arowolo and Ologunowa¹⁶⁸ described privatization as: “a variety of measures adopted by government to expose a public enterprise to competition or to bring in private ownership, control or management into a public enterprise and accordingly to reduce the usual weight of public ownership or control or management.” The key emphasis under privatization policy is the transfer of ownership of business from the public to private sector in order to encourage competition where the market forces of demand and supply determine the price of a commodity in the market.

A thin line however separate privatization from commercialization.¹⁶⁹ Commercialization involves a situation where public enterprises are given the mandate to operate as profit-making ventures, source for funds for their activities

¹⁶⁶ Starr, P. (1988). The Meaning of Privatization. Yale Law and Policy Rev. at p.6.

¹⁶⁷ Iheme, E. (1997). The Incubus: The Story of Public Enterprises in Nigeria. The Helmsman Associates, Abuja, p.7.

¹⁶⁸ Arowolo, D.E. and Ologunowa, C.S. (2012). Privatization in Nigeria: A Critical Analysis of the Virtues and Vices. International Journal of Development and sustainability, Vol. 1 No. 3, pp. 785-796.

¹⁶⁹ Zayyad, H.R. (2007). Privatization and Commercialization in Nigeria (Available at: <http://www.unpan1.un.org/intradoc/images/docgif/AAAPAM.gif> - Retrieved 3/28/2011).

internally without any subvention from the government.¹⁷⁰ A commercialized enterprise is expected to employ the procedures of private enterprises in running its business.¹⁷¹ The policy initiative for the legal framework of the Nigerian privatization project appears to have taken some of these principles into consideration under the Privatization and Commercialization Act of 1988. In doing so however, several of the legal options adopted for the privatization process appear not to accommodate purely market based and egalitarian approach to privatization. Section 14 of the Privatization and Commercialization Act of 1988¹⁷² provides that: “privatization is the relinquishment of part or all of the equity and other interests held by the Federal Government or its agency in enterprises whether wholly or partly owned by the Federal Government, and ‘privatise’ shall be construed accordingly.”

This definition as contained in the Act appears to be functional only and does not reveal the context and the concept of privatization but rather assumes the meaning of the term privatization in its provisions. This approach leaves substantial ambiguity in the law, which is often reflected in the problems and crises of implementation and the overall assessment of its success.¹⁷³ In essence, privatization describes a socio-economic re-organization of activities in which social services that were hitherto provided by government are now transferred to private investors. To

170 Ojo, C.R. (2010). Adult Education in a Deregulated Economy: A Case Study of Nigeria (Available at: <http://www.unilorinn.edu.ng/ejournals/index.php/ijem/articles/view/141> – Retrieved 3/15/2011).

171 Peter, O.K., Kudus, A. and Olufemi, L. (2013), op. cit.

172 Formerly Decree No. 25 but now Cap. P.38, Laws of the Federation of Nigeria, 2004

173 Vincent A. (2004). Privatization and Deregulation of the Downstream Sector of the Oil and Gas Sector: Challenges for Labour. Faculty of Law Lecture Series No. 3, University of Benin, Benin City, p. 3. See also: White, O. and Bhatia, A. (1998). Privatization in Africa (Washington, D.C.: The World Bank, 1998), p. 10.

actualize this objective, the Technical Committee on Privatization and Commercialization (TCPC) took a survey of State-owned enterprises, which show 600 public enterprises at the Federal level and an estimated 900 at the states and local government levels.¹⁷⁴ The Committee categorized all State-owned enterprises and parastatals into four main groups, namely:

- (a) Those to be partially privatized
- (b) Those to be fully privatized
- (c) Those to be partially commercialized
- (d) Those to be fully commercialized.

Those slated for full privatization included 13 insurance companies in which the Federal Government had between 25 percent and 49 percent shareholding; 10 medium to large scale manufacturing firms; 2 hotels; 4 companies in the transportation sub-sector and 15 agricultural and agro-allied firms. The total value of shares expected from the sale was ₦150 million. Enterprises billed for partial privatization were made up of 27 commercial and merchant banks, 23 major manufacturing firms, three steel rolling mills, newspapers, oil companies and air line companies.¹⁷⁵

The Nigerian National Petroleum Corporation (NNPC) and its subsidiaries were among the companies slated for commercialization when the Technical Committee on Privatization and Commercialization (TCPC) became the Bureau of

¹⁷⁴ Idornigie, P.O. (2012). Privatization and Commercialization of Public Enterprises in Nigeria. Paper Presented at the National Conference on Law and Economic Transformation in Nigeria, Organized by the Faculty of Law, Obafemi Awolowo University, Ile-Ife, 11-13 July.

¹⁷⁵ Oshio, P.E. and Stewart, N.F. (2006). The Legal and Institutional Framework of Privatization in Nigeria: A Discourse. Faculty of Law, University of Benin, Benin City Public Lecture Series.

public enterprises (BPE) in 1993.¹⁷⁶ Ariyoosu¹⁷⁷ observed that prior to this period the downstream oil sector has remained relatively underdeveloped because of the inefficient operation of the NNPC and its subsidiaries. This was because of the ill-equipped nature of facilities in the company to deal with a privatized industry. Though the commercialization of the Nigerian National Petroleum Corporation (NNPC) and its subsidiaries were done in such a way that they were expected to generate enough revenue to cover operating costs, the idea has not recorded any significant improvement in the operation of the company.

It is assumed that privatization and commercialization of public enterprises will introduce new technologies and promote innovation while the private investors will upgrade plant and equipment, increase productivity, including utilization of resources by improving quality of goods and services. Due to excessive bureaucratic bottle-necks, imbalances in the geo-political spread of shareholders distribution, lack of access to credit, over-subscription ideological warfare between the government and those who saw privatization as imperialistic and labour antagonism, led to the suspension of the programme in 1993.¹⁷⁸

Although there are gains in privatizing public enterprises, such exercise remained futile because certain measures were not put in place before privatization. Moreover, there are ambiguities in some of the provisions of the Act, especially

¹⁷⁶ Gbenga, T.A., Mukaila, A.A. Adedokun, O.M. and Olayiwola, S.A. (2012). Privatization and Commercialization of Nigerian National Petroleum Corporation oil Refineries in Nigeria. *International Journal of Science and Research (IJSR)*, Vol. 3 Issue 8, pp.634-648.

¹⁷⁷ Ariyoosu, D.A. (2009). Legal Framework of the Downstream Sector of the Gas Industry – An Appraisal. *Petroleum, Natural Resources and Environmental Law Journal*, pp. 109-130.

¹⁷⁸ Zayyad, H.R. (2007). Privatization and Commercialization in Nigeria (Available at: <http://www.unpan1.un.org/intradoc/images/docgifs/AAAPAM.gif> - Retrieved 3/28/2011).

Section 2(3), which states that the National Council on Privatization may approve that the shares be offered for sale through a willing seller and willing buyer basis or through any other means. Section 3 empowers the Government of the Federation to further divest of its shareholding in the privatized enterprises in accordance with the policy guidelines. The manner in which the Act allow for shares to be reserved for staff of the public enterprises to be privatized and shall be held in trust by the public enterprises for the employees raised some questions. Are they to be paid for by the staff or the public enterprises? These are some of the reasons why the labour unions and the general public were apprehensive of the policy that public corporations in Nigeria will not perform better than the way they were, prior to their privatization. As a matter of fact, the wave of privatization in the world is experiencing serious retrogression arising from its own contradictions as a result of global financial crisis.

2.3.2 Bureau of Public Enterprises Act of 1993

The Bureau of Public Enterprises was established to take over the implementation of the privatization programme, hitherto performed by the Technical Committee on Privatization and Commercialization (TCPC). Section 1 of the BPE Act established the Bureau of Public Enterprises to serve as a secretariat in the implementation of privatization and commercialization of all state own enterprise. Its functions under Section 3 includes: (a) the formulation of policies on privatization and commercialization; (b) the approval of guidelines and criteria for valuation of public enterprises slated for privatization; and (c) the choice of strategic investors that will participate in the privatization processes.

Under the Bureau of Public Enterprises Act, a large number of public companies were listed for privatization and commercialization, which involved the banking sectors and the downstream oil companies such as Unipetrol Nigeria Plc, National Oil and Chemical Marketing Company, African Petroleum and the four petroleum refineries, among others.¹⁷⁹ Unquestionably, the privatization programme during this period was truncated due to stiff opposition and considerable controversy generated as result of structural imbalance in the distribution of shares between the North and South of Nigeria.¹⁸⁰

As an economic reform policy, privatization may lead to a smaller government and to greater wealth for some. In general it may be a viable policy, but considering the nature of ethnic-nationalism and religious sentiments in the country, there is need for appointment into some of these enterprises that were privatized to have into consideration of these issues at the back of their mind when making such appointments.

2.3.3 Public Enterprises (Privatization and Commercialization) Act, 1999

The legal framework within which the Bureau of Public Enterprises commenced operation was through the Public Enterprises (Privatization and Commercialization) Act of 1999, which also created two institutions within the Act,

¹⁷⁹ Arowolo, D. E. and Ologunowa, C.S. (2012). Privatization in Nigeria: A critical analysis of the virtues and vices. *International Journal of Development and Sustainability*, Vol. 1 No. 3, pp.785-796.

¹⁸⁰ Idornigie, P.O. (2012). Privatization and Commercialization of Public Enterprises in Nigeria. Being a paper presented at the National Conference on Law and Economic Transformation in Nigeria, Organized by the Faculty of Law, Obafemi Awolowo University, Ile-Ife: 11-13 July.

the National Council on Privatization (NCP)¹⁸¹ and Bureau of Public Enterprises.¹⁸² The two agencies were charged with the implementation of the privatization scheme.

Adeyemo and Adeleke¹⁸³ observed that privatization and commercialization programme during this period became a major policy instrument, which in addition with other instruments was expected to contribute to the overall attainment of the general macroeconomic goals of the Federal Government. The capital market was considered to be a very strategic sector of the economy and if there is a policy that could strengthen such institution, privatization and commercialization will not be out of place.¹⁸⁴ The aim of deregulation and privatization therefore was to develop Nigeria's capital market, increase the stakes of individual citizens in public enterprises through share ownership system.

From the analysis¹⁸⁵ of these legal framework the basis for deregulation of prices of petroleum products in Nigeria, are to:

- (i) Move to market-based pricing and eliminate regulatory distortions, in order to encourage efficient allocation of resources, and phase out fuel subsidies.

¹⁸¹ Sections 9 of Public Enterprises (Privatization and Commercialization) Act, Cap. P.38, Laws of the Federation of Nigeria, 2004.

¹⁸² Ibid, S.12

¹⁸³ Adeyemo, D.O. and Adeleke, S. (2008). A Review of Privatization and Public Enterprises Reform in Nigeria. Contemporary Management Research, Vol. 4, No.4, pp.401-418.

¹⁸⁴ Arowolo, D. E. and Ologunowa, C.S. (2012). Privatization in Nigeria: A critical analysis of the virtues and vices. International Journal of Development and Sustainability, Vol. 1 No. 3, pp.785-796.

¹⁸⁵ Ariyoosu, D.A. (2009). Legal Framework of the Downstream Sector of the Gas Industry – An Appraisal. Petroleum, Natural Resources and Environmental Law Journal, pp. 109-130.

- (ii) Open and liberalize downstream petroleum markets in a manner that will encourage private sector investment and establish a level ground for competition by industry participants for markets and profits.
- (iii) Restructure and privatize the Nigerian National Petroleum Corporation (NNPC) subsidiaries in a manner that removes their dominant market positions.
- (iv) Re-focus and strengthen sector regulation in order to protect and advance the public interest, and encourage competition on a non-discriminatory basis.
- (v) Limit government involvement in the sector to policy formulation and fiscal matters, leaving commercial and investment activities to the downstream operators, and regulatory matters to an independent regulatory.¹⁸⁶

The question is whether privatization is constitutional given the provisions of Section 16 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and some provisions of the Privatization Acts not inconsistent with the Constitution. Section 16 of the 1999 Constitution provides that:

- (1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution-

¹⁸⁶

Omorogbe, Y. (2008). Downstream Sector Reforms in the Nigerian Oil Industry: The Role of the Legislature. Being a paper presented at the Nigerian Downstream Summit organized by the House of Representatives Committee on Petroleum Refineries and Products Marketing in Conjunction with Hymet Resources Limited, September 6-8, 2004 (Available at: www.nigerianesnow.com. Accessed last 20/04/2010).

- (a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy every citizen on the basis of social justice and equality of status and opportunity;
- (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- (c) Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;

.....

(2) The State shall direct its policy towards ensuring-

- (a) The promotion of a planned and balanced economic development;
- (b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- (c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group.

Examining the above Constitutional provisions and that of the Privatization Act, the economic philosophy of the Federal Government is hinged on the market, therefore, all the existing government projects, plants, enterprises, refineries and shareholdings in industries, trade, banking, finance and agriculture must be privatized and sold, so that government can concentrate on governance. In addition,

it had been argued that private owners are more cautious, disciplined and efficient than the managers at the public enterprises.¹⁸⁷ The question of whether these objectives have been sufficiently addressed in Nigeria constitutes the fundamental questions. Unfortunately, the “efficiency hypothesis” is not without doubt. Critical analysis shows not clear evidence that private service delivery is inherently more effective or less effective than public service delivery.¹⁸⁸

Another question is: what is the purpose of governance? Is it not to provide social welfare under the social contract theory as contains in Section 16 of the Constitution.¹⁸⁹ It is the duty of government to provide public goods and, therefore, such public goods should not be privatized. The inclusion of the downstream oil sector, where the four refineries and the Nigerian National Petroleum Corporation (NNPC) were to be privatized, one may be tempted to say go contrary to the provision of Section 16 of the Constitution because of the capital required to establish the refineries that produces petroleum products. However, these sections of the Constitution are non-justiciable as stated in the case of **Attorney General of Adamawa State v. Attorney General of the Federation**.¹⁹⁰

Theme¹⁹¹ argued that individuals, may participate in economic activities in any sector means that private enterprises can be engaged in any sector. In section 16(1)(d) of the Constitution the State is to protect the right of every citizen to engage

¹⁸⁷ Peter, O.K., Kudus, A and Olufemi, L. (2013), op. cit, note 50.

¹⁸⁸ Nwoye, I.M. (2001). Privatization and Public Enterprises in Nigeria: The views and counter views (available at: http://www.globalizacija.com/doc_en/e0062pri.htm, retrieved 3/15/2011).

¹⁸⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹⁹⁰ (2006) All FWLR (pt. 299) 1450.

¹⁹¹ Theme, E. (2003). Legal Regulation of Privatization in Nigeria. In: Readings on Privatization, Onyekpere, E. (ed.), Lagos, SERI, 2003), p.3.

in economic activities outside the major sectors of the economy. This provision gives ample room for the government to decide on how to bring the good things of life to the citizens. In a countered argument presented by Onuoha,¹⁹² Sections 14(b), 17(2)(d), 16(1)(2) revealed that the Constitution envisages a situation where the State will continue to manage and operate the major sectors of the economy while protecting the right of the citizens.

When the provisions of Section 16 of the Constitution are read with the provisions of all enactments¹⁹³ on privatization and commercialization and other relevant enactments dealing with the review of the ownership structure and control of business enterprises, it becomes clear that the ultimate goal of privatization includes the actualization of the economic objectives in the Constitution. These provisions rightly give the government ample room to decide on how to bring the good things of life to the citizens, whether and how far it wishes to operate public enterprises or dismantle them is a question of policy to be addressed by each government in its own wisdom.

2.4 Liberalization and Deregulation of the Downstream Oil Sector

The legal basis for liberalization and deregulation policy in Nigeria started from the inability of government to effectively fund the large number of public enterprises sector set up during the oil boom era that were performing

¹⁹² Onuoha, K. (2003). Legal Regulation of Privatization in Nigeria. In: Readings on Privatization, Onyekpere, E. (ed.), Lagos, SERI, 2003), p.3.

¹⁹³ Oshio, P.E. and Stewart, N.F. (2006). The Legal and Institutional Frameworks of Privatization in Nigeria: A Discourse. Faculty of Law, University of Benin, Benin City, Nigeria.

poorly.⁽¹⁹⁴⁾⁽¹⁹⁵⁾ The crash in international oil price ensured that the usual billions of Naira pumped into the public corporations could no longer be sustained by the Federal Government. The appeal for liberalization and deregulation was that an economy that is driven by private investors will naturally lead to expansion and ultimately job creation. Given the scenario above, and the pressure from international lending organizations, the Federal Government rolled out the economic policy of liberalization and deregulation of petroleum products prices in the downstream oil sector as early as 2003.

The policy of liberalization and deregulation started from the introduction of the Structural Adjustment Programme (SAP) in 1986. One of the main objectives of SAP was to pursue deregulation and privatization of Nigerian Public Enterprises that will lead to removal of subsidies and other wasteful spending by government.¹⁹⁶ Prior to this period the Federal Government had been implementing the Uniform Pricing Policy on petroleum products under Section 6(1) of the Petroleum Act,¹⁹⁷ which empowered the Minister to fix the prices at which petroleum products or any particular class or classes of products are to be sold in Nigeria.

The major factors, which provided a catalyst for the liberalization and deregulation of the downstream oil sector are:⁽¹⁹⁸⁾⁽¹⁹⁹⁾

¹⁹⁴ Kalejaiye, P.O., Adebayo, K and Olufemi, L. (2013), Op. cit.

¹⁹⁵ Etieyibo, E. (2011). The Ethics of Government Privatization in Nigeria. *Thought and Practice: A Journal of the Philosophical Association of Kenya*, Vol. 3, No. 1, pp.87-112.

¹⁹⁶ See generally; Bello, A.T. (2014). Law and Economics of Deregulation in Downstream Sector of the Nigerian Oil and Gas. *The International Journal of Science and Technoledge*, Vol. 2 Issue 8, pp. 99-104.

¹⁹⁷ Cap. P10, Vol.13, Laws of the Federation of Nigeria, 2004.

¹⁹⁸ Uhummwangho, S.O. and Aibiyei, S. (2012). Policy of Deregulation and Liberalization of the Downstream Oil Sector in Nigeria: The Implication on the Nigerian Economy in the 21st Century. *Current Research Journal of Economic Theory* 4(4): 112-119.

- (i) Lack of repair and maintenance of the four refineries built in the country to refine petroleum products for consumption
- (ii) The institutionalized corruption going on in the downstream oil sector.
- (iii) Importation of petroleum products into the country to fill the demand gap.
- (iv) The high increase in subsidy incurred in the importation of petroleum products.
- (v) Smuggling of petroleum products to neighbouring countries as a result of low incentive to marketers to recoup their loss.
- (vi) Scarcity and hoarding of petroleum products created by supply gap.

The Federal Government decided to introduce liberalization and deregulation policy into the downstream sector with the hope that private enterprise initiative and capital will be deployed to achieve competition, efficiency and pricing system.²⁰⁰ The Petroleum Products Pricing Regulatory Agency²⁰¹ appeared to be the first attempt at statutory deregulation of prices of petroleum products in Nigeria.

2.4.1 Liberalization

Liberalization refers to a relaxation of government previous restrictions, usually in areas of social or economic policy. The Dictionary of Contemporary English²⁰² defines liberation to mean, to make a system, laws, or moral attitudes less

¹⁹⁹ Ayodele, O.S. (2013). Deregulating the Downstream Sector of the Nigerian Petroleum Industry. *British Journal of Economic, Finance and Management Sciences*, Vol. 8(2), pp. 1-22.

²⁰⁰ Uhunmwangho, S.O. and Aibieyi, S. (2012), op. cit.

²⁰¹ Cap. P.43, Vol.14, LFN, 2004

²⁰² Dictionary of Contemporary English for Advanced Learners (New Edition) (Fifth Edition), 2009, p.1004

strict. Uhumwuangho and Aibieyi²⁰³ observed that liberalization essentially deals with free entry into and exit from the business or marketing of petroleum products by individuals who will have the economic capacity to do so with less governmental restrictions of manipulations. There is a thin line of difference between “privatization”, “commercialization” and “liberalization”. Liberation is simply to “relax” or “reduce” control of an enterprise but privatization and commercialization seek to remove or transfer ownership to private hands.

In most context the process or concept is often, but not always referred to as deregulation. Liberation is a concept that was introduced into the downstream sector in the early part of 2003, when the Federal Government started increasing the price of petroleum products in the country. With liberalization, private enterprise initiative and capital is deployed to achieve competitive efficiency and pricing system. The idea of liberalization is to dismantle all the laws relating to the application of uniform price regime, which of recent has become a burden to the government.²⁰⁴

Liberalization of the downstream oil sector therefore becomes inevitable as government participation in the sector was characterized by some challenges which include: low capacity utilization and refining activities in the nation’s refineries, scarcity of petroleum products, mismanagement of revenue from petroleum, and

²⁰³ Uhumwuangho, S.O. and Aibieyi, S. (2012), op. cit.

²⁰⁴ Nwaoga, C.T. and Ani-Casimir, K.C. (2013). Fuel Subsidy Removal in Nigeria: Socio-Religious and Value Implications Drawn from the Theistic Humanism of Professor Dukor. *Open Journal of Philosophy*. Vol.3, No. 1A, pp.240-247.

high level of corruption.²⁰⁵ Obviously, the intent of fuel subsidy has been defeated owing to problems associated with the implementation of the policy introduced by the Federal Government. To arrest these problems, several administrations have canvassed and implemented some aspects of deregulation policy such as the raising of petroleum products prices and the granting of licenses to build refineries as means of increasing private sector participation.

In shifting the focus to liberalization policy in the downstream oil sector, government carefully examined the history of the open market economy in the world, which was one of success and excessive emphasis on private hands managing the society's business. It was also a history of a system that came into existence as a result of the maturity of the economy that emphasize decentralization of control in government hands to individuals because the citizens had matured in private sector management and wealth acquisition.²⁰⁶ In the late 1970s and early 1980s, pro-market economy took roots in the great economies in North America and Europe. Akinboye²⁰⁷ asserted that many industries in the United States became regulated by the government in the late 19th and early 20th century and entry to some markets were only restricted in order to stimulate and protect the initial investment of private companies into infrastructure that will provide public services for the welfare of the people.²⁰⁸

²⁰⁵ Adebisi, M.A. (2015). The Political Economy of Oil Price Deregulation and the Subsidy Fraud Crisis: A study of Systematic Bureaucratic Corruption in Nigeria. *Journal of Energy Technologies and Policy*, Vol.5 No.9, pp.33-44

²⁰⁶ Ikenna, E. (2009). Deregulation Headache: The Inside Story. Front Cover of Saturday Sun Newspaper of November 7th, p.11

²⁰⁷ Akinboye, S.O. (2008): Globalization and the Challenge for Nigeria's Development in the 21st Century (available at: www.globalization.icaap.org/content/v7.1).

²⁰⁸ Olaloku, F.A. (1979). *Structure of the Nigerian Economy*, London, p.8. (Available at: www.globalization.icaap.org/content/v7.1).

In Nigeria, the policy frame work for liberalization and deregulation began to emerge in the 1980s, which was anchored on the dismantling of the various laws that entrenched economic regulation, especially in the Telecommunication sector and later the Banking Sector, which further encouraged government to extend the policy of liberalization to the downstream sector²⁰⁹ in the early part of 2003. Since then liberalization began to emerge from the crises of confidence and the failure of regulated prices of petroleum products in the downstream sector. The legal principle of liberalization is therefore a relaxation of government's control, which is slightly different from privatization and deregulation. However, its link with privatization and deregulation is derived from the doctrine in regards to individual as a free moral agent and therefore the individual right of choice but such choice must be safeguarded from unwarranted interference from the State.

2.4.2 Deregulation

Deregulation deals with the legal framework of market environment where there is absence of regulatory procedure and lack of directive to bring under control, law or constituted authority. According to Oxford Advanced Learner's Dictionary²¹⁰ deregulation means to free a trade, a business activity from rules and controls in order to allow for a free and efficient marketplace for competition so that forces of supply and demand determine the price of commodity sold in the market. According to Ayandike,²¹¹ Deregulation is the gradual withdrawal or removal of

²⁰⁹ White, O. and Bhatia, A. (1998). Privatization in Africa (Washington, D.C.: The World Bank), p.10

²¹⁰ Hornby, A.S. (2005): Oxford Advanced Learner's Dictionary (7th ed.), U.K. Oxford University Press. P.313

²¹¹ Anyadike, N.O. (2013). Assessment of the Implication of Full Scale Deregulation of the Downstream Oil Sector on the Nigerian

regulation that serves as an impediment to trade, thereby allowing free flow interplay of the forces of demand and supply in the determination of the price of commodities. The deregulation and privatization are elements of economic reform programme charged with the ultimate goal of improving the overall economy, through properly spelt out ways. Deregulation does not mean absence of regulation as no industry or human relation is not regulated but rather it means allowing free access for entry of other contenders which ensures competition while competition ensure perfection, efficient service delivery, lower cost of goods and services which ultimately benefits the final consumer or average man on the street.²¹²

According to Ayodele,²¹³ deregulation is one essential aspect of price and market reforms which entrails both unshackling private sector development through removal of government restrictions on private economic activity and divestiture of the state assets particularly public enterprises into private hands. The main objectives of deregulation include; introducing a market economy, increasing economic efficiency, establishing democracy and increasing government revenue.

Deregulation policy therefore involves the following elements: privatization, removal of price control, elimination of barrier to aspects of production, supply and distribution of goods and services.²¹⁴ Deregulation pre-supposes market forces as the determinant of prices rather than a decision to fix price of petroleum products by

Economy: The Neoliberalism Approach. Global Journal of Political Science and Administration, Vol. 1 No. 2, pp.23-48. Published by European Centre for Research Training and Development, UK 2013 (also available at: www.ea-journals.org; last accessed January 2014).

²¹² Kur, J.J. (2014). Consumer Protection and Deregulation Policy in the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. Benue State University Law Journal, Vol.5 No.1, pp.25-50.

²¹³ Ayodele, A.S. (1994). Elements of the Structural Adjustment Programme: Privatization and Commercialization. The Nigerian Journal of Economics and Social Studies, 36(1).

²¹⁴ Bankole, T. (2001). Nigeria and Perennial Fuel Scarcity. The Tribune Newspaper, Tuesday March 21, p.14.

administrative fiat.²¹⁵ Liberalization essentially deals with free entry into and exit from the business or marketing of petroleum products by individuals who will have the economic capacity to do so with less government restrictions of manipulations. The concept of deregulation is sometimes used interchangeably with liberalization.²¹⁶ With deregulation and liberalization, private enterprise initiative and capital is deployed to achieve competitive efficiency and pricing system.

The shift from regulation to deregulation is to reduce participation by the Federal Government in fixing pricing or regulating prices of petroleum products in the downstream sector. The introduction of deregulation policy was therefore an option, which will be beneficial to not end users but operators. Moreover, it will ensure that the prices of petroleum products will be determined by the forces of demand and supply, because the law of supply and demand²¹⁷ which states that “the lower the price, the higher the demand and the higher the price the lower the demand” will apply and the public will be protected against monopolies. However, this theory does not work in Nigeria in respect of petroleum product because it has no substitution.²¹⁸ The bulk of consumption of petroleum products in Nigeria are the premium motor spirit (PMS), dual purpose kerosene (DPK), automotive gas oil (AGO). Its consumption cut across various sectors of the economy therefore it is the

²¹⁵ Uhunmwangho, S.O. and Stanley, A. (2012). Policy of Deregulation and Liberalization of the Downstream Oil Sector in Nigeria: The Implication on the Nigerian Economy in the 21st Century. *Current Research Journal of Economic Theory* 4(4): 112-119.

²¹⁶ Adagba, A., Ugwu, S.C. and Eme, O.I. (2012). Deregulation and Anti-Subsidy Removal Strikes in Nigeria, 2000-2012. *Arabian Journal of Business and Management Review (OMAN Chapter)*, Vol.1 No.7, February, 2012, pp. 69-83.

²¹⁷ Adenikinju, A.F. and Falobi, N. (2006). Macroeconomic and Distributional Consequences of Energy Supply Shocks in Nigeria. AERC Research Paper No. 162, African Economic Research Consortium, Nairobi.

²¹⁸ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. *International Journal of Energy Economics and Policy*, Vol.3, No.4, pp.459-472.

most widely utilized fuel. The lack of substitution of PMS and AGO in transportation sector makes the impact of pricing policies in the sector very extensive.²¹⁹ The fact that it is not the market forces that determine the supply and demand of petroleum product shows that the product is still under regulation. The theory of supply and demand can only apply in a deregulated environment where there are proper legal frameworks provided for its operation.

Though the Federal Government claimed that the downstream oil sector has been deregulated, there is no law provided for this as the Federal Government still maintains a firm control of the oil industry under Section 44(3) of the Constitution,²²⁰ which states that:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

Also in Attorney General of the Federation vs. Attorney General Abia State (No.2)²²¹ the court confirmed the ownership of petroleum resources on Federal Government alone and not the littoral states.

This shows that the control and management of both the upstream and downstream oil sector, which include the distribution, refining and pricing are still in the control of government. Even the legislative power to make law in respect of the

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Ibid.

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The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

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(2002) 6 NWLR Pt. 764 at p. 542.

upstream and downstream oil sector rests with the National Assembly under the Exclusive Legislative List of the Constitution.²²² Thus, in the area of refining, the Minister of Petroleum Resources prescribes the terms and conditions for the grant of licence to construct and operate refinery.²²³ In the area of pricing, the Petroleum Products Pricing Regulatory Agency (PPPRA) determines the pricing policy.²²⁴ The agency also regulates the supply and distribution of petroleum products.

The Petroleum Products Pricing Regulatory Agency (PPPRA) Act²²⁵ provides that: “The functions of the Agency are to: (a) determine the pricing policy of petroleum products and (b) regulate the supply and distribution of petroleum products.” This shows that there is still regulation of the downstream oil sector. Therefore, government only tinkers with increase or removal of subsidy of petroleum products instead of complete deregulation. Moreover, PPPRA is yet to achieve its mission and objectives as evidenced by the ongoing debate in subsidy removal of petroleum products. The only major achievement PPPRA has made so far was the development of petroleum products pricing template on imported petroleum products and the determination of subsidy of petroleum products.

Even in the near future there will not be deregulation of petroleum products because of the difficulty the policy will encounter as result of Section 16(1)(b) and (c) of the Constitution,²²⁶ which provides that:

²²² Item 39 of the 2nd Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²²³ Section 1(1), Petroleum Refining Regulation under the Petroleum Act Cap. P.10, Vol.13, LFN, 2004

²²⁴ Section 7(a) and (b), Cap. P. 43, Vol.14, Laws of the Federation of Nigeria, 2004

²²⁵ Ibid.

²²⁶ The Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2004).

- (1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution-
- (b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizens on the basis of social justice and equality of status and opportunity.
 - (c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy.

Subsection (c) of the provision of the Constitution²²⁷ clearly vest to the Federal Government the power to 'operate' the major sector of the economy, of which the oil industry is a major sector of the Nigerian economy. It is the duty of the Federal Government to also operate the downstream oil sector as a major sector of the economy. However, the right of individuals to participate in economic activities in any sector is not in doubt but in doing so the State is positively obliged under Section 16(1)(d) of the Constitution²²⁸ protect the right of every citizen to engage in economic activities outside the major sectors of the economy. These provisions rightly give the government ample room to decide on how to bring the good things of life to the citizens, whether and how far it wishes to operate public enterprises or dismantle them by way of privatization and rely on private enterprises. Therefore, by reason of the meaning of the word 'participate', it goes without saying that the participation of core investors and other private individuals in major sectors of the economy has the blessing of the Constitution.²²⁹

227

Ibid

228

The Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2004).

229

The Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2004).

The granting of licencing to private individuals by the Federal Government to participate in the downstream oil sector, especially in refining and distribution of petroleum products is in line with the provision of the Constitution.²³⁰ The oil and gas industry is controlled by the Federal Government under Section 44(3) of the Constitution.²³¹ Even if licences are granted to individuals, will they sell as they like, or the Federal Government has to say how individual refine, distribute and how to sell? This is why there is no deregulation yet, but liberalization or regulation is feasible.

The Federal Government's bid to deregulate prices of petroleum products in Nigeria by not fixing their prices as prescribed by law was the legal issues raised in the case of *Bamidele Aturu vs. Minister of Petroleum Resources*,²³² where the plaintiff challenged the decision of the Federal Government in not fixing the price of petroleum products as specified in Section 6(1) of the Petroleum Act.²³³ In an action filed at the Federal High Court, Abuja, the plaintiff referred the court to Section 6 of the Petroleum Act²³⁴ which clearly confers an obligation on the Minister of Petroleum Resources to fix the prices of petroleum products. Also Section 4 of the Price Control Act²³⁵ provides that "price control shall continue to be imposed in accordance with this Act on any goods which are of the kind specified in the First Schedule of this Act," and petroleum products is specified as item 7 in the said Schedule. Also,

²³⁰ Uhumwuangho, S.O. and Aibieyi, S. (2012). Policy of Deregulation of Petroleum Products in Nigeria. E3 Journal of Business Management and Economics, Vol.3 (6). Pp. 232-241.

²³¹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2004).

²³² Suit No.: FHC/ABJ/CS/591/2009. Judgment delivered on 19th March, 2013 (unreported).

²³³ Cap. P.10. Vol. 13, op. cit.

²³⁴ Ibid.

²³⁵ Cap. P.28, Vol. 20, Laws of the Federation of Nigeria, 2004

Section 16(1)(b) of the Constitution,²³⁶ stipulates that the government shall “control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.”

The court agreed with all of the plaintiff’s submissions and held that the policy decisions of the defendants to deregulate the downstream sector of the petroleum industry by not fixing the prices at which petroleum products may be sold in Nigeria is unlawful, illegal, null, void and of no effect whatsoever being in violations of the provision of Section 6 of the Petroleum Act,²³⁷ Section 4 of the Price Control Act²³⁸ and Section 16(1)(b) and 41 of the Constitution.²³⁹ The court further made a restraining order on the defendants, their agents, privies, collaborators and whosoever from deregulating the downstream sector of the petroleum industry or from failing to fix the prices of petroleum products as mandatorily required by the Petroleum Act²⁴⁰ and the Price Control Act.²⁴¹ This go to show that total deregulation is not feasible but rather liberalization should be a better policy option.

The issue is, whether Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is justiciable. The Supreme Court held in the case of **Attorney-General of Ondo State vs. The Attorney General of the Federation**²⁴²

²³⁶ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²³⁷ Cap P.10, Vol.13.

²³⁸ Cap. P.28, Vol. 20, op. cit.

²³⁹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁴⁰ Cap P.10, Vol.13, op. cit.

²⁴¹ Cap. P.28, Vol. 20

²⁴² (2002) 9 NWLR (Pt. 772) 722.

that Section 16 of Chapter II of the Constitution²⁴³ is not justiciable. The Supreme Court further held that it is not in all cases that legislation will make the Fundamental Objectives and Directive Principles justiciable.

The Constitution has clearly stated that both the Price Control Act²⁴⁴ and the Petroleum Act²⁴⁵ are existing laws because they pre-date Section 315(1) of the Constitution. The Section 315(1) provides that: “Nothing in the Constitution shall be construed as affecting the power of a court of law to declare invalid an existing law on the ground of inconsistency with any provision of the Constitution. The Price Control Act²⁴⁶ need to be amended to bring it into conformity with item 62(e) of the Constitution²⁴⁷, which require the designation of petroleum products an essential commodity by an Act of the National Assembly.

On a three ground of appeal filed at the Court of Appeal²⁴⁸ against the judgment of the trial court²⁴⁹, the Federal Government argued that the trial judge failed to consider and pronounce on all the issues properly submitted before it and that failure to do so amounted to a denial of fair hearing. On ground one of the appeal, the appellant argued that the lower court erred in law on the question of locus standi of the respondent, when it relied on the Court of Appeal case of **Fawehinmi vs. The President, FRN**²⁵⁰ instead of the Supreme Court decision in

243 The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

244 Cap. P.28, Vol. 20

245 Cap. P.10, Vol.13, op. cit.

246 Cap. P.28, Vol. 20, op. cit.

247 The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

248 Suit No. CA/OW/383C/2013.

249 The Appeal is still pending at the Court of Appeal.

250 (2007) 14 NWLR (Pt. 1054) pg. 275 at pg. 334.

Adesanya vs. The President, FRN & Anor.²⁵¹ He argued that the decision in ***Adesanya vs. The President, FRN*** (supra) was given by the Supreme Court, while the decisions in ***Fawehinmi vs. The President, FRN*** (supra), ***Williams vs. Dawodu***²⁵² and ***Shell Petroleum Development Company Ltd. vs. Nwawka***²⁵³ are all of the Court of Appeal.

Nowhere in Adesanya's case did the Supreme Court recognize or endorse the distinction which the learned trial judge drew between cases involving private rights which directly affect individuals as against public interest litigations where the private right of the individual litigant may not be directly involved but is concerned with an infraction of the provisions of the Constitution. Further more, the appellant argued that since 1981 when the Adesanya case was decided, it has become established that for a complainant or plaintiff to be entitled to a hearing, it has to be determined that on particular facts and situations he has sufficient interest or has suffered injury. He must also show that the claim must reveal legal or justiciable right or show special or sufficient interest adversely affected to bring such action.

On the second ground, the appellant argued that the trial judge misdirected himself because the provision of Section 6 of the Petroleum Act is discretionary as it imposes no legal duty on the appellants to fix the prices of petroleum products, given the use of the word "may" therein in relation to that power. Therefore, the fixing of prices for commodities is the function of the Price Control Act; and not the

²⁵¹ (1981) 2 NCLR 358

²⁵² (1998) 4 NWLR (Pt. 87) 189

²⁵³ (2003) 6 NWLR (Pt.815) 184

function of any of the appellants. Both the Price Control Act and the Petroleum Act are existing laws because they pre-dated the 1999 Constitution. Section 315(1) states: “nothing in the Constitution shall be construed as affecting the power of a court of law to declare invalid an existing law on the ground of inconsistency with any provision of the Constitution in Section 315(3)(d).” That Section 6 of the Petroleum Act and Section 4 (Schedule 1) of the Price Control Act are inconsistent with Item 62(e) of the Exclusive Legislative List of the 1999 Constitution because of the non-designation of petroleum products as “essential commodities by the National Assembly.” On ground three, the appellant argued that the trial judge erred in law when it held that the Economic Objective in Section 16(1) of the Constitution in Chapter II is justiciable. In the case of the *Attorney General of Ondo State vs. the Attorney General of the Federation (supra)*,²⁵⁴ the Supreme Court made it clear that it is not in all cases that legislation will make the Fundamental Objectives and Directive Principles justiciable.²⁵⁵

In most cases, the court would favour a liberal approach on the issue of interpretation of locus standi. According to Justice Adekeye, JCA (as he then was) in the case of *Fawehinmi vs. President of FRN*²⁵⁶ observed that when the interpretation relates to the Constitution and the statutes, the court must give liberal approach to the issue of locus standi. The courts must continue to extend the scope of locus standi based on the peculiar facts and circumstances of the case.

²⁵⁴ (2002) 9 NWLR (Pt. 772) 722.

²⁵⁵ Section 6(6)(c) of the 1999 Constitution (as amended).

²⁵⁶ (2007) 14 NWLR (Pt. 87) 189

Following different pronouncements by the Supreme Court on Section 6(1) of the Constitution in the case of **Adesanya vs. President of FRN** (supra), the question now is who will approach the court to challenge the government where it violates or fails to enforce any provisions of the Constitution or laws where an Attorney-General will not. The courts must relax on the requirement of locus standi in Constitutional or statutory issues and extend the scope of locus standi based on the peculiar facts and circumstances of the case. Where a Nigerian citizen as a result of an executive action has suffered an injury or is in imminent danger of suffering an injury, damage or detriment not personal to him, he must have locus standi to sue. The new trend in judicial interpretation must primarily aim at preserving legal order and ensuring that the legislative and executive are confined within their powers in the observations of the rule of law. Where private rights have been infringed and he has sufficient interest in the subject-matter of the suit, he cannot be regarded as a busy-body or meddlesome interloper.

It is unfortunate that the respondent was not able to file his respondent's brief on the appeal instituted by the Federal Government at the Court of Appeal to afford us the opportunity to know what the Court of would have said legality or otherwise of this case.

On further examination of the Petroleum Act, the policy of deregulation is nowhere to be found in the principal statute to give it a statutory backing. This creates problem for complete deregulation to materialize in the downstream oil sector. Moreover, Section 6(1) of the Petroleum Act is in conflict with Section 7(a)

and (b) of the Petroleum Products Pricing Regulatory Agency Act, which creates confusion as to who has the power to fix the price of petroleum products, is it the Minister as stipulated in Section 6(1) of the Petroleum Act or the Board by virtue of Section 2(1) of the PPPRA Act?. Sections 44(3) and 16(1)(b) and (c) of the Constitution, irrespective of how guaranteed that provision may appear, poses a huddle for deregulation policy. The major sector of the Nigerian economy is the oil and gas sector. Thus, if the Constitution has placed the management and operation of the oil and gas sector in the hands of the Federal Government, complete deregulation may be an exercise in futility.

2.5 Survey Analysis on Deregulation and Privatization Policy in Nigeria

To examine the perception of Nigerians on the deregulation and privatization policy in the downstream oil sector, a survey was conducted in July, 2011 with a view in eliciting information from respondents where a self-developed questionnaire was designed using the dichotomous scale of Yes or No of 13 items, which sought the views of respondents on the deregulation and privatization of the downstream sector. A total of 215 questionnaires were distributed to target population using the simple random sampling technique, which were self-administered to respondents. However, 180 of the questionnaires were returned, which the data analyzed was based, representing 83.7% response rate. Table 2.1 below shows the outcome of the respondents' perception of deregulation and privatization policy of the government in the downstream sector.

Table 2.1: Perception of Nigerians on the deregulation and privatization policy in downstream Sector

| S/N | Questions | Yes | % | No | % |
|-----|--|-----|------|-----|------|
| 1. | Should the monopoly enjoyed by the NNPC be sustained? | 40 | 22 | 140 | 78 |
| 2. | Will the deregulation and privatization of the downstream sector force down the prices of petroleum products? | 120 | 67 | 60 | 33 |
| 3. | Will the deregulation and privatization result in the elimination of smuggling of product across the border? | 114 | 82 | 32 | 18 |
| 4. | Do you agree that there are political implications for deregulation and privatization policies? | 40 | 22 | 140 | 78 |
| 5. | Do you agree that deregulation and privatization policies will improve the Nigerian economy? | 158 | 88 | 22 | 12 |
| 6. | Do you agree that the political implications outweigh the economic implications for deregulation and privatization? | 25 | 14 | 155 | 86 |
| 7. | Do you agree that the government should go ahead with deregulation and privatization of the downstream sector? | 170 | 94 | 10 | 6 |
| 8. | Do you agree that the removal of fuel subsidy is necessary? | 90 | 50 | 90 | 50 |
| 9. | Do you agree that government should subsidize the prices of petroleum products | 130 | 72.2 | 50 | 27.8 |
| 10. | Do you believe that deregulation and privatization of the downstream sector will create job opportunities for Nigerians? | 180 | 100 | - | - |
| 11. | Do you think that government should deregulate and privatize the downstream sector gradually? | 120 | 67 | 60 | 33 |
| 12. | Do you believe that the deregulation and privatization of the downstream sector will be a blessing to Nigerians? | 140 | 77 | 40 | 22.2 |
| 13. | Do you believe that the deregulation and privatization of the downstream sector will be a curse to Nigerians? | 35 | 19.4 | 145 | 80.6 |

Source: Information from personal field survey conducted in July, 2011

In the survey conducted, the respondents' category consisted of government agencies, which represented 22.2% while the market women made up 16.7%, students 12.2%, workers accounted for 19.4%, upstream oil sector comprises of 16.1%, whilst the downstream oil sector consisted of 13.3%. With respect to sex distribution, 68% of the respondents were male whilst 32% were female. The survey further shows that 78% of respondents were not in support of the monopoly enjoy by the Nigerian National Petroleum Corporation (NNPC), which implies that they are in support for the deregulation of the downstream sector that will break the monopoly of NNPC. On the other hand, 67% of the respondents believed that deregulation and privatization will result in the elimination of smuggling of petroleum products across the borders in neighbouring countries. 78% of the respondents believed that the deregulation and privatization are not political factor except if the government is not sincere with its implementation that members of the society become suspicious. The 88% of respondents represent those that agreed that deregulation and privatization policies will improve the economy, while 86% of the respondents do not agree that the political implications outweigh the economic implications for deregulation and privatization. This corroborates the views of respondents to the preceding question, which 94% of them agreed that government should go ahead with deregulation and privatization of the downstream sector.

On issue of subsidy removal the response received from respondents were balanced, which shows that 50% agreed that removal of fuel subsidies is necessary, while 50% disagreed. On the other hand 72% agreed that government should

subsidize the prices of petroleum products. The response received on the issue of fuel subsidies shows clearly that many people did not actually understand the issue of fuel subsidies very well which requires that government should enlighten the people on the issue and the implication of removal of fuel subsidies on petroleum products. It was 100% for those who agreed that deregulation and privatization of the downstream sector will create job opportunities for Nigerians, while 67% of the respondents think that government should deregulate and privatize the downstream sector gradually. Those who believed that deregulation and privatization will be a blessing to Nigeria was 77.8%, while on the other hand, 80.6% of the respondents do not believe that it will be a blessing but curse. This corroborate with what happened in the past few years when the country witnessed series of strikes and street protests as result of increase in prices of petrol that led to lose of lives and properties in the country.

The findings in this survey further indicate that deregulation and privatization of the downstream sector will be a blessing and not a curse. The only way to attract private participation in the downstream sector is to remove government control in favour of deregulation. The insistence by government to deregulate and liberalize the downstream sector was to avoid constant scarcity of petroleum products being experience in the country whenever there is a slight increase. The emerging disagreement between government and labour unions on the deregulation and privatization policy of the downstream sector therefore create new challenges to the government. Moreover, the public regard cheap oil price through subsidies as a

provision of social welfare services that the state suppose to render to the citizens, especially the poor masses.

To examine the effect of price increase in a deregulated economy and the rising public opposition to the policy, questionnaire were also used to collect primary data from respondents in three major cities in Nigeria – Zaria, Kaduna and Abuja, which was used as a rely point to determine the impact of increase of fuel price and its effects on economic activities in Nigeria. Though the questionnaire was restricted to these three areas the data emanating from it reflects what obtains in most part of the country. The perceptions of the operators of commercial vehicles and the burdens to the people during the period of fuel crisis irrespective of their geopolitical zones are similar as to what obtains elsewhere as reported in the various National Dailies in the country at one time or the other.

The researcher relies on both primary and secondary sources of information in this study. For the primary data, a questionnaire was designed to solicit response from individuals, especially transport owners and those who needed petrol to power their vehicles and generators. The data needed through this process include people's perception on the incessant increase of petroleum prices, availability of the product, hoarding of fuel, existence of black market, causes of scarcity, queues at the petrol stations, aftermaths of scarcity. Apart from this, questions were asked on workers' productivity, non repairs of refineries, vandalization of oil pipelines, effects of strikes, conflicts and wars and policy of Organization of Petroleum Exporting

Countries (OPEC) on production quota to members' states. Each statement items in Table 2.2 below highlight the perception of the respondents on these problems.

In the survey conducted in July, 2011, twelve major variables items which affect commercial and private vehicles owner during scarcity of petroleum products were presented to the respondents to make their selection based on how they perceive each statement. These variables include: Industrial action by labour unions, hoarding, long queues at the filling stations, diversion of petroleum products, non-repairs of refineries and fire outbreaks. The analysis of data collected from this interview is presented in Table 2.2 below.

Table 2.2: Effects of price adjustment of petroleum products on commercial activities in Nigeria

| S/N | Effects | Response | | | | Percentage | | % of those not decided |
|-----|---|----------|----|----------|----|------------|----------|------------------------|
| | | Positive | | Negative | | Positive | Negative | |
| | | SA | A | D | SD | | | |
| 1. | Price hike in petroleum products leads to increase expenditure on foodstuff and other house hold products | 12 | 11 | 2 | 1 | 88.46 | 11.54 | - |
| 2. | Price hike of petroleum products lead to industrial action by labour unions | 11 | 12 | - | 3 | 88.46 | 11.54 | - |
| 3. | Price hike in petroleum products lead to agitation for wage increase by labour union | 9 | 12 | 2 | 2 | 76.92 | 15.39 | 7.69 |
| 4. | Price hike in petroleum products lead to increase in transport fares | 18 | 7 | - | 1 | 96.15 | 3.85 | - |
| 5. | Price hike in petroleum products lead to increase in the price of agricultural products | 17 | 9 | - | - | 100 | 0 | - |
| 6. | Price hike of petroleum products lead to hoarding in the filling stations | 12 | 6 | 5 | 3 | 69.23 | 30.77 | - |
| 7. | Price hike of petroleum products lead to long queues at the filling station | 7 | 7 | 6 | 6 | 53.85 | 46.15 | - |
| 8. | Price hike in petroleum products lead to diversion of petroleum products to black market | 9 | 6 | 7 | 4 | 57.69 | 42.31 | - |
| 9. | Overloading of passengers is common during price hike of petroleum products | 8 | 13 | 3 | 2 | 80.77 | 19.23 | - |
| 10. | Vehicles are very few on the road during price hike of petroleum products | 6 | 13 | 1 | 4 | 73.08 | 19.23 | 7.69 |
| 11. | Workers productivity often reduce during price hike of petroleum products | 6 | 12 | 2 | 6 | 69.23 | 30.77 | - |
| 12. | Non repair of refineries causes scarcity in petroleum products | 14 | 7 | 4 | 1 | 80.77 | 19.23 | - |
| 13. | Removal of fuel subsidy affect both the lower and higher class in the society | 12 | 12 | 1 | 1 | 92.31 | 7.69 | - |
| 14. | Vandalization of oil pipelines leads to scarcity in supply and distribution of petroleum products | 16 | 8 | 1 | 1 | 92.31 | 7.69 | - |
| 15. | Strikes by labour unions leads to scarcity in supply and distribution of petroleum products | 8 | 15 | - | 3 | 88.46 | 11.54 | - |
| 16. | Conflicts (religion, ethnic and civil war) affect the supply and distribution of petroleum products | 12 | 8 | 1 | 4 | 76.92 | 19.23 | 3.85 |
| 17. | Policy of OPEC on production quota affects supply of petroleum products in the downstream sector | 1 | - | - | 4 | 3.85 | 15.38 | 80.77 |

Key: SA = Strongly Agreed, A = Agreed, D = Disagreed and SD = Strongly Disagreed

Source: Data from survey conducted in July, 2011

Out of the 40 total questionnaires distributed in the survey areas only 26 were returned, representing 65% and respondents were given options ranging from strongly agreed (SA), agreed (A), disagreed (D) and strongly disagree (SD) from which to choose. The four points responses were used to calculate the percentage attached to each response of SA, A, D and SD. The study also relied on secondary sources of data from Nigerian Newspapers, magazines and business bulletins. The enormous information from these secondary sources also attests to the prominence which Nigerians and the press accorded this problem.²⁵⁷

In applying the analysis of the responds received, a four-point scale analysis was adopted from the responses and the options of the respondents were then summed up, which about 96.15% of the respondents agreed that price hike of petroleum products leads to increase in transport fare within Zaria, Kaduna and Abuja. This is because only few vehicle owners who can afford to buy fuel at the current price put their cars on road to convey large number of passengers who were eagerly waiting to be conveyed to their destinations. Even though this study only covered these three areas, the assertion is true all over the federation base on newspaper reports that whenever there is scarcity of petroleum products it leads to hike in transportation fares. The respondents agreed 100% that a hike in petroleum products leads to increase in the price of agricultural products but this assertion may not be true as there are other variable factors apart from hike in price of petroleum

²⁵⁷

Ogunbodede, E.F. (2010): Petroleum Motor Spirit (PMS) Pricing Crisis and the Nigerian Public Passenger Transportation System. Medwell Journals of Scientific Research Publishing Company. The Social Sciences, Vol.5 Iss.2, pp.113-121.

products that account for increase in price of agricultural products, which include high cost of fertilizer and other agricultural implements required by farmers.

On the other hand 57.69% of the respondents agreed that price hike of petroleum products leads to development of black market. This assertion was confirmed to be true because the development of black market was as a result of scarcity and high increase in fuel price while the cost of transportation also increased, which has a spiral effect on the economy. The results obtained from Table 2.2 also revealed that 92.31% of respondents agreed that removal of fuel subsidy affects both the poor and the rich in the society. This agreed with the analysis provided by Kali²⁵⁸ that the well-being of citizens of any country is mostly built on four key foundations: dependable leadership, vibrant economy, rule of law and the culture of fair play, which removal of fuel subsidies is an indirect way of taking away money from the pockets of the citizens. Even developed countries still give subsidies to sectors critical to their national development and this should be the focal point of the Federal Government of Nigeria.

If proper frame work for deregulation is provided, which is predicated on domestic refining and international price of crude oil, the issue of subsidy will not arise and all patriotic stakeholders will be happy. World over, it is a known fact that transformation often encounter stiff resistance and opposition, especially from detractors who are usually key beneficiaries of the old order which they seek to maintain at all cost and usually to the detriment of the majority. Table 2.3 below

²⁵⁸

Kali, G. (2009): Fuel Subsidy. The Last Straw that will Break Yar'Adua's Back (Available at: <http://www.focusnigeria.com/fuel-subsidy>) last visited July, 2011

examined these issues based on survey conducted in 2011. This was done in order to determine the effects of the variables factors on the lives of the categories of people that are mostly affected by price increase of petroleum products in Nigeria.

Table 2.3: Socio-economic variables effect of price increase of petroleum products on Consumers

| Variables | Frequency | Percentage |
|---------------------------|-----------|---------------|
| Age (years) | | |
| Below 25 years | 0 | 0 |
| 26-35 years | 3 | 11.54 |
| 36-45 years | 8 | 30.77 |
| 46-55 years | 12 | 46.15 |
| 56 years and above | 3 | 11.54 |
| Total | 26 | 100.00 |
| Marital Status | | |
| Single | 03 | 11.54 |
| Married | 23 | 88.46 |
| Divorced/Separated | 0 | 0 |
| Total | 26 | 100.00 |
| Educational Status | | |
| SSCE Certificate | 0 | 0 |
| Diploma | 5 | 19.23 |
| 1 st Degree | 1 | 3.85 |
| Master Degree | 7 | 26.92 |
| PhD Degree | 13 | 50.00 |
| Total | 26 | 100.00 |
| Type of Employment | | |
| Self-Employed | 4 | 15.38 |
| Teaching – Academic staff | 13 | 50.0 |
| Non-Academic staff | 7 | 26.92 |
| Error | 2 | 7.70 |
| Total | 26 | 100.00 |
| Income (₦) | | |
| Below N50,000 | 03 | 11.54 |
| N51,000 – N80,000 | 04 | 15.38 |
| N81,000 – N120,000 | 01 | 3.85 |
| N121,000 – N250,000 | 05 | 19.23 |
| N251,000 and above | 08 | 30.77 |
| Not decided | 05 | 19.23 |
| Total | 26 | 100.00 |

Source: Data from survey conducted in 2011

From the data contained in the Table above, it was revealed that overwhelming majority of the respondents were between the ages of 46 to 55 years representing 46.15%, while the rest were shared between the age brackets of 26 to 35 years and 36 to 45 years, which represent 11.54% and 30.77%, respectively. The implication of this age group pattern indicates that they are the ones that owns vehicle and consume large quantity of petroleum products. In addition, these categories of people are matured in their thinking as well as in their driving career. The educational levels of the people involved in the study revealed that majority of them have Master and PhD Degrees, 26.92% and 50.00%, respectively and are very busy in their various profession and therefore move from one place or the other in pursue of their professional duties.

On marital status, it was discovered that most of the respondents were married, representing 88.46%, while only 11.54% were single, this confirm to the fact that majority of the respondents were 45 years and above (Table 2.3). The income pattern of the respondents based on their net gain per month shows that few of them earn below N50,000 per month, while over 30.77% earned N251,000 and above. Only few earn N81,000 to N120,000 per month and on the other hand the middle average respondents earn between N121,000 and N250,000 per month.

It is therefore not surprising that the current efforts by government to transform the petroleum sector have emerged as the single most contentious issue dominating the national discourse. The strongest argument against the proposed reforms in the petroleum sector is not rooted in the undesirability of the reforms but

rather in the belief that a long history of corruption which has bedeviled the nation will proceed from the subsidy removal that will further retard developmental activities in the country. This is the fear by many people against deregulation and liberalization of the downstream oil sector and to support this fear further was that if the Federal Government allow private companies take control of the downstream sector on the premise of competition and better services it will lead to over 100 per cent increase in the price of fuel with a rippling effect on the entire economy, thereby bringing untold hardship to the common man. However, when view from the current situation where diesel has been deregulated the argument is not true against the backdrop of available facts. Usually trucks drive on diesel and it has since been deregulated and is being priced at market determined rates and this has not affected the price of other items in the economy. However, one should not take this argument very far because diesel is not commonly use like petrol in Nigeria and any slight increase in petrol price will affect all sectors of the economy.

The festering crisis in the downstream sector of Nigeria oil industry therefore produced a serious economic problem for the nation, which it formed the back-bone of the country's economy. Even though it was obvious that the imperative of opening up the sector became evident, which the International Monetary Fund (IMF), World Bank (WB) and the creditor nations insisted on economic liberalization and structural adjustment programmes of which deregulation was a major component this should be approached with caution. The goal of Nigerian government in adhering to the principle of deregulation programme of the

downstream sector should not be influenced by the success of the policy in other countries but rather the outcome of the policy on the lives of the citizens.

For Government to succeed in its deregulation policy it must invest in social institutions like; agriculture, health care, good network of roads, constant electricity supply and efficient and reliable transportation system. The regulatory agencies in the downstream sector are not free from political interference to operate effectively, which suppose to be a yardstick that will measure the success of the policy. In supporting this argument further, labour and the Civil Society Organizations aligned their views based on the Constitutional provision that stipulate that: “it is the right of every citizen acquire and own immovable properties anywhere in Nigeria.”²⁵⁹ However, in terms of mineral resources, which include oil, Section 44(3) of the Constitution did not confer the ownership of mineral resources to individuals. The Section provides that; “Notwithstanding the foregoing provisions of this Section, the entire property in and control of all minerals, mineral-oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.”

The consequences of this and the combined effect of the Land Use Act, 1978 (which forms part of the Constitution by Section 315(d) grants proprietary rights over all oil and gas resources to the Federal Government, while the same

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Section 43 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Constitution also declares Nigeria a Federation.²⁶⁰ Even with these provisions enshrined in the Constitution, opponents of privatization and deregulation policy still regards the provision of oil subsidies as a way of welfare package to the citizens, and regard deregulation and privatization policy as a “laissez-fare” capitalism and a way by which government wants to deny subsidies on petroleum products to the poor and the working classes. Moreover, modern industrialized nations do not typically represent laissez-fare principles, as they usually involve significant amount of government intervention. Therefore, government should deal with market failure in the downstream sector rather than passing the consequences to consumers of petroleum products.

²⁶⁰ Ibid, Section 2 of the 1999 Constitution.

CHAPTER THREE
DETERMINANTS OF PRICES OF PETROLEUM PRODUCTS
IN NIGERIA

3.1 Introduction

There are two factors or circumstances that influence the price of petroleum products in Nigeria. The first factor is the demand and supply of petroleum products. The theory of supply and demand is recognized almost universally as the first step toward understanding how market prices are determined and the way in which these prices help shape production and consumption decisions. The concept of demand and supply is simple. As demand increases (or supply decreases), the price should go up. Conversely as demand decreases (or supply increases) the price should go down. The second theory is the market sentiment, which is the mere belief that oil demand will increase drastically at some point in the future can result in a drastic increase in oil prices. Equally is true that, the mere belief that oil demand will decrease at some point in the future can result in a dramatic decrease in prices. These are the factors that determine the price of oil in the international market, which also affect the price of petroleum products sold in the downstream oil sector if a country depends solely on importation of refined petroleum products.

What propel market sentiment for petroleum product demand in Nigeria are hoarding and scarcity that poll increase in price of petroleum products. At the parallel market in Nigeria, there is increase in demand of petroleum products due to insufficient quantity supply by the Nigerian National Petroleum Corporation (NNPC).

Other determinants²⁶¹ are: subsidies, real income, prices of the products, prices of substitutes and population. When such situation happens, price charge by marketers is bound to be higher than is obtainable at the conventional market. Another determinant of petroleum products price in Nigeria is government regulation, when the price is set at a fixed price under Section 6(1) of the Petroleum Act.²⁶² Since the price is usually set below the market price, a subsidy scheme is in place to defray the potential under-recovery associated with such pricing.²⁶³ From 1973 to early part of 2003, the price of premium motor spirit (PMS) and Dual Purpose Kerosene (DPK) were administratively determined by the government but with the establishment of the Petroleum Products Pricing Regulatory Agency Act in 2003, it is the Agency that determine the expected open price market (EOPM) based on a template agreed to by the stakeholders within the frame work of the agency's governing board.²⁶⁴

The aim in this Chapter is to examine these variable factors as price determinants of petroleum products in the downstream oil sector apart from the regulatory agencies set up by government to regulate the price of petroleum products.

3.2 Demand and Supply

The law of supply and demand is the theory of explaining the interaction between the supply of a resource and the demand for that resource. The law of

²⁶¹ Umeanozie, A.O., Nduka, E.K. ad Chukwu, J.O. (2014). Subsidies and the Demand for Petroleum Products in Nigeria. *International Journal of Sustainable Energy and Environmental Research*, 3(2): 100-109.

²⁶² Cap. P.10, Vol. 13, L.F.N., 2004.

²⁶³ Peter, I.O. Pricing of Petroleum Products in Nigeria. Research Report by African Centre for Leadership, Strategy and Development. Centre LSD Book Series No. 7. Open Society Initiative for West Africa (available at: www.allafrica.com/download/research/main/main/idactcs, last visited: 22/4/2016).

²⁶⁴ Cap. P.43, Vol.14, L.F.N., 2004

supply and demand defines the effect the availability of a particular product and the desire (or demand) for that product has on price.²⁶⁵ Generally, a low supply and a high demand increase prices, and in contrast, the greater the supply and the lower the demand, the lower the price tends to fall. The factors that affect supply are predicated on many factors, such as; production capacity, production costs and the number of competitors. Demand is affected by the number of available substitutes and shifts in the price of complementary products.

The law of demand simply states that, if all other factors remain equal, the higher the price of a good, the less people will demand that good. In other words, the higher the price, the lower the quantity demanded. The amount of a good that buyers purchase at a higher price is less because as the price of goods go up, so does the opportunity cost of buying that good. As a result, people will naturally avoid buying a product that will force them to forgo the consumption of something else they value more.²⁶⁶

The law of supply like that of demand demonstrates the quantities that will be sold at a certain price. But unlike the law of demand, the supply relationship shows an upward slope. This means that the higher the price, the higher the quantity supplied. Producers supply more at a higher price because selling higher quantity at higher price increases revenue.²⁶⁷

²⁶⁵ Reem, H. (2000). Economics Basics: Supply and Demand – Investopedia (available at: <http://www.investopedia.com/university/economics/economics2.asp#xzz4WfEhDqwy> – accessed 12 October, 2016).

²⁶⁶ Lai, L.W.C. and Yu, B.Y. (2003). The Power of Supply and Demand: Thinking Tools and Case Studies for Students and Professionals. Published by Hong Kong University Press.

²⁶⁷ Ibid.

In the early days of the operation of the oil industry, the downstream business in Nigeria petroleum industry started under a market structure in which prices were determined by the multinational oil companies through the interplay of the forces of supply and demand.²⁶⁸ Adenikinju and Falobi²⁶⁹ observed that in a microeconomic system, the demand and supply model predict changes in the price and quantity of goods sold in competitive market. The theory of supply and demand in this aspect is important in the understanding of increase in the pump price of petroleum products in the Nigeria downstream oil sector. Whenever petrol is sold where consumers demand is more than quantity supplied by the Nigerian National Petroleum Corporation (NNPC) and what the retail outlets are prepared to sell to consumers, the shortage or excess demand tend to lead to increase in the price of the product in the downstream sector. This is common in the black market where petrol is sold. In this situation, it is assumed that there is a partial equilibrium framework where markets are presumed to be independent of other markets that allow competition.²⁷⁰

The market equilibrium occurs when supply and demand are equal, i.e. when the supply and demand function intersects, the economy is said to be at equilibrium. At this point, the allocation of goods is at its most efficient because the amount of goods being supplied is exactly the same as the amount of goods being demanded. Thus, everyone is satisfied with the current economic condition. At the given price, suppliers are selling all the goods that they have produced and consumers are

²⁶⁸ Okanla, O.A. (1977). Development of Government Role in the Oil Industry. Paper presented at the sixth Nigerian Institute of Journalism Oil Seminar, Lagos. Nigerian Trade Journal, Vol. 24 No. 3, July 28th, p. 31.

²⁶⁹ Adenikinju, A.F. and Falobi, N. (2006). Macroeconomic and Distributional Consequences of Energy Supply Shocks in Nigeria. AERC Research Paper No. 162. African Economic Research Consortium, Nairobi.

²⁷⁰ Ibid.

getting the goods that they are demanding.²⁷¹ In the free market equilibrium the desires of both suppliers and buyers are reconciled.

This analysis also presumes that the market is allowed to operate without any external interference, especially when prices are under one form of control or the other. This situation will lead to a market disequilibrium, which occurs whenever the price or quantity is not equal to price or quantity demanded. Dorosh²⁷² asserted that the disequilibrium model explains the behavior of the downstream oil sector in Nigeria, when government regulates the price of petroleum products below the equilibrium market price. Governments that directly control petroleum product prices often impose price subsidies that keep domestic prices below border prices. This is particularly the case when international fuel prices increase sharply and governments are reluctant to pass these increases fully on to the price of petroleum products in the domestic market.²⁷³ In such circumstances there will be no excess demand as long as the government or its agency is willing to absorb the difference between the theoretical equilibrium price and the price paid by consumers

Since petroleum products are internationally traded, the domestic supply cost is the international price, adjusted for transportation, and domestic distribution and marketing costs. The size of the subsidy is calculated as the difference between the supply cost and domestic retail price. For example, S.6(1) of the Petroleum Act²⁷⁴

²⁷¹ Lai, L.W.C. and Yu, B.Y. (2003), op. cit.

²⁷² Dorosh, P.A. (1995). A General Equilibrium Analysis of the Effect of Macroeconomic Adjustment in Nigeria. Working Paper Series, Cornell Food and Nutrition Policy Programme, Cornell University, Ithaca, New York.

²⁷³ Olumide, S.A., Obafemi, F. N. and Ebog, F. S. (2013). Deregulating the Downstream Sector of the Nigerian Petroleum Industry. British Journal of Economics, Finance and Management Sciences, Vol. 8 (2), pp. 22.

²⁷⁴ Cap. P.10, Vol. 13, op. cit.

provides that: “The Minister may by order published in the Federal Gazette fix the price at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.” In the same vein, Section 7 of Petroleum Products Pricing Regulatory Agency Act²⁷⁵ provides that: “The functions of the agency are to: “(a) determine the pricing policy of petroleum products, (b) regulate the supply and distribution of petroleum products.” The Price Control Act²⁷⁶ in Section 4 stipulates that, “price control shall continue to be imposed on petroleum products according to the First Schedule of the Act.”

The issues raised from the above provisions of the law are that petroleum product is yet to be designated as special commodity by the National Assembly as required by item 62(e) of the Constitution.²⁷⁷ The position, therefore, is that where a price has not been fixed by the Board in respect of a controlled commodity, the Price Control Act is of no moment as far as that commodity is concerned. As far as petroleum products are concerned, no price has been fixed in respect thereof by the Price Control Board. The removal of subsidy on petroleum products, therefore, is not limited, affected nor impacted in any way by the Price Control Act. The effect of Section 6(1) of the Petroleum Act and Section 7 of the PPPRA Act is that the power to determine the pricing of petroleum products rests with the Federal Government through its representatives, the “Minister” as stipulated in the Petroleum Act or the “Board” as stipulated in the PPPRA Act. If there is any slight adjustment in the pump

²⁷⁵ Cap. P.43, Vol.14, L.F.N., 2004.

²⁷⁶ Cap. P.28, L.F.N. 2004

²⁷⁷ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

price of petrol by the government it will automatically lead to shortage and hoarding of the product by the marketers.²⁷⁸

The theory of demand and supply do not apply to petroleum products because it presents a unique situation different from the economic theory stipulated above as the demand for petroleum product is said to be inelastic i.e, an increase in price does not produce a corresponding decrease in demand or volume consumed. Similarly, a decrease in price does not produce a corresponding increase in demand or volume consumed. Therefore it can be said that petroleum products are similar to tobacco and alcoholic drinks due to their addictive nature in the sense that an increase in price does not produce a corresponding decrease in demand or quantity consumed.

Premium motor spirit (PMS)²⁷⁹ is a major source of energy used for various purposes in Nigeria therefore there is no alternative for the consumers to freely reveal its preference function. The problem that will arise in this scenario is where government adopts a deregulated regime and is unable to fund the subsidy, and if marketers also refuse to import the product, then there is bound to be supply gap. In such situation there will be an increase in price at the black market beyond the price fixed by the government. This will create consequences in which rationing will become the dominant allocating mechanism, especially when demand exceeds supply.

²⁷⁸ Adeola F. Adenikinju and Niyi Falobi (2006): Microeconomic and Distributional Consequences of Energy Supply Shocks in Nigeria. AERC Research Paper 162, African Economic Research Consortium, Nairobi, December, p.16.

²⁷⁹ Onwioduokit, E.A. and Adenuga, A.O. (2000). Empirical Analysis of the Demand for Petroleum Products in Nigeria. A paper presented to the International Economic Relations Department of Central Bank of Nigeria, pp.33-57.

In an attempt to ensure that petroleum product prices reflect supply cost and the forces of demand and supply²⁸⁰ the Federal Government decided to embark on deregulation of the downstream oil sector in August 2000. The Petroleum Products Pricing Regulatory Agency (PPPRA),²⁸¹ which was established in 2003 was to “reposition Nigeria’s downstream sub-sector for improved efficiency and transparency,” and a vision “to attain a strong, vibrant downstream sub-sector of the petroleum industry, where refining, supply, and distribution of petroleum products are self-financing and sustaining.”

Typically, the scope of discussions covered during the “enlightenment campaign” by the government²⁸² were centred on; the burden of subsidy on petroleum products on the national treasury, the inefficiency of the four refineries to produce at full capacity, smuggling of petroleum products to neighboring countries and the general benefits of deregulation. Despite the unveiling of Petroleum Products Pricing Regulatory Agency as a regulator of deregulation policy in the downstream oil sector, prices of petroleum products are still determined by government, while it relies on importation of petroleum products. The existing four refineries built to refine petroleum products for domestic consumption remained substantially ineffective, while subsidies on imported petroleum products kept on increasing.

²⁸⁰ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. *International Journal of Energy Economics and Policy*, Vol.3, No. 4, pp. 459-472.

²⁸¹ Nenpominyi, S.A. (2012). The Political Economy of Oil Deregulation in Nigeria’s Fourth Republic: Prospects and Challenges. *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)*, 3(3): 193-198.

²⁸² Oseni, M. (2013). Fuel Costing in Nigeria: The Need for Interrelated Party Transactions Pricing Method. *Journal of African Macroeconomic Review*, Vol.3, No. 1.

Factors that led to tremendous growth in petroleum products consumption in the country, starting from the early part of 1980s were the rapid income expansion and strong crude oil export performance with low and controlled prices of petroleum products.²⁸³ Other factors were the rapid pace of modernization and industrialization, high population and urbanization growth rates and smuggling of petroleum products propelled increase in demand for petroleum products. Petrol and diesel are the major products utilized in the road transportation sector as well as for small to medium sized electricity generation plants for power supply, which demand for these products is very high in urban than rural areas.²⁸⁴

Adagunodo²⁸⁵ observed that the total demand for petroleum products, either with respect of the whole economy or to a specific sector, has received widespread attention in the last few years as a result of international crude oil prices. Also, Ogunsola²⁸⁶ was of the opinion that the demand for premium motor spirit (PMS) in Nigeria was influenced by its price, particularly, in relation to those of its alternatives. However, not having close substitutes, the demand for this commodity is, as expected, fairly inelastic.

In 1973 before government introduced the uniform pricing²⁸⁷ policy on petroleum product in the country, the downstream sector was doing very well in

²⁸³ Adeola F. Adenikinju and Niyi Falobi (2006) op.cit.

²⁸⁴ Onwioduokit, E.A. and Adenuga, A.O. (2000), op. cit.

²⁸⁵ Adagunodo, M. (2014). An Empirical Analysis of Petroleum Products Demand in Nigeria: A Random Trend Approach. *Global Journal of Arts Humanities and Social Sciences*. Vol. 2 No. 4. Published by European Centre for Research Training and Development, UK., June, 2014, pp.53-71.

²⁸⁶ Ogunsola, O.O. (2005). Oil, Natural Gas and the Nigerian Economy: In Fakiyesi, O.O. and Olosopo Akano (eds.). *Issues in Money, Finance and Economic Management in Nigeria*, Lagos. University of Lagos Press.

²⁸⁷ Onwioduokit, E.A. and Adenuga, A.O. (2000), op. cit.

mediating supply and demand of petroleum products. Petroleum products were generally available at filling stations and hoarding, adulteration of petroleum products and smuggling were uncommon.²⁸⁸ The problem in supply and distribution of petroleum products took place when government decided to take over the control of the downstream sector by regulating prices of petroleum products.

The growth in petroleum products demand was therefore taking place at a time of declining supply as result of inefficient maintenance of the four refineries in the country, coupled with decaying infrastructure in the supply and distribution of petroleum products.²⁸⁹ Since then supply shortages have been a regular feature all over the country because of erratic and occasional products adulteration and in spite of price reviews in recent years the market has failed to meet the needs of growing number of consumers.

The combined impact of erratic and inadequate supply and unending price increases have brought an untold hardship to the citizenry and worse too, prevent economic recovery. Isyaka²⁹⁰ asserted that the major problem in the downstream oil sector in Nigeria was that some of the petroleum products, especially the premium motor spirit (PMS) were very limited in the market and hardly reach the final consumers. Therefore motorists spent hours, sometimes days queuing at the filling

²⁸⁸ Agbola, E.A. (1979). The Role of Road Side Petrol Resellers and Independent Marketers on National Economy. A paper Presented at the Seminar on Petroleum Products Marketing at Petroleum Training Institute (PTI) Warri,.

²⁸⁹ Iwayemi, A., Adenikinju, A. and Babatunde, M.A. (2010). Estimating Petroleum Products Demand Elasticities in Nigeria: A Multivariate Cointegration Approach. *Energy Economics*, 32, pp.73-85. Elsevier Publication.

²⁹⁰ Isyaka, M.S. (2014). The Implications of Price Changes on Petroleum Products Distribution in Gwagwalada Abuja, Nigeria. *Journal of Energy Technologies and Policy*. Vol. 4 No. 7.

stations, while most motor parks were empty; offices were closed as workers moved out in search of petrol. In the same vein, travelers were stranded as they could not get vehicle to transport themselves to their destination.²⁹¹

The ineffective enforcement of punishments by the regulatory agencies also contributes to some substantial problems to hoarding and scarcity of petroleum products in the downstream oil sector. For example, the Petroleum Production and Distribution (Anti-Sabotage) Act²⁹² makes it an offence under Section 1 to obstruct, prevent or interfere with the production and distribution of petroleum products. Any violation of this provision carries a term of imprisonment not exceeding twenty one years or a death penalty.²⁹³

The Petroleum Act²⁹⁴ in Section 13(1) criminalizes interference with, and obstruction of, the holder of a licence or lease granted under the Act. Such offence carries a fine not exceeding N200 or a term of imprisonment for period not exceeding six months (or both). The stipulated penalty as contained in the Petroleum Act is paltry and does not accord with modern day reality, being inconsistent with the scope of the crime sought to be deterred. This contributes to the impunity with which the regulation is flouted. The actors involved in the distribution of petroleum products in the downstream oil sector include the major and private independent marketers.²⁹⁵ As far back as 1978, the concept of

²⁹¹ Nkogbu, O.C. (2015). Deregulation of the downstream sector of the Nigerian Petroleum Industry: The Role of Leadership. *European Journal of Business and Management*. Vol. 7 No. 8.

²⁹² Cap. P.13, Laws of the Federation of Nigeria, 2004.

²⁹³ *Ibid*, Section 2.

²⁹⁴ Cap. P.10, Laws of the Federation of Nigeria, 2004

²⁹⁵ Ehinomen, C. and Adeleke, A. (2012). Assessment of the Distribution of Petroleum Products in Nigeria. *E3 Journal of Business*

independent petroleum products marketing was introduced with a view to ring indigenous independent marketers to participate in the downstream oil sector.²⁹⁶

The roadside petrol resellers and some independent marketers in 2008 took over from foreign oil companies who were responsible for supplying petroleum products in the country and accounted for 70% of products distributed.²⁹⁷ In addition to these facilities, the need to get petroleum products to the consumers was paramount importance to the Federal Government. Despite efforts²⁹⁸ put in place by government to get products to all the retail outlets promptly as possible through equalization of the cost of transportation to marketers, such efforts are often thwarted by some unscrupulous marketers who divert products to black markets for sale to consumers at higher price.

Tables 3.1 and 3.2 below show the numbers of retail outlets established by the major and independent marketers in Nigeria.

Management and Economics, Vol.3(6), pp.232-241.

²⁹⁶ Edoreh, A. (1997). The Future of Nigerian Petroleum Industry, Lagos, Academy Press.

²⁹⁷ Agbola, E.A. (1979): The Role of Roadside Petrol Resellers and Independent Marketers on National Economy. A Paper presented at the Seminar on Petroleum Products Marketing at Petroleum Training Institute (PTI) Warri, pp.1-4.

²⁹⁸ Olubunmi, A., Olumide, A. and Olugbenga, S. (2010): Challenges Dog the Petroleum Marketing Industry (available at: <http://www.csls.firstcitygroup.cm>, last visited in July, 2012)

Table 3.1: Number of Retail Outlets Established by Oil Companies from 1971-1978

| COMPANIES | NUMBER OF RETAIL OUTLETS | | | | | | | |
|-----------------------------|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 |
| Mobil Oil (Nigeria) Limited | 246 | 247 | 260 | 259 | 257 | 257 | 258 | 258 |
| Texaco Nigeria Limited | 139 | 153 | 154 | 161 | 165 | 165 | 167 | 168 |
| BP Nigeria Limited | 190 | 179 | 184 | 182 | 182 | 182 | 158 | 193 |
| Total Nigeria Limited | 223 | 227 | 230 | 231 | 230 | 230 | 215 | 222 |
| Agip Nigeria Limited | 107 | 118 | 119 | 117 | 119 | 119 | 131 | 165 |
| National | 214 | 234 | 247 | 246 | 240 | 240 | 212 | 245 |
| Unipetrol | 167 | 167 | 167 | 167 | 167 | 167 | 211 | 249 |
| TOTAL | 1286 | 1325 | 1361 | 1363 | 1263 | 1360 | 1352 | 1500 |

Source: Engr. E.A. Agbola – The Role of Road Side Petrol Resellers and Independent Marketers on National Economy

Table 3.2: Nationwide retail outlets 2009 census – summary distribution by zone

| Geo - Political Zone | Marketer type Major | Marketer type Independent | Total No of Outlets |
|----------------------|---------------------|---------------------------|---------------------|
| North Central | 355 | 1318 | 1673 |
| North East | 163 | 726 | 889 |
| North West | 265 | 1023 | 1288 |
| South East | 194 | 1227 | 1421 |
| South South | 224 | 1519 | 1743 |
| South West | 1017 | 2135 | 3152 |
| TOTAL | 2218 | 7948 | 10166 |

Source: Petroleum Products Pricing Regulatory Authority Available at www.pppra-nigeria.org

Table 3.1 above revealed that there were 1,286 retail outlets established in 1971 to meet domestic consumption of petroleum products, which number rose to 1,363 in 1974. There was a sharp decline in the number of retail outlets in 1975, which dropped to 1,263 but rose from 1,360 in 1976 to 1,500 in 1978. The reason ascribed to the rapid increase in the number of retail outlets from 1971 to 1978 was attributed to the rapid increase in the economic activities after the civil war. Also, urbanization was considered to have a positive relationship with petroleum products consumption. The large increase in population to commercial and administrative

centres due to rapid increase in economic activities was responsible for the unprecedented increase in demand of petroleum products.²⁹⁹

According to the Petroleum Products Pricing Regulatory Agency (PPPRA),³⁰⁰ the indigenous independent marketers as 2009 were well over 7,948. As a measure of the growing involvement of the indigenous petroleum products marketers in the economic development process of Nigeria, it is interesting that in 1981, they accounted for less than half – percent in terms of volume of petroleum products marketed in Nigeria. By 1998, they had captured about 25 percent of the market. Today, they account for nearly 40 percent of the volume of products marketed in country. In terms of outlets, the major marketers have 2218 while the Independent marketers have 7948 outlets. The NNPC has 18 mega stations nationwide as at June, 2010 (Table 3.2).³⁰¹ These indigenous independent marketers are competing with the established big (foreign) multinational oil companies control about 60 percent of the market. In the downstream sector, activities are progressively falling within the control of private entrepreneurs, especially the indigenous independent marketers. It is the policy of the federal government that petroleum products be distributed by private companies by selling some of its share to the public through the Technical Committee on Privatization and Commercialization.³⁰²

²⁹⁹ Owoye, T. and Adetoye, D. (2016). Political Economy of Downstream Oil Sector Deregulation in Nigeria. *International Journal of Economics, Commerce and Management*, Vol. IV, Issue 5. United Kingdom, pp. 674-689.

³⁰⁰ Ehinomen, C. and Adeleke, A. (2012). An Assessment of the Distribution of Petroleum Products in Nigeria. *E3 Journal of Business Management and Economics*, Vol. 3(6). pp. 232-241.

³⁰¹ Nigerian National Petroleum Corporation NNPC (2010). Annual Statistical Bulletin. Available at: <http://www.nnpcgroup.com> – accessed on 3/6/2011).

³⁰² Kupolokun F (2006). Downstream deregulation: Achievements and Emerging challenges. Available at www.pppra-nigeria.org – accessed on 4/7/2011.

Table 3.3: Domestic Consumption of Petroleum Products (Metric Tonnes) from 1977 to 2005

| Year | Liquefied Petroleum Gas | Premium Motor Spirit | Dual purpose kerosene | High pour Fuel Oil | Low pour fuel oil | Automotive gas oil | Lubricating oil | Bitumen & Asphalt | Others (Grease, wax base oil) |
|----------------------|-------------------------|----------------------|-----------------------|--------------------|-------------------|--------------------|-----------------|-------------------|-------------------------------|
| 1977 | - | 1,861,610.0 | 735,949.0 | 1,228,395.0 | 34,005.0 | - | - | - | 660,000.0 |
| 1978 | - | 2,291,514.0 | 943,645.0 | 1,765,275.0 | 744,510.0 | - | - | - | 417,279.0 |
| 1979 | - | 2,515,789.0 | 1,020,224.0 | 1,707,544.0 | 656,315.0 | - | - | - | 574,742.0 |
| 1980 | - | 5,284,570.0 | 1,823,958.0 | 2,676,605.0 | 875,776.0 | - | - | - | 639,112.0 |
| 1981 | - | 6,573,007.0 | 2,161,368.0 | 3,131,634.0 | 1,153,683.0 | - | - | - | 892,831.0 |
| 1982 | - | 4,300,647.0 | 1,551,484.0 | 2,604,160.0 | 1,232,826.0 | - | - | - | 549,629.0 |
| 1983 | - | 4,244,798.0 | 1,811,914.0 | 3,035,824.0 | 1,187,663.0 | - | - | - | 431,136.0 |
| 1984 | - | 4,012,041.0 | 1,724,021.0 | 2,323,601.0 | 827,217.0 | - | - | - | 338,091.0 |
| 1985 | - | 3,787,895.0 | 1,520,777.0 | 1,832,819.0 | 1,113,837.0 | - | - | - | 516,969.0 |
| 1986 | 88,717.0 | 3,597,356.0 | 1,928,190.0 | 1,854,275.0 | 507,188.0 | 626,271.0 | 148,936.0 | 113,050.0 | 700,854.0 |
| 1987 | 104,114.0 | 3,625,220.0 | 2,017,336.0 | 1,755,580.0 | 473,057.0 | 704,506.0 | 144,910.0 | 123,942.0 | 121,680.0 |
| 1988 | 74,482.0 | 3,103,079.0 | 1,554,391.0 | 1,573,996.0 | 495,350.0 | 867,235.0 | 179,449.0 | 144,164.0 | 66,049.0 |
| 1989 | 64,457.0 | 3,256,442.0 | 1,583,488.0 | 1,496,644.0 | 154,773.0 | 798,608.0 | 172,198.0 | 95,417.0 | 78,940.0 |
| 1990 | 60,373.0 | 3,302,808.0 | 1,546,848.0 | 1,495,739.0 | 139,569.0 | 808,725.0 | 157,336.0 | 100,825.0 | 81,050.0 |
| 1991 | 55,661.0 | 3,380,049.0 | 1,311,893.0 | 2,331,018.0 | 34,134.0 | 773,803.0 | 276,167.0 | 85,685.0 | 403,790.0 |
| 1992 | 48,907.4 | 3,969,275.9 | 1,612,074.5 | 2,280,124.5 | 21,888.2 | 750,786.6 | 177,783.2 | 64,301.0 | 1,868,354.0 |
| 1993 | 36,262.0 | 3,336,215.0 | 1,427,784.0 | 2,054,424.0 | 65,197.0 | 688,072.0 | 144,844.0 | 104,913.0 | 775,412.0 |
| 1994 | 20,610.0 | 3,015,634.0 | 1,131,057.0 | 1,596,269.0 | 40,406.0 | 670,846.0 | 112,172.0 | 37,736.0 | 1,385,317.0 |
| 1995 | 11,389.8 | 2,735,700.3 | 686,719.0 | 1,334,417.6 | 42,497.0 | 472,754.4 | 107,775.0 | 20,445.0 | 763,810.0 |
| 1996 | 53,265.5 | 3,454,327.5 | 916,206.1 | 1,573,292.4 | 568,142.5 | 715,386.8 | 281,235.2 | 6,918.3 | 784,486.0 |
| 1997 | 157,453.0 | 4,461,348.0 | 1,453,194.0 | 18,034.0 | 316,185.0 | 2,145,392.0 | 60,794.0 | 74,662.0 | 144,098.0 |
| 1998 | 37,023.0 | 2,792,112.0 | 1,104,061.0 | 16,557.0 | 290,264.0 | 1,150,462.0 | 42,350.0 | 245,738.0 | 79,666.0 |
| 1999 | 43,311.0 | 4,475,565.0 | 1,459,464.0 | 273.0 | 316,185.0 | 1,700,089.0 | 40,640.0 | 141,129.0 | 160,322.0 |
| 2000 | 13,808.0 | 4,752,568.0 | 1,508,065.0 | - | 207,281.0 | 2,093,866.0 | 60,082.0 | 82,239.0 | 258,961.0 |
| 2001 | 13,812.4 | 5,397,577.4 | 1,744,430.1 | - | 174,675.9 | 2,179,226.4 | 65,359.1 | 84,016.4 | 437,221.1 |
| 2002 | 23,106.0 | 6,556,675.5 | 1,567,863.1 | - | 177,602.1 | 2,275,129.8 | 62,841.2 | 50,484.3 | 521,620.7 |
| 2003 | 21,632.0 | 6,585,614.0 | 1,123,935.0 | - | 213,109.0 | 2,042,744.0 | 60,629.0 | 33,133.0 | 154,976.0 |
| 1 st Qtr. | 10,247.0 | 1,631,933.0 | 391,635.0 | - | 63,964.0 | 780,111.0 | 14,965.0 | 12,293.0 | 35,640.0 |
| 2 nd Qtr. | 5,457.0 | 1,609,051.0 | 267,003.0 | - | 27,444.0 | 427,295.0 | 14,847.0 | 5,692.0 | 65,993.0 |
| 3 rd Qtr. | 4,428.0 | 1,553,087.0 | 251,192.0 | - | 23,777.0 | 402,104.0 | 15,146.0 | 8,548.0 | 47,206.0 |
| 4 th Qtr. | 1,500.0 | 1,791,543.0 | 214,105.0 | - | 97,924.0 | 433,234.0 | 15,671.0 | 6,600.0 | 6,137.0 |
| 2004 | 28,216.1 | 7,308,099.2 | 907,696.7 | - | 236,193.9 | 1,750,313.5 | 58,393.4 | 20,827.6 | 114,304.9 |
| 1 st Qtr. | 13,365.8 | 1,810,966.8 | 316,286.8 | - | 70,892.9 | 668,433.6 | 14,413.2 | 7,727.4 | 26,286.8 |
| 2 nd Qtr. | 7,117.9 | 1,785,574.5 | 215,633.2 | - | 30,416.9 | 366,125.3 | 14,299.5 | 3,578.0 | 48,674.1 |
| 3 rd Qtr. | 5,775.7 | 1,723,470.9 | 202,864.2 | - | 26,352.6 | 344,540.5 | 14,587.5 | 5,373.3 | 34,817.5 |
| 4 th Qtr. | 1,956.6 | 1,988,087.1 | 172,912.5 | - | 108,531.6 | 371,214.1 | 15,093.2 | 4,148.8 | 4,526.4 |
| 2005 | 13,897.0 | 8,644,263.0 | 1,388,747.0 | - | 318,101.0 | 2,368,115.0 | 80,555.0 | 83,646.0 | 7,030.0 |
| Q1 | 2,672.0 | 2,290,300.0 | 302,687.0 | - | 55,942.0 | 592,944.0 | 19,004.0 | 16,807.0 | 1,139.1 |
| Q2 | 5,478.0 | 2,268,812.0 | 303,578.0 | - | 114,354.0 | 568,708.0 | 22,713.0 | 23,935.0 | 1,986.8 |
| Q3 | 2,311.0 | 2,055,823.0 | 432,279.0 | - | 92,722.0 | 718,113.0 | 20,025.0 | 17,254.0 | 1,523.0 |
| Q4 | 3,436.0 | 2,029,328.0 | 350,203.0 | - | 55,083.0 | 488,350.0 | 18,813.0 | 25,650.0 | 2,381.0 |

Source: Central Bank of Nigeria Statistical Bulletin, Vol. 16, p.254, December, 2005

From Table 3.3 and the projection shown in Appendix 1³⁰³ indicate that the consumption of petroleum products has been on the increase with economic growth. This trend has also been encouraged by the low prices of these products. The bulk of consumption has been the premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK). Adagonudo³⁰⁴ reported that these products accounted for more than 60% of the total petroleum products. PMS and AGO are the major products utilized in the road transportation sector and for small to medium sized electricity generation plants for power supply in homes and locations detached from Power Holding of Nigeria Company (PHCN), as well as industries. Specifically, PMS is used in vehicles, small generating plants, while AGO is used largely on heavier engines. The characteristics of petroleum products consumption cut across various sectors of the economy; therefore it is the most widely utilized. Secondly, the elasticity of substitution of the products varies across sectors. The low elasticity of substitutions in transportation makes the impact of pricing policies in the sector very extensive and quite sensitive.³⁰⁵

Several dimensions of the trends of petroleum products consumption can also be noted in Table 3.3, which provides information on the domestic consumption of the major petroleum products in Nigeria from 1977 to 2005. It is apparent from these figures that domestic petroleum product consumption showed an average increase of 29.8% from 1977 to 1981. This can be attributed to

³⁰³ Appendix 1 on Page 343 shows petroleum product consumption in the country from 1977 to 2006

³⁰⁴ Adagonudo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. *International Journal of Energy Economics and Policy*. Vol. 3 No.4. pp. 459-472.

³⁰⁵ Ibid.

increase in per capital income. The key factors in this rapid growth in PMS consumption were the rapid income expansion due to strong oil export performance.³⁰⁶ Umeanozie, et. al.³⁰⁷ asserted that the development reflects the impact of rising prosperity of the oil boom period and the rapid acquisition of vehicles into the country. At 6.5 million tones in 1981, consumption of PMS dropped by 2.0 percent to 4.3 million tones in 1982. The economic recession in the post-1982 period was accompanied by a decline in the level of demand culminating in the sharp fall from 4.2 million tones in 1983 to 3.6 million tones in 1987, a decrease of 14.2 percent.³⁰⁸

Consumption of premium motor spirit (PMS) increased again from 3.3 million tones in 1991 to 3.9 million tones in 1992 and fluctuated downwards to 2.7 million tones in 1995. The consumption of dual purpose kerosene (DPK) fell from 1.3 million tones in 1991 to 686 thousand tones in 1995. This can also be attributed to the non affordability and non accessibility of the products because of high cost of kerosene. The reality is that apart from the Nigerian National Petroleum Corporation (NNPC) outlets, there was no other outlet anywhere in Nigeria where kerosene is sold at the subsidized price. The product sells for between N100 and N150 per litre depending on the outlet and location in 2015 and rose to N300.00 per litre in 2016. PMS consumption also went up to 4.4 million tonnes in 1997 and maintained a downward trend of 2.7 million tones in 1998 and rose to 4.4 million

³⁰⁶ Onwioduokit, E.O. and Adenuga, A.O. (2000). Empirical Analysis of the Demand for Petroleum Products in Nigeria.pPp. 33-57.

³⁰⁷ Umeanozie, A.O., Nduka, E. K. and Chukwu, J. O. (2014). Subsidies and the Demand for Petroleum Products in Nigeria. International Journal of Sustainable Energy and Environmental Research (2014). Vol.3(2). pp. 100-109,

³⁰⁸ Ibid.

tones from 1999 to 2000. The general growth in the economy was responsible for this trend in PMS consumption, as there is usually a close relationship between energy use and economic development. The consumption of automotive gas oil (AGO) declined from 780.1 thousand tones in the first quarter of 2003 to 433.2 thousand tones in the 4th quarter of the same year, which could be attributed to the deregulation in prices of diesel.

The two basic petroleum industry's activities in Nigeria take place at the upstream and downstream sector. Kur³⁰⁹ observed that the upstream sector cover all those activities relating to the exploration, prospecting, extraction of crude oil, their treatment, transportation and delivery to the designated processing plants or refineries. The downstream sector cover the activities commence when crude oil is laid in an inlet of a refinery. The crude oil is transported through a system of pipelines to the four refineries for subsequent conversion to petrol-chemical products, transportation, marketing and supply of the finished products and related ancillary services to the 21 depots in Nigeria.³¹⁰

Most of the petroleum products consumed are supplied by the domestic refineries and in spite of the efforts of government improve the facilities at the downstream sector it was still characterized by series of problems. Factors that were responsible for the current scarcity of petroleum products in the country are; poor conditions of the four refineries, inadequate capacity of pipelines that

³⁰⁹ Kur, J.J. (2014). Consumer Protection and Deregulation Policy in the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. *Benue State University Law Journal*, Vol. 5, No.1, pp.25-50.

³¹⁰ Ehinomen, C. and Adeleke, A. (2012), *op. cit.*

connected the depots, poor planning by the government to plan for the expansion of the four refineries in the refining of petroleum products to meet domestic consumption, irregular supply of power to pumping stations, poorly maintained and inadequate trucks to transports products contributed immensely to shortages of petroleum products.³¹¹ The bulk storage facilities in few locations in the country and the retail outlets were also grossly inadequate, to withstand the ever-rising demands for products.

While the Federal Ministry of Finance put the daily petrol (PMS) consumption in the country at 19 million litres, PPPRA and NNPC on the other hand estimated the actual figure at 33 million litres per day. This controversy between the FMF, PPPRA and NNPC over the projected petroleum products consumption level reveals a fundamental problem that has bedeviled energy planning in Nigeria, while the economy was said to be growing at 7.5%, petroleum products consumption was rising at 18% per annum.³¹²

In order to provide a microeconomic perspective and perceptions of the causes and impact of fuel scarcity on the economic activities, an empirical study was undertaken where 250 questionnaires were administered in some specific parts of the country. The population of the study is made up of civil servants, market men and women, petroleum depots and staff of Kaduna Refinery and Petrol-Chemical Company, staff of the Department of Petroleum Resources, private oil companies and other organizations concerned with petrol and gas

³¹¹ Kur, J.J. (2014), op. cit.

³¹² Adagunodo, M. (2013). (2013). Petroleum Products Pricing Reform in Nigeria. Op.cit., p.68.

affairs in 2012 to solicit information from them. Although the questionnaires did not cover the whole part of the country, the general belief was that the situations obtained were typical as experienced in other parts of the country. Twelve (12) questions were selected, six (6) for those who participated in the hawking of petrol (premium motor spirit) in the black market and six (6) questions for vehicles owners who were affected as result of increase in price and scarcity of petrol (PMS) in the normal distribution channel. Responses were analyzed using ratios and percentage distribution of the respondents across the various groups as presented in Table 3.4 below.

Table 3.4: Perception of respondents to microeconomic variables

| S/N | Description of variables and on respondents | % of Respondents |
|-----|---|---|
| 1. | What job engage by respondent before coming to hawking of fuel i. Driver ii. Artisan iii. Military iv. Business v. Unemployed vi. Students vii. Others | 33.3 22.2 5.6 16.7 8.3 11.1 2.8 |
| 2. | Is this your first time in hawking fuel i. Yes ii. No | 44.4 55.5 |
| 3. | Sources of getting fuel to hawk i. Agents to petrol attendants ii. Petrol station owners iii. Direct purchase from pump iv. Others | 47.2 11.1 27.8 13.9 |
| 4. | Do prices vary across source of supply i. Yes ii. No iii. No response | 8.3 83.3 8.3 |
| 5. | Do you derive any benefit from fuel shortages i. Yes ii. No | 63.2 36.8 |

Table 3.4 continued

| | | |
|-----|---|--|
| 6. | The nature of benefit i. Opportunity to make more money ii. I feel more important iii. I have extra time for myself iv. No response v. Others | 39.5 7.9 18.4 5.3 28.9 |
| 7. | How do you get fuel for your vehicle i. From fuel station only ii. From black market only iii. From both sources | 50.0 15.8 34.2 |
| 8. | How difficult is to get fuel now than in the past i. More difficult ii. Remains unchanged | 86.8 13.2 |
| 9. | How long does it take to get fuel at filling station i. Less than 1 hour ii. 1 hour to 3 hours iii. 3 hours to 6 hours iv. A day v. More than a day vi. No response | 5.3 21.1 18.4 28.9 23.7 2.6 |
| 10. | Which option do you prefer to solve the problem i. Increase price of fuel ii. Go for black market iii. Government to monitor filling stations iv. No response | 23.7 - 71.1 5.3 |
| 11. | How has the crises affected work i. Make less money per day now ii. Spend more time looking for fuel iii. Amount spent on fuel has gone up iv. Reduce number of tribes made v. No response | 13.2 39.5 34.2 10.5 2.6 |
| 12. | Those willing to pay higher price per category of vehicle i. Commercial ii. Private | 50.0 37.5 |

Source: From sample of questionnaire administered within Zaria, Kaduna and Abuja environs.

The analysis derived from the survey conducted revealed that most of the actors that participated in hawking petrol (PMS) were those from the informal sector and were not doing the business for the first time. On the other hand 47.2 percent of the respondents agreed that they obtained their supply of premium

motor spirit (PMS) from the black market, while 83.3 percent agreed that the higher prices in getting the product came from attendants in the filling station. About 63 percent of the respondent agreed that they derive some benefits from petrol scarcity and benefits mainly in terms of opportunity to make more money (39.5%). This explained why petrol attendants at the filling stations prefer to hoard the products in order to sell in the middle of the night to hawkers in the black market because of the extra benefits they get from the business.

The analysis shows that a very high proportion of vehicle owners found it more difficult to get fuel and spent almost a whole day at filling stations before they could buy petrol. 71.1% prefer government in monitoring filling stations that were responsible in hoarding petrol, while 24% support increase in the price of petrol in order to solve the problem, than monitoring by government.

One thing that was very obvious from this study was that the formal market is the main source of fuel supply to the parallel market. The agents in the supply chain are the petrol attendants, station managers, depot supervisors, marketers and tanker drivers who have their agents within and around the petrol stations and are favoured in the allocation of available fuel supply. The profits realized from the sales are shared between the principal and the agents on agreed percentage basis. The materials used in the black market to sell fuel to consumers include jerry cans, personal cars, motorcycles, polyethylene bags, buckets, generators and drums.³¹³

³¹³ Adenikinju, A.F. and Falobi, N. (2006), op. cit.

Marketers and station managers sometimes use their personal cars to purchase fuel, which is then siphoned immediately after leaving the station. This can occur as many times as possible and the time of their operation is around 9.00 – 10.00 pm or early in the morning from 12.00 midnight and the price ranged from ₦90.00 to ₦100.00 per litre.³¹⁴ The price charge at the black market sometime depends on the severity of the scarcity which can rise to ₦150.00 to ₦180.00 depending on the location. On the part of tanker drivers, methods of operation include illegal increase in the size of the tanker reserve or siphoning some petrol before arriving at the filling station or alternatively some depot supervisors arrange with depot operators' workers to add an extra amount to the official price. Some commercial drivers interviewed agreed that they found this more profitable than their regular business. In some filling stations, in addition to selling at the black market price, sundry charges were also imposed on consumers before they were allowed to enter the station or pump point where the amount paid vary with the quantities of fuel purchased.

Table 3.5 below shows the quantity of petrol (PMS) that was supplied to filling stations before the recent price increase in January, 2012.

³¹⁴ In July 2016, the price in the black market was ₦800.00 when the Federal Government raised the price to ₦145.00 per litre.

Table 3.5: Quantity of PMS supplied to filling station and price charged by hawkers in the parallel markets

| S/N | Variables | Quantity supplied to parallel markets per litre | Price charged by hawkers (₦) |
|-----|--|---|------------------------------|
| 1. | Average supply of fuel to black market as result of increase in price | 71,117.65 | |
| 2. | Average supply to black market before increase in price | 39,031.25 | |
| 3. | Amount sold to hawkers per 4 litres jerry-can by principals before increase in price | - | 165.00 |
| 4. | Amount sold by hawkers to consumers per 4 litres jerry-can after increase in price | - | 315.00 |
| 5. | Amount charged per passenger by commercial drivers before the increase | - | 60.00 |
| 6. | Amount charged per passenger by commercial drivers after the increase | - | 120.00 |

Source: Survey results of interview conducted within Zaria and Kaduna environs among major petroleum depots in January 2012.

Table 3.5 above revealed that sellers of petroleum products on the parallel market are motivated by the significant profit margins than in the formal markets. Hawkers of premium motor spirit (PMS) reported that they pay an average of ₦165 per four litre jerry-can of petrol from their principals (marketers, petrol attendants, station supervisors) and then sell the same four litres at about ₦315 on the black market, thereby making a profit of ₦150 per four litre jerry-can against the official price of ₦97.00 per litre in 2012. During scarcity of petrol in November, 2012, a four-litre of petrol in the black market in Zaria was sold for between ₦800.00 and ₦850.00.

In respect of supplies of petrol, the survey shows that the average supply to the black markets fell from 71,117.65 litres before the shortage to about 39,031 litre during the crisis, a decline of about 45.1%, while the marketers also reported

an average loss of ₦94,953.33 per day during the crisis. It was obvious from the table that the amount paid per litre of petrol also went up as a result of the crisis. The reason for the fall in supply to black markets was due to high margin of profit received from the official price after the increase to ₦140 in 2012. Even with the current increase to ₦145.00 by government in 2016, the price of petrol is still sold differently beyond the official rate.³¹⁵

Efforts aimed at arresting the causes of scarcity through importation of refined products by government are sometime hijacked by private petroleum marketers in order to push the price of the product beyond government approved prices. It is common to witness during period of scarcity how petroleum product marketers involved in unwholesome and fraudulent practices by adulterating petroleum products and incorrect meter reading at the filling stations. Some marketers, during period of crisis, divert petroleum products by selling directly to 'organized black marketers,' who then dispensed to the unorganized ones at what they described as reasonable prices. According to an opinion expressed by Adeola and Niyi³¹⁶ these kinds of practices are done with active collaboration of officials from the Department of Petroleum Resources (DPR), Pipelines Product and Marketing Company (PPMC) and other government agencies charged with the responsibilities of maintaining the supply and distribution of petroleum products in the downstream sector.

³¹⁵ Petrol sold in Kano at ₦150.00 – Dailytrust Newspaper of 24th January, 2017, p.7.

³¹⁶ Adeola, F.A. and Niyi, F. (2006). Macroeconomic Distributional Consequences of Energy Supply Shocks in Nigeria. AERC Research Paper 162, African Economic Research Consortium, Nairobi, Dec., 2006.

In a bid to solve the problem of increase demand of petroleum products in the country, structural reform of petroleum markets has become a critical component of macroeconomic liberalization policies. To meet up these challenges, government decided to introduce the deregulation and liberalization into the downstream sector on 8th March, 2001. There was increase in the selling price for premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK) at ₦26, ₦26 and ₦24 per litre respectively, while the consumption tax of ₦3.00 per litre of product was abolished³¹⁷

The removal of subsidy suggests that the forces of demand and supply should determine the appropriate (equilibrium) of the pump price of petrol that would make both the buyers and suppliers of the product reasonably happy. Generally, subsidy represents an intervention in the market system because the market-determined price may not be fair and equitable, particularly if the said product is essential in the functioning of the economy.

3.3 Oil Crime and Smuggling of Petroleum Products in Nigeria

Oil crime in Nigeria involves both the state and non-state players, which extend beyond the territorial boundaries of the country. The multi-dimensional nature has very serious challenge to the Nigerian authority due to the clandestine methods of operation. Such activities involve illegal oil bunkering, pipeline vandalism and sabotage, which lead to loss of production, pollution and shut-

³¹⁷

Brief on the Emergence of the Downstream Petroleum Industry Sub-sector – Major Historical Decisions (available at: <http://www.pppra-nigeria.org>).

down.³¹⁸ Nigeria has laws to curb this menace under the Petroleum Production and Distribution (Anti-Sabotage) Act,³¹⁹ the Petroleum Act³²⁰ and the Economic and Financial Crimes Commission (Establishment) Act.³²¹ Section 1 of Petroleum Production and Distribution (Anti-Sabotage) Act makes it an offence to obstruct, prevent or interfere with the production and distribution of petroleum products. Such activities attract a death penalty or twenty one years imprisonment. Section 13(1) of the Petroleum Act criminalizes interference with, and obstruction of, the holder of a licence or lease granted under the Act. Such offence attracts punishment not exceeding ₦200.00 or a term of imprisonment not exceeding six months. Section 6 of the Economic and Financial Crime Commission (EFCC) Act tasked the Agency with the responsibilities of eradicating all reported cases of economic/financial crime, with a view to identifying individual, corporate bodies or agents involve in economic or financial crime.

Nigeria, as a leading oil producing country in the world loses billions of dollars to oil theft and pipeline vandalization yearly. Igbinovia³²² asserted that these criminal activities are detrimental to Nigeria economy because of its negative affects. It is estimated that 55 million barrels of crude oil (about one tenth of production) is lost through theft of crude oil and smuggling of refined petroleum products out of the country annually thereby denying the country

³¹⁸ Violet, O.A. and Gozie, O. (2014). Oil Crimes: the Nigerian Dimension. *International Energy Law Review*, Vol. 32, Issue 6.

³¹⁹ Cap. P.13, L.F.N, 2004.

³²⁰ Cap. P.10, Vol. 13, Laws of the Federation of Nigeria, 2004.

³²¹ Cap. E.1, Laws of the Federation of Nigeria, 2004

³²² Igbinovia, P. E. (2014). *Oil Thefts and Pipeline Vandalization in Nigeria*. Safari Books, Limited.

substantial revenue from oil production. It was further estimated that Nigeria is losing about \$1 billion per year from this illicit trade. If the crude oil that is smuggled out yearly is refined locally in Nigeria, there would be no need for the country to experience constant scarcity of petroleum products. Moreover, prices of petrol in the country would not be high.³²³

Smuggling of petroleum products across the country borders is a strong determinant factor in the increase in price of petrol in the downstream oil sector. One of the factors that encourage smuggling of petroleum products outside the borders of Nigeria is that the price of petrol is much higher than what is obtained locally in Nigeria, and more profitable to marketers than selling the product within the country. Smuggling of petroleum products is a lucrative business because of unemployment in the country and the desire to get rich quickly.

In comparison, prices of petroleum product, especially the premium motor spirit (PMS) in neighbouring countries of Togo, Cameroon, Chad and Ghana are much higher than what is obtained in Nigeria and combined with the very porous Nigeria border has made smuggling of petroleum products a thriving business.³²⁴ It was estimated that as much as 30% of Nigeria's oil is being smuggled to these countries.³²⁵ In addition, large quantities of Nigeria's petroleum products are daily smuggled into the Republic of Benin through its Badagry/Seme porous border. The border towns of Owode in the Seme-Badagry area of Lagos State

³²³ Igbinovia, P. E. (2014), *op. cit.*, p.78

³²⁴ Akov, E.T. (2015). Fuel Subsidy Corruption and the Illusions of Economic Reconstruction in Nigeria. *Academic Journal of Interdisciplinary Studies*, Vol. 4 No. 1, pp. 395-405.

³²⁵ Adeola, F.A. and Niyi, F. (2006). *Macroeconomic and Distributional Consequences of Energy Supply Shocks in Nigeria – AERC Research Paper 162*. African Economic Research Consortium, Nairobi, December, p.10.

showed that though the removal of fuel subsidy in Nigeria has increased the price of petrol to about ₦140 per litre, the same litre was sold for ₦250 officially in Benin Republic,³²⁶ which is still higher than the price in Nigeria. The effect of smuggling of petroleum product causes distortion in its supply and distribution as most of the products claimed to have been imported into Nigeria found their way to neighbouring countries through unscrupulous marketers.

The diversion and smuggling of petrol outside the country apart from causing scarcity in the country also lead to substantial loss of revenue to the Government. Smuggling of petroleum products is not limited to land borders alone but cut across the riverine areas of the Delta, where crude oil is produced.³²⁷ According to Houssou, et. al.³²⁸ millions of dollars that could have accrued to Nigeria finds their way into the pockets of oil smugglers operating in the Niger Delta States of Bayelsa, Rivers and Delta. As result of oil bunkering and pipelines vandalization, government is losing about 180,000 barrels of crude oil per day, thereby reducing the amount of crude allocation to the refineries and for exportation. This, if calculated into monetary term translate to about ₦800 billion or (\$5 billion).³²⁹

Tiny West African neighbours like Benin and Togo have long been havens for smugglers, who slip easily through poorly policed frontiers and shorelines.

³²⁶ Ayodele, S. (2012). Fuel Subsidy Removal in Nigeria: Shortage of smuggled petrol called “Kpayo” in Benin, Vanguard Newspaper of January 10.

³²⁷ Akhaine, O.S. (2010). Nigeria: Politics and the End of Oil. Review of African Political Economy, Vol. 37, No. 123, pp. 90-91.

³²⁸ Houssou, B. Attisso, J.B. and Aliyou, D. (2012). Fuel Smuggling in Nigeria, Benin and Togo: An Intractable Illicit Trade (available at: www.nigeriainfos.blogspot.com/2 – accessed last on 23 May, 2016).

³²⁹ Onuoha, F.C. (2012). Oil Pipeline Sabotage in Nigeria: Dimensions, Actors and Implications for National Security. African Security Review, Vol.17, No.3. Institute for Security Studies.

They always take the opportunity of cheap and subsidized Nigerian petrol before returning to sell it at a rate that undercuts official price in Benin's filling stations.³³⁰ Why the activities of oil smugglers are prevailing is because the illegal petrol trade provides valuable jobs in these countries where many people earn less than \$1 a day.³³¹ Every morning a flotilla of small boats approach the Togolese coast, laden with Nigerian petrol in jerry cans which are thrown overboard and towed back to the beach by swimmers, thereafter, the “precious liquid” is disposed of in the capitals of Lomé, Ghana, Burkina Faso and even Mali.³³² The sea is also a lucrative route for illicit trade in Nigerian petroleum products to West African countries and because of the sophisticated nature of the operation of smugglers they are hardly noticed by the Nigerian security agencies. Petrol bought legally in Nigeria is loaded onto boats and sail to Togo under the cover of the night.³³³ On a narrow and sandy strait in Togo, dozens of men, women and children plunge into the ocean and return with numerous containers which have been towed to shore by swimmers (See Appendix 2).³³⁴

Smuggling has reached an unprecedented level with the boom in global crude oil prices since 2008, which has further encouraged multinational oil companies to be involved in the elaborate smuggling network that cause serious

³³⁰ Houssou, B. Attisso, J.B. and Aliyou, D. (2012), op. cit.

³³¹ An interview granted by Olanrewaju, Sagir Musa, The Commander of the Joint (Army/Police) Force which ensures the security of the oil region of the Nigeria Delta to Dauoda Aliyou, a journalist working with African Investigative Reporting in Benin in 2012

³³² Charlotte, B. (2012). Subsidies by Lagos lead to flourishing demand for illegal exports Trade in smuggled fuel from Nigeria oils economies of west Africa, Guardian Newspaper of 10th October (also available at: www.guardianweekly.co.uk, last visited, May, 2014).

³³³ Akov, E.T. (2015), op. cit.

³³⁴ Appendix 2 pages 344 show methods adopted by smugglers of petroleum products out of Nigeria to other neighbouring countries.

problem for Nigerian economy. However, there are some Nigerians that are also actively involved in sabotaging the economy through illicit smuggling of petrol by sea to neighbouring West African countries.³³⁵ In November 2011, Benin's Finance Minister acknowledged that more than three-quarters of petrol consumed there was illegally imported from Nigeria. In Togo, with population of 6 million people, a 250-litre barrel sells for \$300, a small fortune in a country where about two-thirds of the populations live in poverty.³³⁶ The various International Agencies, particularly the International Monetary Fund, issued series of advice to Nigerian Government to end its system of subsidies, which had cost the nation \$17bn in 2011.³³⁷

In the Niger Delta area, oil smuggling and illegal bunkering activities flourish with the knowledge of authorities at both the State and the Federal levels who connive with foreigners, mostly Ghanians in the operation.³³⁸ Many of the security agencies that secure the boarder areas negotiate with the smugglers where vessels belonging to Nigerians carrying crude oil were usually hijacked and re-routed to Tema Ports of Accra for discharge. The benefit from the negotiation with the smugglers goes up to their bosses. The major import and export dealers are known but are left untouched because they are protected by politician. These kinds of activities have caused the Nigerian government a

³³⁵ Oshunkeye, S. (2012). At Least, People's Power – Sunday Sun Newspaper, January 15, pg. 71.

³³⁶ Charlotte, B. (2012) op. cit.

³³⁷ Okogu, B. (1993). Issues in Petroleum Product Pricing in Nigeria. *Journal of African Economics*, Vol. 4 No.3, pp.378-405.

³³⁸ Turaki, A.H. (2012). Nigeria Loses N780 billion to Oil Theft Annually. *Daily Trust Newspaper* of 27th June, p.4.

substantial loss of about N780 billion³³⁹ annually (See Appendix 3).³⁴⁰ Methods used in smuggling fuel from Nigeria to Cameroon are mostly by canoes and motorcycles through River Benue and Ibi; and Wukari in the Adamawa axis borders where the products were further transported by trucks and jerry cans using official or unofficial routes.³⁴¹ It is easier to smuggle fuel during the dry season than the raining season because of the terrain of the roads.

Onuoha³⁴² asserted that some independent oil companies in Nigeria are also involved in the smuggling of petroleum products into the country in order to benefit illegally from the subsidy payments by the Federal Government. In collaboration with foreign ships they import large quantity of petrol into the country without following the proper channel in the importation and off loading of the products when they arrive at Nigeria Port (See Appendix 3).³⁴³ These fraudulent companies sometime bring the products through Cotonou and Lome offshore ports under the disguise of subsidy arrangement and transfer the products to smaller ships that later transport them into Nigeria unchallenged, to form part of the products listed to attract subsidy even not officially ordered by the Nigerian National Petroleum Corporation (NNPC). In August 2003, the Navy announced that it had arrested ten foreigners (among them Senegalese, Burkinae,

339 Ibid.

340 Appendix 3 on page 345 shows illegal oil bunkering and smuggling in the Niger Delta Area and Nigeria water ways

341 Turaki, A.H. (2012), op. cit.

342 Onuoha, F.C. (2012). Oil Pipeline Sabotage in Nigeria: Dimensions, Actors and Implications for National Security. African Security Review, Vol.17, No.3. Institute for Security Studies.

343 See Appendix 3, on page 345, op. cit.

Togolese, Ivorians and Beninois) and a number of Nigerians for involvement in oil smuggling, and seized four ships.³⁴⁴

There are several supply sources in Nigeria: there are exporters to Benin who buy the product by tankers from filling stations in Nigeria; there are those who fraudulently obtain it at the official refineries; there are others who obtain their supplies from clandestine refineries which exist all over Nigeria and siphon the crude oil from the pipelines or simply operate their own wells on land. The fuels smuggled from Nigeria to Benin are sent to several depots located along the Benin-Nigeria border that send their vehicles normally without number plates to take delivery of the products in the middle of the night through the porous routes without being challenged by custom officials.³⁴⁵

Nenpomiyi³⁴⁶ asserted that factors that contribute to smuggling of petroleum products to neighbouring countries is the distribution margin the government offers to marketers which are too low for them to replace their ageing capital assets. Therefore prices fixed below the market clearing level in Nigeria does not signal to consumers the real cost of energy use while on the other hand, it does not allow suppliers to receive sufficient returns to maintain their infrastructure as well as expand capacity. Further, the regime where prices of petroleum product are administratively determined by the government in Nigeria

³⁴⁴ Onuoha, F.C. (2012) op. cit.

³⁴⁵ Brice, H., Jean-Baptiste, A. and Daouda, A. (2012). Fuel Smuggling in Nigeria, Benin and Togo: An intractable illicit trade. Available at: <http://nigeriainfos.blogspot.com/2> (last visited April 26, 2013).

³⁴⁶ Nenpominyi, S.A. (2012). The Political Economy of Oil Deregulation in Nigeria's Fourth Republic: Prospects and Challenges. *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)* 3(3): 193-198.

had greatly precluded private sector participation in the refinery segment in the downstream sector. In order to recoup investment these marketers smuggle the products to neighbouring countries where prices are much higher, thereby causing scarcity and higher prices that are more than double the official rate.

Another reason why oil crime flourishes in the country is the current means of oil resource rights ownership, caused by extreme dependence on crude oil. Moreover, Section 44(3) of the 1999 Constitution (as amended) vests ownership of oil as property of the state. Secondly, there is lack of enforcement of the stipulated penalty for oil crime under the Petroleum Production and Distribution (Anti-Sabotage) Act, while punishment provided in the Petroleum Act is paltry and does not accord with modern reality, being inconsistent with the scope of the crime sought to be deterred. This contributes to the impunity with which the regulations are flouted. Even the Amnesty Programme introduced by the Federal Government in the Niger Delta region in 2009 did not reduce the stealing of crude oil by militant youths in the region.

3.4 Political Factors

Balogun³⁴⁷ observed that the economic policy of removal of oil subsidy is largely explicable in terms of the Nigerian masses' loss of trust in the government's competence and supposed good will. Two issues are the main focus in which the author laid his emphasizes: "trust" and "goodwill." In this respect,

³⁴⁷

Balogun, J.B. (2012). Removal of Subsidy: A Question of Trust. *Developing Country Studies*, Vol.2 No.5, pp.95-102.

Salami and Kehinde³⁴⁸ observed that governments in developing countries often find it difficult to implement public policies, especially as outcomes are often perceived to be at variance with public interest by a number of contending political forces including the civil society, Non-Governmental Organizations (NGOs), workers unions, the press and academia. Therefore, increasing prices of petroleum products in the downstream sector often tends to be politically costly, which always result to civil disorder, protests and strikes because under a regulated environment, consumers tend to see domestic prices as under the control of government and so blame it for any slight adjustment in price in spite of higher international price of crude oil.

Politics play an important role as a determinant factor, especially internal factors, in explaining increase in the price of petroleum product in the downstream sector in Nigeria. An election year provides a great opportunity to critically examine key policies of successive administrations if the people have not witnessed meaningful developments or policies that are introduced not working. One of such policies that have received public debate is the uniform pricing policy or appropriate pricing of petroleum products.³⁴⁹

Section 6(1) of the Petroleum Act³⁵⁰ provides that: “The Minister may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any

³⁴⁸ Salami, O. and Kehinde, A.A. (2010). The ‘War’ of Appropriate Pricing of Petroleum Products: The Discourse of Nigeria’s Reform Agenda. *Linguistik Online* 42, 2/10.

³⁴⁹ Ibid.

³⁵⁰ Cap. P.10, Vol.13, Laws of the Federation of Nigeria, 2004.

particular part or parts thereof.” Similarly, the Petroleum Products Pricing Regulatory Agency (PPPRA) Act³⁵¹ provides in Section 7(a) that: “The functions of the Agency are to determine the pricing policy of petroleum products.” There is nothing in these sections or any provisions of these Acts that allow government to subsidize petroleum products. Moreover, the National Assembly has not designated petroleum products an essential commodity under item 62(e) of the Exclusive Legislative List of the Constitution to make the Price Control Act applicable in controlling the price of petroleum products. So on what basis is government subsidizing petroleum product in the country?

Sections 88(1)(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that:

- (1) Each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into – (a) any matter or thing with respect to which it has power to make laws, and (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for – (i) executing or administering laws enacted by National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.
- (2) The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to –(a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws, and (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

³⁵¹

Cap. P.43, Vol.14, Laws of the Federation of Nigeria, 2004

The above provisions of the Constitution cannot be faulted because the Minister of Petroleum Resources is to “fix” the price at which petroleum products are to be sold instead of deregulating their prices. The National Assembly therefore has a constitutional responsibility through resolution in directing the Minister of Petroleum Resources to perform his statutory responsibility. According to Nenpomnyi,³⁵² oil is regarded as both an economic and a political commodity, which explained why key policies of government that has to do with deregulation of prices of petroleum products in the downstream sector have received wider debate both by the labour unions and other pressure groups including political opposition parties in the country.

One issue that attracted debate in recent years is that of “appropriate” pricing of petroleum products or removal of fuel subsidy, which has always been a controversial public policy issue in Nigeria. Successive governments have been grappling with this problem to no avail. Like most other public policy issue, there seems to be no generally accepted solution because of interplay of politics and economics. The Federal Government maintains that petroleum products subsidy has increased significantly in the past decade even though the prices of petroleum products sold in the downstream sector has not witnessed any significant increase. The problem is that the prices of petroleum products are

³⁵² Nenpomnyi, S.A. (2012). The Political Economy of Oil Deregulation in Nigeria’s Fourth Republic: Prospects and Challenges. Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS) 3(3): 193-198.

administratively determined and do not reflect true supply cost and the forces of supply and demand. So long as petroleum products prices are controlled by government it will continue to grapple with the issue of subsidy and the debate will not end. Political issues that have dominated discussion in Nigeria relate to issue of phase removal of subsidy and politics of deregulation, which always feature prominently during electioneering campaigns.

Other issues that became a political debate relate to that of subsidies on petroleum products and corruption that have characterized payment on subsidy claims to oil marketers.³⁵³ The main issue here is that subsidy on petroleum products are regarded as a welfare package by the government to the people, therefore its removal will offend Section 16(2) and 41 of the 1999 Constitution (as amended). According to Balogun,³⁵⁴ the complexity inherent in the idea of removal of subsidy on petroleum products, at least from the point of view of the ordinary Nigerians, government seems to have chosen the term for obvious reasons. This makes it easy in explaining the nature of corruption that has marred the petroleum sector, which has not only actually made the payment of subsidy on petroleum products burdensome to the government, but also has called for its urgent removal. As the argument for the removal of subsidy on petroleum products goes, it will curb the fraudulent acts being perpetrated by some oil dealers, called “cabals”, who are the sole beneficiaries of the subsidies. Quoting

³⁵³ Akov, E.T. (2015), *op. cit.*

³⁵⁴ Balogun, J.B. (2012). Removal of Subsidy: A Question of Trust. *Developing Country Studies*. Vol. 2 No.5: ISSN: 2224-607X.

from the opinions expressed by Oguntuase,³⁵⁵ two major problems were identified to be associated with subsidy claims by oil marketers:

The first is fraudulent payment of subsidy on premium motor spirit (PMS). The product is fraudulently certified as imported into Nigeria but is actually diverted to other countries in West Africa..... They not only collect the subsidy (which actually is outright theft), they also connive to collect demurrage on products that really never entered the Nigerian market. The reality is that what we actually consume in Nigeria may not be up to half of what the records or statistics say we consume. The second is bridging system whereby products are moved by road across depots as may be permitted in what was meant to be exceptional cases such as when repair is being carried out on the pipeline or at a depot. Over time and driven by fraudulent intent, what was designed to augment became the routine practice. Products would be released from Atlas Cove in Lagos ostensibly for bridging to say Kano or Sokoto but would actually be sold at nearby stations while the documentation is perfected and bridging allowance paid.

In pointing out these anomalies in the downstream oil industry, Chimezie³⁵⁶ and Agbon³⁵⁷ argued that there was nothing like subsidy on petroleum products, and in fact government is subsidizing inefficiency and corruption. Similarly, the Nigerian Labour Congress (NLC) and other pressure groups argued that it is the responsibility of government provides social welfare services to her citizens and removal of subsidies on petroleum products contradicts Section 16(1)(b) and (c) of the Constitution.³⁵⁸

In 1999 the new civilian regime in Nigeria inherited the downstream oil industry that was characterized by under-funding and inadequate maintenance of

³⁵⁵ Oguntuase, B. (2012). Removal of Subsidy s Good for Nigeria (available online: www.nigerianpilot.com/index.pbp).

³⁵⁶ Chimezie, D. (2013). Importation Pricing of Petroleum Products in Nigeria: The Shame of a Nation. The Economist Nigeria (available at: www.theeconomistng.blogspot.com)

³⁵⁷ Agbon, I. (2011). The Real Cost of Nigeria Petrol. (available at: www.saharareporters.com). Agbon was the former ASUU Charman, University of Ibadan.

³⁵⁸ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

the supply and distribution system. The effect of the neglect of the sector was the rampant petroleum products shortages which were experienced in the country almost on a daily basis. The shortages in products supply also gave rise to selling the products on the streets and highways by individuals, popularly called “black market,” thereby creating artificial scarcity and increase in prices of petroleum product beyond government control prices. The adjustments in price of petroleum products were justified for the reasons of high spot market price of crude oil and the need for higher margins for the Nigerian National Petroleum Corporation (NNPC) to meet operation and capital cost. The increase in price of petroleum products by the Federal Government witnessed strike actions by the Nigerian Labour Congress, which was viewed as politically motivated.³⁵⁹

Since then the fuel subsidy debate or petroleum products price increase has been overtaken by politics with proponents and opponents adopting a “war” approach, which is based on the assumption that all public issues are political. Thus, since politics is about power grab – the power to make decisions, to control resources and to control other people’s behavior and decisions – the proponents and opponents of fuel subsidy seek to gain power by trying to “manufacture” the consent of the public and decision-makers by presenting their beliefs and positions as the “common sense” or dominant one. They do so by the careful, selective and deceptive use of language. This is why they often employed

³⁵⁹

Chimezie, D. (213). History of fuel price increase in Nigeria (available at: <http://www.economicstng.blogspot.com>).

polarizing language or expressions to present their case while ignoring the “pure” economics of the issue.³⁶⁰

The Federal Government representatives have been using expressions to steer people to believe that petroleum products are underpriced and that the subsidy is inimical to the economy. In addition, they claimed that fuel subsidy is unsustainable and that the money being used for subsidizing fuel can be used in a better and more effective way to reduce poverty that will benefit the poor. In fact, in 2011, the Federal Government accused the critics of the fuel subsidy removal policy that they have turned the issue into full-scale politics with the sole aim of bringing down the government and that the opponents of fuel subsidy in their closet saw the wisdom in fuel subsidy removal, but they resorted to politicizing the policy when they saw it as an opportunity to bring the government down.³⁶¹

Another factor that played out prominently during the last increase in fuel price in January 2012 was the mass protests by a group of police officers in Lagos numbering about 200 who joined the peaceful demonstration.³⁶² The Federal Government therefore viewed the protest as anti-government and a gang-up ploy with the opposition political parties and Civil Society Organizations to rubbish and bring down the government. The Police Officers that participated in the protest complained that they and their families were among the most vulnerable

³⁶⁰ Emmanuel, O. (2011). The Politics and Economics of the Petroleum Products Subsidy Debate in Nigeria (Part I). International Foundation for Education and Self-Help (IFESH), Scottsdale, Arizona State.

³⁶¹ Statements by President Jonathan and Chairman, Peoples’ Democratic Party (PDP) on cost of subsidies of petroleum products in Nigeria. Nigerian Tribune Newspaper of 11 November, 2011.

³⁶² Didymus, J.T. (2012): Nigeria: Police Officers Protest removal of fuel subsidy (available at: <http://www.digitaljournal.com> – Accessed 14/5/2015).

to the effects of removal of subsidy, including their salary, which was paltry. However, the Assistant Inspector General of Police in charge of Lagos and Ogun States quickly addressed the press to dispel the rumor of the protest (See Appendix 4).³⁶³

According to the position of the Minister of Finance, subsidy does not get to the poor; the middle and upper classes are the real beneficiaries. It is clearly unsustainable. Evidence shows that the price of fuel in Nigeria is below that of African and international average.³⁶⁴ Nigeria, with its large population and its oil base, is comparatively poor, compared to other oil producers. With total crude oil production of approximately 2.5 million barrels per day, Nigeria has a significantly lower GDP per capita. Therefore, there is need to rethink approach to managing the scarce resources to provide services that will target poorer groups and big infrastructure projects, that will make Nigerians better off.

Nwoko³⁶⁵ opined that trade unions and the civil society organizations represents the vanguard of the working class' interest against capitalist exploitation. The Nigeria Labour Congress (NLC) has since the return to democracy in 1999 been the platform for the Nigerian people to query government policies, actions and inaction, not only for the Nigerian working class, but the entire Nigerians people. Such policies include privatization and deregulation of the downstream oil industry. Thus, Nigerian Labour Congress

³⁶³ Appendix 4 on pages 346-348 show pictures of protesters taken to the streets of Lagos and many parts of Nigeria to demand restoration of fuel subsidy.

³⁶⁴ Yusuf, A. (2011). The Nation Newspaper of 5th December, p.8.

³⁶⁵ Nwoko, K.C. (2009): Trade Unionism and Governance in Nigeria: A Paradigm Shift from Labour Activism to Political Opposition. Information, Society and Justice, Vol. 2 No. 2, June, pp.139-152.

(NLC) therefore serves as a credible opposition to anti government policies in the country, through popular street protests and demonstration.³⁶⁶ The series of mass protests and labour unrest that accompanied the countless increase of fuel price in the country was unprecedented, which forced the government to review the price downward. This happened in 2003 when the price of petrol was increased to ₦26 per litre but because of protest against the increase by the Nigerian Labour Congress (NLC), government had to review the price downward to ₦22 per litre. This was the same situation that played out in January, 2012 when government was forced to review the price of petrol it had previously increased from ₦140 to ₦97 per litre after series of consultation between the leadership of the National Assembly and the Nigerian Labour Congress.³⁶⁷

The effect of protests³⁶⁸ by labour and Civil Society Organizations led many economic activities to paralyze as banks and other business centres closed down their activities. Customers who besieged banks after the holidays were disappointed as they were turned back at the gates which were firmly shut. The prices of foodstuffs and other commodities in most parts of the country were also affected, which led to youths in some parts of the country to express their anger and displeasure at the removal of fuel subsidy, with some placards carried by the youth, read: “No to subsidy removal;” “Jonathan, you want to kill Nigerians;” “PDP’s government brings hardship;” “Jonathan, stop deceiving the masses;”

³⁶⁶ Ibid.

³⁶⁷ Okpaga, A., Chijioko, S. and Okechukwu E.I. (2012). Deregulation and Anti-Subsidy Removal Strikes in Nigeria. *Arabian Journal of Business and Management Review (OMAN Chapter)*, Vol.1 No. 7, pp.69-83.

³⁶⁸ Isyaku, M.S. (2014). The Implications of Price Changes on Petroleum Products Distribution in Gwagwalada Abuja, Nigeria. *Journal of Energy Technologies and Policy*, Vol.4, No.7, pp. 1-15.

“remove corruption not subsidy,” among others³⁶⁹ apart from other hilarious and humorous pictures posted to the internet as indicated in (Appendix 5).³⁷⁰

As usual, most filling stations refused to sell to motorists while commercial vehicles that had fuel in their vehicles jacked up their fares.³⁷¹ The few products that were available were diverted to the black markets where prices charged per litre ranged from N300.00 and above.³⁷² These actions are clearly in violation of Section 1 of the Petroleum Production and Distribution (Anti-Sabotage) Act and Section 4(1) of the Petroleum Act, which prohibit the sale or distribution of petroleum products in the country without a licence.

During the organized labour strike in January, 2012 the National Bureau of Statistics (NBS) reported that the country’s economy lost an estimated N207,408.28 billion. The whole and retail sales which contributes about 18% to the Gross Domestic Product (GDP) was worst hit during the strike, recording N86,981 million.³⁷³ The week long protests by Nigerians demonstrated clearly that they cannot be taken for granted and that sovereignty belongs to the people. Defying a court injunction that banned the strikes because it was not related with labour dispute, leaders of the country’s largest trade union has shown to the whole world that the Federal Government cannot be trusted.

³⁶⁹ The demonstration was staged at Sabo-Titi, Mandawri, Taludu and in some other parts of Gwale in Kano metropolis.

³⁷⁰ Appendix 5 on page 349 shows pictures of angry youth demonstrating against increase in price of petroleum products.

³⁷¹ Yinka, F. and Gbenga, A. (2012). Fuel Subsidy Removal – Protest Turn Bloody – NBF News (available at: <http://www.Nigerianbestforum.com>, last visited, September, 2013)

³⁷² Ibid.

³⁷³ Olayemi R.I. (2012). Nigeria Lost N207 billion to strike, Statistics Bureau Says. Daily Trust Newspaper, Business Column of 19th January, p.19.

For the oil and gas sector in Nigeria to satisfy the yearnings and aspirations of the citizenry, the sector should be deregulated and privatized as deregulation and privatization are now global phenomena, which were the off-shoot of economic globalization.³⁷⁴ Many developed and developing countries have experienced one form of economic reforms or the other as a result of the global economic system. However, the attitude of some Nigerians towards deregulation and privatization of the oil and gas industry has been different as many hold the notion that such policies will lead to job losses as well as high cost of living. Moreover, there is no legal framework put in place for deregulation to take place in Nigeria. While the government is bent on reducing or removing fuel subsidy, many people and trade unions do not trust the argument of the government.

In fact, if there is a national referendum of the fuel subsidy issue, the majority of Nigerians are likely to vote against the removal of fuel subsidy. However, out of fear of massive industrial action by the labour unions, the President was remarkably silent on the fuel subsidy issue in the 2012 budget speech he made to the Joint Session of the National Assembly on 13th December, 2011. The next day, the Minister of Finance, explained the exclusion of the removal of the fuel subsidy in the budget, which she said consultation was on-going.³⁷⁵

³⁷⁴ Abu, I. N. and Chidi, O.C. (2012): Deregulation and Privatization of the Upstream and Downstream Oil and Gas Industry in Nigeria: Curse or Blessing? *International Journal of Business Administration*, Vol.3, No. 1, January, p.16.

³⁷⁵ Okpaga, A., Chijioko, S. and Okechukwu E.I. (2012). Deregulation and Anti-Subsidy Removal Strikes in Nigeria. *Arabian Journal of Business and Management Review (OMAN Chapter)*, Vol.1 No. 7, pp.69-83.

Ordinarily, Nigerians would not have worried about the purported hike in price of petrol, if previous exercises had yielded desired results. While many people in the country are already feeling the crunch on their lean pockets as a result of the incessant increase in price of petroleum product others, especially the “oil cabal” are smiling to the banks at the expense of the poor masses. According to Agbon’s³⁷⁶ arguments, there has never been any subsidy, it is only that there is a cabal that have hijacked the Nigerian Petroleum distribution and marketing process thereby inflicting unnecessary scarcity of petroleum products in order to sell it in the black market at a higher price and also make frivolous claims from importation of petroleum products.

Price of petroleum products in some parts of the country varied among the filling stations, from the control price set by government, which was also common with the Nigerian National Petroleum Corporation (NNPC), major and independent marketers. The NNPC mega stations sold the product at the rate of N138 per litre, the major marketers sold between N150 and N160 and the independent marketers sold at between N200 and N400 per litre (See Appendix 6).³⁷⁷ Because of the high increase of pump price there were no many queues at the filling stations. Regrettably, however, Petroleum Product Pricing Regulatory Agency (PPPRA), which is the custodian of petroleum subsidy scheme and the

³⁷⁶ Agbon, I. (2012). The Real Cost of Nigeria Petrol. (available at: www.saharareporters.com/2011/12/15/real-cost-nigeria-perol-dr.izielen.agbon), last visited January, 2014.

³⁷⁷ Appendix 6 on Page 350 show different prices displayed by filling stations, including NNPC Mega Station.

Department of Petroleum Resources (DPR) failed to block all loopholes that were exploited by a number of petroleum product traders from abusing the scheme.

The import of the above summary of adjustment of domestic petroleum products prices over the years clearly revealed that members of the opposition political parties regard the policies and decisions as politically motivated; with active support by International Monetary Fund (IMF) and World Bank imposed policies.³⁷⁸ The debate by the public against subsidy removal has not stopped any government in Nigeria to increase price of petroleum products. This is because most actions of government on fuel price increase are shielded by the Constitution³⁷⁹ and any comment by the public on that are regarded as advisory.

3.5 The State of the Economy

The petroleum industry in Nigeria has brought unprecedented changes to the nation's economy, particularly in the past five decades when it replaced agriculture as the cornerstone of the Nigeria economy.³⁸⁰ The oil industry has risen to the commending heights of the economy, contributing the lion share to gross domestic product and accounting for the bulk of Federal Government revenue and foreign exchange earnings since early 1970.

³⁷⁸ Baig, T., Amie, M., David, C. and Joseph, N. (2007). Domestic Product Price Subsidies: Recent Development and Reforms Strategies. International Monetary Fund (IMF) Working Paper No. WP/07/71, March, Fiscal Affairs Department IMF, Washington, DC, USA.

³⁷⁹ Section 16(2) of the 1999 Constitution gives the President the backing to withdraw fuel subsidy because issues regarding fuel subsidy are normally determined administratively

³⁸⁰ Aigbedio, I. and Iyayi, S.E. (2007). Diversifying Nigeria's Petroleum Industry. International Journal of Physical Sciences, Vol. 2(10), pp.263-270.

Nigeria at independence in 1960 was largely a producer and net exporter of primary agricultural products, which were cocoa, rubber, palm oil, groundnut, cotton and palm kernel. The existence of mining and quarrying activities was of negligible percentage and never counted for the economy as a whole. In other words, agricultural produce and raw materials constituted the sole foreign exchange earner for the country, which accounted for 69.4% of its total Gross Domestic Product (GDP) in 1963 and 1964.³⁸¹

The trend of having agriculture as the main foreign exchange earner for Nigeria stopped in the early 1970s when the country was suddenly awash with petrol dollars arising from the sell of crude oil in the world market. From 1972 onwards, oil gained ascendancy over all other commodities as the largest contributor to the GDP, and also as a major foreign exchange earner. The revenue from oil keeps on increasing from low price of \$3.8 per barrel in October, 1973 to a skyrocketing price of \$14.7 per barrel in January 1974 and further rose to a high level of \$145 per barrel in the international market in the year 2005, which Nigeria was said to have earned about \$600 billion from oil alone.³⁸²

Akinboye³⁸³ asserted that the increase from oil revenue led to rapid expansion in economic activities. By 1978 oil accounted for 89.1% of Nigeria's

³⁸¹ Olaloku, F.A. (1979). *Structure of the Nigerian Economy*, London, p.8. Also see Solomon O. Akinboye (2008): *Globalization and the Challenge for Nigeria's Development in the 21st Century* (available at: www.globalization.icaap.org/content/v7.1).

³⁸² Okonta and Douglas, *op. cit.*

³⁸³ Akinboye, S.O. (2008). *Globalization and the Challenge for Nigeria's Development in the 21st Century* – (available at www.globalization/caap.org/country/v7.1 – accessed on 10/5/2011).

export as against agriculture, while from 2000 to date it accounts for 90% of total foreign exchange earnings of Nigeria. In 1999, oil and gas contributed 36.5% of the GDP, while on the other hand agriculture (including livestock) accounted for 32.8%.³⁸⁴ Since the advent of oil, Nigeria's commodity pattern has been a 'monocultural' one with oil being the only product the country depends upon for its foreign exchange earnings thereby weakening other sectors of Nigeria's economic development.

The heavy reliance by Nigeria on oil and gas production according to the World Bank Report³⁸⁵ accounts for more than 90 per cent of export earnings and 85 per cent of government's revenues, which has exposed the economy to the boom-and-burst cycles and the concomitant unstable and unpredictable volume of revenue receivable by the government. The Nigerian National Petroleum Corporation began to experience a decline from revenue received from oil as result of falling oil prices and declining crude production, which the government always projects its budget estimates based on benchmark price of crude oil at the International market. Therefore, any slight drop in oil revenue since then leads to immense distortion in the country's economy development.³⁸⁶

As result of the above factors and the low performance of the local refineries to meet domestic demand for petroleum products in the downstream

³⁸⁴ Anya, O.A. (2001). The Challenge Before the Economy. The Post Express, Lagos, Nigeria, 7th May.

³⁸⁵ World Bank (2011). List of Economies. World Development Indicators, Washington, D.C, 11. Retrieved from: <http://siteresources.worldbank.org/Datastatistics/Resources/Class.xls> – accessed last 5/10/2013)

³⁸⁶ Adedipe, B. (2004). The Impact of Oil on Nigeria's Economic Policy Formulation. Text of a Paper presented at the Conference on Nigeria: Maximizing Pro-Poor Growth: Regenerating the Socio-economic Database, Organized by Overseas Development Institute in Collaboration with the Nigerian Economic Summit Group, 16-17 June.

sector, government depends mostly on importation of refined products at international prices, which has serious macroeconomic imbalances over the last few years. To reverse this trend, the option left for government is to increase the pump price of petrol in the downstream sector on regular basis, which have negative consequences on supply and distribution of the commodity. The shortage in supply led to scarcity, hoarding and diversion of petroleum product to the black market. The effect is that products were sold at prices higher than the one fixed by the government. This in turn leads to high cost in living and rising inflation and instability in foreign exchange market.

The introduction of Structural Adjustment Programme (SAP) in 1986 had further weakened performance of Nigeria's economy as result of the huge debt owed to its International creditors, which the country was using 44% of its oil revenue to service.³⁸⁷ This has caused dramatic drop in real wages for majority of workers and lay off which incited public protests. Another factor that necessitated government to review the price of petroleum products almost on regular basis was the challenges posed by globalization, which demand that the government embark on deregulation and liberalization policy in order to open the downstream sector to new markets that will attract new investments.

The crisis that engulfed the inefficient operation of the four refineries and the high rate of corruption in the downstream oil sector soon saw the government spending huge sum of money in financing subsidies of petroleum products

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Oshio, P.E. and Stewart, N.F. (2006). The Legal and Institutional Frameworks of Privatization in Nigeria: a Discourse. Unpublished LL.M Dissertation submitted to the Faculty of Law, University of Benin, Benin City, Nigeria.

instead of using this amount to invest in other sectors of the economy that would later provide basic welfare services to the populace.³⁸⁸ While government has the good intention of increasing the price of fuel in the downstream sector in order to improve the state of the economy it has rather attracted protests and condemnations. The mass protests, organized by the labour unions always forced the government to roll back its decision on subsidy removal and deregulation. On the whole, the crises in the downstream sector have negative impact on the lives of the people because whatever happens in the oil sector affects all other sectors of the economy and by implication, the macro-economic policies in the country.

Nigeria's economy, like the other developing countries, use large amounts of energy in its production sectors as intermediate input especially in the manufacturing and transportation sectors. The expansion in these sectors has increased the final consumption of petroleum products by local industry, transport and household sectors, which absorbed nearly one-half of the total production.³⁸⁹ The direct impacts of price adjustment were also felt by the manufacturing sector as they have to purchase petroleum products at high prices as direct inputs for production of goods and services, which in turn were passed to consumers at high prices.

³⁸⁸ Nwokeji, G.U. (2007). The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions. Prepared in Conjunction with an Energy Study Sponsored by the James A. Baker III Institute for Public Policy and Japan Petroleum energy Centre, Rice University – March.

³⁸⁹ Onakoya, A.B., Onakoya, A.O., Olalekan, A.J. and Odedairo, B.O. (2013). Energy Consumption and Nigerian Economic Growth: An Empirical Analysis. European Scientific Journal, Vol.9 No.4, pp.25-40.

A report submitted to the International Monetary Fund³⁹⁰ indicates that there are two side effects on the removal of subsidy on petroleum, which affect both the consumers and industries. Under normal circumstances, manufacturers tend to increase the price of their goods and services as their cost of production increases; thus the increased cost directly affects the consumers. If the increase in the cost of production is small, manufacturers will normally absorb part of the cost, thus narrowing profit margins. However, the latter scenario seldom happens because firms are not willing to narrow their profit margins. As a result of higher prices of goods and services, inflation rate is expected to increase. However, the effects of increase in petroleum prices on sectoral costs of production will depend on interdependencies of industries in the economy. Industry that consume large amount of petroleum based energy as inputs in their production processes are expected to incur higher production costs.

As a result of epileptic power supply an increase in the price of fuel invariably increase the cost of production in Nigeria. Government decided to introduce uniform pricing policy under S. 6(1) of the Petroleum Act and at the same time subsidize the cost of a litre of petrol sold to all consumers. The idea was to keep the cost of production by industries low and also reduce inflation in the country. Coupled with other factor and increase in demand of petroleum products in the country, it was discovered that the issue of subsidy was becoming unbearable in implementation, which the Federal Government decided to shift to

³⁹⁰ Granado, J.A., Coady, D. and Gillingham, R. (2010). The Unequal Benefits of Fuel Subsidies: A Review of Evidence for Developing Countries. A Report Prepared for International Monetary Fund (IMF), Working Paper No. WP/10/202.

other alternatives, such as deregulation, liberalization and privatization in the downstream oil sector.

According to Onwioduokit and Adenuga,³⁹¹ the estimated daily crisis-free demand for petroleum products in Nigeria today, is 30-35 million litres of petrol (PMS), 12 million litres of kerosene (DPK), 18 million litres of diesel oil (AGO) and 780 metric tons (1.4 million litres) of cooking gas (LPG). The estimated amount of crude oil required daily for domestic refining that would satisfy domestic consumption in Nigeria adequately is about 530,000 barrels per day (bbl/d), which is 85,000 bbl/d more than the combined refining capacities of all the state-owned refineries in the country.³⁹²

This negative trend has persisted despite various economic reforms embraced by successive Nigerian Government since 1980, such as Structural Adjustment Programme(SAP), privatization, liberalization and deregulation policies in the downstream oil sector. Unless the country deepens its economic reform initiatives to include effective diversification of the petroleum sector, the performance of the economy will continue its unimpressive trend.

With infrastructural facilities in the downstream sector which is not able to meet demand of consumers, government is faced with two options; either to repair and expand the existing refineries in the country so that they can produce refined petroleum products that will satisfy consumers' demand or import the

³⁹¹ Onwioduokit, E.A. and Adenuga A.O. (2001). Empirical Analysis of Demand for Petroleum Products in Nigeria. International Economic Relations. Central Bank of Nigeria. (Available at: www.cenang.org, accessed last on 5/6/210).

³⁹² Umeanozie, A.O., Nduka, E.K. and Chukwu, J.O. (2014). Subsidies and the Demand for Petroleum Products in Nigeria. International Journal of Sustainable Energy and Environmental Research, 3(2): 100-109.

refined products from outside the country and subsidize it to consumers in the downstream sector. However, government's decision to adopt the later option of importation of refined products at international price is what is causing huge amount of subsidies every year. This extreme situation has put government under pressure by the organized labour whose demand was that the refineries should be repaired instead of importation of refined products. What has further given credence to labour demand is the high rate of corruption on subsidies claims by marketers that has further drained the purse of government and any attempt to pass the cost in form of high prices on petroleum products to consumers are vehemently resisted by the public.

All along, the organized labour in the country has been the rallying vanguard against governments' incessant fuel price increase and always responds immediately whenever there is increase in price of petroleum products in the country.³⁹³ Strikes by organized labour against increase in price of petroleum product also have negative effect as economic activities are normally paralyzed during these periods as government offices, industries, banks, markets and public vehicles are off the roads and streets, leading to increase in transportation fares and food prices in the market, shooting up cost of production and distribution in the economy.

The massive response to strike calls by organized labour shows how angry the masses were against fuel price hike and the devastating effects the policies

³⁹³ Okpaga, A., Ugwu, S.C. and Eme, O.I. (2012). Deregulation and Anti-Subsidy Removal Strikes in Nigeria. *Arabian Journal of Business and Management Review (OMAN Chapter)*, Vol. 1 No.7, pp. 62-83.

will affect them.³⁹⁴ Apart from the negative impact of increase in fuel price on goods and services, fuel scarcity causes severe disruption to traffic in major cities as result of obstructions arising from queues by motorists at filling stations. In order to avoid the long queues at the filling stations some motorists prefer to stay at home or resort to patronizing “black markets.” The effect of all these are that it lures many unscrupulous Nigerians into nefarious activities, which has caused many the loss of lives through fire accidents.³⁹⁵

In all the periods of fuel increase there were long queues of vehicles in most filling stations in all major cities of the country including Kaduna, Lagos and Abuja as shown in the pictures in (Appendix 7).³⁹⁶ Motorists across the country often grapple with acute fuel shortages of angry car owners waiting for hours outside those petrol stations that have few supplies. This situation which was common during the military era in the country re-emerged and had further worsen insecurity, infrastructure decay, unstable power supply; all of which have pushed the cost of doing business in the country.³⁹⁷ As usual, operators of filling stations have seized the opportunity to fleece motorists by compounding hardship to them as they normally increase the price of petroleum product higher than the official price.

³⁹⁴ Oghojafor, B.E.A., Anyim, F.C. and Ekwoaba, J.O. (2014). The Aftermath of the Conflict on fuel Subsidy Removal in Nigeria. *Journal of Politics and Law*, Vol. 7, No. 1.

³⁹⁵ Akpoghomeh, O.S. and Badejo, D. (2006). Petroleum Product Scarcity: A Review of the Supply and Distribution of Petroleum Products in Nigeria. *OPEC Energy Review*.

³⁹⁶ Appendix 7 on pages 351-352 Show effects of scarcity of petroleum products on lives and properties.

³⁹⁷ Badejo, A., Ameto, A. and Hope, I. (2011): Fuel Scarcity Cripples Economic Activities in Abuja, Kano, Jos and Kaduna (available at: <http://www.businessdayonline.com/NG>).

Notwithstanding the threat by the Federal Government to sanction petroleum dealers that indiscriminately hike pump price above official rate, some marketers have continued to sell petrol (PMS) at about N120 and above per litre in 2012.³⁹⁸ Many observers believe, that the trend by marketers to break free from government regulated price would unofficially herald a partial deregulation of the petroleum downstream sector. The new unofficial deregulated regime is being foisted on the nation by market forces, being played up by the lingering fuel-supply crisis.

News reports from Nigerian national dailies reported that³⁹⁹ rationing of premium motor spirit (PMS) is common by petroleum dealers and filling station operators in the country. This is done out of fear of exhausting the stock, thereby leading to artificial scarcity and increase in prices of petroleum products and transport fares to as much as 50%. Within the Abuja metropolis, a litre of fuel in the black market goes for N800 as against the official price of N97 in July, 2013. The situation is not different in Plateau, Kano, Kaduna, Zaria, Niger and the entire Northern and some Southern States of the country, where a litre sells for between N135 in the filling stations and N850.00 in the black market.⁴⁰⁰ Even the Nigerian

³⁹⁸ Monica, M. (2012). Nigeria Fuel Protests: Two killed and Dozens Wounded as Police Open Fire. (available at www.guardianng.com – last accessed, 9 January, 2012).

³⁹⁹ Mohammed, H., Okeke, F, Shosanya, M., Mohammed, A., Hamagam, A.M., Isuwa, S. and Yaya, H.G. (2013). Fuel Scarcity Resurface in Abuja, Kano, Others. (Available at: www.dailytrust.com, last accessed 2/7/2013).

⁴⁰⁰ Anyadike, N.O. (2013). Assessment of the Implication of Full Scale Deregulation of the Downstream Oil Sector on the Nigerian Economy: The Neoliberalism Approach. *Global Journal of Political Science and Administration*, Vol. 1, No. 2, pp.23-48.

National Petroleum Corporation (NNPC) Mega stations in some states sell for between N100 and N120.00 per litre in July, 2013.⁴⁰¹

Scarcity of petroleum product in the country some times occur as result of the inability of Government's to pay subsidy claims to oil marketers in time, which has made it difficult for them to import products into the country. With the current daily consumption of about 35,000 metric tons per day, about 1,050,000 metric tons of premium motor spirit (PMS) is consumed monthly, which translates to about \$1,050,000,000 monthly at an average price of \$1,000 per metric ton. The subsidy element, which is about 35 percent, will bring the average amount per month to about \$367,500,000 (N60,637,500,000).⁴⁰²

Transportation of petroleum products by road truck creates numerous opportunities for hazardous materials to be accidentally released into the environment. Most of the accidents in the transportation of petroleum products were caused by human factors mainly dangerous driving. More than 70% of the accidents resulted in loss of containment leading to spills, fires and explosions. 81% the accident resulted in injuries.⁴⁰³

The ugly situations that normally accompany scarcity of petroleum products are disasters; such as fire outbreak and road accidents, which are as result of some marketers and black market dealers who struggle to make huge

⁴⁰¹ Anyadike, N.O. (2013), op. cit.

⁴⁰² Obiora, A. and John, O. (2012): Fuel Scarcity Bites Harder in Abuja, Friday, 17 August (available at: www.guardiannewsngr.com, last visited in January, 2013).

⁴⁰³ Ambituuni, A., Amezaga, J.M. and Werner, D. (2015). Risk Assessment of Petroleum Product Transportation by Road: A Framework for Regulatory Improvement. Safety Sciences, Vol. 79, pp. 324-335. Elsevier Publication.

profits during this period without minding the consequences of their actions. Such incidents are common with trailers' drivers who without minding traffic regulations try to outsmart others in the business by excessive speed that often result to accidents. On 28 April 2009 in Ibadan Oyo State a trailer loaded with fuel crushed at least 10 vehicles that were on queue at a filling station. The same situation also occurred in Ojo Expressway on 28 May 2011 where a fatal accident involving a tanker fully loaded with petroleum products crushed a nursing mother and 25 people including 27 vehicles that were burnt where the accident occurred.⁴⁰⁴

In the same vein, many motorists have to travel several kilometers out of their locations in search of petroleum products with jerry cans, kegs and even buckets, just any container to store fuel, leaving commuters to be stranded in parks and bus stops. Apart from long queues at the filling stations, physically-fit but unemployed youths who could muscle their way through barricades at the filling stations often force petrol station attendants to serve them fuel at the expenses of those on queue thereby causing scuffling and fight among motorists that have been waiting for hours to buy petroleum product.

One of the problems that have characterized the uniform pricing of petroleum products since 1973 is the issue of subsidies payment on imported petroleum products. Adagunodo⁴⁰⁵ observed that the subsidy payment in 2008

⁴⁰⁴ Adesuyi, G. (2011). Nursing Mother, 25 Others, 27 Vehicles Burnt in Fire Incident. (Available at: www.guardiannewsngr.com, visited last on 28th May, 2011).

⁴⁰⁵ Adagunodo, M. (2013): Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. Op.ct.

alone was 150% of capital expenditure of the Federal Government, which was about 400% of the budgeted capital expenditures for Human Capital Development. The landing cost of petrol plus margin as at May 2012 was ₦169.13, which means that government was subsidizing petrol at the rate of ₦72.37 per litre given the fact that the product was sold for ₦97 per litre to consumers at official rate. The subsidy payment in 2010 amounted to ₦1.25 billion and the ₦656.3 billion allocated to subsidy was the second largest allocation in 2012. Also, provision of ₦231.8 billion was made for the payment of the 2011 subsidy arrears, which exceeded total allocation to priority sectors of the economy.⁴⁰⁶

Although, Nigeria's oil industry began to play a prominent role in the economic life of the country at the end of the Nigeria civil war, which took place from 1967 to 1977, the discovery of oil has positive and negative impacts on the Nigerian economy. On the negative side, this can be considered with respect to the surrounding communities within which the oil wells are exploited. Some of these communities still suffer environmental degradation, which leads to deprivation of means of livelihood and other economic and social factors. The large proceeds obtained from domestic and export of the petroleum products contributes to the growth of the economy, there are still some loopholes that need to be blocked. Crude oil, no doubt generated a lot of revenue for Nigeria, its effects are still not visible because of mismanagement and absence of judicious use of funds.

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Akov, E.T. (2012), op. cit.

It is regrettable that despite the seemingly total reliance on oil and gas as the mainstream of the Nigerian economy, the future of this sector is still uncertain.⁴⁰⁷ Over the years government has used regulatory authorities, laws and reforms to ensure the efficiency and effectiveness of the oil and gas sector, still, the Nigerian oil and gas industry is bedeviled by insincerity, fraud and corruption, oil theft, subsidy scam, gas flaring, environmental hazards, fluctuations in world oil price, pipeline vandalism, illegal refining of oil, under utilization and collapse of refineries, importation of refined petroleum products, marginalization of host communities and a host of other issues.⁴⁰⁸

The effect of fuel price increase has rather imparted negatively on the growth and development of the Nigerian economy, which in 1978 contributed to the country's Gross Domestic Product (GDP) in a downward trend.⁴⁰⁹ In 1978 when fuel price was increased by 15%, GDP fell to 5.8% and in 1982 fuel price rose to 20 kobo, while GDP fell by 0.2%. In October 1994 fuel price fell from ₦15.00 to ₦11.00 per litre and stood till 1998, while GDP fell by 0.6% and rose to 2.6% in 1995.⁴¹⁰

In 1982 when fuel price was increased to 20 kobo, total federally collected revenue fell to ₦11,764 million and in 1986 fuel price rose to 39½ Kobo, government revenue fell to ₦12,383 million. However, there was a decrease in

⁴⁰⁷ Mgbame, C.O., Donwa, P.A. and Osunbor, E.O. (2015). Nigerian Oil and Gas Sector Background, Reform Efforts and Implication for Economic Growth. *International Journal of Multidisciplinary Research and Development*. Vol. 2, Issue 9, pp.508-515.

⁴⁰⁸ Akov, E.T. (2012), op. cit.

⁴⁰⁹ Iyoha, M.A. (2003): An Overview of Leading Issues in the Structure and Development of Nigerian Economy Since 1960: In: Iyoha, M.A. and C.O. Itsede (eds.), *Nigeria Economy: Structure, Growth and Development*, Benin City: Mindex Publishing, pp. 3-28.

⁴¹⁰ Iyoha, M.A. (2003), op. cit.

fuel price in 1993 and 1994 to ₦3.50 and ₦11.00 per litre respectively, while government revenue rose to ₦138,874 million and ₦201,911 million respectively. In 1998, fuel price rose to ₦25.00 per litre, government revenue fell to ₦464,609 million.⁴¹¹ This can be attributed to labour unrest which has resulted in fall of oil and gas industry activities and consequently affected the revenue that would have accrued to government coffer.

Scholars like Carruth⁴¹² and Davis⁴¹³ examined the effect of increase in fuel price, which contribute negatively on employment either at the short or long run. In Nigeria, unemployment increased as a result of crisis in the downstream oil sector, which in 1982 stood at 4.1% when the price of premium motor spirit (PMS) was increased to 20 kobo and rose to 3.4% from 1986-1990 when the price of PMS was 60 kobo. However, unemployment fell to 3.4%, from 1991- 1992 when the price of PMS was increased to 70 kobo.⁴¹⁴ The negative impact witnessed on unemployment rate in the country from 1986-1990 is attributed to the impact of Structural Adjustment Programme (SAP), which resulted to high cost of production and layoff of staff by companies in Nigeria.⁴¹⁵

3.6 External Factors

⁴¹¹ CBN Report on Fuel Shortage & Prices in Nigeria (1998). Special Economic Review Series, Vol.1, No.1, May.

⁴¹² Carruth, A.A., Hooker, M.A. and Oswald, A.J. (1998). Unemployment Equilibria and Input Prices: Theory and Evidence from the United States. *Review of Economics and Statistics*, 80(4): pp.621-628.

⁴¹³ Davis, S.J. and Haltiwanger, J. (2001). Sectoral Job Creation and Destruction Responses to Oil Prices Changes. *Journal of Monetary Economics*. 48(3): pp.465-512.

⁴¹⁴ Mba-Afolabi, J. (1999). The Oil Price of Hike Blunder, *Newswatch Magazine* of January 18, pp.8-16

⁴¹⁵ Gboyega, A. Soreide, T., Tuan, M.L. and Shukla, G.P. (2011). Political Economy of the Petroleum Sector in Nigeria. The World Bank Policy Research working Paper No. WPS5779.

Timing of increase in price of petroleum products in a reform environment like Nigeria is considered critical and crucial. There are various external factors that determine the prices of petroleum products in the downstream sector in Nigeria. One of such factors is the attitude of Industrialized Nations, called the G8 countries that work intimately with the World Financial Institutions like International Monetary Fund (IMF), World Bank and World Trade Organizations (WTO).⁴¹⁶ They pursue a broad and ambitious agenda that attempt to build international capitalism on the foundations of open world trade and capital flows, privatization, balanced budget, freeing up of exchange controls and similar deregulation and liberalization measures.⁴¹⁷

Ugorji⁴¹⁸ observed that the ideology of deregulation is based on capitalism, while Ezie and Beida⁴¹⁹ observed that deregulation is a concept that emanate from neoliberal school of thought. The ideology and concept of deregulation is one that is base on competition, profit and free market pricing, which opposes regulation. Deregulation, according to this theory have some advantages to be derived from the market system, which are; competition, effectiveness, productivity and efficient service. Privatization would thus, strengthen market forces with some degree of deregulation, economic liberalization and relaxation. However, the Nigerian Labour Congress argued that the policy of deregulation introduced into

⁴¹⁶ Akinboye, S.O. (2008): Globalization and the Challenge for Nigeria's Development in the 21st Century, University of Lagos, Nigeria.

⁴¹⁷ Usman S. (1999): Implications of Globalization for the Nigerian Economy. In: Nigerian Economic Society, *Globalization and Nigeria's Economic Development, Ibadan: NES*.

⁴¹⁸ Ugorji, E.C. (1995). Privatization/Commercialization of State-owned Enterprises in Nigeria: Strategies for Improving the Performance of the Economy Comparative Political Studies: 7(4): 537-560.

⁴¹⁹ Ezie, O. and Beida, O.J. (2014). Nigeria's Downstream Oil Sector Deregulation and Efficient Petroleum Pricing. International Journal of Social Sciences and Humanities Reviews: Vol. 4 No. 4, pp. 84-93.

the downstream oil sector by the Federal Government have some elements of international capitalist imposition, especially the World Bank and International Monetary Fund (IMF), which stipulated economic liberalization and privatization as pre-condition for providing development loans to the less developed countries.⁴²⁰

In actualizing this policy direction as suggested by (IMF) the Federal Government in 2003 started a gradual and pre-determined approach in the adjustment of price of petroleum product in Nigeria in order to build political support, and to allow the public get use to the idea of petrol price changes frequently. The IMF thinking was that a particular period of implementing price increases is more ideal, especially the post-election period, which often offers a useful window for government to push through tough policy measures.⁴²¹

In supporting these arguments, the World Bank⁴²² estimated that about US\$4.2 billion per year or (N654.78) billion was lost in Nigeria oil industry in 1993 as a result of inappropriate pricing, under investment, neglect of maintenance, wrong policies and corruption. Out of these, inappropriate pricing of petroleum products in the downstream sector accounts for a colossal amount of US\$3.3 billion (N514.47 billion).⁴²³ In 2006 when Nigeria was engaging its external creditors for cancellation of the country debts, IMF was advancing arguments

⁴²⁰ Okafor, L. (2012). Deregulation of the Nigerian Downstream Oil Sector, Keeping Faith with a Global Trend. (Available at: [www.pppra-nigeria.org/articledetails.asp? ArticleID=16](http://www.pppra-nigeria.org/articledetails.asp?ArticleID=16) – accessed last 25/8/2013)

⁴²¹ Onyishi, A.O., Eme, O.I. and Emeh, I.E.J. (2012). The Domestic and International Implications of Fuel Subsidy Removal Crisis in Nigeria. Kuwait Chapter of Arabian Journal of Business and Management Review, Vol.1, No. 6. Pp.57-80.

⁴²² World Bank (1993). Nigeria: Issues and Options in the Energy Sector. Report No. 1672 UNI. The World Bank, Washington, D.C.

⁴²³ World Bank (1993), op. cit.

against subsidy with active support from its ally multinational lending club. Government was forced to buy into the two key arguments against subsidy; that it is unsustainable and not pro-poor policy leading to the payment of over \$12 billion to exit the debt owed the Paris Club.⁴²⁴ These points against subsidy have become self serving, because the country was forced to withdraw subsidy on petroleum products by reviewing the price of petroleum product between 2000 and 2004 from ₦22.00 to ₦65.00.

When the Jonathan administration was seeking for re-election in 2011, he came up with the “Transformation Agenda” of the Nigerian economy. Not sooner he secured the mandate of the people that he started removing fuel subsidy on the price of domestic consumption of premium motor spirit (PMS) from ₦65.00 to ₦140.00 per litre in January, 2012. This was import driven that was based on the policy of the World Bank and that of the International Monetary Fund (IMF). This attracted a week-long protest by organized labour and civil society organizations until the price was reduced from ₦140.00 to ₦97.00 per litre. The same situation played out during Obasanjo’s regime when he increased the price of PMS from ₦62.00 to ₦78.00 on the eve of handing over to Umaru Musa Yar’Adua on the 28th May, 2007.⁴²⁵

The pressure on government and the urgent need to finance a number of key national projects were the major driving force that government attempted

⁴²⁴ Manson, N. (2007). Impacts of Petrol Price Subsidy in Nigeria. African Institute for Applied Economics, Enugu, Nigeria (available at: [http://www.aiae-nigeria.org/Publications/Research paper 2.pdf](http://www.aiae-nigeria.org/Publications/Research%20paper%202.pdf))

⁴²⁵ Nuhu-Koko, A.A. (2007). Nigeria’s Unending Fuels Price Crises – Issues and Matters Arising (Part 1 of 5). Available at: www.nigeriavillagesquare.com/index.php?option=com_content – visited last 29/8/2010).

deregulating the downstream oil sector. This is because government long term energy depend on the ability to deliver petroleum products in the domestic markets at a relative cost prices and this can only be attained in an environment where clear rules are set and oligopoly are removed. The main problem here is that there is no law that allows deregulation to take place. Moreover, petroleum products are still regarded as property owned by the State under Section 44(3) of the Constitution.⁴²⁶

Global energy demand is also a strong external factor responsible for increase in price of petroleum products in the downstream sector in Nigeria. When there is increase in energy demand of crude oil in the international market it is bound to have effect in the downstream sector of Nigeria as imported refined product are paid at international prices by the government, which in turn swell the amount of subsidy on petroleum product. The volatility in global economy has manifested in the price of crude oil, which in the last few years has seen a dip to \$40 per barrel in 2009 and a peak at \$140 per barrel in 2008. From the early part of 2015 the price of crude oil continued to fluctuate, which has great effect on national budget.⁴²⁷

According to Onovo⁴²⁸, four major forces impact on the global oil business. The first is politics. Access to energy sources such as oil has become a key

⁴²⁶ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁴²⁷ Mgbame, C.O., Donwa, P.A. and Osunbor, E.O. (2015). Nigerian Oil and Gas Sector Background, Reform Efforts and Implication for Economic Growth. *International Journal of Multidisciplinary Research and Development*, Vol. 2, Issue 9, 508-515.

⁴²⁸ Onovo. (2012). Paper presented by the former Group Managing Director of Nigerian National Petroleum Corporation at the 2012

survival imperative for nations, especially the non-resource rich countries, who are the big energy consumers. Wars are being fought among nations because of oil, which strongly influences their prices. The second potent force that affects the industry is the environment and the frequent natural disasters. The third is security, which was witnessed in recent times that have devastating impact of militancy and global terrorism that impact negatively on the price of oil. The interplay of these forces directly influences the volatilities in the global oil price, which at the long run affect the downstream oil prices. The removal of fuel subsidy is based on these factors which did not go down well with most Nigerians.

Nigeria remains a poor country with more than half of its population living below the poverty line and 35 percent living in conditions of extreme poverty.⁴²⁹ What Government needs to do in a regime of high increase in prices of petroleum products is to target this group of people with some palliative measures in order to reduce the hardship. Deregulation or subsidy removal will trigger-up inflation by way of increase in the cost of transportation, which in turn will stimulate increase in the prices of food items and other basic consumer good. This will reduce the purchasing power of most Nigerians who are already living below the United Nation's poverty mark of one US dollar per day. Therefore, the average Nigerian wants to know what impact a policy such as the removal of fuel subsidy will have in an economy where all households and businesses still rely almost

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Pre-Convocation Lecture at Ahmadu Bello University, Zaria.

Gboyega, A., Sorreide, T., Tuan, M.L and Shukla, G.P. (2011). Political Economy of the Petroleum Sector in Nigeria. The World Bank Policy Research Working Paper, No. WPS5779.

solely on fuel-consuming electricity generating sets to power their businesses and at the same time meet their domestic energy needs.

The implication of this is that salary earners and artisans will definitely need to spend a greater portion of their earnings on fueling their generating sets while the few companies still managing to survive in Nigeria's unhealthy business environment will be plagued by gross infrastructural deficit. As government contemplates increase in petrol price, there is need to test the impact of price volatility in the context of Nigeria's fragile democracy. The effect of this move has informed advisory statements, which have been issued by many stakeholders to the government, especially the organized labour who have kicked against petrol price increase.

3.7 Cost of Production and Transportation

The Petroleum Products Pricing Regulatory Agency (PPPRA) under Section 7(a) has the power to determine the pricing policy on petroleum products. In doing so, it releases from time to time the cost structure template of imported petroleum products into the country. In the template, two types of structure are involved: (1) the landing cost and (2) the cost of distribution of petroleum products to consumers in the downstream sector. The difference between the landing cost and the cost of distribution is what determine the amount of subsidy to be paid by the government. In other words, subsidy represents the amount pay

on a litre of petroleum product by government so that it can be sold at a cheaper price to consumers.⁴³⁰

According to Agbon,⁴³¹ if the four refineries are working to full capacity to refine their allocation of 445,00 barrels per day, the cost components in determining the price of petroleum product can be calculated base on the following; finding, developing, producing, refining, distribution and marketing. These components are divided into two categories; the cost of exploration and the cost of refining after which the price per litre is arrived at after all components of production and transportation costs are factored into before arriving at what the actual amount government is subsidizing petroleum products in the country will be.

In 2012 the four refineries can only operate at 38.2 per cent efficiency of refining the 445,000 barrels of crude oil allocated to them, leaving a balance of 275,000 barrels, which is exported and refined outside and the import the refined petroleum product back into the country.⁴³² The allocation of crude oil to the four refineries for domestic consumption is calculated based on international price.

Under such arrangement government calculation of the various cost components comprise: finding/development cost (\$3.5 per barrel) and production/storage/transportation cost (\$1.50 per barrel), which all amount to a total of \$5.00 per barrel. Therefore, \$5.00 is the cost of a barrel of crude oil taken to the refinery for refining either at Port Harcourt or Warri refinery. If one barrel

⁴³⁰ Uduebor, M.A. (1994). Determining the Price of Petroleum Products in Nigeria an the Issue of Price Subsidy. Central Bank of Nigeria (CBN Economic and Financial Review. 32(1). CBN Publication.

⁴³¹ Agbon, I. (2012). The Real cost of Nigerian Petroleum. Punch Newspaper of 14 January, 2012 (also available at: <http://www.saharareporters.com/2011/12/12/real-cost-nigeria-petrol> - last accessed 14/01/2012).

⁴³² Agbon, I. (2012). The Real cost of Nigerian Petroleum, op cit.

is 42 gallons or 168 litres, the price of one barrel of petrol taken to the refinery is the sum cost of crude oil. The refining process is \$12.6 per barrel and pipeline distribution cost is \$1.50 per barrel.

The Distribution Margins, which include; retailers, transporters, dealers, bridging funds, administrative charges etc; is ₦15.49/litre or \$16.58 per barrel. Therefore, the true cost of one litre of petrol at the filling station anywhere in Nigeria will be the total cost of production plus refining and distribution, which is: ($\$5 + \$12.6 + 1.5 + 16.6 = \$35.7$ per barrel). If in 2011, the exchange rate was \$1 to ₦160, and a barrel is equal to 168 litre, then the cost of a litre of imported fuel will be ₦33.95.

The question is whether petroleum products should continued to be subsidized. According to the Nigerian Labour Congress and other opinions leaders in the country, the existence of subsidy on petroleum product is a fallacy.⁴³³ However, the current situation now may not be realistic because the Federal Government in July, 2016 removed subsidy on petroleum product and increased the price to ₦145.00 per litre due to the fluctuation in foreign exchange, which is between ₦300.00 to ₦320.00 and falling prices of crude oil in the international market.

A cursory examination of the various components used in determining the actual subsidy on petroleum products based on foreign exchange rate of ₦160.00 per \$1 as at 2012 can be summed up as follows:-

⁴³³ Okechukwu, I.A. (2006). Petroleum Products Pricing: A Critique of the Legal Framework and the Fallacy of Subsidy in the Oil and Gas Sector. Ahmadu Bello University Law Journal, Vols. 24-25. Pp.156-170.

| | | | |
|--|---|---|----------|
| - Finding/development | - | - | \$3.5 |
| - Production cost | - | - | \$1.5 |
| - Refining cost | - | - | \$12.6 |
| - Pipeline transportation | - | - | \$1.5 |
| - Distribution/Bridging fund margin | - | - | \$15.69 |
| | | | |
| - True cost of one gallon of petroleum products in Nigeria | | | = \$34.8 |
| | | | |

If one gallon = 168 litre,
 One litre cost equivalent : $\$34.8 \div 168 \text{ litre} = \0.207 litre
 Therefore Naira equivalent = $\$0.207 \times \text{N160 (exchange rate)} = \text{N}33.12 \text{ per litre}$
 Add Tax of N5 + 33.12 = N38.12 per litre.

Therefore, if the true cost of petroleum product is N33.12k per litre and government was selling a litre of PMS for N65 as at 2007 while the exchange rate was N160.00 to \$1, then there is no subsidy on petroleum products because the total cost of importation and the retail price will be = $\text{N}65 - 38.12 \text{ k} = \text{N}26.88 \text{ k}$. This therefore represents gain to the government. This assumption is possible if government is refining petroleum products in the local refineries in Nigeria.

Supporting this view, Aluko⁴³⁴ and Oseni⁴³⁵ asserted that if the four refineries in the country can work to full capacity or at 30% capacity, the issue of subsidy on petroleum products will not arise because even at 30% refining capacity, government can still meet the domestic consumption, and the issue of importation of petroleum products will not arise. On his part, Babasessy⁴³⁶ opined that there is no subsidy whatsoever as being claimed by government if the total

⁴³⁴ Aluko, M. (2002). NNPC and Mr. President: Where is our oil subsidy? Retrieved from www.dawodu.com/aluko58.htm, Sunday 6th January, 2013.

⁴³⁵ Oseni, M. (2013). Fuel Costing in Nigeria: The Need for Interrelated Party Transactions Pricing Method. Journal of African Economic Review, Vol.3, No.1.

⁴³⁶ Babasessy, T. (2011). Don't be deceived, there is no oil subsidy. Retrieved: www.nairaland.com/704785/dont-decei. 4 January, 2012

picture, rather than just cost and sales of imported refined petroleum products are taken into consideration. Accordingly, government cannot be talking of subsidy when the cost of production is less than what is being paid. Product costing does not only involve separating variable (cost of materials and transportation) and fixed (interest payments on equipment and facilities, rent, property, taxes) but should be based on quality, flexibility and responsiveness that will meet customer needs. If in December 2011, before the price of premium motor spirit (PMS) was increased to N97.00 per litre in January 2012, premium motor spirit (PMS) was sold for N65.00 per litre or \$1.66 per gallon in international market at an exchange rate of \$1 to N157.00.

Therefore:-

If a litre is \$1.66 a gallon;

and one gallon = 4 litre

$\$1.66 \div 4 \text{ litres} = \0.415

Exchange rate = $N157 \times 0.415 = N65.00$ per litre of PMS.

The annual practice of appropriating funds in the Budget by the National Assembly for fuel subsidy payments is illegal because it is inconsistent with the provision of Section 6(1) of Petroleum Act⁴³⁷ and Section 7(a) and (b) of the Petroleum Products Pricing Regulatory Agency Act.⁴³⁸ The National Assembly

⁴³⁷ Cap. P.10, Vol. 13, Laws of the Federation of Nigeria, 2004

⁴³⁸ Cap. P43, Vol. 14, Laws of the Federation of Nigeria, 2004.

has not designated petroleum products as essential commodities under the Constitution.⁴³⁹

According to Okechukwu,⁴⁴⁰ the untruth of the claim on subsidy of petroleum products can be viewed in four misconceptions:

- (i) The tying of domestic price of refined petroleum products to the international price of crude oil, which is abundantly available in the country and can be refined in the four refineries by the Nigerian National Petroleum Corporation (NNPC).
- (ii) The comparism of prices in neighbouring West African states to that of Nigeria. In doing this government loses sight of the different geological environment, which denies these countries the natural deposits of hydrocarbons.
- (iii) There is also a misconception on subsidy which relates to the gap between changes in the domestic prices of petroleum products and changes in composite domestic consumer price level. Changes in composite domestic consumer price are changes, which arise in respect of goods and services which prices are tied to the change in petroleum products prices.
- (iv) The inability of the four refineries to produce to full capacity of 445,000 barrels of crude oil per day to satisfy consumers' demand. However, it can only produce to 32.5 per cent capacity leaving the remaining

⁴³⁹

Item 62(e) of the Exclusive Legislative List under the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁴⁴⁰

Okechukwu, I.A. (2006), op. cit.

balance of 67.5 per cent crude oil to be exported abroad, which in turn imported to the country as refined petroleum products for sale to consumers.

Based on this analysis, government claimed that this price would have been subsidized at N73.00 per litre while the true price of a litre of PMS in Nigeria was N138.00 per litre or \$3.52 per gallon.⁴⁴¹ Despite the fact that the downstream sector is still under regulation there are several factors responsible for increase of fuel price in the downstream sector, which add to the cost of production of petroleum product. Table 3.6 below shows crude processing capacity of the four refineries, which stood at 445,00 barrel of crude oil per day. However, the refineries could only produce 38.2% of the crude in the refineries, the remaining balance of 275,000 barrel of crude oil that cannot be refined in the refineries is exported and sold by NNPC at the international market price and the proceeds applied towards importation of refined petroleum products by NNPC to satisfy the domestic consumption. The imported price is however much higher than the domestic price which is sold to consumers in the downstream sector by Government.

⁴⁴¹ Agbon, I. (2012). The Real Cost of Nigerian Petroleum. Punch Newspaper of 14 January, 2012 (also available at: <http://www.saharareporters.com/2011/12/12/real-cost-nigeria-petrol>).

Table 3.6: Nigeria's Crude Oil Processing Capacity

| S/N | Refinery | Date Commissioned | Installed Capacity (bpd) |
|-----|---|-------------------|--------------------------|
| 1 | Port Harcourt I Port Harcourt (Expanded) | 1965 1971 | 35,000 60,000 |
| 2 | Warri | 1979 | 125,000 |
| 3 | Kaduna | 1980 | 110,000 |
| 4 | Port Harcourt II | 1989 | 150,000 |
| | Total Capacity | | 445,000 |

Source: Nigerian National Petroleum Corporation (NNPC), 2000

The report of the Committee on the Review of Petroleum Products Supply and Distribution⁴⁴² could not refine the 445,000 barrel of crude oil allocated to the refineries because of lack of maintenance of the facilities. What compounded the problems of the refineries further is the vandalization of the multipurpose pipeline, which moves products from the refineries import receiving jetties to the 21 petroleum storage products depots at a total distance of 5,001 kilometers.⁴⁴³ At the moment, they are not yielding optimum return because of various forms of violation of the integrity of the facilities by vandals. The rail transportation, which suppose to be the cheapest means of transportation of petroleum product to retail outlets in the country has massively deteriorated for lack of maintenance and would require massive injection of funds to upgrade the tracks to standard gauge and modernize the wagon and haulage facilities.⁴⁴⁴

⁴⁴² Report of the Special Committee on the Review of Petroleum Products Supply and Distribution submitted to the Federal Government of Nigeria, October, 2000.

⁴⁴³ Ehinomen, C. and Adeleke, A. (2012). An Assessment of the Distribution of Petroleum Products in Nigeria. E3 Journal of Business Management and Economics, Vol. 3(6): 232-241.

⁴⁴⁴ Mgbame, C.O., Donwa, P.A. and Osunbor, E.O. (2015). Nigerian Oil and Gas Sector Background, Reform Efforts and Implication for Economic Growth, op.cit.

In order to ensure continuous availability of petroleum products to areas of need, Petroleum Products Marketing Company (PPMC) has to resort to trucking of products by road from the Southern Depots to other parts of the country, through “bridging” which add to the cost of distribution. The trucks on the other hand are grossly inadequate and are mostly old thereby hindering efficient products distribution. In addition, the weights of loaded trucks further damage the already bad roads, while their poor state result in many accidents which have cost the lives of many and the destruction of the environment.

The situation where petroleum marketing companies had to source products themselves, transport and distribute them using their own distribution and retail outlets had forced Nigerians to pay market-determined prices for petroleum products. Because of these factors the Federal Government has to review the prices of petroleum products in order to meet operational and capital cost. Whatever market price of petroleum products are at the moment government still need to intervene through deregulation by allowing the market variables of demand and supply determine the price of petroleum products instead by regulation.

CHAPTER FOUR

THE LEGAL FRAMEWORK FOR THE DETERMINATION OF UNIFORM PRICING OF PETROLEUM PRODUCTS IN NIGERIA

4.1 Introduction

The regulation of petroleum products prices in Nigeria has long been the feature of government policy since early 1970s in form of uniform pricing, where petroleum products are subjected to a fixed price so that it can be sold uniformly throughout the country. Prior to 1973, petroleum product pricing was not uniform throughout the country as the pricing was under the control of domestic multinational oil companies who determined the price of petroleum products to reflect cost of refining and distribution locally.⁴⁴⁵ The cost of pump price at which a litre of petrol was sold depended on point of sale and this affected the distribution of petroleum products in the country.

The Federal Government therefore took over the regulation of the downstream oil sector in order to encourage even distribution of products to all parts of the country through a uniform pricing system for all grades of products. In implementing the uniform pricing policy, the Federal Government decided to grant subsidy on petroleum products in order to allow marketers distribute petroleum products to all parts of the country without additional cost to consumers. The scope of the legal framework for the determination of prices of petroleum products in Nigeria covers the regulation of prices at which a litre of

⁴⁴⁵

Nwaobi, G.C. (1992). Oil Policy in Nigeria. A Critical Assessment (1958-1992) (available at: www.core.ac.uk/download/pdf/9312754 - last visited 6/10/2016).

premium spirit (PMS), dual purpose kerosene (DPK) and automotive gas oil (AGO) are sold in the filling stations, while others involve the distribution of petroleum products in the downstream sector. Such legal regimes include the Petroleum Act⁴⁴⁶ and the Petroleum Equalization Fund and Management Board (PEF&MB) Act.⁴⁴⁷

The aim of this chapter is to examine the legal framework for the determination of prices and distribution of petroleum products in the downstream sector and how they impact positively or negatively to the Nigerian economy.

4.2 The Application of Uniform Pricing Regime under the Petroleum Act

The first law to regulate petroleum product prices in Nigeria was the Petroleum Act⁴⁴⁸, which introduced the first Uniform Prices of Petroleum Products in 1973, where petroleum products were sold for 8.45 kobo per litre all over the Federation of Nigeria. Section 6(1) of the Petroleum Act⁴⁴⁹ provides that: “The Minister may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.” The Minister by an order under Section 6(1) of the Petroleum Act⁴⁵⁰ introduced another Uniform Price Order of 1986 where petroleum products were further reviewed and sold at uniform price throughout the country. Prior to 1973, pricing of petroleum products was not

⁴⁴⁶ Cap P.10, Vol. 13, L.F.N., 2004.

⁴⁴⁷ Cap. P.11, Vol.20, L.F.N., 2004

⁴⁴⁸ Cap P.10, Vol. 13, op. cit.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

uniform throughout the country as the pricing was under the control of the domestic multinational oil companies and prices reflected local cost conditions. This was the period prices of petroleum products were deregulated and the demand and supply was the dominant factor that determined the price of the commodity. The competitive pricing system adversely affected the distribution and even development of the country,⁴⁵¹ which made it difficult for consumers have easy access to petroleum products.

At that time, it was more profitable to market petroleum products in some areas around the seaports than other parts of the country. The Federal Government through instrumentation of the law introduced the uniform pricing law under the Petroleum Act,⁴⁵² which provides that; “The Minister may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.” In implementing the uniform pricing policy, government grant subsidy on the cost of transporting this product to all parts of the country in order to stabilize the price of petroleum products through the country at a fixed price.

The intervention by government through subsidy arrangement was socially, economically, politically and legally motivated. The social aspect was based on welfare policy of making the product easily accessible and affordable

⁴⁵¹ Nwaobi, G.C. (1992). Oil Policy in Nigeria: A Critical Assessment (1958-1992). Available at: www.core.ac.uk/download/pdt/9312754 - last visited 26/11/2016).

⁴⁵² Section 6(1) of Petroleum Act, Cap P.10, Vol. 13, L.F.N., 2004.

by all consumers in the country. The political aspect has to do with the desire to spread development evenly to all parts of the country as energy product serve as a critical need in the product process. The economic aspect was a desire to reduce the cost of inflation as result of high energy prices. The legal aspect was to fulfill the provision of the Constitution,⁴⁵³ which provides that:

The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution –

- (a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy every citizen on the basis of social justice and equality of status and opportunity.
- (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

The major energy sources in the country are petroleum products, and are the juice that oils the Nigerian economy. The implementation of uniform pricing policy led to a remarkable improvement in the consumption patterns throughout the country.⁴⁵⁴ Section 15(1) of the Petroleum Act defined petroleum products to includes premium motor spirit, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant. Out of thees, premium motor spirit (PMS) or petrol and automotive gas oil (AGO) are the most regulated because of its important in driving the economic activities in the country. Moreover, they have no

⁴⁵³ Section 16(1)(a)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁴⁵⁴ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. International Journal of Energy Environment and Policy, Vol.3, No.4, pp.459-472.

substitution in transportation sector and they are price inelastic. However, diesel and kerosene have since been deregulated because of their substitution and are price elastic.

Since petroleum products touch the lives of every citizen, government decided to subsidize it in order to keep the price of the products very low and easily accessible to consumers. Bello⁴⁵⁵ opined that subsidy is money paid by the government in order to reduce the cost of producing goods and services so that their prices can be kept low. In other words, the government assists consumers in paying the bulk amount of a commodity, thereby making the consumers pay less than the actual market price of the commodity. The mechanisms for determining the price of such products are the demand and supply, and market sentiments.

The review of petroleum products pricing was introduced by the military regime of General Yakubu Gowon⁴⁵⁶ in 1966 under the Mineral Oils Act of 1914 (though now repealed) which provisions were replicated in the Petroleum Act of 1969.⁴⁵⁷ During that period, petroleum product was sold for 6 kobo but later, the Federal Military Government reviewed the price of the product upward from 6 kobo to 8½ Kobo in 1976.⁴⁵⁸ Fuel subsidy payment was introduced as a policy in the downstream oil sector by Ibrahim Badamosi Babangida administration due to non maintenance of the refineries to temporarily stabilize the price of petroleum

⁴⁵⁵ Bello, A.T. (2014): Law and Economics of Deregulation in Downstream Sector of the Nigerian Oil and Gas. *The International Journal of Science and Technology*. Vol.2, Issue 8, pp.99-104.

⁴⁵⁶ Ibid.

⁴⁵⁷ Okechukwu, I.A. (2006). Petroleum Products Pricing: A Critique of the Legal Framework and the Fallacy of Subsidy in the Oil and Gas Sector. *Ahmadu Bello University Law Journal*, Vols. 24-25. Pp. 156-170.

⁴⁵⁸ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey, op. cit.

product while the refineries underwent rehabilitation.⁴⁵⁹ Due to the dilapidated state of the refineries and their inability to produce to optimum capacity, the Federal Government had to import petroleum products to meet domestic demand.

The reason for the introduction of uniform pricing law and subsidy policy on petroleum products throughout the country, especially from 1973 was based on social welfare policy of making the product easily accessible and affordable by all consumers in the downstream sector. Three factors can therefore be identified which influenced government position. First, is the desire to protect the interest of the poor who could be hurt as a result of higher energy prices in the country. The second is the need to reduce industrial cost as energy products are seen as critical inputs in production process. The third factor relates to the potential inflationary impact of higher energy prices.⁴⁶⁰

In order to reduce these problems and ensure that marketers sell petroleum products at uniform prices all over the country, government established the Petroleum Equalization Fund (Management Board) Act⁴⁶¹ principally to reimburse marketers of petroleum products (PMS, AGO and DPK) the cost of transporting the products from the supply point to the retail outlets, in order to facilitate sale of these products at government regulated price

⁴⁵⁹ Ewah, O. (2012). The Origin of Fuel Subsidy in Nigeria. (Available at: www.punchngr.com – last accessed January, 2012.

⁴⁶⁰ Agadunogo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey op.cit.

⁴⁶¹ Cap. P.11, Vol. 20, Laws of the Federation of Nigeria, 2004.

throughout the country. Section 2 of the Act⁴⁶² stipulates that: “The Fund shall be utilized for the reimbursement of oil marketing companies for any loss sustained by them solely and exclusively as a result of the sale by them of petroleum products at uniform prices throughout the country being prices fixed by the Minister pursuant to Section 6(1) of the Petroleum Act.”⁴⁶³

On the other hand, Section 1 of the Act⁴⁶⁴ stipulates that the Fund shall pay any net surplus revenue recovered from oil marketing companies pursuant to the Act and such sums as may be provided for that purpose by the Federal Government.⁴⁶⁵ Going by the provision of the Act,⁴⁶⁶ the administration of the fund is made possible by surplus revenue recovered from oil marketing companies and grants provided by the Federal Government to finance the reimbursement of the scheme. At the initial stage of administering the Fund and implementation of the Uniform Pricing Regimes, there was remarkable shift in the consumption patterns of petroleum products throughout the country, when government granted N23 million in 1981 to subsidize the system. However, from 1973 to 1978 the Federal Government was not providing enough cash grants to fund the uniform price scheme but rather it was the Nigerian National Petroleum Corporation (NNPC) that was providing that complementary role of providing grants on behalf of the Federal Government in order to sustain the uniform pricing

462 Ibid.

463 Cap. P.11, Vol. 20, op. cit.

464 Ibid

465 Ibid., Section 1(a) and (b).

466 Ibid., Sections 1 and 2

scheme.⁴⁶⁷ The NNPC was created by the Federal Government as an independent agency to serve as a link between the multinational oil companies operating at the upstream sector and the various oil marketers operating in the downstream sector. This means that the Corporation is both a regulator and operator in the oil industry.⁴⁶⁸

For ease of enforcement of uniform pricing scheme in the country, the Petroleum Act⁴⁶⁹ provides that; “any person who contravenes any provision of an order made under Section 6 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two thousand naira.” The Petroleum Equalization Fund Management Act⁴⁷⁰ also confers power on the Board through the Secretary who is the Chief Administrative Officer to:-

- (a) Determine at such intervals as the Board may direct, the net surplus revenue recoverable from any oil marketing company and accruing to that company from the sale by it of petroleum products as such uniform prices as may be fixed by the Minister pursuant to Section 6(1) of the Petroleum Act.⁴⁷¹
- (b) Determine the amount of reimbursement due to any oil marketing company which has suffered loss as a result of the operation of the enactment as aforesaid.
- (c) Payment of all disbursements authorized under or by virtue of this Act.
- (d) Accounting for all moneys collected, paid or otherwise expended under the Act.

⁴⁶⁷ Akpieye, J. J. (2012): Uniform Pricing, Imports and Fuel Subsidy, Vanguard Newspaper of 4th January.

⁴⁶⁸ Nwokeji, G.U. (2007). The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current directions. The James A. Baker III Institute for Public Policy Rice University.

⁴⁶⁹ Section 13(3) of Petroleum Act, Cap. P.10, Vol.13, Laws of the Federation of Nigeria, 2004.

⁴⁷⁰ Section 4(2)(a)-(e) of Petroleum Equalization Fund Act, Cap. P.11, Vol. 20, Laws of the Federation of Nigeria, 2004.

⁴⁷¹ Cap. P.10, Vol. 13, op. cit.

(e) Carrying out such other duties as may from time to time be specified by the Board.

In 1975, in order to stabilize the supply of petroleum products in the country, the Federal Government established the Pipelines Products Marketing Company (PPMC) as a subsidiary of the Nigerian National Petroleum Corporation (NNPC) as part of reorganization of NNPC from Nigeria National Oil Company (NNOC) to transport and market petroleum products all over the country. As a subsidiary of the Nigerian National Petroleum Corporation (NNPC, Petroleum Products Marketing Company (PPMC) is to charge tariffs⁴⁷² for transportation of oil through its pipelines network to all the distribution outlets in the country. Government introduced another law called the Uniform Price Regulation of 1986 guiding the regulation of petroleum products in Nigeria where products were reviewed upward to 39½ Kobo, 29½ Kobo and 10½ Kobo per litre, respectively for premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK).⁴⁷³ In addition, the Department of Petroleum Resources (DPR)⁴⁷⁴ and the Nigerian National Petroleum Corporation (NNPC),⁴⁷⁵ were conferred with the powers to regulate the supply and distribution of petroleum products in the downstream sector.

⁴⁷² Nwokeji, G.U. (2007). The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions. A Report prepared in Conjunction with an Energy Study Sponsored by the James A. Baker III Institute for Public Policy, Rice University.

⁴⁷³ S.1 Petroleum Products (Uniform Retail Prices) Order of 1986. A subsidiary Legislation under the Petroleum Act Cap. P.10, op. cit.

⁴⁷⁴ The Department was previously known as Department of Petroleum Inspectorate Division (DPIID)

⁴⁷⁵ Cap. N.123, Vol. 12, Laws of the Federation of Nigeria, 2004.

At the initial period of the implementation of Uniform Pricing Regime and regulation of price of petroleum products in Nigeria, government continued to rely mostly on Sections 6(1)(2) and 13(3) of the Petroleum Act⁴⁷⁶ in the implementation and enforcement of the uniform price scheme in the downstream sector. Section 6(2) of the Act⁴⁷⁷ particularly stipulates that:

The Minister may by notice in writing require any person appearing to him to have or to be likely to have access to information which is relevant to the fixing of any prices of the kind mentioned in subsection (1) of this section to supply that information to the Minister, and any person so required shall be legally bound to use his best endeavours to supply the information accordingly.

By these provisions as contained in the Petroleum Act, it is very clear that prices of petroleum products in the downstream sector were administratively determined by an order of the Minister of Petroleum Resources. These provisions therefore empower the Minister of Petroleum Resources in conjunction with Nigerian National Petroleum Corporation (NNPC) and Department of Petroleum Resources (DPR)⁴⁷⁸ to regulate and enforce the uniform price scheme and the sale of petroleum products in the country. Similarly, the power under Section 6(1) of the Petroleum Act, which was vested in the Minister of Petroleum Resources, continued to be exercised from the period 1973 up to 1999 both during the Military and civilian administrations in Nigeria.

⁴⁷⁶ Cap P.10, Vol. 13, Laws of the Federation of Nigeria (LFN), 2004 as amended.

⁴⁷⁷ Petroleum Act, Cap. P.10, Vol. 13, LFN, 2004 as amended

⁴⁷⁸ The Department is now known as Department of Petroleum Resources (DPR)

From 1986 to 1991 government introduced various privatization laws in the country and one of the objectives of the privatization was to deregulate the downstream oil sector for effective performance. However, from 1979 to 1983 and 1999 to the early part of 2003 there was no any other law made by the National Assembly in respect of regulation⁴⁷⁹ of prices of petroleum products and government continued to rely on Section 6(1) of the Petroleum Act to regulate uniform prices of petroleum products until when the Petroleum Products Pricing Regulatory Agency Act was established in March, 2003.

The shortcoming of the Petroleum Act is that nowhere the word “subsidy” is defined or mentioned in any of the principal statute. The verb “fix” in relation to prices means “to take a decision in relation to the price of a product or service and not allow it to change.”⁴⁸⁰ This means that the provision of subsidies on petroleum products by government all along was based on welfare policy that is not backed by law. Both Section 6(1) of the Petroleum Act⁴⁸¹ merely empowered the Minister of Petroleum Resources and that of Commerce, respectively to fix the price of petroleum products. Neither the Petroleum Act nor Price Control Act imposes an obligation on the government to actually subsidize petroleum products. The application of both enactments in controlling the price of petroleum products is also invalid because of the non-designation of petroleum products as an essential commodity by the National Assembly. Such a designation is required

⁴⁷⁹ Okechukwu, I.A. (2006), op. cit.

⁴⁸⁰ Macmillan English Dictionary for Advanced Learners, 2nd Ed., P. 563.

⁴⁸¹ Cap. P.10, Vol.13, Laws of the Federation of Nigeria, 2004.

by item 62(e) of the Exclusive Legislative List in the Constitution in order to validate any price control legislation. To that extent, both the Price Control Act⁴⁸² and Section 6 of the Petroleum Act, as well as the Petroleum Products Pricing Regulatory Agency Act and Petroleum Equalization Fund Act are ultra vires, invalid, null and void in respect to provision of subsidy on petroleum product.

It is important to stress that what Item 62(e) of the Exclusive Legislative List of the Constitution recognizes is price control and not subsidization; the two are not the same. Whilst a subsidy is a means of controlling prices, not all price control measures involve subsidies, as it depends on the modalities, if any, applicable in any given case. The Price Control Act leaves no room for conjecture that the National Assembly intended to subsidize petroleum products. Accordingly, the annual practice of appropriating funds in the Budget for fuel subsidy payments is illegal because it is inconsistent with the Price Control Act and the Petroleum Act.

In relation to the application of the Uniform Price Regime, the Nigerian National Petroleum Corporation (NNPC) Act⁴⁸³ in Section 5(b) and (c) empowered the Corporation to “refine and distribute” petroleum products within the downstream sector. Currently, Petroleum Products Pricing Regulatory Agency (PPPRA) is another agency set up by government to regulate the price and distribution of petroleum products in the downstream sector. Section 7(a) and (b) of the Act stipulates that: “the functions of the Agency are to – (a)

⁴⁸² Cap. P28, Vol. 20, Laws of the Federation of Nigeria, 2004.

⁴⁸³ Cap. N.123, Laws of the Federation of Nigeria, 2004.

determine the pricing policy of petroleum products; (b) regulate the supply and distribution of petroleum products. These two enactments did not mention or prescribed any form of subsidy arrangement to be paid on petroleum products.

Table 4.1: History of price Increase in petroleum products from 1973 to 2016

| Year | Price per litre | Fluctuation | Regime | % Increase | % Decrease |
|------|-----------------|-----------------|------------------|------------|------------|
| 1973 | 8½k | Increase | Yakubu Gowon | 35.50 | |
| 1976 | 9k | Increase | Murtala Mohammed | 0.50 | |
| 1978 | 15k | Increase | Gen. Obasanjo | 41.44 | |
| 1979 | 15k | Stable | Gen. Obasanjo | - | |
| 1980 | 15k | Stable | Shagari | - | |
| 1981 | 15k | Stable | Shagari | - | |
| 1982 | 20k | Increase | Shagari | 23.15 | |
| 1983 | 30k | Increase | Gen. Buhari | 50.00 | |
| 1985 | 39½k | Increase | Gen. Babangida | 31.67 | |
| 1987 | 42k/60k | Increase | Gen. Babangida | 6.33/51.89 | |
| 1988 | 60k | Increase/Stable | Gen. Babangida | 42.86/0.00 | |
| 1990 | 70k | Increase | Gen. Babangida | 16.67 | |
| 1992 | N5.00 | Increase | Gen. Babangida | 614.29 | |
| 1993 | N3.25 | Decrease | Shonakan | - | 35.00 |
| 1994 | N11.00 | Increase | Gen. Abacha | 238.46 | |
| 1996 | N11.00 | Stable | Gen. Abacha | 0.00 | |
| 1997 | N15.00 | Increase | Gen. Abacha | 36.36 | |
| 1998 | N15.00 | Stable | Gen. Abubakar | 0.00 | |
| 1999 | N20.00 | Increase | Gen. Abubakar | 33.33 | |
| 2000 | N22.00 | Increase | Obasanjo | 10.00 | |
| 2001 | N26.00 | Increase | Obasanjo | 18.18 | |
| 2002 | N30.00 | Increase | Obasanjo | 15.39 | |
| 2003 | N40.00 | Increase | Obasanjo | 33.33 | |
| 2004 | N49.00 | Increase | Obasanjo | 22.50 | |
| 2005 | N52.00 | Increase | Obasanjo | 6.12 | |
| 2006 | N64.00 | Increase | Obasanjo | 24.04 | |
| 2007 | N75.00 | Increase | Obasanjo | 16.28 | |
| 2008 | N65.00 | Decrease | Yar'Adua | - | 13.33 |
| 2012 | N141.00 | Increase | Jonathan | 53.90 | |
| 2012 | N97.00 | Decrease | Jonathan | - | 45.36 |
| 2015 | N86.50 | Decrease | Buhari | - | 11.62 |
| 2016 | N145.00 | Increase | Buhari | 33.45 | |

Source: Adagunodo, M. (2013). Petroleum products reform in Nigeria: Welfare analysis from household budget survey (with little amended). Lawal, Y.O. (2014). Subsidy Removal or deregulation: Investment Challenge in Nigeria's Petroleum Industry. American Journal of Social and Management Sciences.

The petroleum subsidy burden of the government has risen largely due to significant increases in the price of crude oil in the international oil market, which determines the landed cost based on exchange rate. Given the high share of the demand for foreign exchange is a potential destabilizing mechanism.⁴⁸⁴ Since there is no established mechanism for determining adjustments to prices, government administered prices have tended to be in quantum leaps. Table 4.1 below shows the various increases on petroleum products by the government from 1973 to 2016.

A close examination of the above table revealed that prices of petroleum products were increased on various occasions due to government determination to remove fuel subsidy. It must however be borne in minds that each time there was an increase in prices of petroleum products, there were public outcry and protests due to simultaneous increase in the price of goods and services; and economic dislocation in other parts of the Nigerian economy. Government argument was that subsidy brings market distortions. This was predicated on the fact that the pump price is not a true reflection of the cost and economic value to be derived while the market is operating at an “artificial” and unrealistic level. Furthermore, the issue of smuggling of petroleum products to neighboring countries crippled the Nigerian economy significantly. Igbinovia⁴⁸⁵ asserted that the nation lost 55 million barrels of crude oil yearly, which was estimated at \$1

⁴⁸⁴ Ozo-Eson, P.I. (2013). Pricing of Petroleum Products in Nigeria. Research Report by African Centre for Leadership, Strategy and Development. Centre LSD Book Series No. 7. Published by Open Society Initiative for West Africa.

⁴⁸⁵ Igbinovia, P.E. (2014). Oil Thefts and Pipeline Vandalization in Nigeria. Baltimore Publisher, Marland.

billion. In the bid of mitigating this huge loss to the economy, deregulation will be an option that will allow the forces of demand and supply determine the price of petroleum products thereby bringing about a competitive market, with the effect of more revenue accruing to the government.

Going by these analyses, the incessant adjustments in petroleum products' prices were either supported or opposed with arguments, which underline the politics of petroleum products' pricing in Nigeria. Government position on removal of subsidies on petroleum products was that petroleum products' prices were heavily subsidized in Nigeria. According to the argument of a former Minister of Petroleum Resources; ".....Subsidies were originally put in place for, what appear at the time to be acceptable social reasons. They were aimed at spreading the benefits of development to wider section of the population. To a certain extent, they have served their purpose and therefore should be done away with."⁴⁸⁶

The Nigerian Labour Congress while calling on the Federal Government to change its decision to deregulate the downstream oil sector through removal of fuel subsidy, the House of Representatives on the other hand passed resolutions⁴⁸⁷ calling on the executive arm of government to withdraw new pump price of petroleum products saying that the President of the Federal Republic of Nigeria has no power to do so, without their approval. Secondly, members of the House of

⁴⁸⁶ Lukeman, R. (1995). Nigeria's Economy at the Crossroads. Africa Recovery, Vol. 1, June. Cited in: Relationship Between Petroleum Products Pricing and Private Consumption in Nigeria: A Case Study of Nigeria Petroleum Corporation, NNPC).

⁴⁸⁷ National Assembly Hansard, Resolution No.20, House of Representatives Votes and Proceedings of Tuesday, 6 June, 2000.

Representatives argued that the poor masses cannot afford to pay for higher prices of petroleum products and by increasing the price of petroleum products will hurt the poor and trigger social unrest.

The resolution of the National Assembly was anchored on the following provision of the Constitution.⁴⁸⁸

.....the entire property in and control all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

In adjusting prices of petroleum products, government relied on Section 6(1) of the Petroleum Act from 1999 to 2001 to increase the prices of petroleum products even when there was no Minister of Petroleum Resources appointed at that time. When the House of Representative and the Nigerian Labour Congress challenged the power of Federal Government to increase prices of petroleum products without recourse to announcement by the Minister, the Federal Government exonerated itself from any blame but rather defended its position on the price increase.⁴⁸⁹

The argument here is that the power under section 6(1) of the Petroleum Act is vested on the Minister of Petroleum Resources to determine the price at which petroleum products are to be sold in the market, and it is for the Minister,

⁴⁸⁸ Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁴⁸⁹ Okupe, D. (2000). Former Special Adviser to the President on Media and Publicity interview granted to Thisday, June 11, p.12.

and not the legislature to exercise those powers by resolution. The “Minister” is defined in the same Act as “Minister of Petroleum Resources.”⁴⁹⁰ Having given the function of fixing prices of petroleum products to the Minister of Petroleum Resources, the National Assembly cannot appropriate that function to itself through resolutions. It cannot even curtail the exercise of that power by issuing administrative orders by way of resolution since the delegated power to the Minister does not contain any requirement as to legislative approval before any new price on petroleum products announced by him should take effect.

A cursory look at the resolution passed by the National Assembly, it did not bars the price hike because the National Assembly can exercise its power through Section 4 of the Constitution with respect to matters under exclusive and concurrent list. The matters that require the resolution of both chambers of the National Assembly does not include management of mineral resources. The management of mineral resources therefore can only be exercised through legislation. Each Chamber of the National Assembly is at liberty to pass resolution on any issue of national interest and any resolution which is not specifically empowered by the Constitution may not be binding on the other arms of government neither would it have the force of law.⁴⁹¹

⁴⁹⁰ Section 15 of Petroleum Act, Cap. P.10, LFN, 2004. From 2000 to 2003 there was no substantive Minister of Petroleum Resources at all material time of the price increase and though desirable, the President is not legally compellable to appoint one, in line with S.147(1)(2) of the 1999 Constitution (as amended). In the Presidential Media Chat aired on NTA on February 26, 2001, President Obasanjo in a reply to a question on why he had not appointed a substantive Minister for Petroleum matters said, rightly that the Constitution vested all executive powers of the Federal Republic of Nigeria in him. Therefore he could choose not to appoint a substantive Minister for that Ministry.

⁴⁹¹ Nwabueze, B. (2000). *Fostering Partnership Between the Executive and the Legislature for Sustainable Democracy*. Paper delivered at a Conference organized by the House of Representative in Abuja, August 14-16. pp.18-20.

Be that as it may, the executive powers conferred on the President include the execution of all laws made by the National Assembly⁴⁹² the exercise of that power is however made subject to the Constitution and to the provisions of any law made by the National Assembly. That being the case, the President cannot by himself or through a public officer purporting to be acting on his instruction validly increase the prices of petroleum products since a law of the National Assembly has expressly assigned that role to another government functionary; that is the Minister of Petroleum Resources.

In addition, the penalty under Section 13(3) of the petroleum Act,⁴⁹³ which stipulates that: “Any person who contravenes any provision of an order made under Section 6 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N2,000.00” is not a stiff penalty and the court may choose that the criminal pay a fine of N500.00 for an economic crime. This is not an efficient legislation to curtail serious offence relating to distribution of petroleum product in the country, which is capable of derailing the policy of government in its objective in making petroleum product easily accessible to consumers in the country. If the Federal Government really wants to ensure adequacy, reliability and affordability of petroleum product to consumers in the downstream sector, it needs to harmonize some of the provisions of the Petroleum Act and that of Price Control Act.

⁴⁹² Section 5(1)(b) of the 1999 Constitution (as amended)

⁴⁹³ Cap. P.10, Vol.13, Laws of the Federation of Nigeria, 2004.

This is because petroleum products play a critical role in the economic development of Nigeria and the bulk of its consumption come from the premium motor spirit (PMS) commonly known as petrol and automotive gas oil (AGO), which are used mainly for transportation business and generating plants. The rapid increase in demand of petroleum products reflects the rapid growth rate in the number of automobiles, industries, economic and political development.⁴⁹⁴ This explains why most Nigerian consumers exhibit dislike and apathy towards increase in prices of petroleum products. This, perhaps, is due to the economic problem faced by majority of consumers and the failure of government to explain the reason behind the continuing increase in prices of petroleum products.

Generally, consumers show signs of distrust in the attitude of government that refuses to fulfill its promises of providing some social welfare packages to workers in terms of increase in salary and wages, provision of cheaper means of transportation through Subsidy Reinvestment and Empowerment Programme⁴⁹⁵ in order to cushion the effect of increase in price of petroleum products. Moreover, Nigerian consumers always express fear of buying sub-standard adulterated petroleum products and being cheated by dubious dealers in petroleum products. Since there is no alternative to premium motor spirit (PMS) in Nigeria, its demand and supply is inelastic and an increase in its price or decrease in its quantity can affect the profitability of production and productivity of other factors of production.⁴⁹⁶ The dual purpose kerosene (DPK) and liquefied petroleum gas (LPG) are used mainly for cooking and lighting purposes, and are used virtually in

⁴⁹⁴ Umeanozie, A. O., Nduka, E. K. and Chukwu, J. O. (2014). Subsidies and the Demand for Petroleum Products in Nigeria. *International Journal of Sustainable Energy and Environmental Research*, 3(2). Pak Publishing Group, 2014, pp. 100-109.

⁴⁹⁵ Adebisi, M.A. (2015). The Political Economy of Oil Price Deregulation and the Subsidy Fraud Crisis. A Study of Systematic Bureaucratic Corruption in Nigeria. *Journal of Energy Technologies and Policy*, Vol.5 No., pp.33-44.

⁴⁹⁶ Isyaka, M.S. (2014). The Implications of Price Changes on Petroleum Products distribution in Gwagwalada Abuja, Nigeria. *Journal of Energy Technology and Policy*. Vol. 4 No. 7.

most household, therefore there is alternative to its uses as consumers can resort to fire wood and charcoal.⁴⁹⁷

The initial introduction of uniform prices on petroleum products worked well when the international oil prices were relatively stable and low, and close to production costs. However, when international prices on crude oil began to rise in 2004, low domestic petroleum product price became increasingly out of line with the market value of oil. Oil prices increased dramatically in 2003 from \$28.77 a barrel and peaked at \$100.60 in August, 2010 and declined to \$81.07 a barrel in December, 2010. In addition, high domestic inflation and exchange rate deregulation contributed further to domestic petroleum products prices.⁴⁹⁸

The prices of petroleum products in Nigeria should theoretically be derived from international crude oil prices since the marginal supply (litre) comes from import, it should therefore reflect import price. In other words, when the marginal unit of consumption is imported the economic price should be import price. However, this has not always been the case for a number of reasons particularly socio-political ones.

The downstream sector of the oil industry no doubt contributes substantially to the growth of Nigerian economy; however, because of the potential cost of the subsidy regime government began to feel its impact on the economy. The cost of subsidies continued to rise dramatically because of the

⁴⁹⁷ Onwioduokit, E.A. and Adenuga, A.O. (2001). *Emperical Analysis of Demand for Petroleum Products in Nigeria*. International Economics Relations. Central Bank of Nigeria (CBN). (Available at www.cenbang.org, last accessed in May, 2011).

⁴⁹⁸ Adagunodo, M. (2013). *Petroleum products reform in Nigeria: Welfare analysis from household budget survey*, op.cit.

increased volatility in world petroleum products' prices and smuggling to neighbouring countries. Therefore, removing fuel subsidies on petroleum products has become contentious socio-economic policy debate in Nigeria today.

4.3 Appraisal of Petroleum Equalization Fund (PEF) Act as a Stabilizer of Uniform Price on Petroleum Products

To reduce the problems associated with the application of uniform prices on petroleum products in the country, the Petroleum Equalization Fund (Management Board) Act⁴⁹⁹ was set up to principally reimburse marketers the cost of transporting petroleum products, such as; premium motor spirit (PMS), automotive gas oil (AGO) and dual purpose kerosene (DPK) from the supply point to the retail outlets throughout the country. The objective of the Petroleum Equalization Fund was to ensure stability and uniformity in the prices of petroleum products that is consumed in the country, regardless of the cost differential in transportation of the product from the refineries to the various depots and filling stations.

Section 2 of the Act⁵⁰⁰ stipulates that: "The Fund shall be utilized for the reimbursement of oil marketing companies for any loss sustained by them solely and exclusively as a result of the sale by them of petroleum products at uniform prices throughout the country being prices fixed by the Minister pursuant to Section 6(1) of the Petroleum Act."⁵⁰¹ Section 1 of the Act⁵⁰² stipulates that the

⁴⁹⁹ Cap. P.11, Vol.20, Laws of the Federation of Nigeria, 2004.

⁵⁰⁰ Ibid.

⁵⁰¹ Cap. P.10, Vol.13. L.F.N. 2004.

Board shall pay any net surplus revenue recovered from oil marketing companies pursuant to the implementation of the Act and such sums as may be provided for that purpose by the Federal Government.⁵⁰³ Going by the provisions of Sections 1 and 2 of the Act, the administration of the fund is made possible by surplus revenue recovered from oil marketing companies and grants provided by the Federal Government to finance the equalization scheme.

At the initial stage of administering the Fund and implementation of the Uniform Pricing Schemes, there was remarkable shift in the consumption patterns of petroleum products throughout the country. This was made possible by the grant of N23 million by the Federal Government in 1981 to subsidize the equalization system.⁵⁰⁴ The Federal Government's stoppage of assistance in financing the bridging claims was the beginning of subsidy problem of petroleum products in the downstream sector.

The Federal Government introduced the bridging scheme originally as a temporary measure during turn-around maintenance (TAM) wherein government sought to encourage and support marketers in transporting petroleum products nationwide. Although this was meant to be a temporary solution until the refineries were producing at full capacity, the state of the refineries has continued to worsen over the years. In addition, pipelines vandalization by militant and

502 Cap. P.11, Vol. 20, op. cit.

503 Section 1(a) and (b) of Petroleum Equalization Fund Act. Cap. P.11, op. cit.

504 Joseph, J.A. (2012): Uniform Pricing, Imports and Fuel Subsidy, Vanguard Newspaper of 4th January.

economic saboteurs has been on the increase, to the point where trucks have become the major source of distributing petroleum products in recent times.⁵⁰⁵

Akpochafo⁵⁰⁶ observed that the initial projection was to have a maximum of 10% of total petroleum products bridged while the remaining portion will be pumped through the pipelines. However, trend analyses indicate that bridging of product have consistently increased over the years to about 40%. There is also a noticeable trend whereby products are bridged from Lagos to the South East and South-South areas of the country to address products unavailability from the refineries in Port-Harcourt and Warri.

The introduction of bridging of petroleum products is one of the best things that have happened in the downstream sector, as far as making petroleum product available to the consumers in Nigeria is concerned.⁵⁰⁷ Through this method it was possible for products to be delivered to all parts of the country at uniform price as approved by the Federal Government, which prevented marketers from adding additional cost to consumers as result of delivering the products to the hinter areas where there were no refineries. Even with the bad facilities of the refineries and the vandalism of oil pipelines, bridging of petroleum products through road transportation was the better option.

The removal of subsidy on petroleum product as result of price adjustments has compelled consumers to pay for the transportation of the product from the

505 Onuoha, F.C. (2008). Oil Pipeline Sabotage in Nigeria: Dimensions, Actors and Implications for National Security. *African Security Review*, 17:3. Institute for Security Studies.

506 Akpochafo, P. (2011). The Petroleum Equalization Fund as a Stabilising Agency (Available at: <http://www.csls.firstcitygroup.com> – accessed on 20/4/2011 - 07:23).

507 Report of the Special Committee on the Review of Petroleum Products Supply and Distribution, October, 2000.

coastal areas to the hinterland through the inclusion of 'bridging fund' in the benchmark price for every litre of petrol nationwide. The responsibility for bridging payment administration was with the Pipelines Product Marketing Company (PPMC) until 1998, when it was transferred to the Petroleum Equalization Fund (PEF). The resources available to Fund were adequate to cover the cost of bridging prior to 1998. However, with the total collapse of the refineries and the pipeline transportation system as result of vandalization, the reliance has shifted to road and water transportation system, which led to bridging claims.

4.4 The Roles of Petroleum Equalization Fund Management Board Act

The Petroleum Equalization Fund Management Board is a scheduled parastatal of the Ministry of Petroleum Resources, established under the Petroleum Equalization Fund Act,⁵⁰⁸ mainly to administer Uniform Prices of Petroleum products throughout the country. This is achieved by reimbursing a marketer's transportation differentials for petroleum products movement from depots to their sales outlets (filling station), in order to ensure that products are sold at uniform pump price throughout the country. The source of the Fund come principally from the net surplus revenue recovered from Oil Marketing Companies.

The Petroleum Equalization Fund (PEF) is very essential to the Nigerian downstream industry. It is there to ensure that every petroleum transaction is being done according to policy, with strong emphasis to the transparency needed

⁵⁰⁸ Cap. P.11, Vol. 20, Laws of the Federation of Nigeria, 2004.

in the sector.⁵⁰⁹ The intent of PEF is to ensure that regardless of geographical location or distance from the refinery, consumers can access petroleum products at a standard government approved price. That is the mandate of the Board, to ensure that the uniform pricing mechanism works effectively throughout the country. It appears simple, but it is much more complex because the Board puts into consideration the location of retail outlets all over the country, how and who transports the products to the outlets and the volume that arrives there.⁵¹⁰ All these involve a lot of data gathering. Therefore, collection of data is key to the work of the Fund and is acquired to support business decisions.

The variable element in the sale of petroleum products at uniform prices nationwide is the transportation cost; this is what makes prices differ from one point to another. The Board equalizes the transportation differentials by reimbursing petroleum product marketers' for any losses sustained by them, solely and exclusively, as a result of the sale by them, of petroleum products at government approved prices throughout the country.

The ability of Petroleum Equalization Fund Management Board to reimburse marketers promptly, help in the movement of products as required and this ensures availability, which results in stability of prices. If the bridging was faulty it will lead to scarcity and marketers would sell at higher prices to recover the cost of transportation, but because Petroleum Equalization Fund (PEF) is

⁵⁰⁹ Kasali, S.A. (2013). *Bringing efficiency and equality to Nigerian petroleum*. (Available at: <http://www.theworldfolio.com/interviews/sharon-adefunke-kasali-executive-secretary-petroleum>- last accessed 1/3/2015)

⁵¹⁰ Kasali, S.A. (2013), op. cit.

managed by a Board, it effectively ensures the pump price stability of petroleum products in the country. The Fund gets its revenue from an in-built transportation cost that is included in the pump price irrespective of where the product is sold. This scheme helps in no small measure in encouraging movement of petroleum products to areas otherwise considered economically unviable and also to discourage diversion of products to areas where marketers considered more lucrative.

The equalization payment is divided into two categories: determined using a “Transport Differential Zone” (TDZ) model and Inter-District Scheme. The Transport Differential Zone model divided the country into 22 districts delineated along the 22 PPMC depots. A Depot District is a geographical area of the country served by a particular depot. The Depot Districts are further sub-divided into Transport Differential Zones (TDZ), which are progressive concentric bands of 50km radius, with the depot as the centre point. A district has a maximum of 9 zones to which zonal rates apply.⁵¹¹ The Inter-District Scheme was adopted upon realizing that some petroleum products movement to certain parts of the country did not qualify for re-imburement under the bridging scheme despite the additional transportation costs incurred by marketers. Therefore, the Inter-District Scheme was also introduced to reimburse marketers to move their

⁵¹¹ Adefunke, S.K. (2007). The Executive Secretary Brief on the Activities of PEF. The Equalizer, A quarterly Magazine Publication of Petroleum Equalization Fund Management Board, p.9.

products across depot districts under 450 kilometers but without full bridging support.⁵¹²

Going by the analysis of the functions and activities of Petroleum Equalization Fund (PEF), it is evident that it has been grappling with some problems and challenges. Prominent among these challenges is the gap in funding the three schemes currently run by the organization. The three schemes which are implemented concurrently to help achieve the uniform pricing regime are Bridging, Equalization and Inter-District. With the issue of vandalization of pipelines, bridging trend has escalated to about 40% of products consumed in the country and also increased the volume of bridging from 3 billion litres of fuel in 2003 to 5 billion of litres, representing growth rate of about 2 billion litres of products bridged within the period. The high rate of bridging therefore created huge resource gap in funding the scheme, thereby forcing the Board to contend with paucity of fund to run the secretariat.⁵¹³ With the current situation of supply and demand gap in the country it is important for government to constantly release its counterpart funding to the Equalization to enable it meet its obligation. As at June 2000, the Fund had paid over 7 billion naira claims⁵¹⁴ to marketers and this amount had risen upwards in 2008 and 2009. By 2011, compensating oil marketing companies for sale of petroleum products at uniform prices throughout the country and the importation of petroleum products to make for the short falls

512 Ibid.

513 Adefunke, S.K. (2007). The Executive Secretary Brief on the Activities of PEF, op.cit.

514 Ibid.

arising from the poor state of local refineries was costing the Federal Government a whopping sum of N1.3 trillion per annum.

4.4.1 Ease of Enforcement of the Uniform Price Regime by the Petroleum Equalization Fund Management Board

For ease of enforcement of Uniform Pricing Regime in the country, the Petroleum Equalization Fund, the enabling Act⁵¹⁵ establishing the board has provisions for penalties for various offences. It provides that:

- (1) Any person who fails to comply with any requirement made by the Secretary under section 10 of this Act, shall be guilty of an offence and liable on conviction to a fine of N50,000.00.
- (2) Any person who-
 - (a) knowingly or recklessly furnishes in pursuance of any requirement made under section 10 of this Act, any return or other information which is false in any material; or
 - (b) Willfully makes a false entry in any record required to be produced under that section with intent to deceive, or makes use of any such entry which he knows to be false, shall be guilty of an offence and liable on conviction to a fine of N50,000 or to imprisonment for five years.
- (3) Where an offence under this Act by a body corporate is proved to have been committed with the consent or connivance of, or to be attributed to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate (or any person purporting to act in any such capacity) he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.⁵¹⁶

⁵¹⁵ Cap. P.11, Vol. 20, Laws of the Federation of Nigeria, 2004

⁵¹⁶ Sections 11(1)-(3) of Cap. P.11, Vol. 20, Laws of the Federation of Nigeria, 2004

The Act also empowered the Board through the Secretary who is the Chief Administrative Officer⁵¹⁷ to:-

- (a) Determine at such intervals as the Board may direct, the net surplus revenue recoverable from any oil marketing company and accruing to that companies from the sale by it of petroleum products as such uniform prices as may be fixed by the Minister pursuant to Section 6(1) of the Petroleum Act.⁵¹⁸
- (b) Determine the amount of reimbursement due to any oil marketing company which has suffered lose as a result of the operation of the enactment as aforesaid.
- (c) Payment of all disbursements authorized under or by virtue of this Act.
- (d) Accounting for all moneys collected, paid or otherwise expended under the Act.
- (e) Carrying out such other duties as may from time to time be specified by the Board.

The provision in Section 1(1) of Petroleum Production and Distribution (Anti-Sabotage) Act⁵¹⁹ also compliment the efforts of Petroleum Equalization Fund Management Board in making petroleum products available in all over the country. The Act provides that:

Any person who willfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in

⁵¹⁷ Ibid., Section 4(2)(a)-(e)
⁵¹⁸ Cap. P.10, L.F.N., 2004, op.cit.
⁵¹⁹ Cap. P.12, Vol. 20, L.F.N., 2004

any part of Nigeria or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products, shall, if by so doing causes or contributes to any interruption in the production or distribution of petroleum products in any part of Nigeria be guilty of the offence of sabotage under the Act.

The objective of this Act is to deter the interruption of the production or distribution of petroleum products in Nigeria.

On cursory examination of the whole Act, it is observed that there are some discriminatory practices in claims settlement by the Board. The Board paid claims to major and independent oil marketers only after deducting the contributions and allowances due from the marketers to Petroleum Equalization Fund Management Board. In some cases, bridging claims were paid to some independent oil marketing companies without deducting the National Transportation Average (NTA) contribution due from them. In some cases the Board does not impose penalties promptly on defaulting independent and major oil marketers who did not pay their contribution to the Fund. All these create loopholes in the full implementation of equalization schemes, thereby making it difficult for marketers to deliver their products promptly or none at all to their designated locations.

4.4.2 Implementation of Equalization through E-Payment System

The introduction of paying marketers their bridging costs and equalization of allowance through an e-payment system by the Board has made enforcement of

the Uniform Price Regime very easy and encourages oil marketers to make the products available and sold at government approved prices nationwide. Before now, the Petroleum Equalization Fund payments were made manually in an unwieldy process that caused long delays, which could erode the ability of marketers to sell products at uniform prices nationwide.

The Act⁵²⁰ further enforces the credibility of Petroleum Equalization Fund (PEF) by providing that:-

- (1) The Board shall from time to time by notice served by registered post on the oil marketing company concerned, specify the date on which any net surplus revenue due from that oil marketing company shall be paid to the Board.
- (2) If any sum is not paid within twenty-one days of the specified date, a sum equal to ten per cent of the amount unpaid shall be added for each month or part of a month after the date on which payment should have been made.
- (3) The Board may, if it thinks fit, remit in whole or in part any penalty imposed under the section.⁵²¹

The e-payment method has removed the bureaucratic nature of settling marketers their payments promptly unlike what was stipulated in the above provisions of the Act. It has also made it possible for PEF to settle more claims in eight months than all the payments it made in the three years before the system became operational. Another advantage of the introduction of e-payment system

⁵²⁰ Cap. P.12, Vol. 20, L.F.N., 2004

⁵²¹ Sections 6(1)-(3) of Petroleum Equalization Fund Act, Cap. P.12, Vol. 2, L.F.N., 2004.

is the reduction of fake claims usually made by marketers for service not rendered or over-invoicing in the quantity of products not supplied. Worried by the increasing level of unacceptable claims presented by marketers, the “Board” has reviewed and re-strengthened its verification processes to include all product distribution parameters and daily distribution reconciliation which is part of measures to improve transparency and accountability in its service delivery.⁵²²

In order to ensure proper management and administration of the Petroleum Equalization Fund, the Act establishing the Fund also established a Management Board by providing that:-

There shall be, for the purpose of administering the Fund in accordance with the provisions of this Act, a body to be known as the Petroleum Equalization Fund Management Board (hereinafter in this Act referred to as “the Board”).

(2) The Board shall be a body corporate with perpetual succession and a common seal.

(3) The Board may-

(a) Sue and be sued in its corporate name

(b) Hold and acquire property whether movable or immovable.⁵²³

These provisions further created the independence of the Board and by conferring on it a legal personality, which the Board may sue and be sued in its name.⁵²⁴ The composition of the Board is in accordance with the provision of the

⁵²² Hamisu, M. (2012): PEF Uncovers Fraud by Petroleum Marketers. Daily Trust Newspaper of Monday 4th June, Business Column p. 13.

⁵²³ Section 3(1)-(3) and (h) of Petroleum Equalization Fund Management Board Act, Cap. P.11, Vol.20, Laws of the Federation of Nigeria, 2004.

⁵²⁴ Ibid, Section 3(4).

law setting up the Petroleum Equalization Fund Management Board.⁵²⁵ Due to recent developments and the emergence of new players in the downstream sector, the Minister of Petroleum Resources, acting under Section 12 of the Act⁵²⁶ expanded the membership of the Board to include a representative of the Depot and Petroleum Products Marketers Association (DAPPMA) and the Petroleum Products Pricing Regulatory Agency (PPPRA).⁵²⁷ This was done to allow for wide spread of membership of the Board and for proper consultation in matters relating to operation of equalization schemes.

The Secretary of the Board acting under Section 4(3) of the Act⁵²⁸ provides guidelines for loading petroleum products at depots to facilitate prompt dispatch of trucks and certification delivery in order to facilitate prompt payment of claims. The guidelines are:⁵²⁹

- (a) All staff of the Board must be at the depots to sight products and stamp marketers documents at all times during official working hours.
- (b) Collection of National Transportation Average (NTA) allowance and issuing of receipts for same to marketers on daily basis.
- (c) Collection and acknowledgement of marketers Claims within 24hours.
- (d) Claims to be scrutinized by the depot staff and forwarded to the head office within 5 working days.
- (e) All Claims received at the depots for processing will be ready for payment to marketers at the depot within 37 working days.

525 For composition of the Board see Schedule of the Act.

526 Cap. P.11, Vol. 20, op. cit.

527 The Stakeholders are Petroleum Products Pricing Regulatory Agency (PPPRA), The Department of Petroleum Resources (DPR), Nigerian National Petroleum Corporation (NNPC), Pipelines Products Marketing Company (PPMC) and National Association of Road Transport Owners (NARTO)

528 Cap. P.11, Vol. 2, Laws of the Federation of Nigeria, 2004,

529 The guidelines were extracted from the Bulletin of Nigeria Extractive Industry Transparency International (NEITI), 2016.

- (f) Bridged products must be delivered within stipulated time limit (presently set at 10days).
- (g) Marketers are to report any breakdown of vehicle immediately to Petroleum Equalisation Fund (management) Board receiving depots within the stipulated time limit (48hours).
- (h) Evidence of delivery of correct volume of products lifted.

According to Adagunodo,⁵³⁰ government in introducing the Uniform Pricing Regime believed that oil is a natural endowment that was freely given to Nigerians by God and therefore conceived the policy as an economic and social ideology for the well being of the populace by ensuring that prices of petroleum products in the downstream oil sector are sold at uniform prices throughout the country. Nigeria is a developing economy where government actions transcend virtually all aspects of life of the population and in this way the range of public policies is usually very broad and unlimited. Regrettably, the powers given to the Board by the Act to manage the equalization fund are centred on one person; that is the Secretary of the Board, rather than to an independent institution. This can lead to abuse, patronage and political interference. At the same time some of the powers confers on the Secretary are discretionary, which can further be abused thereby defeating the essence of uniform price regime of the Federal Government. Specifically, Section 9 of the Act⁵³¹ stipulates that:-

A copy of an entry in the accounts of the Board or other extract from the records of the Board shall, when certified

⁵³⁰ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. International Journal of Energy Economics and Policy, Vol.3, No.4, pp.459-472.

⁵³¹ Adagunodo, M. (2013), op. cit.

by the Secretary, be received in all courts as prime facie evidence of the truth of the contents thereof and, as the case may be, of the debt to the Board of any oil marketing company.

Section 11(1) on the other hand went further to stipulate that: “Any person who fails to comply with any requirement made by the Secretary under Section 10 of this Act shall be guilty of an offence and liable on conviction to a fine of N50,000.00.”

The power in these sections is too wide, which can lead to an abuse by the Secretary of the Board in dealing with some sensitive issues of records of accounts of the Board. This is because it is the Secretary that is conferred with the power to keep records of account of the Board as stipulated in Section 7(1) of the Act. Another area of concern is the creation of sister organizations like the Petroleum Product Price Regulating Agency (PPPRA) and the Department of Petroleum Resources (DPR), which perform some similar functions like that provided in the Petroleum Equalization Fund Act. This is capable of conflict of powers and interest between these organizations. There is need to harmonize the powers of these agencies in order to avoid such conflicts, smooth operation and proper monitoring of the downstream sector.

4.4.3 Implementing Equalization through Project Aquila

The Petroleum Equalisation Fund (Management) Board introduced ‘Project Aquila’, as an innovative e-business solution, to enhance service delivery to stakeholders in the downstream oil sector. It is an efficient system of managing products distribution

and payment of Marketers' claims. It confirms the loading and delivery of petroleum products at the depots. It was initiated to check leakages, enthrone transparency and due process while transforming the Board's operations. Aquila is a tracking device to monitor movement of trucks or goods in transit. Aquila, a Latin name for Eagle was chosen in view of the bird's strength, speed and accuracy.⁵³²

The Aquila Project is an electronic business solution designed to track the movement of regulated petroleum products throughout Nigeria by confirming loading and delivery of regulated petroleum products at all depots and retails outlets.⁵³³ This method, it is believed would bring efficiency in the management of volume of regulated petroleum products bridged across the country. It would also ease bridging claims payment to marketers and transporters; as well as eliminate the massive corruption that has hitherto characterized the payment of the bridging claims. Building a reliable data base for the downstream petroleum sector distribution is also one of the advantages of the project.

Managers of PEF believe the Aquila project, would bring efficiency in the management of volume of regulated petroleum products bridged across the country, it would also ease bridging claims payment to marketers and transporters; as well as eliminate the massive corruption that had hitherto characterized the payment of the bridging claims. Regrettably, the project is facing its difficult and test moment. Cases of theft and tampering with the Radio

⁵³² *Project Aquila In Your Business Interest.* (Available at: <http://www.pefmb.gov.ng/?p=828> – accessed 4th December, 2016).

⁵³³ Sanyaolu, A. (2016). Deregulation: Why Government Should Abolish Bridging Claims Payment <http://www.nigeriannewspapers.today/2016/07/11/deregulation-why-govt-should-abolish-bridging-claims-payment/> (accessed January 29, 2017)

Frequency Identification (RFID) tags affixed on trucks, especially in the Lagos area by some petroleum marketers and haulers having little or no understanding of the workings of the project, acute shortage of the Radio Frequency Identification tags are among the various difficulties facing the project.⁵³⁴ Before the introduction of the Aquila project, the PEF has been battling hard with so many challenges, which ranges from rampant petroleum product diversion by haulers and marketers; absence of reliable data, fraudulent bridging claims of undelivered products. Cases of multiple registration numbers for a single truck and insider abuses were also challenges in the management of the regulated petroleum products distribution system.

According to statistics posted on the website of Petroleum Equalization Fund (PEF),⁵³⁵ the agency paid N11,992,034,535.11 claims to marketers for the month of August 2015. But despite this staggering payment to marketers of August alone, government should continue to fund PEF, giving the fact that prices of petroleum products are still being regulated by government. Not until downstream petroleum sector is fully deregulates, Petroleum Equalization Fund (PEF) will continue to remain relevant because government wanted a situation that petroleum products pricing would be uniform nationwide. As long as the downstream sector is still regulated and government continues to fix prices, PEF would continue to remain relevant, since the agency was created to ensure price

⁵³⁴ Sanyaolu, A. (2016). Deregulation: Why Government Should Abolish Bridging Claims Payment. <http://www.nigeriannewspapers.today/2016/07/11/deregulation-why-govt-should-abolish-bridging-claims-payment/> (accessed January 29, 2017)

⁵³⁵ Ibid.

stability of petroleum products across the country. What the management of Petroleum Equalization Fund needs to do is to maintain continuity of this project and embark on massive education and advocacy, including continuous publicity and advertising.

CHAPTER FIVE

THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR PETROLEUM PRODUCT PRICING IN NIGERIA

5.1 Introduction

Petroleum, a very important source of energy for economic development of Nigeria, has inevitably become a subject of political manipulation and any discussion about the oil industry today raises various issues, especially from the period of 1980s. The various issues include: scarcity of petroleum products, sharing of revenues accruing from the sell of crude oil, removal of subsidy or deregulation of prices of petroleum products, which always generate social and political problems that normally paralyze economic activities nationwide, high rate of corruption in the downstream petroleum sub-sector.⁵³⁶ Some petroleum policies in the country relates to the steps government are taking to properly plan in order to be able to forecast the expected amount of consumption of petroleum products due to rapid increase in population and economic activities in the country that require large volume of petroleum products for industrial purposes.

Over the years government has used regulatory authorities, laws and reforms to ensure the efficiency and effectiveness of the oil and gas sector,⁵³⁷ still, the Nigerian oil and gas industry is bedeviled by insincerity, fraud and corruption, oil theft, subsidy scam, gas flaring, environmental hazards,

⁵³⁶ Akove, T. (2015). Fuel Subsidy Corruption and the Illusion of Economic Reconstruction in Nigeria: Academic Journal of Interdisciplinary Studies, Vol. 4, No.1. MCSER Publishing.

⁵³⁷ Donwa, P.A., Mgbeme, C.O. and Julius, O.M. (2015). Corruption in the Oil and Gas Industry: Implication for Economic Growth. European Scientific Journal, Vol 11 No. 22, pp 212-222.

fluctuations in world oil price, pipeline vandalism, illegal refining of oil and collapse of refineries.⁵³⁸

In order to exploit her natural resources efficiently, the Federal Government of Nigeria adopt strategies aligned to her economic and political ideologies as enshrined in Chapter Two of the 1999 Constitution (as amended) by developing some policies and legal instruments in order to ensure orderly development of the petroleum industry.⁵³⁹ In the last two decades, the concept of sustainable development emerged strongly in national policies discourse and in recognition of the fact that human development activities are the major concern of sustainability. According to Romanova⁵⁴⁰, development strategies in Nigeria relied heavily on classical and neoclassical ideas as the basis for national development, which stress the roles of trade and capital accumulation in development.

The contributions of the downstream petroleum industry to growth and development of the Nigerian economy can be enumerated in terms of the industry's impacts on the economic variables responsible for economic growth. This explains the reason why policies formulation through legislative framework is necessary for the regulation of prices of petroleum products in the downstream sector. This Chapter is therefore aimed at analyzing the legislative and

⁵³⁸ Mgbame, C.O., Donwa, P.A. and Osunbor, E.O. (2015). Nigerian Oil and Gas Sector Background, Reform Efforts and Implication for Economic Growth. *International Journal of Multidisciplinary Research and Development*, Vol. 2, Issue 9, pp.508-515.

⁵³⁹ Enebeli, E.E., Cheng, J. and Wang Xiao-Lin (2012). Petroleum Exploration and the Oil Price Dynamics: A Case Study of Nigerian Petroleum Industry. *African Journal of Business Management*. Vol.6(9), pp.3342-3348. Published by Academic Journals, 2012.

⁵⁴⁰ Romanova, I. (2007). *Oil Boom in Nigeria and its Consequences for the Country's Economic Development*. Published by Munich, GRIN Verlag. 2007.

institutional framework responsible for the regulation of petroleum products pricing in Nigeria.

5.2 Petroleum Policies in the Oil and Gas Sector in Nigeria

Nwaobi⁵⁴¹ defined policy as a course of action intended to be followed by government with a view to achieving certain objectives. According to Adedipe,⁵⁴² policy is the action–statement of the government pertaining to particular sectors of the economy, describing the intended objectives and how to achieve them. Thus, a major role of government policy is to foster and sustain rapid socio-economic development and an improvement in the living standards of the population of the country. In other words, the thrust of a policy should be to properly balance economic and social objectives. The formulation of an economic policy involves the collection, arrangement, analysis, summary and interpretation of economic data. The quality of data input into policy formulation then becomes critical to evolving policies that will impact the macro-economy in the desire sectors.⁵⁴³

The origin of Nigeria’s oil policy⁵⁴⁴ can be traced to the year 1971, when oil became prominent in the economy. The Federal Government has maintained a strong hold on oil and gas resources, passing many laws giving it exclusive rights. Among such laws are the Territorial Waters Act,⁵⁴⁵ Exclusive Economic Zone Act,⁵⁴⁶ Land Use Act,⁵⁴⁷

⁵⁴¹ Nwaobi, G.C. and Territory, F.C. (2005). Oil Policy in Nigeria: A Critical Assessment (1956-1992). (Available at: <http://www.core.ac.uk/download/pdf/9312754> - last accessed 28/10/2008).

⁵⁴² Adedipe, B. (2004). The Impact of Oil on Nigeria’s Economic Policy Formulation. Text of a Paper presented at the Conference on Nigeria: Maximizing Pro-poor Growth: Regenerating the Socio-Economic Database, Organized by Overseas Development Institute in Collaboration with the Nigerian Economic Summit Group, 16-17 June.

⁵⁴³ Adedipe, B. (2004). The Impact of Oil on Nigeria’s Economic Policy Formulation. Op. cit.

⁵⁴⁴ Gbeoyega, A., Sereide, T., Tuan, M.L. and Shukla, G.P. (2011). Political Economy of the Petroleum Sector in Nigeria, The World Bank Policy Research Working Paper No. WPS5779.

⁵⁴⁵ Cap. T.5, Laws of the Federation of Nigeria, 2004

⁵⁴⁶ Cap. E.11, Laws of the Federation of Nigeria, 2004

⁵⁴⁷ Cap. 202, Laws of the Federation of Nigeria, 2004

Oil Pipelines Act,⁵⁴⁸ Petroleum Act,⁵⁴⁹ Minerals and Mining Act,⁵⁵⁰ and National Inland Waterways Act.⁵⁵¹

Several questions emerged from this discussion with respect to the impact of Nigeria's oil policy.⁵⁵² What is the impact of the low oil price regime on the growth of energy demand? What is the impact of the low oil price regime on the growth of energy demand? Has the poor benefited from the distribution objectives of the oil policy? What is the effect of oil policy on resource allocation and efficient use of energy? What is the medium term prospect of oil in dealing with the external financial crisis? The answers to these questions can be explained in two dimensions; the first is the internal and the second is the external dimensions. The internal dimension has to do with the involvement of Nigeria's Government in the downstream oil industry, which it started by making various policies and laws to regulate the sector.⁵⁵³

Given the overall expansion of economic activities and the unprecedented explosion in the demand for petroleum products in the 1970s the government ventured into petroleum products distribution and marketing.⁵⁵⁴ Prior to 1973, petroleum product pricing was not uniform throughout the country the pricing was under the control of the domestic multinational oil companies. The pump price depended on point of sale and this affected the distribution of products to all parts of the country. Government introduced the uniform pricing system on 1st October, 1973 for all grades of products,

⁵⁴⁸ Cap. 07, Laws of the Federation of Nigeria, 2004

⁵⁴⁹ Cap. P.10, Vol. 13, Laws of the Federation of Nigeria, 2004

⁵⁵⁰ Cap. No. 20, Laws of the Federation of Nigeria, 2004

⁵⁵¹ Cap. No. 13, Laws of the Federation of Nigeria, 2004

⁵⁵² Nwaobi, G.C. and Territory, F.C. (2005). Oil Policy in Nigeria: A Critical Assessment (1956-1992), op. cit.

⁵⁵³ Okanla, O.A. (1977). Development of Government Role in the Oil Industry. Paper Presented at the Sixth Nigerian Institute of Journalism Oil Seminar, Lagos. *Nigerian Trade Journal* Vol. 24 No. 3 July 28th, p.31

⁵⁵⁴ Nwaobi, G.C. and Territory, F.C. (2005),op. cit.

and grant subsidies to the marketing companies to compensate for the differential in the cost of operation.

The external dimension that made Nigeria involved in the regulation of the downstream sector was when Nigeria became a member of the Organization of Petroleum Exporting Countries (OPEC) in 1971 when oil market was characterized by strong upward pressures on prices and OPEC has assumed a dominant role in production and pricing decisions.⁵⁵⁵ Since then OPEC continued to influence Nigeria's oil production policy, however, Nigeria's entry into the business as a strategy of national survival perhaps introduced a new dimension to it.

5.3 The Legislative Framework for Petroleum Products Pricing in Nigeria

At inception, Nigeria had minimal government regulation of the oil industry⁵⁵⁶ but the International Oil Companies operated the concessions and paid appropriate taxes, and oversight was vested in a one-man in the Mines Division of the Ministry of Lagos Affairs.⁵⁵⁷ To increase control over the oil industry, government passed the Petroleum Act in 1969, which stipulated that only companies registered in Nigeria could participate in the oil industry and reserved the right of the government to acquire shareholding in all concessionary contracts.⁵⁵⁸ The development in Nigeria toward more state

⁵⁵⁵ Nwaobi, G.C. and Territory, F.C. (2005), *op. cit.*

⁵⁵⁶ Nwokeji, G.U. (2007). *The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions*. Report Prepared in Conjunction with an Energy Study Sponsored by the James A. Baker III Institute for Public Policy, Rice University.

⁵⁵⁷ It was later changed to Ministry of Mine and Power (MMP).

⁵⁵⁸ Omoregbe, Y. (2001). *Oil and Gas Law in Nigeria*. Lagos Nigeria, Malthouse Press Limited.

control corresponded to policy choices in many other petroleum rich countries at that time.⁵⁵⁹

One of the important legislations made to regulate the price of petroleum products in Nigeria was the Petroleum Act.⁵⁶⁰ The Act provides that: “The Minister may by order published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.”⁵⁶¹

The Petroleum Act⁵⁶² also provides that; “The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.”⁵⁶³ Similarly, the Constitution also provides that:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.⁵⁶⁴

The provisions of these laws were applied in the case of **Attorney General of the Federation (AGF) vs. Attorney General of Abia State (No.2)**⁵⁶⁵ on the legal implication of Federal Government ownership of petroleum Resources. In that case the court confirmed the vesting of ownership of petroleum resources in the Federal Government. It further held that the Federal Government alone and not the littoral states can lawfully

559 Gboyega, A., Soreide, TG., Tuan, M.L., Shukla, G.P. (2011). Political Economy of the Petroleum Sector in Nigeria. Policy Research Working Paper No. WPS5779. The World Bank.

560 Cap. P10, Vol. 13, Laws of the Federation of Nigeria, 2004.

561 Ibid, Section 6(1) of the Petroleum Act, Cap. P.10, Vol. 13.

562 Cap. P.10, Vol.12, Laws of the Federation of Nigeria, 2004

563 Ibid., Section 1(1) of Cap. P.10, Vol. 12.

564 Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

565 (2002) 6 NWLR Part 764, page 542.

exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters as well as sovereign rights over the exclusive economic zones subject to universally recognized rights.

Reference was also made by the court to paragraph 35 of the First Schedule of the Petroleum Act in the case of **Famfa Oil Ltd. vs. A.G.F. & NNPC**⁵⁶⁶ where the court held that the provisions of paragraph 2 of Deep Water Block Allocation to companies (backing rights) regulations 2003 (a subsidiary legislation under the Petroleum Act) which gives the Federal Government the arbitrary right to acquire five-sixth of an Oil Prospecting Lease (OPL) or Oil Mining Lease (OML) interest is invalid to the extent that it is inconsistent with paragraph 35, First Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder of the OPL or OML.

In **Idoniboye-Obu vs. Nigerian National Petroleum Corporation (NNPC)**,⁵⁶⁷ the court established the legal status of the NNPC when it held that the Corporation is a creation of statute enacted by the National Assembly. It is therefore a Federal Government Corporation which is known to perform a central role in the Oil and Gas Industry. Similarly, in **Opuo vs. NNPC**,⁵⁶⁸ it was established that the nature of relationship between NNPC and the Nigerian Gas Company that the provisions of Sections 5 and 6 of the NNPC Act, the Nigerian Gas Company is not only a subsidiary of NNPC but an agent of the Corporation. In **Nigerian Gas Company Ltd. vs. Dudusola**⁵⁶⁹ the court held that Section 4(4) of the NNPC Act empowers the Corporation

⁵⁶⁶ Suit No. CA/A/173/06 (unreported).

⁵⁶⁷ (2006) NWLR Part 660

⁵⁶⁸ (2002) FWLR Part 84 page 11.

⁵⁶⁹ (2005) 18 NWLR Part 957 page 292.

to appoint such persons as members of staff of the Corporation as it considers necessary and may approve conditions of service including provision for the payment of pensions.

The role of government agency for petroleum matters in the oil industry at the early stage was focused more on the regulation of the upstream sector⁵⁷⁰ through the issue of permits and licenses for oil exploration, drilling operation, oil pipelines and for the construction of oil field installation and inspection⁵⁷¹ in order to promote the smooth operation of the international oil companies doing business in Nigeria. The attention of government was later shifted to the downstream sector,⁵⁷² but however, the regulation was directed towards importation, storage, shipping and transportation by rail and road of petroleum products.⁵⁷³

The powers granted the Minister generally in petroleum matters were so much that it became very difficult to effectively discharge its functions for the monitoring of both the upstream and downstream sector. In order to address this situation, a Department of Petroleum Resources (DPR)⁵⁷⁴ was created in 1970 to enhance Nigeria's regulatory functions under the supervision of the Ministry of Mines and Power. Since 1977 DPR is created as an independent regulatory unit under the Ministry of Petroleum Resources. It operate both in upstream and

⁵⁷⁰ Kur, J.J. (2014). Consumer Protection and Deregulation Policy I the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. *Benue State University Law Journal*, Vol. 5, No. 1, pp.25-50 described the upstream sector that sector that cover all those activities relating to the exploration, prospecting, extraction of crude oil, their treatment, transportation and delivery to designated export terminals or otherwise to processing plants or refineries.

⁵⁷¹ Sections 2(1) and (2) Petroleum Act, op. cit.

⁵⁷² Kur, J.J. (2014), op. cit. defined the downstream sector to include refining, subsequent conversion to petrochemical products, transportation, marketing and supply of the finished products and related ancillary services to consumers.

⁵⁷³ Okanla, O.A. (1977). Development of Government Role in the Oil Industry. Paper Presented at the Sixth Nigerian Institute of Journalism Oil Seminar, Lagos. *Nigerian Trade Journal* Vol. 24 No. 3 July 28th, p.31

⁵⁷⁴ It was formerly called the Department of Petroleum Inspectorate created by Decree No. 33 of 1977, now S.10(1) NNPC Act, Cap. N.123, Vol.12, L.F.N., 2004.

downstream sector. However, the power granted to DPR was centred on monitoring and issuance of licenses for the establishment of petrol filling stations according to guidelines issued by the Nigerian National Petroleum Corporation.⁵⁷⁵ The establishment of NNPC in 1975 and the subsequent establishment of the Pipelines Product Marketing Company (PPMC) as a subsidiary of the NNPC in 1980 were some of the bold steps taken by government to control the supply and distribution of petroleum products in the country.

In order to reform the downstream oil sector in Nigeria, government established the Petroleum Products Pricing Regulatory Agency (PPPRA) in 2003⁵⁷⁶ to control the pricing, supply and distribution of petroleum products.

Many of the developmental challenges in Nigeria are the results of past policy choices in the evolution of petroleum governance. The comprehensive reform of the petroleum sector proposed by the government is an effort to move out of an adverse equilibrium. The likelihood of success may depend critically on the legislatures to formulate policies and laws that will shape the Nigeria oil industry.

5.3.1 The Roles of the National Assembly in Petroleum Matter

Before the 1999 Constitution of the Federal Republic of Nigeria (as amended), the power to make laws for any matter or part of the country was conferred on the Federal Military Government, which ruled the country from 1966

⁵⁷⁵ S.4(1) Petroleum Act, Cap. P.10, op. cit.

⁵⁷⁶ Cap. P.43, Vol. 14, Laws of the Federation of Nigeria, 2004.

to 1979 except from 1979 to 1983 when there was civilian administration in the country. During the period of Military rule various Decrees were made in respect of oil matters in the country. Some of these Decrees include the Petroleum Act of 1969, the Petroleum Equalization Fund Act of 1973, the Petroleum Production and Distribution (Anti-Sabotage) Act of 1975, the various Uniform Pricing Orders of 1973 and 1986, which control the price per litre of petrol in the downstream sector. There is also the Price Control Act,⁵⁷⁷ enacted by the Military Government in 1977. Section 4 of the Act stipulates that price control shall continue to be imposed on any goods which are of the kind specified in the First Schedule, in which petroleum product was mentioned as control commodity. The current National Assembly is however empowered under Section 4(2) and Part I of the Second Schedule of the 1999 Constitution (as amended) to “make laws for the peace, order and good governance of the Federation on any part thereof with respect of any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule of the Constitution.”

Under the current democratic dispensation, there are two arms of the National Assembly, which include the Senate and the House of Representatives.⁵⁷⁸ Bills are normally presented to the National Assembly either by the President of Nigeria or sponsored by members of the house for legislative action and when pass by the two chambers can only become law when the President assent to it.⁵⁷⁹

⁵⁷⁷ Cap. P.2, Vol. 20, Laws of the Federation of Nigeria, 2004

⁵⁷⁸ Section 47 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁵⁷⁹ Ibid, Section 58.

Most of the economic policy actions of government are also presented to the two Houses by the President in form of Annual Budget, which is debated and pass by the two houses before signing by the President to become the Appropriation Act for implementation.⁵⁸⁰ The power of the National Assembly to make laws, which are included in both the Exclusive and Concurrent Legislative List is not in doubt.⁵⁸¹ While the Exclusive Legislative List only empowered the National Assembly to make law under such circumstances, the Concurrent List allows both the National and States Assemblies to make law under such list.⁵⁸²

The power of the National Assembly to make laws in the Exclusive Legislative List is for the good governance of the State.⁵⁸³ The State is normally guided by the Directive Principles of State Policies under Chapter 2 of the Constitution that represents the economic action-statement of Government pertaining to particular sectors of the economy.⁵⁸⁴ It sets out the intended objectives and how to achieve them in order to improve the welfare of the people. Petroleum matters are issues reserved in the Exclusive Legislative list⁵⁸⁵ which only the National Assembly is allowed to make law thereof. Over the years the downstream sector appears to be the most problematic sector of the oil industry and requires good legislative action that will connect the final consumers to refined petroleum products.

580 Ibid, Section 59.

581 Ibid, Sections 4(2).

582 Sections 4(4)(a)(b), of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

583 Ibid, Sections 4(1)(2).

584 Sections 16(1)(a)-(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

585 Ibid, Item 39 Second Schedule, Part I.

Since inception of the National Assembly under the present democratic dispensation, two bills were presented for legislative action that will shape the activities of the downstream oil sector. The first was the Petroleum Products Pricing Regulatory Agency (Establishment) Bill of 2001, which became an Act⁵⁸⁶ of the National Assembly in 2003 and the Petroleum Industry Bill (PIB), which was first presented to the National Assembly in 2008 and re-forwarded in July, 2012 for consideration and passage into law.

The Petroleum Industry Bill (PIB), which is still in the National Assembly,⁵⁸⁷ seeks to provide a legal fiscal and regulatory framework for the Nigerian Petroleum industry including the downstream sector, which will establish a fiscal framework that will encourage investment and revenue flow to the government. Government arguments for deregulation amongst others are to:⁵⁸⁸ ensure petroleum products are consistently made available, eradication of waste and corruption and to allow market forces to be the major determinant of petroleum products prices.

The Constitution⁵⁸⁹ poses a huddle to the deregulation policy because the major sector of the Nigerian economy is the oil and gas sector, thus if the Constitution has placed the management and operation of the oil and gas sector in the hands of the Federal Government, complete deregulation may not be

586 Cap. P.43, Vol. 14, op. cit.

587 Temitayo, B.A. (2014). Law and Economics of Deregulation in Downstream Sector of the Nigerian Oil and Gas. The International Journal of Science and Technology, Vol. 2 Issue 8, pp.99-104.

588 Kur, J.J. (2014), op.cit. defined the downstream sector to include refining, subsequent conversion to petrochemical products, transportation, marketing and supply of the finished products and related ancillary services to consumers.

589 Sections 16(1)(b and c), and Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

possible. Our law makers must look for a way to further amend the Constitution in the bid of allowing economic reforms become implementable. In this regard, there is urgency in passing into law the proposed Petroleum Industry Bill (PIB). Under Section 221 of the proposed Bill, deregulation is the starting provision for downstream petroleum industry in Part V. It stipulates thus: “The pricing of petroleum products in the downstream products sector is deregulated to ensure:

- (a) A market related pricing;
- (b) Adequate supply of petroleum product;
- (c) Removal of economic distortions; and
- (d) The creation of fair market value for petroleum products in the Nigerian economy.”

Further more, under Section 1(f) of the Bill it states that: “The objectives of this Bill are to: deregulate and liberalize the downstream petroleum sector.” The law and economics of deregulation are entrenched in the PIB as it is placed within the general and common economic structure of Nigeria. The Bill, if passed into law by the National Assembly will divest government’s control and encourage private investors into the industry to determine the price of petroleum products through market forces.

In considering budget estimates presented by the Executive to the National Assembly,⁵⁹⁰ consideration for the passage of every budget is normally based on a benchmark of crude oil price in the International Market. Abdullahi and Angus⁵⁹¹ observed that the 2004 budget was based on US\$25 per barrel

⁵⁹⁰ Section 81(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides a time frame in which budget is presented by the Executive to the National Assembly 2-4 months before the commencement of next fiscal year.

⁵⁹¹ Abdullahi, A.M. and Angus, O.U. (2012). Budget in Nigerian Public Sector: Need for Balanced Scorecard Perspective.

benchmark, which surpassed the market prices in the beginning of that year. The 2012 budget that was presented to the National Assembly was based on US\$65 per barrel price of crude oil at the international market while that of 2013 was based on US\$75 per barrel but was increased to US\$79 per barrel by the National Assembly. The 2014 budget, which was based on US\$65 per barrel was later reversed by the National Assembly to US\$45 per barrel due to fluctuation of prices of crude oil in the international market.⁵⁹²

Every budget presented by the Executive to the National Assembly always contains policy direction, especially in regard to fuel subsidy.⁵⁹³ In 2012 budget estimates to the Joint Session of the National Assembly, there was no such provision for fuel subsidy until the Minister of Finance's explanation that the President was still consulting widely on the issue. This absence of the President's pronouncement, even before the passage of the budget by the National Assembly began to draw comments from well meaning Nigerians to mean full deregulation of the downstream oil sector, which led to protests by Labour Unions and other pressure groups in the country in early part of January, 2012. The same argument also came up during the purported deregulation or increase in petroleum product price by the government from N86.50 to N145.00.

Arguments for non-removal of fuel subsidy and continued regulation of the downstream sector by the Federal Government is predicated on the abysmal

International Journal of Financial Accounting, Vol.1(2), pp. 1-6.

592

Nigeria's Senate Passes N4.8trn 2012 Budget – Available at: www.vanguardngr.com, accessed on 16 August, 2012, 00.38GMT.

593

Vahyala, A.T., Ramtan,W.M.and Shakur, F. (2016). Nigeria 2016 Budget Proposal: A Critique. Online Journal of Social Sciences Research, Vol.5, pp.13-16.

neglect of local refineries, poverty level in Nigeria, depreciation of the value of Naira to international currencies and unprecedented increase in corruption both in the oil and gas sector by Nigeria political class. Nigerians have shown disgusted attitude towards this policy because any slight increase in petrol price results in high increase in the cost of goods and services. The case of ***Bamidele Aturu v. Minister of Petroleum Resources***⁵⁹⁴ further put great obstacle on government effort to deregulate the downstream oil sector because of its violation with Section 6 of the Petroleum Act 1969,⁵⁹⁵ Section 4 of the Price Control Act,⁵⁹⁶ and Section 16(1)(b) and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). This decided case is no doubt an authority for those against subsidy removal and total deregulation of the downstream oil sector.

One thing that is certain under the 1999 Constitution of the Federal Republic of Nigeria (as amended) is Section 16(1)(b) and (c), which stipulates that the Federal Government shall:

- (b) Control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- (c) Without prejudice to its right to operate or participate in areas of the economy, other than the major sector of the economy, manage and operate the major sector of the economy.

⁵⁹⁴ Suit No. FHC/ABJ/CS/591/2009, judgment was delivered in 2013 (unreported)

⁵⁹⁵ CAP. P10, Vol. 13, Laws of the Federation of Nigeria, 2004

⁵⁹⁶ CAP P.28, Vol. 20, Laws of the Federation of Nigeria, 2004

The Constitution is the grundnorm and any law inconsistent with it will be treated as null and void. The above provision of the Constitution, irrespective of how guaranteed that provision may appear, poses a hurdle to the deregulation policy. The major sector of the Nigerian economy is the oil and gas sector, thus if the Constitution has placed the management and operation of the oil and gas sector in the hands of the Federal Government, complete deregulation may be an exercise in futility. Our law makers must look for a way to further amend the Constitution in the bid of allowing economic reforms become implementable.

Adedipe⁵⁹⁷ opined that oil revenues accrued to the Federation Account are also appropriated based on the Constitution and the law made by the National Assembly from time to time. Since Nigeria operate a Federal System of Government monies accrued to the Federation Account are shared according to formulae agreed by the National Assembly, which in 2004 was 47% to the Federal Government, the 36 State Governments and the Federal Capital Territory (FCT) received 24.2% and Local Governments received 18.4%. In the same period, the Niger Delta States received additional N14.45 billion from the derivation fund and N5.55 billion from the Derivation Offshore.⁵⁹⁸ The violent conflicts in the Niger Delta in the past years have greatly affected production of crude oil from that area which also affected its export to customers outside the country and the amount

⁵⁹⁷ Adedipe, B. (2004). The Impact of Oil on Nigeria's Economic Policy Formulation. Test of a Paper presented at the Conference on Nigeria: Maximizing Pro-Poor Growth: Regenerating the Socio-economic Database, Organized by Overseas Development Institute in Collaboration with the Nigerian Economic Summit Group, 16-17 June.

⁵⁹⁸ Adedipe, B. (2004), op. cit.

sent to the local refineries to satisfy domestic consumption leading to scarcity and high increase in prices of fuel in the downstream sector.

The 2011 to 2015 Medium-Term Fiscal Framework and 2012 Fiscal Strategy Paper⁵⁹⁹ were submitted to the National Assembly under the Fiscal Responsibility Act, which outlined principal components of government's revenue and expenditure plan, based on global economic uncertainty. Since government revenue comes largely from oil, the legislators are always conscious of how these revenues are properly used. Therefore the legislatures will be more inclined in approving appropriation estimates in funding fuel subsidy rather than approving implementation of deregulation and privatization policy that would rather expose the citizenry to rules of fuel scarcity and its attendant hardship being experienced by motorists in the filling stations and high cost of transport fares.

Adebisi⁶⁰⁰ in examining the systematic and bureaucratic corruption in the downstream oil sector observed that fuel suppliers have increased from 30 to 40 but curiously, the list contains five oil marketers that had been previously indicted for oil import fraud. The indicted fuel importers were Nepal, MRS, Fresh Synergy, Ibafor and Techno. In 2012 about One Trillion Naira (US\$6.2 Billion) which represents about 20% of the Federal Budget was expended on fuel subsidy.⁶⁰¹ Fuel subsidy on petroleum products obviously facilitates corruption, which creates a huge shortfall in the financial resources needed for infrastructural development

⁵⁹⁹ Sam-Tsokwa, A.T. and Ngara, C.O. (2016). The National Assembly and the Budget Process in Nigeria's Fourth Republic: Tackling the Challenges of Timeliness. *Canadian Social Science*, Vol. 12(5), pp. 1-7.

⁶⁰⁰ Adebisi, M.A. (2015). The Political Economy of Oil Price Deregulation and the Subsidy Fraud Crisis: A Study of Systematic Bureaucratic Corruption in Nigeria. *Journal of Energy Technologies and Policy*, Vol.5, No.9, pp.33-44.

⁶⁰¹ The Nation Newspaper (2012). EFCC Invites 38 Oil Marketers Over N1.3 Trillion Subsidy Cash. Monday January 23, p.6.

across the country.⁶⁰² To ensure that subsidies on petroleum products are properly used as intended, there is need for proper enforcement of all offences stated in the Petroleum Act, the Petroleum Production and Distribution (Anti Sabotage) Act and other relevant laws in order to serve as a deterrent to other those who default the provision of the law.

5.3.2 The Nigerian National Petroleum Corporation (NNPC)

Nigeria joined the Organization of Petroleum Exporting Countries (OPEC) in 1971, the same year the Nigerian National Oil Company (NNOC) was established by Decree No. 18.⁶⁰³ The law required that Nigeria should hold an ownership of at least 60 percent equity stake in all foreign oil companies doing business in Nigeria and the Nigerian National Oil Company would manage the ownership share.⁶⁰⁴ The hydrocarbon section, which was known as Department of Petroleum Inspectorate (DPI) under the Ministry of Mines and Power was upgraded to the Department of Petroleum Resources (DPR) in 1970, in response to the need for a specialized agency to regulate the industry.⁶⁰⁵

In 1977 there was a major restructuring, which led to the merging of the Nigerian National Oil Company with the Ministry of Mines that led to the establishment of Nigerian National Petroleum Corporation (NNPC) on 1st April,

⁶⁰² Donwa, P.A., Mgbeme, C.O. and Julius, O.M. (2015), op. cit.

⁶⁰³ Now an Act of the National Assembly in the Laws of the Federation of Nigeria, 2004

⁶⁰⁴ Gboyega, A., Sereide, T., Tuan, M.L. and Shukla, G.P. (2011). Political Economy of the Petroleum Sector in Nigeria. Policy Research Working Paper, No. WPS5779, The World Bank.

⁶⁰⁵ Nwokeji, G.U. (2007). The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions. Report Prepared in Conjunction with an Energy Study Sponsored by the James A. Baker III Institute for Public Policy, Rice University.

1977 by Decree No.33.⁶⁰⁶ With this measure, the newly formed NNPC assumed the powers and responsibilities of the NNOC, the regulator DPR and the Ministry as a policy formulator and coordinator regarding; exploration, production, transportation, processing, refining and marketing of crude oil.⁶⁰⁷

The primary intend and objective establishing the Nigerian National Petroleum Corporation (NNPC) is to empower the Corporation to engage in all activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through the Department of Petroleum Resources (DPR).⁶⁰⁸

Historically, the active participation by the Nigerian Government through the Nigerian National Petroleum Corporation (NNPC) in marketing of crude oil only started in 1973.⁶⁰⁹ Prior to this time, oil was marketed by the Multinational Oil Companies (MNOC) through their integrated system using transfer pricing methods.⁶¹⁰ In the early days of crude oil production in Nigeria the seven marketing companies that spear-headed the marketing process were Shell, British Petroleum (BP), Mobil, Agip, Esso, Total and Gulf⁶¹¹ who operated joint ventures with the Nigerian Federal Government. However, the Multinational Oil Companies (MNOC) then produced and marketed all the crude oil at prices fixed by them alone. These arrangements were entirely import dependent as the crude

⁶⁰⁶ Now Cap. N.123, Vol.12, Laws of the Federation of Nigeria, 2004

⁶⁰⁷ Nwokeji, G.U. (2007), op. cit.

⁶⁰⁸ Section 6(1)(a)-(d), Cap. N.123, Vol.12, Laws of the Federation of Nigeria, 2004.

⁶⁰⁹ Kur, J.J. (2014). Consumer Protection and Deregulation Policy I the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. Benue State University Law Journal, Vol. 5, No. 1, pp.25-50

⁶¹⁰ Nwokeji, G.U. (2007), op. cit.

⁶¹¹ Kur, J.J. (2014), op. cit.

sourced in Nigeria were usually exported for refining processes. The period 1956 to 1970 can therefore be equated to the era of price deregulation in which Nigerians were made to pay for the products at market determined prices of products.⁶¹²

During this period, there was nothing like subsidy on petroleum products and Nigerians were made to pay for the products at market determined prices. Factors that accounted for the success of that regime of deregulation mainly were that, the exchange rates were relatively stable and predictable, the supply and distribution channels were working well and there was nothing like scarcity or hoarding of petroleum products.

In March 1988, Nigerian National Petroleum Corporation (NNPC) was declared a commercial company and fully integrated as an international oil company whose functions were further expanded to explore, develop, produce, process and market crude and refined petroleum products at internationally competitive prices in Nigeria and abroad.⁶¹³ The idea of making the Nigerian National Petroleum Corporation (NNPC) a commercial company was aimed at achieving efficiency, profitability and financial autonomy in all its operations. This led to the Corporation investing in other subsidiaries, such as the Nigerian Petroleum Development Company Limited [NPDC] and the Integrated Data

⁶¹² Okechukwu, I.A. (2006). Petroleum Products Pricing: A Critique of the Legal Framework and the Fallacy of Subsidy in the Oil and Gas Sector. *Ahmadu Bello University Law Journal*, Vols. 24-25, pp.156-170

⁶¹³ Nwokeji, G.U. (2007), op. cit.

Services Limited (IDSL), Pipelines Products Marketing Company (PPMC).⁶¹⁴ On the nature of relationship between NNPC and the Nigerian Gas Company, the court held in the case of **Opuo vs. NNPC (supra)**⁶¹⁵ that by the provisions of Sections 5 and 6 of the NNPC Act, the Nigerian Gas Company is not a subsidiary of NNPC but an agent of the Corporation.

The Nigerian National Petroleum Corporation (NNPC) power to control downstream activities was tailored towards transportation and marketing of petroleum products in order to meet consumers' demand of petroleum products.⁶¹⁶ In order to achieve its purpose, it constructed several kilometers of pipelines, pump stations and depots to distribute petroleum products throughout the country. In 1982, products retail, which was hitherto firmly in the hands of major multinational oil companies, were deregulated to accommodate indigenous (independent) marketers.⁶¹⁷ Petrol, kerosene, diesel, Aviation fuel and fuel oils are the more popular products associated with the Nigerian National Petroleum Corporation, apart from series of intermediate and other products produced from the Corporation's refineries and petrol chemicals plants, which aid small and medium scale industrial growth and development.⁶¹⁸

Apart from the commercial functions which the Nigerian National Petroleum Corporation (NNPC) was allowed to perform, it also has the sole responsibility of

⁶¹⁴ Egede, E.A. and Uzonna, N.O. (2013). The Effect of Cost of Distribution on the Pump Price of Petroleum Products in the South East Nigeria. *Journal of Economics and Sustainable Development*, Vol. 4, No.17, pp.154-162.

⁶¹⁵ (2002) FWLR Part 84 page 11.

⁶¹⁶ Egede, E.A. and Uzonna, N.O. (2013), op. cit..

⁶¹⁷ Ibid.

⁶¹⁸ Onwioduokit, E.A. and Adenuga, A.O. (2000). *Empirical Analysis of the Demand for Petroleum Products in Nigeria*. International Economic Relations Department, Central Bank of Nigeria.

importing refined petroleum products into the country. Prior to 1973 and before the introduction of uniform pricing regime, seven (7) multinational oil companies controlled marketing and distribution of petroleum products.⁶¹⁹ From 1971 to 1978 there were 1,500 retail outlets of petroleum stations⁶²⁰ built by the seven multinational oil companies established at different locations all over the country. By 1998, they had captured about 25 percent of the market but as 2010, they account for nearly 40 percent of the volume of products marketed in country.⁶²¹ In terms of outlets, the major marketers have 2,218 while the independent marketers have 7,948 outlets, the NNPC has 18 mega stations nationwide as at June, 2010.⁶²²

The Act⁶²³ establishing the Nigerian National Petroleum Corporation stipulates its functions to include:

- (i) Exploring and prospecting for, working, winning or otherwise acquiring, possessing and disposing of petroleum;
- (ii) Refining, treating, processing and generally engaging in the handling of petroleum for the manufacture and production of petroleum products and its derivatives;
- (iii) Purchasing and marketing petroleum, its products and by-products;

⁶¹⁹ Kur, J.J. (2014), *op. cit.*

⁶²⁰ Agbola, E.A. (1979). The Role of Roadside Petrol Resellers and Independent Marketers on National Economy. A paper presented at the Seminar on Petroleum Products Marketing at Petroleum Training Institute (PTI), Warri, pp.1-4.

⁶²¹ Petroleum Products Pricing Regulatory Agency Bulletin (2010). Available at www.pppra-nigeria.org

⁶²² Ehinomen, C. and Adeleke, A. (2012). An assessment of the distribution of Petroleum products in Nigeria. *E3 Journal of Business Management and Economics* Vol. 3(6). pp. 232-241.

⁶²³ Section 5(1) of NNPC Act, Cap. N123, Vol.12, Laws of the Federation of Nigeria, 2004

- (iv) Providing and operating pipelines, tanker-ships or other facilities for the carriage or conveyance of crude oil, natural gas and their products and derivatives, water and any other liquids or other commodities related to the Corporation's operations;
- (v) Constructing, equipping and maintaining tank farms and other facilities for the handling and treatment of petroleum and its products and derivatives;
- (vi) Carrying out research in connection with petroleum or anything derived from it and promoting activities for the purpose of turning to account the results of such research.;
- (vii) Doing anything required for the purpose of giving effect to agreements entered into by the Federal Government with a view to securing participation by the Government or the Corporation in activities connected with petroleum;
- (viii) Generally engaging in activities that would enhance the petroleum industry in the overall interest of Nigeria; and
- (ix) Undertaking such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

Apart from these functions, the Corporation is required to undertake a general review of affairs of its activities and subsidiaries as provided in the Act,⁶²⁴ which stipulates that:

⁶²⁴ Cap. N.123, Vol. 12, L.F.N., 2004.

It shall be the duty of the Corporation, from time to time, when the President so requires, or the Corporation considers it appropriate to undertake a general review of the affairs of the Corporation and of any subsidiaries thereof for the purpose of determining how the management of the activities of the Corporation or any subsidiary thereof can most efficiently be organized and, where appropriate, to make a report to the President, upon the Corporation's conclusion arising from the review.⁶²⁵

Section 6(1) states that; “the corporation shall have powers to do anything which in its opinion is calculated to facilitate the carrying out of its duties under this Act.” Section 6 (2) went further to state that: “notwithstanding, Subsection 1 of this Section, any contract relating to any project of a value of more than ₦5,000,000.00 (or such higher limit as may be directed from time to time by the President) shall be referred by the Corporation to the President, for approval before the award of any such contract is made by the Corporation.”

On Thursday 13th February, 2014, at the Senate Finance Committee hearing on the \$20 billion oil money which the Governor of Central Bank of Nigeria alleged had been diverted, misappropriated or was not remitted or accounted for by the NNPC, the Ministers of Petroleum Resources and Finance rendered an account on how the \$10.8 billion was spent out of the \$20 billion.⁶²⁶ The documents produced before the Senate Finance Committee, which were obtained from the Petroleum Products Pricing Regulatory Agency (PPPRA) showed that \$8.76 billion was paid out in favour of NNPC as subsidy payments on kerosene

⁶²⁵ Ibid., Section 5 (2) of Cap. N.123, Vol. 12.

⁶²⁶ Ogunye, J. (2014). Are NNPC and PPPRA Immune to Legislative and Presidential Oversight? (Available at: premiumtimes.com/opinion/155360-nnpc-pppra-immune-legislative-presidentialoversight – last accessed 18/2/2014).

and petrol between January, 2012 and July 2013, which was against a Presidential directive embargoing kerosene subsidy payment, since 2009.⁶²⁷

It is instructive to examine the alleged diversion or misappropriation of \$20 billion oil money which was not remitted or accounted for, by the Nigerian National Petroleum Corporation (NNPC), which was against Presidential directive stopping further subsidy payments on kerosene. According to the Minister of Petroleum Resources,⁶²⁸ the presidential directive stopping kerosene subsidy payments in 2009 lacked the force of law because it was not contained in a gazette; and that (in any case) after the order was released by the President, a ministerial committee met and decided to suspend the directive. According to the Ministers of Petroleum Resources and that of Finance, the sum of \$10.8 billion out of the \$20 billion allegedly missing was spent on payment of subsidy for petroleum products, while the remaining balance of \$10.8 billion was the outstanding sum.

The NNPC Group Managing Director also explained that out of the \$10.8 billion, which the NNPC claimed was the outstanding sum yet to be accounted for, \$8.76 billion had been used to settle “unpaid petroleum products subsidy”; crude oil and products losses had allegedly gulped \$0.76 billion; national strategic

⁶²⁷ Daniel (2014). Unrelenting CBN Governor Insists \$20 billion Naira Crude Oil Sales by NNPC still Unaccounted for. Available at: <http://www.information.com> – Accessed on 2/2/2017.

⁶²⁸ Ibid.

reserve holding cost had taken \$0.46 billion; while pipeline maintenance and management cost had consumed \$0.91 billion.⁶²⁹

The issues to be addressed here are; whether it was legal for NNPC to have claimed, as refunds, subsidy payments without appropriation?; Whether a presidential directive to the NNPC that is not published in an official gazette of the Federal Government of Nigeria lacks the force of law, has no binding force and is reversible by a ministerial committee? And whether the Senate Finance Committee or the Senate as a whole can investigate the alleged misappropriation of oil funds or order the Finance Ministry to carry out a forensic audit of a specific or general Nigerian National Petroleum Corporation accounts?.

Section 80 (1-4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that:

(1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation;

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorized by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of Section 81 of this Constitution;

(3) No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the

⁶²⁹

Ogunye, J. (2014), op. cit.

Federation, unless the issue of those moneys has been authorized by an Act of the National Assembly; and

(4) No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.

Since there is no provision in the NNPC Act that authorizes the NNPC to earn oil revenue on behalf of the Federation, withhold it, refuse to remit it into the consolidated revenue fund of the Federation kept with the CBN, and spend from it on behalf of the Federation without appropriation, before remitting the balance to the Federation, was a clear violation of the Constitution. On the issue that the Presidential directive has no backing by law or gazette, Sections 7 and 8 provisions of the Nigerian National Petroleum Corporation (NNPC) Act⁶³⁰ and Petroleum Products Pricing Regulatory Agency (Establishment) Act⁶³¹ vest in the President of Nigeria overall superintendent powers over the affairs of NNPC and PPPRA, which put the validity of ungazetted presidential directives relating to NNPC and PPPRA's operations beyond any disputation.

The provision of Section 6 (1 and 2) of the Petroleum Act⁶³² provides that:

(1) The Minister may, by order, published in the Federal Gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof; (and)

(2) The Minister may, by Notice, in writing require any person appearing to him to have or to be likely to have access to information which is relevant to the fixing of any prices of the kinds mentioned in subsection 1 of this Section to supply that

630 Cap. N.123, Vol.12, op cit.

631 Cap. P. 43, Vol. 14, op. cit.

632 Cap P10, Vol. 13, op. cit.

information to the Minister, and any person so required shall be legally bound to use his best endeavours to supply the information, accordingly.

The statutory power of the Minister of Petroleum Resources to fix the prices of petroleum products is not an authority for unauthorized payment of money, as subsidy for kerosene importation, without appropriation, in violation of the provisions of the Constitution; or a statutory power to disregard a duly communicated order or directive of the President stopping such payment. Fixing a price of petroleum products is one thing, paying out government money to subsidize the price is another? The two are not the same.

It is submitted that payments of the \$8.76 billion must have arisen from kerosene importation contracts, which NNPC could not have legally “paid to itself” the huge amount without appropriation, in flagrant disregard of a presidential directive and without recourse to the President.

Section 7 (1, 2 and 5) of the NNPC Act⁶³³ provides that:

(1) The Corporation shall keep proper accounts and proper records in relation thereto in a form which shall conform to the best commercial standards;

(2) The Corporation shall as soon as may be after the end of the financial year to which the accounts relate cause its accounts to be audited by auditors, appointed by the Corporation, with the approval of the President, from the list of auditors and in accordance with the guidelines laid down by the auditor-general for the Federation; and

(5) The Corporation shall submit to the President not later than three months before the end of each financial year estimates of

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Cap. N.123, Vol.12, op. cit.

its expenditure and income relating to the next following financial year.”

Section 8(2) of the Act⁶³⁴ also provides that “the Corporation shall not without the approval of the President, borrow any sum of money whereby the amount in aggregate outstanding on any loan or loans at any time exceeds such amount as is for the time being specified by the President;” and Section 9 provides that: “the President may issue to the Corporation such directions as he may think necessary as to the disposal of any surplus funds of the corporation, and subject to any such directions, the Corporations may invest its funds and maintain a general reserve.” Section 7 of the PPPRA Act⁶³⁵ defines its functions to include: “(a) determining the pricing policy of petroleum products; (b) regulating the supply and distribution of petroleum products: and (d) moderating the volatility in petroleum products prices, while ensuring reasonable returns to operators”

From the forgoing provisions of the Nigerian National Petroleum Corporation (NNPC) and Petroleum Products Pricing Regulatory Agency (PPPRA) Acts, it is very clear that at every turn, the NNPC and PPPRA must have recourse to the President. The question then is, when the President gives a directive to either the NNPC or PPPRA, and when both submit reports to seek approvals from the President, is it legally required that this must be done through a gazette? The answer, of course, is no. There is no provision in the two legislations to back such erroneous assertion.

⁶³⁴ Cap. N.123, Vol.12, op. cit.

⁶³⁵ Cap. P.28, Vol.14 op. cit.

Unless a particular declaration, notice or communication of government directive, business or transaction is compelled by law to be published in an official gazette; such requirement cannot be mischievously imported to attempt the invalidation of the directive, business or transaction. A presidential directive is not a proclamation of a state of emergency that must be published in a gazette as mandated by the Constitution.

In any case, by virtue of Section 130(2) of the Constitution,⁶³⁶ “the President shall be the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces of the Federation,” and by virtue of Section 148 (1) of the Constitution, “the President may, in his discretion, assign to the Vice-President or any Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any department of government.” Unpleasant as it may appear, a President can function without a Minister of Petroleum Resources. President Olusegun Obasanjo did so for eight years. For a Minister of Petroleum Resources to then assert that a presidential directive is ineffectual because it was not published in a gazette is nothing but a demonstration of abysmal ignorance of the Constitution.

On the issue whether the Federal Executive or President can audit the accounts of the NNPC, yes it can do so because of the clear and unambiguous provision of Section 85 of the Constitution, which provides as follows:

⁶³⁶ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

(1) There shall be an Auditor-General for the Federation who shall be appointed in accordance with the provisions of section 86 of this Constitution;

(2) The public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on to the Auditor-General who shall submit his reports to the National Assembly; and for that purpose, the Auditor-General or any person authorised by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts;

(3) Nothing in subsection (2) of this section shall be construed as authorising the Auditor-General to audit the accounts of or appoint auditors for government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly, but the Auditor-General shall – (a) provide such bodies with – (i) a list of auditors qualified to be appointed by them as external auditors and from which the bodies shall appoint their external auditors, and (ii) guidelines on the level of fees to be paid to external auditors; and (b) comment on their annual accounts and auditor's reports thereon; and

(4) The Auditor-General shall have power to conduct checks of all government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly.

The law, from the literal reading of Section 85 of the Constitution, is that the Auditor-General of the Federation does not have the power to directly audit the accounts of or appoint auditors to audit the accounts of statutory corporations or agencies; he only has power to conduct checks of these agencies and corporations. The directive by the Senate Finance Committee that the Ministry of Finance should ensure that the NNPC accounts of the expenditure of the \$ 10.8 billion be audited is, therefore, in order.

Under Section 88 (1) of the Constitution,⁶³⁷

Each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into – (a) any matter or thing with respect to which it has power to make laws, and (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for – (i) executing or administering laws enacted by National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

Under Section 88(2) of the Constitution,

The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to - (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

The important thing about the Nigerian National Petroleum Corporation (NNPC) is that it provides opportunity for the Corporation to be meaningfully engaged and involved in petroleum activities without limitations. However, some of the weaknesses of the Corporation are that it makes NNPC both an operator and a regulator at the same time without a clear distinction of these roles. This makes the Corporation ineffective in both responsibilities. It also inhibits legitimate action against NNPC by stipulating that before an action can be instituted or commenced against the Corporation, a one month prior notice of

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The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

intention to sue is required to be served on it by the intending plaintiff or his agent.⁶³⁸

The argument whether Section 12 of the NNPC Act⁶³⁹ has removed the right of a litigant have access to court or it imposes a strict statutory limitation of action and unduly insulating the board or an employee from legal action that may be brought. In interpreting the provision of Section 12(2) of the NNPC, the courts took the following positions in the following cases:

(i) **Nigerian National Petroleum Corporation (NNPC) vs. Fawehinmi**⁶⁴⁰

The court held that a statute that prescribes the procedures for invoking the exercise of Judicial Powers cannot ex ipso facto be said to be in conflict with Section 12(2) of NNPC Act. The NNPC Act in this case therefore cannot be said to contain anything inconsistent with Section 6 of the Constitution as Section 12(2) of the Act neither removes the adjudicatory powers of the court in respect of matters concerning the Corporation (NNPC) nor does it deny access to the courts to an individual, it merely regulates, without interposing the discretion of any other person between the will of the individual and the commencement of proceedings, the manner of invocation of the jurisdiction of the courts.

(ii) **Nigerian National Petroleum Corporation (NNPC) vs. Tijani**⁶⁴¹

The court held that no suit against NNPC shall be instituted in any court unless it is commenced within 12 months following the ceasing of the act complained of.

There is no doubt that restructuring the Nigerian National Petroleum Corporation should be the focal point of the ongoing oil and gas sector reforms in

⁶³⁸ Section 12(1) of Cap. N.123, Vol.12, L.F.N., 2004.

⁶³⁹ Ibid.

⁶⁴⁰ (1998) NWLR Part 559 page 598

⁶⁴¹ (2006) 17 NWLR Part 1007 page 29.

the new Petroleum Industry Bill (PIB). This will put to rest the general observations by the public that NNPC has failed woefully to fulfill its objectives. It must be recognized that its failure to attain the prospect to drive the national economy has not entirely been the corporation's error of judgment. For example, the frequent changes in leadership of the Corporation also contribute to the numerous problems facing the Corporation. Therefore, government must reposition the Corporation and the structure being put in place must be robust enough to overcome the increased subservience of NNPC to the Presidency.

To allow the Nigerian National Petroleum Corporation (NNPC) performs its statutory functions properly, deregulation of the downstream sector is necessary. This is because the absence of competition in a market leaves room for the existence of inefficiency, dissatisfaction and distortions. Since the refineries are not working and the NNPC lacks the capacity to import enough petroleum products for the country's consumption, liberalization and deregulation will open the downstream oil sector to private sectors' participation, which will break the monopoly hitherto enjoyed by NNPC. It is in this regard that the Federal Government's decision to deregulate the downstream oil sector should be commended.

5.3.3 The Department of Petroleum Resources (DPR)

In the beginning when oil exploration started in Nigeria, petroleum matters were handled by Hydrocarbon Section of the Ministry of Lagos Affairs. As

activities of the petroleum industry expanded, the unit was upgraded to Petroleum Division within the Ministry of Mines and Power and in 1970 it became the Department of Petroleum Resources (DPR).⁶⁴² In 1971, a new body, the Nigerian National Oil Company (NNOC) was created to handle direct commercial operational activities of the oil industry on behalf of the Federal Government, while the Department of Petroleum Resources in the Federal Ministry of Mines and Power continued to exercise statutory supervision and control of the industry.⁶⁴³

In 1975, the Department of Petroleum Resources was upgraded to a Ministry and named the Ministry of Petroleum and Energy, which was later, renamed the Ministry of Petroleum Resources. The Act⁶⁴⁴ that created the Nigerian National Petroleum Corporation (NNPC) also created the Petroleum Inspectorate as an integral part of the NNPC, and entrusted on it to regulate the petroleum industry.⁶⁴⁵ In order to conserve the scarce manpower in the oil industry both the revenue and regulatory functions within the oil industry was placed under the same supervision of DPR.⁶⁴⁶

As a regulatory agency, the Department of Petroleum Resources performs supervisory and control duties in the oil industry in Nigeria. Its activities

⁶⁴² Ifesinachi, K. and Raymond, A. (2014). The Department of Petroleum Resources (DPR) and Enforcement of Environmental Regulations in the Nigerian Oil Industry, 2008-2013. *Journal of Advances of Political Science*, Vol. 1 No.1. Peer Review Research Publishing System.

⁶⁴³ Nigerian National Petroleum Corporation (NNPC) (2013). *Annual Statistical Bulletin*, NNPC.

⁶⁴⁴ Cap. N.123, Vol.12, Laws of the Federation of Nigeria, 2004.

⁶⁴⁵ Ibid, Section 10

⁶⁴⁶ Department of Petroleum Resources (2013). *The Origin, Mission and Vision of the DPR*. Available at: www.dprnigeria.org.ng/about.dpr - accessed 9/9/2016).

include;⁶⁴⁷ supervising all petroleum industry operations being carried out under licenses and leases in order to ensure compliance with the applicable laws and regulations in line with good oil producing practices; enforcing safety and environmental regulations and ensuring that those operations conform to national and international industry practices and standards.

The Petroleum Act,⁶⁴⁸ is key to petroleum industry legislation, it makes provisions for the regulation of the Nigerian petroleum industry by providing that; “no person shall import, store, sell or distribute petroleum product in Nigeria without a licence granted by the Minister of Petroleum Resources.”⁶⁴⁹ Pursuant to this provision, the Department of Petroleum Resources (DPR) has been vested with the powers to issue the license.

The Petroleum Act⁶⁵⁰ provides that the Minister may by writing under his hand delegate to another person any power conferred on him by or under this Act except the power to make orders and regulations. Since DPR is a Department under the Ministry of Petroleum Resources, the Minister has therefore delegated powers to the Director of Petroleum Resources in charge of DPR to carry out the following functions:

- (a) Supervising all petroleum industry operations being carried out under licenses and leases in the country in order to ensure compliance with the applicable laws and regulations in line with good oil producing practices.

⁶⁴⁷ Ifesinachi, K. and Raymond, A. (2014), op cit.

⁶⁴⁸ Cap. P.10, Vol.12, L.F.N., 2004.

⁶⁴⁹ Ibid., Section 4(1) .

⁶⁵⁰ Ibid., Section 12(1).

- (b) Enforcing safety and environmental regulations and ensuring that those operations conform to national and international industry practices and standards.
- (c) Processing all applications for licenses so as to ensure compliance with laid down guidelines before making recommendations to the Honourable Minister of Petroleum Resources.
- (d) Monitors the petroleum industry operations to ensure that they are in line with national goals and aspirations.
- (e) Maintains records on petroleum industry operations, particularly on matters relating to petroleum reserves, production/exports, licenses and leases.
- (f) Advising government and relevant government agencies on technical matters and public policies that may have impact on the administration of petroleum activities.
- (g) Ensure timely and accurate payment of rents, royalties and other revenue due to government.

The Nigerian National Petroleum Corporation Act⁶⁵¹ gave the legal existence of the Department of Petroleum Resources (DPR) by stating that; "There shall be established a department to be known as the Petroleum Inspectorate which shall, subject to the other provisions of this Part, be an integral part of the

⁶⁵¹ Section 10(1) of Cap. P123, Vol.13, Laws of the Federation of Nigeria, 2004.

Corporation.” Apart from this, the Minister may delegate powers to the Department⁶⁵² to:

- (a) Issue permits and licences for all activities connected with petroleum exploration and exploitation and the refining, storage, marketing, transportation and distribution thereof;
- (b) Acting as the agency for the enforcement of the provisions of the said Acts and any relevant regulations made there under by the Minister.

The discharge of the above responsibilities involve monitoring of operations at drilling sites, producing wells, production platforms and flow stations, crude oil export terminals, refineries, storage depots, pump stations, retail outlets, any other locations where petroleum is either stored or sold, all pipelines carrying crude oil, natural gas and petroleum products.⁶⁵³

The implication of the statutory functions of the Department of Petroleum Resources (DPR) apart from carrying out safety related functions, it also performs revenue related functions by keeping records of production, ensuring that production and sales meet government’s target, as well as guaranteeing payments of all relevant revenues due to the government. The law, which set out the power of DPR as a regulatory agency charged with the responsibility of managing environmental and health safety in oil related activities is the

⁶⁵² Section 10(2)(a) and (b). Cap. P123, Vol.13, op. cit.

⁶⁵³ Adegoye, A. (2002). The Challenge of Environmental Enforcement in Africa: The Nigeria Experience. Available at: <http://www.inece.org/3rdvo11/pdf/Adegoye.pdf>.

Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN).⁶⁵⁴

In performing its statutory responsibility to ensure compliance to petroleum laws, the Department issue guidelines for construction and operation of filling stations in the country. Guidelines issued by the Department of Petroleum Resources⁶⁵⁵ that regulate the operation of filling station usually contain the following information:

- (a) Functional Fire fighting gadgets must be kept handy and at alert.
- (b) Ensure that a station Manager/Supervisor is always at the station.
- (c) Always make available alternative source of power to operate products pumps and adequate illumination of the station.
- (d) Products are sold at prevailing government approved price.
- (e) Products pumps accurate dispense/display of volume and price
- (f) Pump attendants trained and dressed in safety wears
- (g) Ensure that vehicle engines are switched off before fueling
- (h) Strategic and conspicuous display of warning signs on “NO SMOKING and NO USE OF CELLPHONE” within the station.
- (i) Stations always maintain good house keeping.
- (j) Tanker trucks are earthed before starting and throughout products discharge
- (k) Copy of each way-bill for products on sale shall have to be available at the station at all times.

⁶⁵⁴ Ifesinachi, K. and Raymond, A. (2014).

⁶⁵⁵ DPR Bulletin (2003). The Origin, Mission and Vision of the DPR (Available at: www.dprnigeria.org.ng/about.dpr - last accessed 23/1/2016)

- (l) Products in tanker trucks to be discharged into storage tanks shall have to be allowed to settle for at least two (2) hours while in the station before the discharge.
- (m) Display of Current Storage and Sales license in the station's office
- (n) Availability of DPR inspections log book in the station
- (o) Unrestricted access to DPR officials to carry out statutory functions in the station.

In carrying out its functions, the Department can adopt some punitive measures to enforce compliance to the Environmental Guidelines and Standards for the petroleum industry. However, as an agency of the state, it is also placed under Section 8(1)(a) of the Petroleum Act⁶⁵⁶ to be directly answerable to the Minister of Petroleum Resources, who is charged with the responsibility of organizing and managing the oil sector of the Nigerian economy in a way that promotes the interest of the state, and consequently, the interest of foreign multinational oil companies' capital. The implication of this is that the revenue-related functions of DPR is in line with the long term interest of preserving the dominance of foreign oil companies' capital in the Nigerian economy by the state while its regulatory functions is only effective in so far as the enforcement of its environmental regulations do not threaten the long-term interest of foreign oil capital in the economy.⁶⁵⁷

⁶⁵⁶ Cap. P.10, Vol.12, L.F.N., 2004

⁶⁵⁷ Ogunye, J. (2014). Are NNPC and PPPRA Immune to Legislative and Presidential Oversight? (Retrieved from: premiumtimes.com/opinion/155360-nnpc-pppra-immune-legislative-presidentialoversight – last visited 18/2/2014).

According to opinion expressed by Ifesinachi and Raymond⁶⁵⁸ the Department of Petroleum Resources' statutory responsibility of managing oil revenue functions in the petroleum industry is capable of conflict of interest that will undermine its credibility as an oil regulatory agency. The conflict of interest arises from Federal Government's participation in commercial activities associated with the petroleum industry in Nigeria through the Nigerian National Petroleum Corporation (NNPC) as a commercial venture and at the same time allow the Department of Petroleum Resources (DPR) to perform both functions of regulatory and revenue generation.

Acting under its statutory power of enforcement of the rules against violators in the downstream sector, DPR imposed sanctions, such as seizure of premises, fines, shutdown of oil installations that belong to defaulting companies, as well as revoking oil operating licenses of oil companies.⁶⁵⁹ It also carries regular check on petrol filling stations to ensure that products are sold at stipulated government prices⁶⁶⁰ and in this way it ensures that cheatings of consumers by fraudulent marketers are eliminated. However, even in cases of outright violation or neglect by oil company operators, DPR has never revoked the operating licenses of any oil company operating in Nigeria. Most times, fines imposed by DPR on international oil companies for violation of the laws are not commensurate with the crimes committed.

⁶⁵⁸ Ifesinachi, K. and Raymond, A. (2014). Op. cit.

⁶⁵⁹ Alohan, J. (2012). DPR Seals NNPC Stations over Meter Manipulation – Available at: www.guardiannewsngr.com – accessed 24 January, 2012).

⁶⁶⁰ Section 10(2)(b), NNPC Act, Cap. N.123, op. cit.

In early January 2010 many consumers laid complains to DPR against hike in price of kerosene product in the Federal Capital Territory (FCT) where the product was sold in the filling stations between N120 and N130 per litre, which became unbearable to consumers.⁶⁶¹ In view of persistence fuel crisis and the need to stem sharp practices, the Department of Petroleum Resources some time ordered 24 hours surveillance in all the filling stations in the country in order to deal decisively with the menace of wayside/street peddling of petroleum products.⁶⁶² Some time staff of the agency were positioned nationwide in control centres of Lagos, Abuja, Port-Harcourt, Warri, Owerri, Kaduna and Maiduguri to deal decisively with violators of downstream operational guidelines.⁶⁶³

While appealing to major and independent marketers to cooperate with the government and DPR to ameliorate the problem being faced by consumers, dealers at filling stations were directed not to sell petroleum products in jerry-cans but should deploy all available pumps to dispense fuel in their stations.⁶⁶⁴ The Department of Petroleum Resources also work in partnership with other enforcement agents, such as the Nigerian Police Force in arresting and

⁶⁶¹ Oyelere, T., Olagunju, F. and Pelewo, F. (2010). DPR Sets Up Control Centres for Monitoring/Complaints – Available at: dprnigeria.com/news_archieve – accessed last 1/3/2010).

⁶⁶² DPR shuts Down Stations and Depots Around the Country as Marketers Fail to Heed Warning (2015). Available at: <http://www.energymixreport.com/dpr-shuts-down-stations-depots>..... Accessed on 6/2/2017,

⁶⁶³ Enejeta, E. (2017). DPR to check Unauthorized Fuel Price Increase. Available at : <http://www.financialwatchngr.com/2017/02/02/dpr-check-unauthorized-fuel-increase> - Accessed on 4/2/2017.
Defaulting Filling Stations to be Sanctioned – PPPRA – Available at: <http://www.newscity.com.ng/defaulting-filling-stations-to-be-sanctioned-pppra> - Accessed on 2/1/2016.

prosecuting individual selling fuel at the wayside or in the street, which are not licensed for that purpose.⁶⁶⁵

Attempts have been made by some scholars to explain why there is a weak compliance by oil corporations to the standards set by the DPR in Nigeria and one common argument found in the literature is to associate the problem with the “resource curse” thesis. Edo,⁶⁶⁶ Frynas⁶⁶⁷ and Agborufo⁶⁶⁸ are among scholars who subscribe to this view point. These scholars argue that the overly dependence on oil has led to rent seeking behavior, as government involved itself in little productive work as a result of the dependence on oil revenue generated by international oil companies. This is seen to lead the government play a weak and subordinate role in its relations with foreign oil companies who consistently blackmail the state with the prospect of reduced revenue if any upward review of operational guidelines is carried out.

The statutory responsibility of the Department of Petroleum Resources in managing both revenue and regulatory functions result in a conflict of interest in the discharge of its duties and a bias towards revenue-related concerns. In many instances, the responsibilities of the DPR overlap with that of the Petroleum

⁶⁶⁵ DPR Sets up Control Centres for Monitoring/Complains, 1st March, 2010 (Available at: http://www.dprnigeria.com/new_archive)

⁶⁶⁶ Edo, Z.O. (2012). The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria. *Journal of Sustainable Development in Africa*, 14(6).

⁶⁶⁷ Frynas, J.G. (2000). The Environmental Effect of Oil Industry Activities on the Nigeria Economy – A Theoretical Analysis. In *the Petroleum Industry, the Economy, and the Niger Delta Environment*, C.O. Orubu.

⁶⁶⁸ Agborufo, J. (2002). The Colonial Origin and Perpetuation of Environmental Pollution in the Post-Colonial Nigeria State – Available at <http://www.litt.ilstu.edu/critique/fall/2002does/jagbonifo.pdf>. - accessed last 8/7/2016.

Products Pricing Regulatory Agency (PPPRA), engendering the issuance of policies by both bodies on the same issues.

5.3.4 Petroleum Product Pricing Regulatory Agency (PPPRA)

The first attempt to deregulate the downstream oil sector was through the various privatization laws; such as the Structural Adjustment Programme (SAP) in 1986, the Privatization and Commercialization Act of 1988 and the Bureau of Public Enterprises Act of 1993, which received wide opposition by the Nigerian Labour Congress (NLC) and other pressure groups in the country. This led to the suspension of the policy in the downstream oil sector and government only thinker with increase in the price of petroleum products instead of complete deregulation of the downstream sector.⁶⁶⁹

Another attempt towards deregulation of prices of petroleum products in Nigeria was the establishment of the Petroleum Products Pricing Regulatory Agency (Establishment) Act,⁶⁷⁰ which also established an agency known as the Petroleum Products Pricing Regulatory Agency.⁶⁷¹ The Agency is a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name.⁶⁷² In order for the Agency to be independent, the Act provides that it “*shall not be subject to the direction, control or supervision*

⁶⁶⁹ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. *International Journal of Energy Economics and Policy*, Vol. 3, No.4, pp.459-472.

⁶⁷⁰ Cap. P.43, Vol.14, LFN, 2004.

⁶⁷¹ *Ibid.*, Section 1(1).

⁶⁷² *Ibid.*, Section 1(2).

of any other authority in the performance of its functions under this Act.”⁶⁷³ The major functions of the Agency are set down in Part II of the Act, which among other provides that it shall “*determine the pricing policy of petroleum products*” and “*regulate the supply and distribution of petroleum products.*”⁶⁷⁴ By this mandate given to the Petroleum Products Pricing Regulatory Agency (PPPRA), government still retain the policy of regulation instead of deregulation. Moreover, PPPRA as an institutional framework operate the law relating to petroleum products marketing instead of deregulation due to stiff opposition from the Nigerian Labour Congress (NLC) and other pressure groups in the country.

This can further be attested by the mission of PPPRA, which is to “*reposition Nigeria’s downstream oil sub-sector for improved efficiency and transparency*” and its vision is “to attain a strong, vibrant downstream oil sub-sector of the petroleum industry, where refining, supply and distribution of petroleum products are self-financing and sustaining.”⁶⁷⁵ In implementing its mandate as stipulated in the Act, the programmes executed by PPPRA when it formally took off in 2003 include:

- (i) Privatisation of all federal government owned Petroleum Products Marketing Company (PPMC) and other distribution companies;
- (ii) Issuance of licenses for the establishment of private refineries.

⁶⁷³ Ibid, Section 1(3).

⁶⁷⁴ Section 7(a) and (b), Cap. P.43, Vol.14, op. cit.

⁶⁷⁵ Ariyoosu, D.A. (2009). Legal Framework of the Downstream Sector of the Gas Industry – An Appraisal. Nigerian Journal of Petroleum, Natural Resources and Environmental Law.

- (iii) Issuance of licenses to private firms to import, market and distribute petroleum products.
- (iv) Establishment of “Mega Filling Stations” by the Nigerian National Petroleum Corporation (NNPC).
- (v) Deregulation and liberalization of prices of domestic petroleum products under the watchful eyes of Petroleum Products Pricing Regulatory Agency (PPPRA), the Department of Petroleum Resources (DPR) and the Nigerian National Petroleum Corporation (NNPC).

The functions of the Agency are contained in Part II, Section 7, which provides that it shall:⁶⁷⁶

- (a) Determine the pricing of petroleum products;
- (b) Regulate the supply and distribution of petroleum products;
- (c) Establish an information and data bank through liaison with all relevant agencies to facilitate the making of informed and realistic decisions on pricing policies;
- (d) Moderate volatility in petroleum products prices, while ensuring reasonable returns to operators;
- (e) Oversee the implementation of the relevant recommendations and programmes of the Federal Government as contained in the White Paper on the report of the Special Committee on the Review of Petroleum Products Supply and Distribution specified in the Second Schedule to this Act as they relate to its functions, taking cognizance of the phasing of specific proposals;
- (f) Establish parameters and codes of conduct for all operators in the downstream petroleum sector;
- (g) Maintain constant surveillance over all key indices relevant to pricing policy and periodically approve benchmark prices for all petroleum products.

⁶⁷⁶

- (h) Identify macro-economic factors with relationship to prices of petroleum products and advise the Federal Government on appropriate strategies for dealing with them;
- (i) Establish firm linkages with key segments of the Nigerian society, and ensure that its decisions enjoy the widest possible understanding and support.
- (j) Prevent collusion and restriction, trade practices harmful in the sector;
- (k) To exercise mediatory role as necessary for all stake holders in the sector.

The Agency was inaugurated as a result of several problems⁶⁷⁷ that besieged the downstream sector. Some of these problems include:

- (a) Scarcity of petroleum products leading to long queues at the service station.
- (b) Low capacity utilization and poor state of the refining activities at the nation's refineries.
- (c) Rampant fire accidents as a result of mishandling of products and adulteration.
- (d) Pipelines vandalisation.
- (e) Large scale smuggling of petroleum products to neighbouring countries.

With obvious contradictions, on January 2002 the Federal Government moved the prices of petroleum products from ₦22.00 to ₦26.00. This was followed by another increase in June 2003, when the price moved from ₦26.00 to ₦40.00.

⁶⁷⁷

Nigeria Extractive Industries Transparency Initiative (2013). Petroleum Product Pricing Regulatory Agency (PPRA). A Bulletin of NEITI, Section 2. Prepared by SIAO, Lagos, Nigeria.

On 9th June, 2004 another increase was announced, which moved the pump price of petrol to ₦50.00 and further increased to ₦52.00 in September, 2004 and ₦65.00 in December of the same year. On 20 June, 2007 there was a further increase from ₦65.00 to ₦70.00 per litre. In January 2012, the pump price of petroleum products was moved to ₦141.00, the Nigerian Labour Congress (NLC) embarked on one week strike before it was called off after negotiation with the Federal Government. In July, 2016 another increase of ₦145.00 was announced by the Federal Government.⁶⁷⁸

The impression given by the government to the people perhaps was to allow the policy of deregulation break the monopoly of the Nigerian National Petroleum Corporation (NNPC) and allow full participation of independent marketers in the supply and distribution of petroleum products. The policy was also aimed at allowing marketers determine the pricing policy through competition instead of government determining the pricing policy.

Though the Federal Government claimed that the downstream petroleum sector has been deregulated there is no law provided for this as it still maintain control and management of the sector as provided in Section 44(3) of the 1999 Constitution (as amended). This shows that the control and management of the downstream sector, including the distribution, refining and pricing are still in the control of government. Thus, in the area of refining, the Minister of Petroleum Resources prescribes the terms and conditions for the grant of licence to construct

⁶⁷⁸ Okpaga, A., Chijioko, U.S. and Eme, O.I. (2012). Deregulation and Anti-Subsidy Removal Strikes in Nigeria. *Arabian Journal of Business and Management Review (OMAN Chapter)*, Vol.1, No.7.

and operate refinery.⁶⁷⁹ In the area of pricing, the Petroleum Products Pricing Regulatory Agency (PPPRA) determines the pricing policy. The agency also regulates the supply and distribution of petroleum products.

On further examination of the Petroleum Products Pricing Regulatory Agency (PPPRA) Act, Section 7(a) and (b) provides that: “The functions of the Agency are to: (a) determine the pricing policy of petroleum products and (b) regulate the supply and distribution of petroleum products.” This shows that there is no deregulation, but regulation. Even in the near future there will not be deregulation of petroleum products because of the difficulty the policy will encounter as result of the Constitutional provision in Section 16(1)(b) and (c),⁶⁸⁰ which provides that the State shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizens on the basis of social justice and equality of status and opportunity.

On whether Section 16(1)(b) and (c) of the Constitution is justiciable or not, recourse can be heard from the pronouncements of court on this matter. In the case of **Attorney-General of Ondo State vs. The Attorney-General of the Federation (supra)**⁶⁸¹ the court held that it is not in all cases that legislation will make the Fundamental Objectives and Directive Principles justiciable. The non-justiciability of the Fundamental Objectives and Directive Principles of State Policy in Chapter II of our Constitution Section 6(6)(c) says so. While they remain

⁶⁷⁹ Section 1(1), Petroleum Refining Regulation under the Petroleum Act Cap. P.10, Vol.13, LFN, 2004

⁶⁸⁰ The Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2004).

⁶⁸¹ (2002) 9 NWLR (Pt. 772) 722.

declarations, they cannot be enforced by legal proceeding but the Directive Principles (or some of them can be made justiciable by legislation. It stated that that Section of the Constitution requires the government to control the national economy in a manner as to secure the maximum welfare, freedom and happiness of every citizen. But that paragraph (c) places on the government the duty of managing the major sectors of the economy.

The oil sector being the major economy of Nigeria, it is the duty of Federal Government regulates the downstream sector in such a way as to enable the citizen access to petroleum products at an affordable price. Petroleum under Section 44(3)⁶⁸² is a Federal Government property. Even if licence is given to individuals, will they sell as they like, or the Federal Government has to say how individual refine and distribute and how to sell? This is why there is no deregulation yet, but liberalization is feasible. Therefore, government only tinkers with increase or removal in price of petroleum products instead of complete deregulation. Moreover, PPPRA is yet to achieve its mission and objectives as evidenced by the ongoing debate of the removal of fuel subsidy. The only major achievement made so far was the development of petroleum products pricing template on imported petroleum products and the determination of subsidy on petroleum products.

While the issue of appropriate pricing of petroleum products continued to rage, PPPRA, in pursuit of its mandate as per Section 7(c) of the Act, conducted a

⁶⁸² Ibid.

census of petrol products retail outlets nationwide in collaboration with other downstream stakeholders in order to establish a reliable information database in the country. This was also aimed to assist the Agency produce relevant data on the operational activities of oil marketers for a successful implementation of the Petroleum Support Fund (PSF). Tables 5.1 and 5.2 below show the statistics of the spread of major and independent marketers in the various geo-political zones of the country.

Table 5.1: Nationwide Retail Outlets Summary Distribution by Zone

| S/N | Geo-Political Zone | Marketer Type | | Total No.of Outlets |
|-----|--------------------|---------------|--------------|---------------------|
| | | Major | Independent | |
| 1. | North Central | 355 | 1,318 | 1,673 |
| 2. | North East | 163 | 726 | 889 |
| 3. | North West | 265 | 1,023 | 1,288 |
| 4. | South East | 194 | 1,227 | 1,421 |
| 5. | South South | 224 | 1,519 | 1,743 |
| 6. | South West | 1,017 | 2,135 | 3,152 |
| | Total | 2,218 | 7,948 | 10,166 |

Source: Petroleum Product Pricing Regulatory Agency (PPPRA) Bulletin – Monitor (based on 2006 Census)

Table 5.2: Nationwide Retail Outlets of Major and Independent Marketers in Nigeria

| S/N | State | Number of Retail Outlets | | |
|-----|-------------|--------------------------|-----------------------|--------|
| | | Major Marketers | Independent Marketers | Total |
| 1. | Abia | 46 | 461 | 507 |
| 2. | Adamawa | 42 | 104 | 146 |
| 3. | Akwa Ibom | 25 | 484 | 509 |
| 4. | Anambra | 27 | 141 | 168 |
| 5. | Bauchi | 23 | 149 | 172 |
| 6. | Bayelsa | 05 | 045 | 050 |
| 7. | Benue | 54 | 255 | 305 |
| 8. | Borno | 37 | 253 | 290 |
| 9. | Cross River | 26 | 148 | 174 |
| 10. | Delta | 10 | 250 | 260 |
| 11. | Ebonyi | 13 | 098 | 111 |
| 12. | Edo | 75 | 305 | 382 |
| 13. | Ekiti | 28 | 123 | 151 |
| 14. | Enugu | 53 | 269 | 322 |
| 15. | FCT | 42 | 110 | 152 |
| 16. | Gombe | 19 | 058 | 077 |
| 17. | Imo | 55 | 258 | 313 |
| 18. | Jigawa | 24 | 075 | 099 |
| 19. | Kaduna | 75 | 258 | 333 |
| 20. | Kano | 75 | 201 | 276 |
| 21. | Katsina | 31 | 165 | 196 |
| 22. | Kebbi | 24 | 158 | 182 |
| 23. | Kogi | 42 | 169 | 211 |
| 24. | Kwara | 53 | 245 | 298 |
| 25. | Lagos | 462 | 306 | 768 |
| 26. | Nasarawa | 37 | 118 | 155 |
| 27. | Niger | 76 | 208 | 284 |
| 28. | Ogun | 193 | 560 | 758 |
| 29. | Ondo | 89 | 285 | 374 |
| 30. | Osun | 83 | 369 | 442 |
| 31. | Oyo | 162 | 502 | 664 |
| 32. | Plateau | 51 | 213 | 264 |
| 33. | Rivers | 83 | 285 | 368 |
| 34. | Sokoto | 18 | 99 | 117 |
| 35. | Taraba | 23 | 91 | 114 |
| 36. | Yobe | 19 | 71 | 90 |
| 37. | Zamfara | 18 | 67 | 85 |
| | Total | 2,218 | 7,948 | 10,166 |

Source: Petroleum Product Pricing Regulatory Agency (PPPRA) Bulletin – Monitor (based on 2006 Census)

The statistics from Tables 5.1 and 5.2 revealed that all the thirty six (36) States, including the Federal Capital Territory (FCT) have the presence of major and independent marketers. Bayelsa State has the least number of five (5) major marketers and forty-five (45) independent marketer's retail outlets, while Lagos State has the highest number of major marketers with four hundred and sixty two (462) retail outlets. Ogun State has the highest number of independent marketer's retail outlets of five hundred and sixty (560) as shown in Table 5.2.

In Table 5.2, the statistics also revealed that activities of most independent marketers are concentrated around Ogun, Oyo, Abia and Akwa-Ibom States while those of the major marketers are largely concentrated in Lagos State. The South Western part have the highest number of retail outlets of about one thousand and seventeen (1,017) for major marketers and two thousand one hundred and thirty five (2,135) independent marketers, with a total number of three thousand one hundred and fifty-two (3,152) retail outlets. The North Eastern Zone has one hundred and sixty three (163) major marketer's retail outlets and seven hundred and twenty six (726) independent marketers outlet making a total number of eight hundred and eighty-nine (889) outlets thus recording the least number of outlets among the six zones in Table 5.3. With a total of 10,166 retail outlets in Nigeria, the major marketers control 2,218 while independent marketers control 7,948 retail outlets. With a total vehicle population of about 7 million in the country,⁶⁸³ including cars, lorries and buses, customers' satisfaction can be measured by the

⁶⁸³

What is the number of cars in Nigeria (available at: www.wiki.answers.com) last visited Nov., 2012.

service offered to 689 vehicles per outlets in a day,⁶⁸⁴ which is grossly inadequate.

Following continued subsidies on petroleum products, the proponents of its removal, which mostly represented by government officials and the Petroleum Products Pricing Regulatory Agency (PPPRA) argued that the huge amount of money being spent every year in financing fuel subsidies is undesirable. In support of this argument, the Federal Government stated that it spent the sum of N2.07 trillion between 2006 and 2010 under the Petroleum Support fund to pay importers the difference between market and the pump price of petrol.⁶⁸⁵

In 2010, figure released by Petroleum Products Pricing Regulatory Agency (PPPRA) on fuel subsidies was N484.4 billion.⁶⁸⁶ In fulfillment of its mandate, PPRA continue to publish figures of financial sacrifices government has provided in maintaining uniform price of petroleum products in the country, which formed the basis of upward review of the pump price of petroleum products. Such information are contained in the pricing template of imported petroleum products released by PPPRA every month which detailed the various components used in deriving the daily and monthly guiding products prices (Table 5.3 below).⁶⁸⁷

This is done by employing import parity principle that includes; the landing cost of a litre of petroleum product, the margin for transporters, dealers

684 Adeola F. Adenikinju and Niyi Falobi (2006), op. cit.

685 Ovaga, O.H. (2012). Subsidy in the Downstream Sector and the Fate of the Masses in Nigeria. Kuwait Chapter of Arabian Journal of Business and Management Review, Vol.1, No.6., pp.15-33.

686 Ibid.

687 Petroleum Product Pricing Regulatory Agency (PPPRA) Bulletin – Monitor, 2006 (Available at: www.pppranigeria.org.ng/template.price –last visited October, 2012)

and marketers, Jetty-Depot Through-Put and other charges and taxes. The difference between the higher costs of imported petroleum products as ascertained by PPPRA and the then lower regulated pump price of ₦97.00 per litre was the subsidy that government repaid to importers after being subjected to audit by Government. For example as at November 2012 the Petroleum Product Pricing Regulatory Agency released template detailing cost of importation of petroleum product into the country as indicated in Table 5.4 below, which determine the price per litre of fuel sold in the downstream sector in Nigeria. This template is subject to review from time to time by PPPRA.

Table 5.3: PPPRA Product Pricing Template based on Average Platts' Price for the Month of November, 2012

| S/N | Description of components | PMS | |
|-----|--------------------------------|----------|-------------|
| | | \$/MT | Naira/Litre |
| | Cost Element | | |
| 1. | C+F | 956.00 | 113.25 |
| 2. | Trader's Margin | 10.00 | 1.18 |
| 3. | Lightering Expenses (SVH) | 33.30 | 3.94 |
| 4. | NPA | 5.25 | 0.62 |
| 5. | Financing (SVH) | 14.14 | 1.68 |
| 6. | Jetty Depot Thru'Put Charge | 6.75 | 0.80 |
| 7. | Storage Charge | 25.33 | 3.00 |
| 8. | Landing Cost | 1,050.78 | 124.47 |
| | Distribution Margins | | |
| 9. | Retailers | 38.83 | 4.60 |
| 10. | Transporters | 25.24 | 2.99 |
| 11. | Dealers | 14.77 | 1.75 |
| 12. | Bridging Fund | 49.38 | 5.85 |
| 13. | Marine Transport Average (MTA) | 1.27 | 0.15 |
| 14. | Admin. Charge | 1.27 | 0.15 |
| | Sub-total Margins | 130.76 | 15.49 |
| | Foot-Note | | |
| 15. | Total Cost | 1,181.54 | 139.96 |
| 16. | *Official Ex-Depot | 688.08 | 81.08 |
| | **Under/Over Recovery | -362.69 | (42.96) |
| | Taxes | | |
| 17. | Retail Price | 818.84 | 97.00 |

Source: Petroleum Product Pricing Regulatory Agency (PPPRA) Bulletin – Monitor (based on

2006 Census)

Expected Open Market Price (OMP) (Naira/litre) is Landing Cost+Margins = 139.95

*C+F price is Offshore Nigeria Conversion Rate (MT to Litres = 1341

Exchange Rate (₦ to \$ = 159.76

*Official Ex Depot is exclusive of Bridging Fund, Marine Transport Average (MTA) & Admin. Charge.

**Ex Depot includes Bridging Fund, Marine Transport Average (MTA) & Admin. Charge

***Effective Date of New Approved Pricing Template is 1st July, 2011.

The history⁶⁸⁸ of price increase of petroleum products in Nigeria is rather a long one. From 1986, with the introduction of Structural Adjustment Programme (SAP) and subsequent devaluation of the Naira, petroleum products prices continued to be reviewed upwards. The subsequent adjustments in petroleum products prices in 1999 marked a turning point in Nigeria until the establishment of Petroleum Products Pricing Regulatory Agency in 2003.

The various increase between 2000 and 2003 attracted several comments and debates by individuals and the Nigerian legislature as to whether the President of the Federal Republic of Nigeria has the power to increase prices of petroleum products considering the existence of Section 6(1) of the Petroleum Act. It could also be noted that during this period (2000-2003) there was no Minister of Petroleum Resources appointed by the Government, while Section 6(1) of Petroleum Act confers power on the Minister of Petroleum Resources to fix the price at which a litre of fuel is to be sold in any part of the country. The arguments by government why it decided to deregulate the downstream oil sector was aimed at dismantling the natural monopoly enjoyed by the Nigerian National Petroleum Corporation (NNPC) by privatizing and deregulating the price controls. In addition, there would be significant reduction in cost spent by the government in subsidizing the sector.⁶⁸⁹

⁶⁸⁸ Nwachukwu, M.U. and Chike, H. (2011). Fuel Subsidy in Nigeria: Fact or Fallacy. *Energy* 36: 2796-2801. Published by Elsevier.

⁶⁸⁹ Temitayo, B.A. (2014). Law and Economics of Deregulation in Downstream Sector of the Nigerian Oil and Gas. *The International Journal of Science and Technology*, Vol.2 Issue 8. Pp.99-104.

On the heel of these arguments, there were several resolutions passed by the House of Representatives calling on the executive arm of government to withdraw the pump price of petroleum products till wider consultation was made.⁶⁹⁰ The resolutions of the National Assembly if taken from a constitutional point of view were anchored on the following provision of the Constitution:-

.....the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.⁶⁹¹

The argument by the Federal Executive Council was that the resolutions passed by the House of Representatives stopping price hike of petroleum products may not be supportable, in spite of the above Constitutional provision.⁶⁹² The powers of the National Assembly⁶⁹³ can only be exercised through the mode prescribed by the Constitution⁶⁹⁴ and the matters that require the joint resolution of both chambers of the National Assembly or that of the Senate only are well spelt out in the Constitution, which does not include management of mineral resources.⁶⁹⁵ The power relating to the management of mineral resources therefore can only be exercised through legislation not by resolutions. However,

⁶⁹⁰ The National Assembly Hansard (2000). House of Representatives Votes and Proceedings of Tuesday, June 6, Resolution No. 120

⁶⁹¹ Section 44(3) of the 1999 Constitution (as amended 2004).

⁶⁹² Owonikoko, A.J. (2000). Between Constitutionality and Fuel Price Increase (2). Thisday Newspaper of 11 June, p. 17.

⁶⁹³ S.4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁶⁹⁴ Ibid., Section 58(1) of the Constitution.

⁶⁹⁵ Nwabueze, B. (2000). Fostering Partnership Between the Executive and the Legislature for Sustainable Democracy. Pp.18-20. Paper delivered at a Conference Organized by the House of Representatives in Abuja, August, 14-16.

each chamber of the National Assembly is at liberty to pass resolution on any issue of national interest. That notwithstanding, any resolution which is not specifically empowered by the Constitution may not be binding on the other arms of government neither would it have the force of law. Besides, the executive is to enforce the laws made by the National Assembly and see to the day to day running of the country.

In making the law, it has been the practice of legislatures to delegate authority to some people to act and create rules, regulation and subsidiary legislation on behalf of the lawmakers. This is what the National Assembly is deemed to have enacted the Petroleum Act which is the subsisting statute on petroleum management in Nigeria by which Section 6(1) stipulates that: "The Minister may by order published in the Federal Gazette fix the price which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof."

Having given the function of fixing prices of petroleum products to the Minister of Petroleum Resources, the National Assembly cannot appropriate that function to itself through resolutions. It cannot even curtail the exercise of that power by issuing administrative orders by way of resolution since the delegated power to the Minister does not contain any requirement as to legislative approval before the new price takes effect.⁶⁹⁶ Similarly, the power under Section 6(1) of the

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This view was supported in the case of *Merchant Bank Ltd. V. Federal Minister of Finance (1961)* All NLR 598 where Unsworth, F.J.said that the powers under Section 14 of the Banking Ordinance are administrative powers which are vested in the Minister, and it is for the Minister, and not the courts to exercise those powers.

Petroleum Act is an administrative power which is vested in the Minister of Petroleum Resources, and it is for him and not the legislature to exercise those powers. That being the case, the President of the Federal Republic of Nigeria cannot by himself or through a public officer purporting to be acting on his instruction validly increase the prices of petroleum products since a law of the National Assembly has expressly assigned that role to another government functionary, the Minister of Petroleum Resources.

In spite of the vacuum created by the non-appointment of a Minister of Petroleum Resources from 1999 to 2003 and the non-passage of the Petroleum Products Pricing Regulatory Agency (PPPRA) Bill at the material time, prices of petroleum products could have been increased without breaching the laws. This would have been possible if the provisions of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act⁶⁹⁷ had been utilized. Section 2(1) of the Act provides that:

Subject to the provisions of this section, the President may, in any law enacted by the National Assembly or having effect as if it had been so enacted by order make such modifications, whether by means of addition, substitution or deletion, as he may think fit for the purpose of-

- (a) Transferring to a Minister any of the powers and duties which are by such law directly or indirectly conferred or imposed on the President, or any public officer or which are conferred upon any other Minister; and
- (b) Making provisions consequential or incidental to any such transfer

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Cap. 228 Laws of the Federation of Nigeria (LFN), 2004 and Cap M14 Laws of the Federation of Nigeria (LFN), 2004.

Relying on these provisions, the President, to the best of my knowledge could have substituted the ‘Minister of Petroleum Resources’ with perhaps, the ‘Minister of Special Duties’ or the ‘Minister of Internal Affairs’ or any ‘Minister’ in the definition of “the Minister” in the Petroleum Act.⁶⁹⁸ With such an alteration, the designated Minister could have adjusted the prices of petroleum products lawfully in compliance to Section 6(1) of the Petroleum Act.

The Act that gave legal backing to the Petroleum Products Pricing Regulatory Agency (PPPRA) came into effect in 2003.⁶⁹⁹ Section 7(a)-(c) of the Act, the PPPRA is to fix price regime and determine pricing policy of petroleum products according to section 7(a)-(c) of the Act. By Section 7 of PPPRA Act, it seems Section 6(1) of the Petroleum Act has been impliedly repealed. In the case of **Vauxhall Estates Ltd v. Liverpool Corporation**⁷⁰⁰ and **Ellen Street Estates Ltd. vs. Minister of Health**,⁷⁰¹ both focused on the Acquisition of Land Act of 1919, which laid down levels of compensation for property owners whose houses were demolished. The Housing Act of 1925 and 1930 made those compensation provisions less generous. The land affected owners looked for some way to have compensation on the basis used in the 1919 Ac. In Vauxhall case, it was held that where two inconsistent provisions are found in two Acts of Parliament, the one

⁶⁹⁸ Section 15 Petroleum Act, Cap P10, op cit.

⁶⁹⁹ The Petroleum Products Pricing Regulatory Agency (Establishment) (Amendment) Bill 2004 is currently before the National Assembly to make provisions for the National Assembly to approve any price regime fixed by the Agency before it could come into effect.

⁷⁰⁰ (1932) 1 KB 733 .

⁷⁰¹ (1934) 1 KB 590.

passed subsequently to the other, the later provision prevails and is deemed to have impliedly repealed the earlier one. Similarly, in *Ellen* case the Court of Appeal held that S.4 of the Housing Act 1925 so far as its provisions are inconsistent with those of the case of 1919, has repealed by implication the provisions of the earlier Act.⁷⁰²

The power given by law to the Minister of Petroleum Resources to fix the price at which petroleum products are to be sold has been transferred by a later legislation to another agency, the PPPRA, which is saddled with responsibility of determining price policy of petroleum product. It follows therefore that the subsequent price increase of petroleum products in Nigeria from 2003 till date by PPPRA is lawful.

The analysis of the various increases in fuel price revealed an illegality in the process by the Executive Arm, because such directives did not come from the Minister of Petroleum Resources but directives from the President. While the Nigerian Labour Congress has voiced against such illegality, unfortunately they could not challenge the action of government in court, which would have probably made pronouncement as to the constitutional effect of Section 6(1) of the Petroleum Act as to whether the President of Nigeria has the power to fix the price of petroleum products in the country instead of the Minister as stipulated in the enabling statute. The National Industrial Court is constitutionally vested under Section 245(1)(c) of the Constitution with exclusive jurisdiction to consider matters

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Loveland, I. (1996). *Constitutional Law: A Critical Introduction*, London, Butterworths, pp.42-43.

relating to the propriety or otherwise of a strike or industrial action. The choice of strike by the NLC is that no trade dispute has been declared in consonance with existing laws, which is different from civil protest. Moreover, strike action is a legitimate right of workers to question any government policy or action where collective agreement failed.

In a democratic society, the citizens, most especially the Nigerian Labour Congress, as a pressure organization in Nigeria must be on guard to protect the law against possible breach by resorting to adjudication whenever the need arises instead of strike actions. Reluctance to utilize the court system against unlawful and illegal acts of government is an outright relinquishment of constitutional rights and a disdainful refusal to push for good governance, protect democratic values and respect for the rule of law.

5.3.5 Petroleum Support Fund (PSF) as a Stabilizer of Petroleum Products Prices

The Petroleum Support Fund (PSF) was created in 2006 as a unit under the Petroleum Product Pricing Regulatory Agency (PPPRA) to ensure availability of petroleum products as well as stabilize the domestic price of the products.⁷⁰³ The establishment of the Fund as a Unit under the Petroleum Products Pricing Regulatory Agency was in furtherance to Section 7(h) of the PPPRA Act,⁷⁰⁴ which stipulates that: “The Agency is to identify macro-economic factors with

⁷⁰³ Report on the Administration of the Petroleum Support Fund (PSF) (2006). Prepared by Petroleum Products Pricing Regulatory Agency (PPPRA), January, 2007. (Available at: www.pppra.gov.ng/wp-content/upload/2015/02/report - accessed in October, 2010).

⁷⁰⁴ Cap. P.43, Vol. 14, Laws of the Federation of Nigeria, 2004.

relationship to prices of petroleum products and advice the Federal Government on appropriate strategies for dealing with them.” In administering the Fund, the pricing policy of the PPPRA which is based on import parity principle would be upheld. The import parity principle is used so that the concept and process of deregulation which are the building block for massive investment in the economy are not totally expunged in the scheme.⁷⁰⁵

The idea in creating the Fund was to bridge the difference between the market prices and fixed prices of petroleum products imposed by the government, which will encourage marketers import or provide petroleum products at controlled price set by the government in the country. This means that marketers will be allowed to import or provide petroleum products at a fixed price while the government through the Fund pay any difference arising thereof. This is to attract more participation in product procurement without the hindrance of full cost recovery which could arise in the event of upward pressure on crude and products prices in the international market.

The difference between Petroleum Support Fund (PSF) and Petroleum Equalization Fund (PEF) is that Petroleum Support Fund (PSF) is an administrative unit under the PPPRA, which was created to perform the function of equalizing importers of petroleum products the difference in market price and the fixed price set by the government in the domestic market. Petroleum Equalization Fund (PEF) was established to ensure that petroleum products are sold at uniform price

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Agusto & Co. (2008). Industry Report/Oil and Gas Downstream (2008). Published by Agusto & Co. Ltd., Marina Lagos, Nigeria.

throughout the country and by reimbursing marketers the cost of transporting products from the supply point to the retail outlets at government approved prices. More so, the administration of the fund (PEF) is made possible by net surplus revenue recovered from oil marketing companies and other fund made available to it by the government.⁷⁰⁶

The Petroleum Support Fund (PSF) is funded by the three tiers of Government⁷⁰⁷ to stabilize the domestic prices of petroleum products against volatility in international crude oil and products prices. The Federal Government pay 50% cost of the PSF budget while the remaining 50% is shared between the States and Local Governments.⁷⁰⁸ However, from inception payment into the Fund has been derived or borne by either the Federal Government Budget or through the Domestic Excess Crude Account. The following are the objectives of the Petroleum Support Fund (PSF):

- (a) To stabilize the domestic prices of petroleum products against volatility in International crude oil and products market
- (b) To create a level-playing field for active participation of the Nigerian National Petroleum Corporation (NNPC) and other marketers in products supply and distribution
- (c) To guarantee effective products availability and distribution nationwide

⁷⁰⁶ Agosto & Co. (2008). Industry Report/Oil and Gas Downstream (2008). Published by Agosto & Co. Ltd., Marina Lagos, Nigeria.

⁷⁰⁷ Report on the Administration of the Petroleum Support Fund (PSF) (2006). Prepared by Petroleum Products Pricing Regulatory Agency (PPPRA), January, 2007. (Available at: www.pppra.gov.ng/wp-content/upload/2015/02/report - accessed in October, 2010).

⁷⁰⁸ Nigeria Extractive Industries Transparency Initiative Report (Section 2) on the activities of Petroleum Products Pricing Regulatory Agency (PPPRA), October, 2013.

(d) To entrench transparency and accountability in the administration of the Fund on petroleum products subsidy in line with the government objectives.⁷⁰⁹

In order to achieve its objectives and in line with its mandate, the fund is administered in such a way that pricing policy that engenders healthy competition among industry operators, encourage investment and the maintenance of international standards and practice are applied. The pricing principle known as Import Parity is adopted using Platts of published products' prices and freight rates released by Petroleum Products Pricing Regulatory Agency (PPPRA) in order to ensure transparency and accountability.⁷¹⁰

The PSF mode of payment is based on either Under Recovery of Products Cost or Over Recovery of products cost.⁷¹¹ Under Recovery is the subsidy pay to the oil marketers where the amount spent by them is higher than the government's regulated price. Government will then reimburse the oil marketers to ensure that the regulated price is complied with. On the other hand, Over Recovery simply means the opposite of under recovery. That is, a situation where the amount spent by the marketers is lower than the regulated price by government. Administrative charge of N0.15K per litre is imputed on the quantity

⁷⁰⁹ Nigeria Extractive Industries Transparency Initiative Report (Section 2) on the activities of Petroleum Products Pricing Regulatory Agency (PPPRA), October, 2013.

⁷¹⁰ Ibid.

⁷¹¹ Agosto & Co. (2008). Industry Report/Oil and Gas Downstream (2008). Published by Agosto & Co. Ltd., Marina Lagos, Nigeria.

of the product imported. This charge applies in both recovery situations mentioned above.⁷¹²

In order to make the PSF work at the initial take-off, a budget of N150 billion was provided in 2006 and in 2007 another N100 billion was provided to the Fund by the government, which was later increased to N1 trillion in 2008.⁷¹³ Despite the setting up of the fund there is no stable availability of petroleum products in the market because of the fluctuation of international prices of crude oil.⁷¹⁴ This creates problem for the Nigerian National Petroleum Corporation (NNPC) and the oil marketer to reluctantly participate fully in petroleum products importation because of the high cost incurred in importing products into the country. The only solution out of this problem is to have a domestic price stabilizer that will insulate domestic product prices from international price shocks, which will guarantee cost recovery on reasonable return on investment to the oil marketers, if the downstream oil sector is fully deregulated.

In order to achieve its objectives and the smooth operation of Petroleum Support Fund (PSF), the Petroleum Products Pricing Regulator Agency (PPPRA) provides the following guidelines and modalities for its operation after proper consultation with industry operators approved by the government.⁷¹⁵

⁷¹² Nigeria Extractive Industries Transparency Initiative Report (Section 2), op

⁷¹³ Report on the Administration of the Petroleum Support Fund (PSF) (2006). Prepared by Petroleum Products Pricing Regulatory Agency (PPPRA), January, 2007. (Available at: www.pppra.gov.ng/wp-content/uploads/2015/02/report - accessed in October, 2010).

⁷¹⁴ Egbu, R. (2009). Nigeria: Deregulation – Passport to Misery, Chaos and Instability.(Available at: <http://brechforum.org/fuel-oil-deregulation-nigeria-two-articles> - accessed on 10/04/2010).

⁷¹⁵ Report on the Administration of the Petroleum Support Fund (PSF) (2006). Prepared by Petroleum Products Pricing Regulatory Agency (PPPRA), January, 2007, op cit.

- (a) The signing of an agreement between the marketer and the PPPRA
- (b) Notification to import by the marketer.
- (c) Witnessing and confirmation of the discharge of the imported cargo by the PPPRA operatives at the jetty.
- (d) Submission of the import documents.
- (e) Verification of the import documents at the PPPRA headquarters.
- (f) Processing of the import documents and determination of under or over recovery (as applicable).
- (g) Approval of the payment due to the marketers.
- (h) Payment of under-recovery to the marketer from the Fund or payment of over recovery by the marketer into the Fund.

However, the Petroleum Support Fund Guidelines does not supersede the mandate given to PPPRA, which was established by the Act of the National Assembly No. 8 of May, 2003. This is because the Act provided that the relevant portions of the mandate given to PPPRA are to take precedence over the PSF Guidelines.

The Petroleum Equalization Fund (PEF) payment is the bridging allowance due to it by each oil importer who is expected to pay a bridging allowance on the litre for the quantity of imported petroleum product. This is deducted at source by PPPRA and remitted to the PEF account. The Bridging allowance to PEF is now fixed at N6 per litre on the quantity of petroleum product imported from 2011. To ensure accountability in the payment of charges all documents brought by oil

marketers are properly checked to ensure their completeness and correctness. If the documentations are not complete, the oil marketers would be referred to the stage two; but if they are certified to be correct and complete, it will be processed for the next stage.⁷¹⁶

The mandate given to the Petroleum Support Fund (PSF) to modulate the impact of the volatility of oil prices at the international market and align them with domestic pump prices approved by government always attract comments from the public on the rationale of the policy. The arguments from those that are against the introduction of bridging by PSF were that the nation is not yet ripe for such a policy.⁷¹⁷ This is because of the unethical behavior of some oil marketers' operators who engage in all sorts of sharp practices and unwholesome products round tripping in order to short-change their competitors in the market and the final consumers. Akov⁷¹⁸ observed that product round-tripping takes place in two levels; and is a roundabout way of cheating the system and competitors by those firms that partake in this despicable practice and behavior; normally in the administration of subsidy of petroleum products.

Nwachukwu and Chike⁷¹⁹ observed other scenario devised by private oil marketing companies in conniving with some unscrupulous government agents to

⁷¹⁶ Ozo-Eson, P.I. (2014). Pricing of Petroleum Products in Nigeria. Research Report by African Centre for Leadership, Strategy and Development. Open Society Initiative for West Africa, Centre LSD Book Series No.7.

⁷¹⁷ Omonbude, E.J. (2009). Prospects for Domestic Petroleum Refining in Nigeria. (Available at: <http://www.economicconfidential.com/dec9featuresoileregulation.htm> - accessed on 30th April, 2010)

⁷¹⁸ Akov, E.T. (2015). Fuel Subsidy Corruption and the Illusions of Economic Reconstruction in Nigeria. Academic Journal of Interdisciplinary Studies, Vol. 4, No.1, pp.395-45.

⁷¹⁹ Nwachukwu, M.U. and Chike, H. (2011). Fuel Subsidy in Nigeria: Fact or Fallacy. Available at: <http://www.elsevier.com/locate/energy> - accessed on 10/8/2012).

recycle their petroleum products. In this manner, they will then obtain official determined prices from the Nigerian National Petroleum Corporation (NNPC) and re-present same as imported products. This then will allow the company to benefit from drawing from the PSF, thereby swindling the nation of billions of unearned profits.

In the past few years, oil marketers who were granted licences to import petroleum products were involved in sharp practices in the distribution of import allocation, approval of subsidy payments and actual collection of subsidy amount from the government only to refuse delivery of the products allocated to them.⁷²⁰ These are powerful players involved in the fraudulent act in the importation of petroleum products who connive with officials handling import documents and by criminally perfecting their documents, these companies collect huge sum of money from the Petroleum Support Fund.⁷²¹

The fuel subsidy scandal opened the pandoras box on profligate practices in the country's troubled oil sector.⁷²² These companies rather than import the product sourced it from within the shores of Nigeria and falsely declared it as an imported product. This allegation was also corroborated by the African Centre for Leadership and the Strategy and Development in its report titled: *Transparency and Accountability in the Oil and Gas Sector*.⁷²³

⁷²⁰ Sahara Reporters (2011). Fuel Subsidy: Senate Releases Named Cabal. Available at: <http://www.saharareporters.com/news.page> - accessed last on 10/11/2013).

⁷²¹ Sahara Reporters (2011), op cit.

⁷²² N963.7m subsidy fraud: Marketer sourced fuel from within Nigeria – EFCC (available at: www.theeagleonline.com.ng)

⁷²³ Asu, F. (2014). Petroleum Products pricing riddled with corruption – Group. The Punch Newspaper of September 23. (Also available at: www.punchng.com)

The second scenario is where private petroleum marketing companies registered with the PPPRA and PSF get allocation from the NNPC at reduced ex-depot prices and then returns offshore with the possible connivance with public officials and thereafter, the products are returned to Nigeria as imported products. The returned products are then sold by the oil marketers at prices lower than those that were actually imported and then apply to Petroleum Support Fund (PSF) for the differences in landing cost and sales price at the pump station.⁷²⁴

In order to maintain price stability of petroleum products in the market, Part II, Section 7(b) and (m) of the PPPRA Act empowered the Agency and stakeholders operating in the downstream oil sector develop eligibility conditions for oil marketing and trading companies that will guide them in the administration of the Petroleum Support Fund (PSF). These conditions stipulate that:-

(a) Oil Marketing and Trading Company must be registered with the Corporate Affairs Commission (CAC) in order to qualify for petroleum products business.

(b) Ownership of storage facility with a minimum of 5,000 metric tons.⁷²⁵

At inception, participation under the PSF was limited to marketing companies that owned storage facility of a minimum of 5,000 metric tons and a network of petrol stations/retail outlets. Moreover, the guidelines stipulate that

⁷²⁴ Donwa, P.A., Mgbame, C.O. and Julius, O.M. (2015). Corruption in the Oil and Gas Industry: Implication for Economic Growth. European Scientific Journal, Vol. 11, No. 22, pp. 212-223.

⁷²⁵ Nigeria Extractive Industries Transparency Initiative Report (Section 2) on the activities of Petroleum Products Pricing Regulatory Agency (PPPRA), October, 2013.

only bona fide companies with meaningful and identifiable assets in the downstream sector could be held accountable. Unfortunately, PSF changed the guidelines in Part V of 2007, which paved the way for companies with nothing more than a through-put-agreement to operate under the PSF. This was the beginning of the emergence of 'briefcase' companies (with no asset base or accountability) in the PSF scheme.

It is needless to state that corruption and criminality in Nigeria's oil sector are the major causes of poverty and underdevelopment in the country. To address these problems, government must as a matter of urgency, fast-track the turn-around maintenance of the country's refineries and encourage the building of new ones. This would address the over-dependency on importation of refined petroleum products and protect Nigeria's economy from the volatility of global oil market.

CHAPTER SIX

ENFORCEMENT OF UNIFORM PRICES OF PETROLEUM PRODUCTS IN NIGERIA

6.1 Introduction

The deregulation policy and frequent price adjustment of petroleum products often create supply gaps that often lead to scarcity in petroleum products. When this situation occurs, oil marketers explore the opportunity by diverting petroleum products to black market where it is sold at very exorbitant prices thereby cheating consumers who are desperate in buying the product for their vehicles. Most of the cheating also takes place at the petrol filling stations, where fraudulent practices; ranging from hoarding, diversion of petroleum products to black markets, tempering with meter reading in the filling stations and dispensing pump mal-adjustment and other unwholesome practices, are very common. To control these situations various agencies established by government were empowered to intervene in ensuring uniform implementation of prices of petroleum products so as to conform to best practices as required by all operators in the downstream sector. The scope of operation of the regulatory agencies extend to petroleum depots, filling stations, raiding of black market where petroleum products are sold, enforcement of safety standard and quality of products dispensed at filling stations in the country. All these are done in order to maintain standard and quality of petroleum products that are dispensed to consumers in all parts of the country.

The aim of this Chapter is to examine the various laws in enforcing uniform prices of petroleum products and how it help in sanitizing the downstream sector from the unwholesome practices often exhibited by oil marketers.

6.2 Enforcement Power under the Legal Framework

In order to exercise a firm control of the downstream oil sector, the Federal Government enacted various laws that regulate the distribution of petroleum products in Nigeria, which include:

(a) The Petroleum Act.⁷²⁶

(b) The Price Control Act.⁷²⁷

(c) Petroleum Production and Distribution (Anti-Sabotage) Act.⁷²⁸

6.2.1 The Petroleum Act

Under this Act, the Minister of Petroleum Resources has overall control on the distribution and pricing of petroleum products in Nigeria. The Petroleum Act⁷²⁹ under Section 6(2) stipulates that:

The Minister may by notice in writing require any person appearing to him to have or to be likely to have access to information which is relevant to the fixing of any prices of the kind mentioned in Subsection (1) of this Section to supply that information to the Minister, and any person so required shall be legally bond to use his best endeavour to supply the information accordingly.

⁷²⁶ Cap. P.10, Vol. 13, Laws of the Federation of Nigeria, 2004

⁷²⁷ Cap. P.28, Vol. 20, Laws of the Federation of Nigeria, 2004

⁷²⁸ Cap. P.12, Vol.20, Laws of the Federation of Nigeria, 2004.

⁷²⁹ Cap. P10, Vol.13, op. cit.

The penalty for non-compliance with the above provision is stipulated under Section 13(3) of the Petroleum Act, which states that: “Any person who contravene any provision of an order made under Section 6 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦2,000.00.” Section 13(4)(a) and (b) of the same Act went further to stipulates that:

Where a person is convicted of an offence under subsection (2) or (3) of this section in respect of any petroleum or petroleum products, then, in addition to any penalty imposed under the subsection in question, the convicting court may-

- (a) Order the petroleum or petroleum products to be forfeited; or
- (b) Order that person to pay to the Minister the value of the petroleum or petroleum products.⁷³⁰

The Petroleum Act⁷³¹ has assigned so many powers and responsibilities to the Minister of Petroleum Resources, which however sometimes makes the Ministry unaccountable for certain activities. Nevertheless, Section 12(1) of the Petroleum Act⁷³² allow the Minister to delegate his power to another person to act on his behalf, which is the Department of Petroleum Resources that implement the provisions of the Petroleum Act in the downstream oil sector. Despite the provision of punishment in the law, there is still infringement by oil marketers who adopts various means of cheating consumers. This is because of lack of enforcement by the relevant authority or agencies that are saddled with the

⁷³⁰ Section 13(4)(a) and (b) of Petroleum Act. Cap. P10, Vol.13, L.F.N., 2004

⁷³¹ Cap. P.10, Vol.13.

⁷³² Ibid

implementation of the law, or that the punishment provided is too small to deter offenders who continued to violate the provisions of the law.

It is on this basis that the Petroleum Act is not an efficient legislation in the light of the above provision. In addition, the penalty attached to contravention of Section 6 of the Act, which prescribed a fine not exceeding N2,000.00 for those who sell petroleum products above the control price, is not stringent enough to deter other offenders from such economic crime. This means that a court may choose that the offender pay a fine of N500.00 and he is set free.

6.2.2 Price Control Act

Price control is government restrictions on the prices that can be charged for goods and services in a market. The intent behind implementing such control is the desire to maintain affordability of staple foods and goods, to prevent price increase during shortages, and to slow inflation, or, alternatively, to ensure a minimum income for workers. Adagunodo⁷³³ identified two primary forms of price control, the maximum and minimum price that can be charged on a commodity. The problem with price control is that by keeping the price of a commodity low, demand is expected to increase to the point where supply can not keep up, leading to shortages in the price controlled of such product and verse-versa.⁷³⁴ This assumption is true of commodities that have substitution, but for commodity, such as petroleum products that have no substitution, the

⁷³³ Adagunodo, M. (2013). Petroleum Products Pricing Reform in Nigeria: Welfare Analysis from Household Budget Survey. *International Journal of Energy Economics and Policy*, Vol.3, No.4, pp. 459-472.

⁷³⁴ Iwayemi, A., Adenikinju, A. and Babatunde, M.A. (2010). Estimating Petroleum Products Demand Elasticity in Nigeria: A Multivariate Cointegration Approach. *Energy Economics*, 32:73-85.

economic theory of price the law of demand and supply does not follow. The demand for petroleum products is not price elastic i.e; an increase in price does not produce a corresponding decrease in demand or volume consumed. Similarly, a decrease in price does not produce a corresponding increase in demand or volume consumed. It can therefore be said that petroleum products are similar to tobacco and alcoholic drinks due to their addictive nature in the sense that an increase in price does not produce a corresponding decrease in demand or quantity consumed.⁷³⁵

In furtherance to its objective of making petroleum products easily accessible and affordable by all consumers in the country the Federal Government established the Price Control Act⁷³⁶ and also the Price Control Board⁷³⁷ at the Federal level and Price Control Committee⁷³⁸ at the State level under the Price Control Act. What the Price Control Act prohibits is sale of “any controlled commodity at a price which exceeds the controlled price.” Under the law, price of petroleum products is controlled under Section 6(1) of the Petroleum Act⁷³⁹ and Section 4 and the First Schedule of the Price Control Act. By Section 5 of the Price Control Act, it is only the Board⁷⁴⁰ that can fix the controlled price by notice published in the Federal Gazette. Therefore, where price has not been fixed by the Board in respect of a controlled commodity the Price Control Act is

⁷³⁵ Onwioduokit, E.A. and Adenuga, A.O. (2000). Empirical Analysis of the Demand for Petroleum Products in Nigeria. International Economic Relations Department, Central Bank of Nigeria.

⁷³⁶ Cap. P.28, Vol. 20, Laws of the Federation of Nigeria, 2004.

⁷³⁷ Ibid, Section 1.

⁷³⁸ Ibid, Section 2.

⁷³⁹ Cap. P.10, Vol. 12, op. cit.

⁷⁴⁰ Ibid.

not applicable and the National Assembly is yet to designate petroleum product as a special commodity for Price Control Act to apply.⁷⁴¹

Section 6(1)-(4) of the Price Control Act⁷⁴² prohibits the sale of controlled commodity above the controlled price. The Section provides that:

- (1) It shall be unlawful for any person to sell, agree to sell or offer to sell any or employ any other person, whether or not that other person is of full age, to sell any controlled commodity at a price which exceeds the controlled price.
- (2) If any person contravenes subsection (1) of this section in respect of any controlled commodity:
 - (a) He shall be guilty of an offence and shall
 - (i) In the case of a retailer, be liable to a fine of not less than N200 and not more than N2,000.00 or to imprisonment for less than six months, or to both such fine and imprisonment; and
 - (ii) In the case of a manufacturer, wholesaler or major distributor, be liable to a fine of not less than N1,000.00 and not more than N10,000.00 or to imprisonment for not less than twelve months, or both such fine and imprisonment;
 - (b) The stock of the controlled commodity shall be liable to forfeiture.
- (3) Where a person is convicted of any offence under subsection (2) of this section in respect of any commodity the court shall make an order forfeiting the stock of the commodity; and, where such an order is made, the commodity shall be disposed of by the Board as it thinks fit, any proceeds of the

⁷⁴¹ Emeka, U. (2015). Price Control Act has no Relationship with fuel subsidy. Nation Newspaper of 16th July (available at: www.thenationonline.net, last accessed, 6/4/2016).

⁷⁴² Cap. P.28, Vol. 20, op. cit.

disposal being paid into the Consolidated Revenue Fund of the Federation.

(4) Where proceedings under subsection (2) of this section do not result in conviction the court shall make an order for the disposal at the controlled price of any commodity to which the proceedings relate and the proceeds of such disposal shall be applied as follows:

(a) ninety per cent of the proceeds shall be paid to the owner of

the commodity;

(b) the remaining ten per cent shall be paid into the Consolidated Revenue Fund of the Federation.

Section 6(5) of the Act covers the vicarious liability of an employer who employed persons to work under him and if such persons found to have sold such commodity at price which exceeds the controlled price, he is to be personally liable for the offence committed. The sub-section (5) of Section 6 stipulates that:-

(5) For the purpose of subsection (1) of this section where any person employed by another to sell any controlled commodity is proved to have sold the commodity at any price which exceeds the controlled price, the employer of that person shall, notwithstanding anything to the contrary in any law or rule of law, be deemed to have employed that other person to sell the commodity concerned at the price at which it was in fact sold.

Section 7 of the Price Control Act also provide offence for those who hoard commodities of any description, including petroleum products, shall be liable if found guilty of such offence. This section provides as follows:-

If-

(a) A person carrying on a business in the course of which controlled commodities of any description are normally sold

has in his possession in the course of that business a stock of controlled commodities of that description; and

- (b) That person, or any person employed by him to sell goods in the course of that business, when asked by any other person (referred to in this section as “the buyer”) to sell any controlled commodity of that description or whether he or, as the case may be, his employer has any such commodity for sale-
- (i) Refuses to sell the commodity in question, or denies that he (or, as the case may be, his employer) has the commodity, or uses any words or gives any other indication calculated to lead the buyer to suppose that he (or, as the case may be, his employer) has not got the commodity or will not or cannot sell it; or
 - (ii) Offers to sell the commodity subject to a condition requiring the buying of any other goods (whether controlled commodities or not) or the making of any payment in respect of any service or subject to any other condition except delivery within a reasonable time, the person carrying on the business shall be guilty of an offence.

Section 4 went further to state that:-

Where a person is convicted of an offence under subsection (1) of this section in respect of any controlled commodity of any description-

- (a) He shall-
- (i) In the case of an individual, be sentenced to imprisonment for not less than six months without the option of a fine; and
 - (ii) In the case of a body corporate be sentenced to a fine of not less than N5,000.00; and
 - (iii) The stock of controlled commodities shall be liable to forfeiture.

The essence of these provisions is to prevent petrol dealers from hoarding or selling petroleum products beyond the control price set by government. It is

also aimed in preventing members of the public who have within their knowledge of any person selling petroleum products above the control price to be legally bound to make such information available to the Minister. Over the years the enforcement of these provisions of the Petroleum Act is lacking because of the non-designation of petroleum products as a special commodity by the National Assembly. There is need for the National Assembly designate petroleum products as a special commodity as required by item 62(e) under Exclusive Legislative List in order to reduce the rampant cases of corruption going on in the downstream oil sector.

6.2.3. Petroleum Production and Distribution (Anti-Sabotage) Act

In Nigeria, loss of production, pollution and production shut-down caused by oil bunkering, pipeline vandalism and sabotage accounts for the loss of over 100,000 barrels of crude oil per day, with approximately 55 million barrels of crude oil being lost annually to traffickers.⁷⁴³ The activities of those involved in oil crime ranges from illegal oil bunkering, pipeline vandalisation, fuel scooping and oil smuggling. Oil theft and sabotage is compromising Nigeria's capacity to improve its domestic demand of petroleum products and increase in its crude oil reserves. This also affects the quantity of crude oil allocation to the four refineries for processing and distribution in the downstream. In order to tackle this problem

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Violet, O.A. and Gozie, O. (2014). Oil Crimes: the Nigerian Dimension. *International Energy Law Review*, Vol.32 Issue 6, pp.212-221.

effectively, the Petroleum Production and Distribution (Anti-Sabotage) Act⁷⁴⁴ provides various offences and punishment for those who obstruct the production and distribution of petroleum products in Nigeria. Section 1(1) of the Act⁷⁴⁵ provides that:

Any person who does any of the following things, that is to say-

- (a) willfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria; or
- (b) willfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or
- (c) willfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products shall, if by doing that thing he, to any significant extent, causes or contributes to any interruption in the production or distribution of petroleum products..... shall be guilty of the offence of sabotage under this Act.

Section 2 of the Act provides that any person convicted of the offence of sabotage shall be liable to a death sentence or a term of imprisonment not exceeding 21 years.⁷⁴⁶ It is pertinent to observe here that what constitutes the offence of sabotage under the Act is not only the willful act of obstructing the distribution of petroleum products but such offences of procurement, aiding or incitement of another to commit the act amounts to the commission of the act

⁷⁴⁴ Cap. P.12, Vol. 20, L.F.N. 2004.

⁷⁴⁵ Cap. P.12, Vol. 20, L.F.N. 2004.

⁷⁴⁶ Ibid. Section 2

itself.⁷⁴⁷ Under the Economic and Financial Crimes Commission (Establishment, etc) Act⁷⁴⁸ oil bunkering is included as part of the definition of economic and financial crime.⁷⁴⁹

Oil crime has, in recent times, attained the notoriety of being the most economically, environmentally and financially challenging crime facing Nigeria, yet the Economic and Financial Crime Commission (EFCC), unfortunately, appears to have been somewhat reticent in investigating and prosecuting offenders. This accounts for societal acquiescence to oil crime, which is viewed as a victimless crime. The EFCC has to be proactive in carrying out its functions of a societal watch dog, which would efficiently sensitise the public to the criminality of any unauthorized oil dealings.

Aside from ineffective regulations to combat oil crime, Nigeria's weak governance is also exploited by oil thieves. Apparently, the Joint Military Task Force operating within the Niger Delta region have also compromised by providing escort services for stolen crude oil operations, ensuring unrestricted access to their designated point of delivery.⁷⁵⁰ In spite of the lip-service currently being paid to combating oil crime, Nigeria is yet to develop a cohesive strategy for confronting these issues. It lacks a proper intelligence network, compounded by its porous borders.

⁷⁴⁷ Ibid., Section 1(2)(a) and (b)

⁷⁴⁸ Cap. E.1, Laws of the Federation of Nigeria, 2004.

⁷⁴⁹ Ibid., Section 6.

⁷⁵⁰ Aigbokhaevbo, V.O. and Ogbodo, G. (2014). Oil Crimes: The Nigerian Dimension. *International Energy Law Review*, Vol. 32 Issue 6, pp. 212-221.

6.3 Enforcement Power under the Institutional Framework

The power to enforce the provisions of Petroleum Act and other enactments rests with the Department of Petroleum Resources (DPR); and to some certain extent the Nigerian National Petroleum Corporation (NNPC). The Department of Petroleum Resources was established under Section 10 (2)(a) and (b) of the NNPC Act⁷⁵¹ to:

- (a) Issue permits and licences for all activities connected with petroleum exploration and exploitation and the refining, storage, marketing, transportation and distribution thereof;
- (b) Acting as the agency for the enforcement of the provisions contains in the Petroleum Act or any relevant regulations made there under by the Minister.

Section 4(1) of the Petroleum Act⁷⁵² provides that; “no person shall import, store, sell or distribute any petroleum products in Nigeria without a licence granted by the Minister.” Section 8(1)(d) of the same Act provides that; “the Minister may arrest without warrant any person whom he finds committing, or whom he reasonably suspects of having committed, any offence under this Act or any regulations made thereunder, and shall hand over any person so arrested to a police officer with as little delay as possible.”

Despite these provisions and payment of bridging claims to marketers under the Petroleum Equalization Fund Act, petroleum products are being sold above the regulated price outside the major cities in Nigeria, which is a clear

⁷⁵¹ Cap. N.123, Vol. 12, op. cit.

⁷⁵² Cap. P.10, Vol. 13, op. cit.

signal of the failure of the regulating institutions. In order to ensure that marketers sell petroleum products at uniform price all over the country as fixed by the government, the Department of Petroleum Resources (DPR) and the Nigerian National Petroleum Corporation were granted various powers to ensure that not only the regulated price on petroleum products are enforced but also ensure the availability of petroleum products all over the country. These powers include the following:

6.3.1 Power to Enforce Standard and Quality of Petroleum Products Dispensed at the Filling Stations

All refineries operations are monitor by Department of Petroleum Resources (DPR) so that the desired quality is maintained. In doing this, it ensured that each refinery has well equipped laboratory where appropriate tests are carried out on the products before test certificates are issued and vetted by the Department to ensure that products meet set standard for shipment by rail, road, sea and pipelines.⁷⁵³

To effectively carry out its function, DPR operates three zonal offices at Kaduna, Port-Harcourt and Warri, with the Headquarters at Abuja. It also operates area offices in Sokoto, Makurdi, Ibadan, Jos and Enugu in order to bring its services closer to the consumers. The Headquarters collates the returns on production and consumption of petroleum products from the refineries and oil

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Ifesinachi, K. and Adibe, R. (2014). The Department of Petroleum Resources (DPR) and Enforcement of Environmental Regulations in the Nigerian Oil Industry, 2008-2013. *Journal of Advances of Political Science*, Vol.1 No.1. Peer Review Research Publishing System. Pp. 1-10.

marketing companies respectively and reconcile these figures with those collected independently by the field officers.⁷⁵⁴ For effective monitoring and control of operation at the filling stations all over the country, the representatives of DPR are normally stationed in all the petroleum depots. The Department maintains laboratories in Kaduna, Port Harcourt and Warri with modern equipment for proper testing of petroleum products in order to dictate adulterated petroleum products by scrupulous oil marketers. The national laboratory built in Abuja is well equipped with staff for quality control measures to be enforced on all those operating petrol filling stations. This is to ensure that consumers of petroleum products all over Nigeria derive maximum satisfaction from their money.⁷⁵⁵

According to Agha,⁷⁵⁶ the Department of Petroleum Resources (DPR) also monitors the quality of petroleum products from time to time at Depots and Jetties before petroleum products are shipped from refineries through a network of pipelines after certifying that the products refined by the refineries meet standard specification. It also ensures that the pipelines operators handle the shipment of petroleum products carefully in order to prevent contamination. At the coastal Jetties representatives of DPR are normally stationed to monitor vessel

⁷⁵⁴ Agbola, E.A. (1987). Petroleum Products Measurement and Quality Assurance. Paper Presented at the National Seminar on Petroleum Measurement, 1987 (also available at: <http://www.nigeriavillagesquare.com>, last visited, April, 2011).

⁷⁵⁵ Oyelere, T., Olagunju, F. and Pelewo, Funmilayo (2010). DPR Sets Up Control Centres for Monitoring/Complaints. (Available at: http://www.dprinigeria.com/news_archive - accessed last on 1/3/2010

⁷⁵⁶ Agha, B. (2010). The Director of DPR 's interview granted to the Guardian Reporter on 1st March, 2010 – available at www.guardiannewsngr.com – accessed on 1st March, 2010).

discharging imported petroleum products and take samples for independent analysis before sales of the products to the consumers.⁷⁵⁷

According to the guidelines provided by DPR⁷⁵⁸ it ensures that all Depots in the country are installed with loading arms flow meters. This is used for checking the volume of fuel loaded into tanks and quantity discharged at the filling stations. The compulsory meter proving exercises for all meters in the depots is also witnessed every month by representatives of the Department of Petroleum Resources to make sure that standards are maintained by Depots operator. Apart from this, it also conduct inspection/assessment of the facilities for all new applicants under the major and specialized categories before a consideration for the issuance of permits are given. In this way, it ensures that all environmental, laboratory and diving services, etc are assessed for professional competency before a consideration for issuance of permits.

Uzundu⁷⁵⁹ in his analysis of the unwholesome practices by petrol attendants at some filling stations in the country observed that the Department of Petroleum Resources has to step up routine inspections on all petrol stations where samples

⁷⁵⁷ Sections 3-6 of Crude Oil (Transportation and Shipment) Regulations Under the Petroleum Act, Cap. P.10, Vol. 13, Laws of Federation of Nigeria, 2004.

⁷⁵⁸ The Guideline stipulates that:

- (a) All operators and retail outlets are to be captured in DPR database through the Geographic Positioning System (GPS) by first Quarter, 2010.
- (b) DPR would take the lead in bulk certification of petroleum products through well equipped laboratories nationwide
- (c) An acceptable and effective technology for pump seal/lock and automatic volume count mechanism to check sharp practices would be proposed by DPR for the sector.
- (d) All existing sanctions and penalties for infringement on provisions of regulations by operators would be appropriately reviewed.
- (e) Any retail outlet found hoarding would be sanctioned by auctioning of product and dealer fined twice the amount of product.
- (f) DPR website would be upgraded to permit the public post comments on activities of retail outlets.
- (g) Nationwide road-shows to enlighten the public on DPR's licensing and permitting requirements for downstream activities.
- (h) Finally, DPR will ensure capacity building and provision of adequate material resources.

⁷⁵⁹ Uzundu, J. (2010). Fighting Unwholesome Practices. Available at: <http://www.nigeriannewsworld.com> –accessed last on 11/7/2010).

of petroleum products are withdrawn for laboratory analysis. The frequent presence of the Department's representatives at these petrol stations at least serves as a deterrent to petrol station dealers to avoid acts that may lead to sanctioning by the Department. The efforts of DPR are often complemented by those of the Military and other security agency's task forces.⁷⁶⁰ Further more, monitoring of operations at petrol stations by officials of DPR ensure that accurate volume of petroleum products are sold at correct prices. To achieve this, periodic proving of meters in dispensing pumps are carried out using the 10-litre Seraphin Cans.⁷⁶¹ The product is delivered into the can, while the gauge on the cylinder is used to determine if the supply is up to standard measure.

As a result of incessant complaints by consumers of widespread cases of cheating in petrol stations through manipulation of dispensing meters, the Department of Petroleum Resources (DPR) print the volume and the price tales indicating the cost of a litre of fuel to be dispensed to motorist in a filling station. These are distributed to oil marketing companies for mandatory display on all petrol stations. This is to serve as guides to consumers for a quick reconciliation of the amount paid with volume dispense (Appendix 8).⁷⁶² In this way, consumers know how much they are paying for the quantity of fuel they consume. This has helped consumers all over the country tremendously and also Department of

⁷⁶⁰ Fagbemi, S.E. (2010). Why We Will Shut Down Petroleum Products Depots – NUPENG. Available at: <http://www.nigeriannewsworld.com> –accessed last on 11/7/2010).

⁷⁶¹ Agbola, E.A., op. cit.

⁷⁶² Appendix 8 on page 353 shows daily spot market data of imported petroleum products accompanied by price list charged by marketers after taken care cost of importing the products into the country.

Petroleum Resources to control the activities of the unscrupulous dealers and attendants. Appendix 8, which displayed the price list of petroleum product revealed clearly that the Nigerian National Petroleum Corporation (NNPC) Mega Stations are also involved in violating the uniform pricing policy by selling their product above the regulated price as displayed in their pumping machine.⁷⁶³

Apart from the Department of Petroleum Resources enforcing the law against erring marketers, the Weights and Measures Division in the Federal Ministry of Commerce also ensure that accurate weights and measures, weighting and measuring equipment used for trade within the economy are maintained. The Weights and Measures laws are enforced all over the Federation through the state offices, located in the various state capitals, with Abuja as the Headquarters. These offices are managed by trained Inspectors. The Primary Standards are kept as defined and maintained by the International Organization of Legal Metrology (OIML). The responsibilities of the Weights and Measures Division are:-

- (a) Maintenance of the Standard of Weights and Measures in the country.
- (b) Verification and certification of weights, measures, weighting and measuring instruments used in the economy through visits to petrol retail outlets, petrol depots, supermarkets, open markets, grocery shops, factories, airports, etc.
- (c) Protect consumers from the use of unjust weights or measures or misrepresentation.

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Enejeta, E. (2017). DPR to Check Unauthorized Fuel Price Increase. Available at: <http://www.financialwatchngr.com/2017/02/02/dpr-check-authorized-fuel-price-increase/> - accessed 2/2/2017).

- (d) The approval of newly manufactured within or measuring instruments through the issuance of the “Certificate of Approval of Pattern.”
- (e) Issuance of certificates of verification for any weights, measures weighing or measuring instruments found to be accurate within the limits of error prescribed by the law.
- (f) Prosecution of those who go contrary to the law.

It is no gainsaying that technology has changed practically every facet of the human life from lifestyle to living, and most importantly the way humans do their works. Whilst technology may have brought about challenges in terms of adapting and keeping up with industry trends, it certainly has improved work processes tremendously, especially in terms of service delivery and turn around.

Despite the measures put in place to sanitize the downstream sector against these fraudsters, there is increase in their activities. This is because of the inefficient operation of some of the agencies or lack of manpower to enforce the law effectively.⁷⁶⁴

6.3.2 Power to Sanction Erring Filling Station Operators

The petrol station is the final point where the petroleum products get to the consumers. These products are transported to the petrol stations by road instead of pipelines or rail system which has proved inefficient. The main source of contamination of petroleum products identified before products get to consumers

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PPRA (2006). Downstream Facilities and Retail Outlets in Nigeria. Available at: http://www.pppra-nigeria.org/retail_outlets.asp -accessed 22/11/2013).

is deliberate adulteration by road tanker drivers or dealers.⁷⁶⁵ Road tanker drivers or dealers adulterate petroleum products so as to make maximum profit. As a result of huge price differential between petroleum product and other products, unscrupulous drivers or dealers are engaged in operating illegal depots where these products are blended before they eventually find their way into petrol stations and are sold to innocent consumers. Of recent, the activities of these fraudsters have reached an alarming dimension that the Nigerian National Petroleum Corporation had to spend huge sum of money to launch a publicity campaign against it through radio television and newspapers advertisements.⁷⁶⁶

The Department of Petroleum Resources is given the power under Section 8(1) and (2) of the Petroleum Control Act⁷⁶⁷ to revoke at any time and without reason assigned, or forthwith upon conviction of the holder or any person acting on his behalf of an offence under this Act. Where a licence is revoked, any petroleum product then in the possession of the former holder of the licence or under his apparent control shall be disposed of as directed by a competent authority, and the person whose licence is revoked shall comply with the direction, notwithstanding the revocation.

The Department of Petroleum Resources (DPR) in accordance to Section 3 of the Petroleum Act apart from granting licences also issue guidelines to filling

⁷⁶⁵ Ambituuni, A., Amezaga, J.M. and Werner, D. (2015). Risk Assessment of Petroleum Product Transportation by Road: A framework for Regulatory Improvement. *Safety Science* 79:324-335.

⁷⁶⁶ NNPC (2012). Draft Annual Statistical Bulletin. Corporate Planning and Development Division, Abuja, Nigeria.

⁷⁶⁷ Cap. 351, Laws of the Federation of Nigeria, 2004

station operators in the country for compliance.⁷⁶⁸ In this way the Department of Petroleum Resources' power to sanction erring filling stations who flout the regulatory guidelines helped to check the unwholesome practices going on in the downstream industry. The Department acquired effective technology in monitoring filling stations all over the country in order to conform to best corporate practices in Nigeria. The agency has effective technology in pump seal/lock and automatic volume count mechanism that can check sharp practices.

The Agency continued to review all existing sanctions and penalties for infringement on provisions of regulations by operators and capacity building and materials resources in order to meet anticipated challenges.⁷⁶⁹ The agency had intensified its monitoring efforts towards avoiding products scarcity, diversion, smuggling and hoarding. Any outlet found to be hoarding petroleum products is not only sanctioned but has its product auctioned to the public and such dealer fined twice the amount of the product.⁷⁷⁰

In order not to allow the bad system win in the fight against unethical practices in the downstream sector, Koku,⁷⁷¹ the Lagos Zonal Controller of the Department of Petroleum Resources (DPR) observed that:-

Any country, including Nigeria that believes that one man is above the law, that means about 10 million people are above the law, because the man has a lot of friends, both

⁷⁶⁸ DPR (2013). Starting a Filling Station in Nigeria. Available at: www.dprnigeria.org/about.dpr - accessed last 22 December, 2013).

⁷⁶⁹ DPR (2014). DPR Says Migration to Electronic Operations Yield Dividends. Available at: www.wmdnigeria.com – accessed on 6/2/2017).

⁷⁷⁰ Alohan, J. (2012). DPR Seals NNPC Stations Over Meter Manipulation. Leadership Newspaper of Tuesday 24/1/2012., p.5.

⁷⁷¹ Koku, O. (2011). DPR Decries Abuse of downstream Regulations. Available at: <http://www.sweetcrudereports.com/2011/09/28/dpr-decries-abuse-of-downstream>). Accessed on 6/2/2017).

imagine and real. His drivers, children, relations and their friends and hangers on will all be above the law because there is nobody, who does not know somebody. Until we come to realize that we must uphold the rule of law and everybody must be committed to it, from the top to the bottom, we will keep coming back. But we are not giving up, otherwise the system will win. The onus is on us not to give up. Hopefully, someone will listen; people are already listening but the pace is too slow.⁷⁷²

Motorists in the major cities of Nigeria are often worst hit in the supply of premium motor spirit (PMS), whenever there is scarcity of petroleum product as they have to queue; sometimes for days or nights at the filling stations in order to get petrol for their vehicles from the few stations that have the product and are willing to sell to them. Indeed, the unwillingness of most marketers to sell had played out a major inhibiting factor in the government's efforts to ease the crisis and get products to consumers in all nooks and crannies of the country. Both the Nigerian National Petroleum Corporation (NNPC) and the Department of Petroleum Resources (DPR), which regulates the industry, had come out to state on several occasions that marketers preferred to hoard products which they would later sell at night to desperate customers at black market rates, sometimes tripling their profits.⁷⁷³

The assurance by the Nigerian National Petroleum Corporation⁷⁷⁴ that they have made available products in sufficient volume for sales throughout the

⁷⁷² Koku, O. (2011), op. cit.

⁷⁷³ Alohan, J. (2012). DPR Seals NNPC Stations Over Meter Manipulation. Leadership Newspaper of Tuesday 24/1/2012., p.5.

⁷⁷⁴ Hamisu, M., Okeke, F., Shosanya, M., Mohammed, A., Hamagam, A.M., Isuwa, S. and Yaya, H.G. (2013). Fuel Scarcity in Abuja, Kano, Others. It's Panic Buying – NNPC., Available at: www.dailytrust.com – Accessed last on 2/07/2013).

country has not changed the attitudes of petroleum dealers to sell their products to members of the public. Instead, they prefer to hoard the product for higher prices than sell at government approved price. Despite the punishment provided in S. 6(1)(2) of the Price Control Act that it is an offence to sell any controlled commodity at a price which exceeds the controlled price, the continued hoarding of petroleum products by oil marketers has pointed a growing state of lawlessness in the industry as they flout all laws and best practices without anyone calling them to order.

The continue crisis in the downstream oil sector have further exposed the failure of government regulation. The unabating scarcity of petroleum products has been attributed to the activities of vandals and illegal bunkerers who rupture petroleum pipelines and scoop the product. Despite the danger that normally accompanied such exercise, it has not stopped such criminal acts. What is needed is for the government to employ necessary measures to protect and keep the pipelines in good shape to ensure uninterrupted supplies of petroleum products to consumers. While recognizing the death penalty for any one caught in this serious criminal act and the very stiff punishment of death sentence for culprits, it will not solve the problem, but rather life imprisonment will better serve as a deterrent for offenders of pipeline vandalization.

Under the current regulated regimes there are lots of unethical things that are happening in the filling stations all over the country which are clearly

unacceptable.⁷⁷⁵ The disorder which seem to have pervaded the industry include fraudulent acts of hoarding, sales of products above recommended or regulated price,⁷⁷⁶ and recalibration of meters to shortchange consumers, displaying of a particular price and selling at a different one have all become a common feature in most stations.⁷⁷⁷ Not that these fraudulent acts were never part of features of the industry, but the degree to which they were perpetrated were monumental as if such frauds are made to be acceptable ethics of the industry.

Ovbiagele⁷⁷⁸ observed that marketers who obviously had products in their fuel pumps would shut down their filling stations to customers in the day and prefer to sell at nights at black market prices to triple their earnings, which is an economic crime. Even though the industry is government regulated, marketers that get their products from the NNPC later sell it at arbitrary prices as determined by them, some as high as N120 per litre as against the N97 per litre from 2012 to 2014, and the people will still buy and feel happy.⁷⁷⁹

The worst form of abuse is when buyers are tricked and cheated openly by petrol filling station attendants by claiming that a litre of petrol sold as at 2012 was N97 but in the actual fact it was sold for more than the amount advertised.⁷⁸⁰ Some Station Managers sometimes put guards at the entry points of their filling stations

⁷⁷⁵ Energy Mix Report (2015). DPR Shuts Down Stations, Depots Around the Country as Marketers Fail to Heed Warning. Available at: <http://www.energymixreport.com/dpr-down-stations-depots-around-t>. Accessed laast 6/2/2017).

⁷⁷⁶ Oyelere, T., Olagunju, F. and Pelewo, F. (2010). DPR Sets Up Control Centres for Monitoring/Complaints. Available at: www.dprnigeria.com/news-archieve - last accessed on 1/3/2010).

⁷⁷⁷ Uzundu, J. (2010). Fighting Unwholesome Practices. Available at: www.nigeriannewsworld.com – accessed last on 11/7/2010).

⁷⁷⁸ Ovbiagele, H. (2012). Fuel Filling Stations: Cheats at the Pumps! Available at: www.vanguardngr.com/energynews/dpr/ accessed on 11/3/2012).

⁷⁷⁹ BBC Report (2011). Nigerian Fuel Shortages Worsen – Dark Days Return. Available at: <http://news.bbc.co.uk/2/hi> - accessed last on 6/5/2011).

⁷⁸⁰ Uzundu, J. (2010), op. cit.

to collect “levy” from customers before allowing them entry into such stations. The pump attendants also have fees you pay before the products are eventually dispensed, on the other hand some filling stations preferred clandestine sales, usually at nights, using torch lights in a bid to hide its dirty dealings. For those buying in jerry cans, they are made to pay extra amount by the petrol attendants before being attended to.⁷⁸¹ According to Adenikinju and Falobi, most of the frauds perpetrated by attendants at the filling stations sometimes were carried without the knowledge of the station managers.⁷⁸² For those filling stations that even sell the products, most of them have thrown caution to the winds as they sell well above the approved price per litre without fear that they will be sanctioned by the Department of Petroleum Resources.

While the Department of Petroleum Resources is trying all it could to wipe the downstream oil industry of the sharp practices, which has caused serious scarcity in petroleum products supply, the major oil marketers sometimes are not ready to absorb the blame of the shady businesses going on in the downstream oil sector. Their position is understandable because the basic instinct of a businessman is to make profit and this can be achieved through legal or illegal method. This can be judged by the level of corruption in the downstream oil

⁷⁸¹ Adelaja, B. (2015). Fuel Scarcity: Return of an Almost Forgotten Ordeal. Available at: www.vanguardngr.com – Accessed on 27/5/2015).

⁷⁸² Adenikinju, A.F. and Falobi, N. (2006). Macroeconomics Distributional Consequences of Energy Supply Shocks in Nigeria. AERC Research Paper No. 162. African Economic Research Consortium, Nairobi, December, 2006.

sector normally perpetrated by the independent marketers who after getting the product at government regulated price but sale at a higher price in the market.⁷⁸³

The Petroleum Workers' Union, the Nigerian Labour Congress (NLC) and the Tankers Drivers' Union have also contributed immensely in sensitizing the downstream oil sector. The pressures they put on government sometimes lead to reversal of increase in price of petroleum products or compel petroleum marketers to sell the products at government control price, thereby restoring sanity in the downstream sector. In May 2007 when government announced increase in the price of petroleum product the organized labour called a nation-wide strike to kick against the increase, which nearly crumbled economic activities in the country.⁷⁸⁴ In desperate effort to avert further prolong strike, government offered concession to the Unions' demand by reversing the price increase on petroleum products.

The suspension of the strike action led to restoration of business activities in the country. All the filling stations that were closed or suspended were later directed to adjust their meters to the new price agreed between labour and government.⁷⁸⁵ In order to ensure compliance to the new price, some States Governors ordered some filling stations to be shut-down for selling the product above the control price. In Osun State, government ordered its Task Force on

⁷⁸³ Adenikinju, A.F. and Falobi, N. (2006), op cit.

⁷⁸⁴ Femi, A. (2007). Nation-Wide Strikes in Nigeria: A critical analysis (Available at: <http://www.pambazuka.org/en/category/comment/42507>). Last visited October, 2011.

⁷⁸⁵ Igomu, T. (2010). Fuel Scarcity: Nigeria's Problem that Won't go Away. Available at: www.nigeriadailynews.com – accessed on 13/1/2010).

Petroleum and Allied Products to ensure full compliance with the new price and imposed financial sanctions on the defaulting stations, which they had to pay before re-opening for business activities. In Rivers State, government took a similar step when they ordered the closure of two fuel outlets in Port-Harcourt, the State Capital for not heeding government's directives.⁷⁸⁶

The actions of these Governors go contrary to the law because they do not have the power to shut down any filling station. The power to do so rest squarely with the Department of Petroleum Resources (DPR) under Section 4(6) of the Petroleum Act,⁷⁸⁷ which provides that:

Any person who does, without the appropriate licence, any act for which a licence is required under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for two years or a fine of two thousand naira or both, and, in addition, the petroleum products in respect of which the offence was committed shall be forfeited.

The State Governors are the Chief Security Officers of their respective State and considering the issue of petroleum products scarcity in the country, which is capable of undermining the security threat of lives and property, it is recommended that the relevant provisions of the law should be amended that will give State Governors the power to arrest any offender who sale the product beyond the approved price.

⁷⁸⁶ Crisis Brews Over N65/litre New Petrol Price. Guardian Newspaper of 27 January, 2009. (Also available at: <http://www.guardiannewspaper.org>).

⁷⁸⁷ Cap. P.10, Vol. 12, Laws of the Federation of Nigeria, 2004.

6.3.3 Power to Close or Seal Erring Filling Station Operators

Under the Petroleum Act⁷⁸⁸ a person can only be allowed to import, sell or distribute petroleum products in Nigeria if such person is granted a license of operation by the Minister of Petroleum Resources. Such power is however delegated by the Minister of Petroleum Resources to the Department of Petroleum Resources (DPR) under Section 12(1) of the Act.⁷⁸⁹ Section 4(1) of the Act further stipulates that “.....no person shall import, store, sell or distribute any petroleum products in Nigeria without a license granted by the Minister.”⁷⁹⁰ The short coming under the Petroleum Act is that there is no provision provided for, that allowed DPR to seal or close erring filling station that violates the law. The only provision in the Act is the punishment of 2 years if a person is convicted for violating the provision of the Act or an option of fine of N2,000; and in addition, the person found committing the offence is made to forfeit the product.⁷⁹¹ However, in the exercise of its power to seal or close down any erring filling stations or oil marketers for violating the provision of the Petroleum Act, the Department of Petroleum Resources (DPR) continued to rely on the provisions of Section 12(1) and (2)(c) of the Price Control Act⁷⁹² stipulates that:-

12(1) Where an Inspector has reasonable grounds to believe that any premise have been, are being or will or might be used directly or indirectly for the for the purpose of frustrating the

⁷⁸⁸ Ibid, Section 4(1)

⁷⁸⁹ Cap. P.10, Vol. 12, Laws of the Federation of Nigeria, 2004 (as amended)

⁷⁹⁰ Cap. P.10, Vol. 12, op. cit.

⁷⁹¹ S.4(6) Petroleum Act, Cap P.10, Vol. 12, L.F.N. 2004

⁷⁹² Cap. P.28 LFN 2004

operations of this Act, he may requisition and seal the premises in question.

(2)(c) The requisition and sealing shall last for three months in the first instance and may be extended by the Committee for further periods of three months at a time, so however that the total period of requisitioning and sealing shall not exceed twelve months.

In order to fulfill its mission and power under the law, the Department of Petroleum Resources (DPR) set up monitoring teams to various filling stations in the 36 States, including the Federal Capital Territory, Abuja.⁷⁹³ The reports and statistics from DPR indicated startled revelations as the monitoring team report one problem or the other from the exercise embarked upon.

On a monitoring exercise to Kaduna State in 2007 and 2015, the Department of Petroleum Resources (DPR) was able to close down 20 filling stations for engaging in fraudulent malpractices, which abets fuel crisis in the state.⁷⁹⁴ All the filling stations closed down were owned by private petroleum marketers. It also shut no fewer than 30 pumps stations in Enugu for the same fraudulent purpose. Statement by DPR's Zonal Operations Controller in Kaduna explained that out of the 20 filling stations visited, 11 were shut for shortchanging consumers through dispensing pump mal-adjustment, two for diversion of petroleum products, six for operating without DPR licenses while one was shut for selling products above government regulated price. The closure, which was effected by the Zone's

⁷⁹³ DPR Deploys Task Force to Monitor 24-Hour Sale of Petrol (2016). Available at: <http://www.channelstv.com/2016/04/06/dpr-deploys-task-force-to-monitor-24-hours...> Accessed on 6/4/2016.

⁷⁹⁴ George, O. and Francis, U. (2007). DPR Shuts Filling Stations in Kaduna, Enugu. ThisDay Newspaper of 16th January, 2007. (Available at: <http://www.dprnigeria.com>, last visited, May 2010).

Decongestion Team, directed all petroleum products marketers to desist from dispensing products to consumers in jerry cans or any other form of containers as the practice contravenes the DPR laws guiding the purchase and sales of petroleum products.

Appendix 9⁷⁹⁵ shows filling stations that were shut down by the Department of Petroleum Resources for acts inimical to the growth of the downstream oil industry.⁷⁹⁶ Most filling stations visited by the monitoring team from the Department of Petroleum Resources (DPR) discovered to be indulging in under-dispensing of petroleum products by adjusting their pumps. In January 2012 about 100 filling stations were sealed all over the country by DPR for offences ranging from products under-dispensing, hoarding and selling of products above government approved pump prices.⁷⁹⁷

In this regard the regulatory agency has assured members of the public that the measure taken is to ensure customers' satisfaction for the money they pay in obtaining the product. In order to achieve this objective, the Department of Petroleum Resources (DPR) embarked on a full deployment of tracking and implementation policy, digitalization of critical retail outlet operational data and migration of license administration to electronic processing platform through the National Data Repository (NDR). Also undertaken was the upgrading of the

⁷⁹⁵ Appendix 9 on page 354 Shows petrol filling stations sealed by officials of DPR for cheating customers at the pumps station.

⁷⁹⁶ PM News Nigeria (2016). The Department of Petroleum Resources (DPR) in Eket Said it Had Sealed 37 Unlicensed -Filling Stations in the Last Three Months in Akwa Ibom. Available at: <http://www.erpecnewslive.com/article/638/37-unlicensed-filling-stations-in-nigeria-are-sealed> - accessed 8 September, 2016).

⁷⁹⁷ Nigerian Pilot (2015). DPR Seals Ex-Gov's Filling Stations, 40 Others in Oyo, Osun. Available at: <http://nigerianpilot.com/dpr-seals-ex-govs-filling-stations-40-others>. Accessed 6/2/2017).

operational standards of depot facilities, installation of metering facilities at the inlet pipeline headers for adequate products accounting, and the replacement of fixed roof with floating roof for all premium motor spirit (PMS) storage tanks to eliminate environmental hazard.⁷⁹⁸

The Department of Petroleum Resources also expressed concern over the indiscriminate hoarding of petroleum products by marketers under the guise of reservation for one agency or the other.⁷⁹⁹ In order to eliminate any sharp practice that may occur, it advised such agencies to construct fuel depots in their premises and seek appropriate approval from the Department to operate such depots. During festive periods, the Department normally maintains 24-hours surveillance on filling stations across the country to ensure compliance with official pump price.⁸⁰⁰ Major marketers who suppose to stick to the official price even at crisis period were found selling above the control price while some filling stations on the other hand were not willing to sell the product to motorists at their stations but prefer to dispense the product in jery cans that constituted a menace.

The Tax Force Monitoring Team from the DPR to Bauchi and Gombe States were able to seal filling stations for alleged sharp practices ranging from readjustment of their metering pumping machines.⁸⁰¹ Most of the defaulting

⁷⁹⁸ Weight and Measures Nigeria (2017). DPR Says Migration to Electronic Operations Yields Dividends. Available at: www.wmdnigeria.com – accessed on 6/2/2017).

⁷⁹⁹ Adedeji, S. (2011). Nigerians Groan Under Incessant Increase in the Prices of Kerosene and Diesel. Available at: www.tellng.com – accessed on 20/4/2011).

⁸⁰⁰ Oyelere, T., Olagunju, F and Pelewo, F. (2010). DPR Sets Up Control Centres for Monitoring/Complaints. Available at: www.dprnigeria.com/new_archieve - last visited on 1/3/2011).

⁸⁰¹ Channel Television (2016). DPR Deploys Task Force to Monitor 24-Hour Sale of Petrol. Available at: <http://www.channelstv.com/2016/04/dpr-deploys-task-force-to-monitor-24-hor-sale-of-petrol/>. Accessed on 6/4/2016).

filling stations were independent marketers and few major marketers, including NNPC operated Mega filling stations. Most of the independent marketers, apart from under dispensing petroleum products were found to be operating without safety equipment like fire extinguishers, sand buckets, in addition to absence of price and station signboards, faulty pumping machines and gross under delivery.⁸⁰²

Blaming this low rate of compliance and the non-observance of the rule of law in the downstream sector, DPR assured members of the public of their determination in addressing the situation.⁸⁰³ However, in carrying out its statutory function of enforcing the law, the Department is more careful in ensuring that enforcement against erring marketers does not lead to scarcity of petroleum products. This is because, whenever filling stations that were found contravening the law are sealed by official from DPR, most of the stations were deserted by motorists leaving only petrol attendants to man them until appropriate fines are paid before re-opening. This fear was expressed by the Lagos Zonal Controller of the Department of Petroleum Resources thus:- “If you shut down 50 filling stations in Lagos for non-compliance, you will hear some stories – people will start to wonder if there is scarcity. There will be panic buying and there will be trouble.”⁸⁰⁴

⁸⁰² DPR Seals-Off Mobil, Total in Gombe. Available at: <http://www.sweetcrudereport.com> – accessed on 11 October, 2006).

⁸⁰³ Channel Television (2016), op. cit.

⁸⁰⁴ DPR Decries Abuse of Downstream Regulations (available at: <http://www.sweetcrudereport.com>) last visited 28 September, 2012.

The same fear was also expressed by Olugbenga Koku, an official of DPR from the Lagos area thus:-

.....we are thinly stretched in terms of personnel but we do our best. It is difficult, it is hard but we go out every day to force people, and beg them to sell because we are keeping records, when things normalize we are going to go back to the unruly ones and tell them when things were bad, you guys behaved badly. This is because if we decide to shut down everybody, we will probably be going to Ibadan to buy petrol because majority of the marketers here are involved in the shady business.⁸⁰⁵

In Yenagoa, Bayelsa State, the Department of Petroleum Resources wielded the big stick by sealing off seven (7) filling stations allegedly involved in sharp practices of over pricing and under dispensing of products during a surveillance exercise carried out by officials of the agency on petrol filling stations in the state.⁸⁰⁶ The development further put pressure on the NNPC Mega station and other NNPC retail outlets in the predominantly riverine state, where long queues returned to the few available filling stations that have the products. The story was the same in Kano⁸⁰⁷ when official from the Department of Petroleum Resources (DPR) visited the state on inspection exercise and sealed four filling stations including an NNPC mega filling station for alleged diversion and hoarding of petroleum products. It was revealed that 30,000 litre of petrol was allocated to the

⁸⁰⁵ DPR Decries Abuse of Downstream Regulations, op. cit.

⁸⁰⁶ Niyi (2016). Hoarding: DPR Seals 33 Filling Stations in Rivers. Available at: <http://www.informationng.com/2016/12/dpr-seals-19-filling-stations-rivers/malpractices.html>. Accessed last on 7/2/2017.

⁸⁰⁷ Niyi (2016), op. cit.

NNPC mega station but only 15,000 was said to have been taken to the filling station, the rest was diverted to unknown destination.⁸⁰⁸

Filling stations that were sealed but went ahead to sell with the DPR seals on their stations were reported to the law enforcement agencies and were arrested. During a monitoring exercise in the Federal Capital Territory, Abuja, eight (8) filling stations within Karu/Nyanyan areas were sealed off by the Weight and Measures Department of the Federal Ministry of Commerce and Industry for under dispensing diesel and kerosene to customers.⁸⁰⁹

In Isolo, Lagos, a petroleum marketing company had its facilities sealed up by NUPENG after the expiration of a 14-day ultimatum issued to the Federal Government to address the shady activities and corruption in the Petroleum Products Pricing Regulatory Agency (Agency) on the issue of petroleum products allocation.⁸¹⁰ When a Lagos based petroleum marketing company was fingered for adulterating petroleum products before selling them to end users and he was reported to the police he was surprisingly left off the hook even after ample evidence against it proved that the company actually indulged in unwholesome practices.⁸¹¹ It further put paid to the speculation that the oil marketing business, indeed had a smearing tag tied to its operations in the downstream segment and assumed a larger than life status, to the extent that no matter the degree of crime

808 DPR Seals off four filling stations in Kano (available at: <http://www.sweetcrudereport.com>) last visited 24th June, 2011.

809 Available at: <http://www.vanguardngr.com>. Last visited October, 2011.

810 Fagbami, S.E. (2010). Why We Will Shut Down Petroleum Products Depots - NUPENG. Available at: <http://www.nigeriantribune.com.ng> accessed last on 11/8/2010).

811 Uzundu, J. (2010). Fighting Unwholesome Practices. News World (Available at: <http://www.nigerianesworld.com> – accessed last on 11/7/2010).

they commit, they could easily get off the hook by seeking to apply the influence of their backers who are mostly politicians. A close look at the books of some oil marketers will reveal a growing incidence of lack of proper system that is put in place to ensure credible business dealings, thus leading to rampant cases of fraud.⁸¹² For instance, marketing companies doing business with the Petroleum Products Pricing Regulatory Agency (PPPRA) were neither duly certified by the agency nor registered with the Corporate Affairs Commission (CAC). The question is: how unregistered companies could get away with doing large volumes of business transaction with the DPR and agencies like the PPPRA and the Nigerian National Petroleum Corporation (NNPC) will become a mind boggling phenomenon? Things easily go that way because marketing companies clandestinely run the show with people fronting for insiders to win juicy contracts to import petroleum products without following stipulated guidelines, they go ahead to be endorsed in order to collect huge sums of subsidies from the Federal Government under the Petroleum Support Fund (PSF) scheme.⁸¹³

Another disturbing event that is causing distortions in most filling stations in the country is the Acts establishing DPR and PPPRA, which appeared to have unwittingly created a leeway for unscrupulous marketers to operate as the two agencies could not prosecute for such misconduct as operating from sealed premises. Lamenting on the law establishing the Department of Petroleum

⁸¹² Premo, D. (2010). The Petroleum Products Pricing Regulatory Agency (PPPRA) Takes Measures to Rid the Society of Unregistered Oil Marketing Companies. Available at: <http://www.ngeriannewsworld.com>. Accessed last on 11/7/2010).

⁸¹³ Premo, D. (2010), op cit.

Resources (DPR), Mr. Kolomi Yerima, the Head of Downstream, Abuja Zonal Office⁸¹⁴ said that the law establishing DPR only empowered it to seal, arrest or suspend the licenses of erring filling stations that go against the law, however the DPR lacked the legal backing to prosecute offenders. To allow the DPR do a better job of sensitizing the downstream oil sector of unwholesome activities by oil marketing companies, a review of the law establishing DPR is recommended.

Aware that the agencies could only bark and not bite, some filling stations including the Nigerian National Petroleum Corporation (NNPC) Mega filling stations in some parts of the country normally called the bluff of Department of Petroleum Resources (DPR) by re-opening their premises for business minutes after officials of the agency have sealed them for allegedly under-dispensing fuel to the public.⁸¹⁵ The only thing the regulatory agency could do is to instruct depots not to give erring stations products or suspend their licenses.

Because of these loopholes and despite the stringent Petroleum Products Pricing Regulatory Agency (PPPRA) regulations put in place to check sharp practices they are easily broken by oil marketing companies who have insiders working for them thereby making the government to lose huge sums of money.⁸¹⁶ At the same time, the public were also deceived by the marketers who either import sub-standard products or adulterated products in order to make huge

⁸¹⁴ Alohan, J. (2012). DPR Seals NNPC Stations Over Meter Manipulation. Available at: <http://www.leadershipnewspaper.com>. Accessed on 24/1/2012.

⁸¹⁵ [Sealed Filling Station Defies DPR as Agency Laments Legal Limits](http://www.guardiannewsngr.com) (available at: www.guardiannewsngr.com) last visited, 24 Jan. 2012. See also: [Juliet Alohan](#) 2012: DPR Seals NNPC Stations Over Meter Manipulation, Leadership Newspaper, Tue, 24 January.

⁸¹⁶ Uzundu, J. (2010). Fighting Unwholesome Practices. News World (Available at: <http://www.nigerianesworld.com> – accessed last on 11/7/2010).

gains. The high incidence of adulterated petroleum products has been a major concern for players in the industry, which may have led to constant surveillance by the PPPRA staff in most filling stations in the country.⁸¹⁷

In order to tighten the loose ends of its operations, Petroleum Products Pricing Regulatory Agency (PPPRA) has commenced the process of recertification of all its operators including marketers by issuing guidelines regarding conduct of petroleum product business, ownership of storage facilities with a minimum of 5000 metric tones, procurement of a valid DPR import permit and ownership of retail outlet. This was aimed at sustaining supply of petroleum products to consumers and any marketer that failed to meet these guidelines is delisted from the list of its operators. It is with respect to this that PPPRA in carrying out its mandate of enforcing regulations against violators of the rules of the Agency issued threat order to any oil marketer that buy premium motor spirit (PMS) from Noble Group, a Singapore-listed trader in a move to prevent the company in further participation in the \$6 billion fuel market.⁸¹⁸ The action was sequel to discovery of irregularities in a transaction by the company that claims submitted for subsidies refund did not tally with the actual quantity of product delivered and its failure to satisfactorily respond to requests by the PPPRA for clarification on the same matter.⁸¹⁹

⁸¹⁷ Daniel (2016). DPR Warns Marketers Against Fuel Adulteration, Pump Manipulation. Available at: <http://www.informationng.com/2016/4/dpr-warns-marketers-against-fuel-adulteration-pump-manipulation.html>. Accessed on 7/2/2017.

⁸¹⁸ Nigeria: PPPRA Blacklists Fraudulent Oil Trader (available at: <http://www.allafrica.com/stores/201011291310.html-last> visited September, 2001)

⁸¹⁹ Ibid.

The clampdown by PPPRA on many influential oil marketers has swept through the industry to signal a new beginning in its operations. Following series of petitions to the National Assembly on PPPRA actions, the House of Representative Committee on petition summoned Mr. Abiodun Ibikunle, the Executive Secretary of PPPRA for questioning, which he said that many influential politicians are backers of these oil companies who cut sharp corners in order to make huge profits that they dole out to them during electioneering campaigns.⁸²⁰ Even though PPPRA is determined to carry its clampdown on erring marketers, the Act setting up the Agency needs review in order to strengthen its power of arrest and prosecution of such offenders.⁸²¹ The National Assembly could amend the Act establishing the Petroleum Products Pricing Regulatory Agency and by inserting more stringent punishment for those who engage in unwholesome practices in the downstream oil sector.

6.3.4 Power of Arrest and Prosecution

Under Section 8(1)(a) of the Petroleum Act the Minister of Petroleum Resources is empowered to exercise general supervision over all operations carried on under licenses and leases granted under the Act. It is also stipulated that the Minister may delegate to another person any power conferred on him to

⁸²⁰ Premo, D. (2010). The Petroleum Products Pricing Regulatory Agency (PPRA) Takes Measures to Rid the Society of Unregistered Oil Marketing Companies. Available at: <http://www.ngeriannewsworld.com>. Accessed last on 11/7/2010).

⁸²¹ Uneze, A. and Sowole, J. (2016). Fuel Marketers Challenge DPR, Others to Enforce Price at Depots as Filling Stations are Sealed in Owerri. Available at: <http://www.thisdaylive.com/index.php/2016/04/30/fuel-marketers-challenge-dpr-others-to-enforce-price/>. Accessed on 7/2/2017).

exercise the power on his behalf.⁸²² Pursuant to this provision, this power is delegated to the Department of Petroleum Resources to exercise on behalf of the Minister to arrest any person found violating any provision of the Act. In the exercise of this power, DPR relies mostly in Section 8(1)(d) of the Act, which provides that: “The Minister may arrest without warrant any person whom he finds committing, or whom he reasonable suspects of having committed, any offence under this Act or any regulations made thereunder, and shall hand over any person so arrested to a police officer with as little delay as possible.”⁸²³

This provision only allowed the officials of Department of Petroleum Resources (DPR) to effect arrest but the power of prosecution rest with the Police. Moreover, the Petroleum Products Pricing Regulatory Agency (PPPRA) does not have the power to arrest any offenders who go against the regulations of the downstream oil sector. On several occasions in October 2007, the Petroleum Products Pricing Regulatory Agency (PPPRA) and the Petroleum Equalization Fund (PEF) had to invite the Economic and Financial Crimes Commission (EFCC) to assist in the recovery of N8 billion bridging fund contribution owed by the petroleum marketers.⁸²⁴ The debt was in relation to the imported automotive gas oil (AGO), which was part of the cost elements of petroleum products that was to be remitted to PEF as reimbursement to marketers who transport products from the coastal areas to the hinterland. Thereafter various machineries were put in

⁸²² Ibid., Section 12(1) of Petroleum Act

⁸²³ Section 8(1)(d) of Petroleum Act, Cap. P. 10, vol. 12, Laws of the Federation of Nigeria, 2004.

⁸²⁴ Nigeria to Investigate Missing Bridging Fund by 40 Oil Firms, Thisday Newspaper of 18 October, 2007 (available at: <http://www.gasandoil.com>, last visited, May, 2010).

place to enforce remittance of the bridging fund by about 40 defaulting marketers who failed to remit their bridging allowance to the Petroleum Equalization Fund. One of the measures adopted was to incorporate the services of the Nigerian National Petroleum Corporation and Central Bank of Nigeria to assist in recovering the fund that are still standing against the oil marketers.⁸²⁵

The Nigerian Custom Service also play complementary roles to DPR in ensuring that activities of fraudsters in the downstream oil sector are drastically curtail. In a monitoring exercise conducted in Cross River and Akwa Ibom States, the Nigerian Custom Service impounds four trucks load of diesel worth N25 million from illegal oil suspects for bunkering activities. Apart from impounding their products and the tankers used in the operation the suspects were arrested and handed over to Government Anti-bunkering Task Force for further prosecution.⁸²⁶

The Department of Petroleum Resources in exercising its statutory power arrested illegal jetty operators in Marina area of Lagos State that were using their jetty to adulterate petroleum products. It was revealed that the two barges arrested were found to be filled with 2 million litre of automotive gas oil (AGO) and 3 abandoned ships used by the operators to carry out illegal petroleum smuggling outside the country who claimed they were working with Millennium

⁸²⁵ Niyi (2014). Federal Government Orders NNPC, Others to Recovers \$7.8bn From Oil Companies. Available at: <http://www.informationng.com/2016/12/dpr-seals-19-filling-stations-rivers/malpractices.html>. Accessed on 12/1/2014.

⁸²⁶ Eyo, C. (2012). Customs Impounds Petrol in Cross River. Weekly Trust Newspaper, July 7th, P.5. (available at: <http://www.nnpegroup.com/PublicRelations>, accessed on May, 2013).

Shipping Company. They were later handed to the Police Headquarters Lagos⁸²⁷ for further investigation and prosecution, knowing that neither the Department of Petroleum Resources nor the Petroleum Product Pricing Regulatory Agency has the power to prosecute any oil company for illegal activities.

The Edo State Governor, Adams Oshiomhole in a familiarization tour within the state capital ordered the arrest and closure of 10 Filling Stations' Managers for alleged sharp practices and directed the Ministry of Justice to put into machinery the process for their prosecution. The Governor also ordered that the petrol in the sealed filling stations be sold to the members of the public for selling above the approved price. Addressing the crowd who gathered in the filling stations that were sealed, the Governor said:-

If you cannot sell within the law then you will not sell. Even the one you have already sold, you are in problem now. We will seal up the station and you have to pay back all those you have extorted money from. You will go to the police now and give your statement then we will charge you to court. Anybody who sells above the law, I will revoke the C of O. We want to ensure that from now on we don't want those who are powerful to continue to exploit those who are powerless. Some of these petrol that should be selling for N65, it should even be cheaper than that but these people are selling at N85 and sometimes they sell for N100. That is why transport fare is going up and poor people are made to pay through their nose and anytime you hear they are selling above the official price, report to us. All these stations that are doing it we are going to shut them down now, the manager will be detained until he vomits that money.⁸²⁸

827 Mohammed, S. (2012). Department of Petroleum Resources (DPR) Uncovers Adulterated Diesel Spot in Lagos. Dailytrust Newspaper of Tuesday June, 19th.

828 Friday, O. (2008). Hoarding of Petroleum Products: Governor Shuts 10 Filling Stations (available at: <http://www.nigerianobservernews.com/30122008/news/news1.html>). Last visited – September, 2011.

The action of Ogun State Government was not only directed to petrol filling station operators but to the judiciary and politicians who owns such filling stations as well. Despite the order by an Ijebu-Ode High Court that Zipest Petrol Filling Station that was closed by the governor should be re-opened, the State Government refused to obey the Court Order.⁸²⁹ The State Government, through the Bureau for Urban and Regional Planning sealed-up the filing station owned by a member of Ogun State House of Assembly for indulging in sharp practices.

The action of the government, when examined from the economic point of view seems right as it was aimed in protecting the helpless motorists who purchase the commodity at the mercy of petrol filling station operators. On the other hand, it may be taken to mean that the Governor was out to pursue his “political enemy” bearing in mind that a competent court had given an order that the filling station should not be sealed. Even though the action amount to contempt of court order, nevertheless, the Governor chose to seal the filling station and hide under immunity clause confers on him by the Constitution that a governor cannot be prosecuted for any action taken in relation to the performance of his official function.⁸³⁰ When those who are custodian of rule of law decide to flow court’s order the way the Governor did, it is clearly an abuse of

⁸²⁹ Governor Daniel Flouts Court Order: Closes Lawmaker’s Station (available at: <http://www.nigerianobservernews.com/30122008/news/news1.html>). Last visited – September, 2011.

⁸³⁰ Section 6(6) of 1999 Constitution of the Federal Republic of Nigeria.

court process and rule of law. This observation was bluntly put by the plaintiff in the case of *Zipest Ventures Ltd. v. Ogun State Government*⁸³¹ thus:-

Now that they have closed the filling station again, it is no longer going to be *Zipest Ventures* versus whoever that sealed it up. It is going to be that person versus the Ogun State Judiciary, because that means they are telling the High Court to go to blazes; that means the court order is not to be obeyed; and I think there is an appropriate sanction for whoever disobeys a court order.⁸³²

Consumer protection is the legal means to secure consumers' interest against all forms of exploitation and unfair dealings by those who supply goods, services and credit facilities in the course of business.⁸³³ Undoubtedly, the Nigeria customer remains one of the most exploited in the global village. There are issues of products diversion, unauthorized outlets to optimize profits by avoiding mainly government pricing of products. While the Constitution in Section 308 confers some privileges on the holders of power of the Office of the Governor, it is expected that the governor should exercise this power diligently in such a way as to favour the masses. This is because petroleum products touches the lives of every individuals and a break in supply will definitely affect every sector of the economy. Since the oil marketing companies have a conflict of interest of their "for profit" service, the regulatory authority and inspections of the operation of these companies should be carefully considered.

⁸³¹ Suit No. HCJ/147/08 - Unreported.

⁸³² It was not possible to know the outcome of the contempt the plaintiff was complaining because the appeal against the judgment remained pending and yet to be disposed off by the Court of Appeal .

⁸³³ Kur, J.J. (2014). Consumer Protection and Deregulation Policy in the Downstream Petroleum Operation in Nigeria: Policy and Regulatory Issues Considered. *Benue State University Law Journal*, Vol. 5, No.1, pp.25-50.

6.3.5 Power to Ensure Constant Supply of Petroleum Product

In order to curtail artificial scarcity of petroleum products during increase in prices of petroleum products by government, the Nigerian National Petroleum Corporation (NNPC) normally takes pre-cautionary measures to arrest any ugly situation that may arise.⁸³⁴ In ensuring adequate supply of petroleum products to all retail outlets within the country, officials from the Corporation usually undertake random visits to some filling stations or depots at designated points within state capitals in the country. Any outlet that was discovered to be involved in cheating or refuse to dispense products was compelled to do so, which helped in the decongestion of motorists in filling stations.⁸³⁵ To further forestall break down of law and order, NNPC sometime mobilize its reception depots to push out as many trucks as are available to overcome the attempt to create artificial scarcity by some of the independent and major marketers.

Section 43(1) and (2) of Petroleum Act⁸³⁶ provides as follows:

- (1) Any officer deputed by the appropriate authority or any officer authorized by the Director of Petroleum Resources or any police officer not below the rank of inspector may, at any time between sunrise and sunset, enter any premises in respect of which a licence to store petroleum has been granted and inspect the same.
- (2) Any officer deputed by the appropriate authority or any officer authorized by the Director of Petroleum Resources or any police mentioned in paragraph (1) of this regulation may, on such entry, require any licensee to show him any of the receptacles, bins or tanks in which any of the petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same and to deliver to him a sample or samples from any of the receptacles, bins or tanks.

⁸³⁴ Daniel (2016). Fuel Scarcity: DPR Orders Massive Truck-out of Products to Petrol Stations Nationwide. Available at: <http://www.informationng.com/2016/04/dpr-fuelscarcity-massive-truck-out-of-products-to-stations/>. Accessed last on 27/3/2016.

⁸³⁵ Daniel (2016). New Petrol Pump Price: DPR Commences Enforcement in Plateau. <http://www.informationng.com/2016/04/dpr-fuelscarcity-massive-truck-out-of-products-to-stations/>. Accessed last on 27/3/2016.

⁸³⁶ Cap. P.10, Vol. 13, op.cit.

The above provision is to prevent marketers from hoarding petroleum products in order to create an artificial scarcity or diverting such products to the black markets. Despite this provision, diversion and hoarding of petroleum products in the country have not abated. This is done in coalition with some of the marketers by officials of the Department, after collecting a token from the marketers they never performed their statutory responsibility. Before the establishment of the Petroleum Product Pricing Regulatory Agency in May 2003 and the removal of petroleum subsidies, there were lots of distortions in products supply and distribution in the country. The impacts of which led to long queues by motorists at the filling stations as result of scarcity, smuggling, diversion of products to black markets by petroleum dealers, which created a serious bottlenecks to government.⁸³⁷ Various steps were undertaken by government to ensure adequate supply of petroleum products without hitches.⁸³⁸ One of such steps was the establishment of PPPRA to regulate and checkmate the activities of marketers in the supply and distribution of petroleum products at approved price fixed by government. In actualizing its mandate as stipulated in the PPPRA Act, the Agency constituted three sub-committees; comprising of the Technical Sub-Committee, Pricing Sub-Committee and Communication Sub-Committee for effective monitoring of petrol filling stations who might wish to hoard the product

⁸³⁷ Ada, M. (2016). How Nigerian Petrol Attendants Cheat You in Filling Stations. Available at: <http://www.nieridailynews.net/news/291261-how-nigerian-petrol-attendants-cheat-you...> accessed on 20/5/2016.

⁸³⁸ Egede, E.A. and Uzonna, N.O. (2013). The Effect of Cost of Distribution on the Pump Price of Petroleum Products in the South East Nigeria. *Journal of Economics and Sustainable Development*, Vol. 4, No.17, pp.154-162.

in order to cause artificial scarcity.⁸³⁹ This was followed in November 2003 by the setting up of a Monitoring Team that visited Niger, Kebbi, Sokoto, Zamfara, Katsina, Jigawa, Kano and Kaduna states to ensure that petroleum products were available in all the eight (8) States visited and no queue or increase in the price of the product beyond what was fixed by the Government.⁸⁴⁰ Another joint monitoring group made of government representatives and the official of the Nigerian Labour Congress (NLC) was set up to tour the six (6) geo-political zones in the country to assess the socio-economic impact of deregulation introduced in the downstream sector.⁸⁴¹ The initiatives implored by PPPRA ensured constant availability of petroleum products in retail outlets all over the country and prevented marketers from selling the products beyond the approved government price.⁸⁴²

The Agency in enforcing the uniform pricing policy had to positioned staff in all Depots, Refineries and Jetties located in various parts of the country and with the use of modern information technology system provides products inventory on weekly basis. The essence of this was to help in products import plan, local refining production forecasts; products demand forecasts and determining the supply gaps in the system. In actualizing its mandate in sensitizing the

839 Muhammed, S. (2016). NNPC, PPPRA Fail as Filling Stations Defy Directive. Available at: <http://www.post-nigeria.com/nnpc/pppra-as-filling-stations>. Accessed on 2/1/2016.

840 Hembe, J. (2016). NNPC Intensifies Monitoring of Petrol Sale at Filling Stations. Available at: <http://www.today.ng/news/nigeria/103884/nnpc-intensifies-monitoring-petrol...> Accessed on 9/4/2016.

841 Ahiuma-Young, V. and Adeoye, Y. (2007). Nigeria: NLC Begins Monitoring of Filling Stations. Available at: <http://www.allafrica.com/stories/200706290031.html>. Accessed on: 10/4/2014.

842 Gbolagunte, B. (2012). PPPRA Seals Off Filling Stations in Osun. Available at: <http://www.newsghana.com.gh/pppra-seals-off-filling-stations-in-osun/>. Accessed on: 26/1/2012).

downstream sector, a reliable information databank of filling stations available in the country were compiled with a view in facilitating planning, supply and distribution of petroleum products nationwide.⁸⁴³ In order to successfully implement the deregulation policy in 2007, the Nigerian National Petroleum Corporation (NNPC) established many Mega Filling Stations all over the country by designating some filling stations that were leased out from some Independent Marketers and designated it as NNPC Mega Filling Stations. The exercise was to ensure that petroleum products were made available in abundance and also to avoid a situation where marketers will hold the consumers to ransom.

With all the powers conferred on PPPRA to rid the downstream sectors of sharp practices by oil marketers have not revealed any appreciable results as cheating of consumers by filling stations, hoarding, diversion and artificial scarcity of petroleum products still persist in the country.⁸⁴⁴ While some of the sharp practices going on in the downstream sector as revealed in this study were intentionally caused by oil marketers as result of the loop-holes in the law establishing the various agencies in enforcing regulations against erring marketers other factors were as result of lack of the inability of government in settling claims due to oil marketers in time. The oil marketing companies, depot and jetty owners under the aegis of Major Oil Marketers Association of Nigeria (MOMAN), Depot and Petroleum Products Marketers Association (DAPPMA),

⁸⁴³ Petroleum Products Pricing Regulatory Agency (PPPRA) Interim Report Nationwide Retail Outlet Census, November, 2006 (Available at: <http://www.pppraannualreport.com>, last accessed, September, 2010).

⁸⁴⁴ Patrick, L. (2016). Fuel Scarcity: RTEAN Wants Taskforce to Monitor Filling Stations. Available at: <http://www.nigerianpilot.com/fuel-scarcity-rtean-wants-taskforce-to-monitor-filling-stations/>. Accessed on 6/4/2016.

Independent Petroleum Marketers Association of Nigeria (IPMAN), and Jetties and Petroleum Tank Farms Owners of Nigeria (JEPTFON) have often accused the Federal Ministry of Finance and Central Bank for not paying their members their outstanding subsidy claims, which have accumulated to billions of naira. These were some of the reasons why some marketers refused to lift fuel to filling stations in the country.⁸⁴⁵

Despite some achievements recorded by the various agencies in sensitizing the downstream sector of sharp practices by petroleum dealers, duplication of functions amongst the various agencies, such as the Department of Petroleum Resources (DPR), the Petroleum Products Pricing Regulatory Agency (PPPRA), the Nigerian National Petroleum Corporation (NNPC) and the Ministry of Petroleum Resources often cause confusion and improper execution of government policies. This undermined the critical function of consumers' protection during volatility of increase in price of petroleum products. These factors revealed the reasons why hoarding of petroleum products by marketers and other sharp practices continue to persist in the downstream sector. The sanctions and fines imposed by the Department of Petroleum Resources (DPR) on erring filling stations sometimes are not commensurate with the offence committed. There is need to amend the Petroleum Act, particularly Section 13(2)(a) and (b) that deals with fine not exceeding Two Thousand Naira for any oil marketers or filling station operators that contravene any provision of the Act or any other law with respect to sale of petroleum products in the downstream sector.

⁸⁴⁵ Major Oil Marketers Association of Nigeria (MOMAN) Speaks on the Petrol Subsidy Issue. Available at: <http://www.oandopl.com/media/oando-in-the-news/major-oil-marketers...> Accessed on: 8/2/2017.

CHAPTER SEVEN

SUMMARY AND CONCLUSION

7.1 SUMMARY

In this thesis, the focus of discussion was on the Appraisal of the Legal Framework for the Regulation of Uniform Pricing of Petroleum Products in Nigeria. The thesis also examined other variable factors; such as demand and supply, smuggling of petroleum products, the state of the economy, strikes by organized labour unions and other pressure groups, cost of production and external factors that are responsible for increase in price of petroleum products. These issues were analyzed in order to characterize the nature of debate surrounding prices of petroleum products in the country. The issue of deregulation of prices of petroleum products in Nigeria was also examined in order to determine whether deregulation is feasible under the legal framework, if not why.

In 1973 when the Federal Government introduced uniform pricing policy in the downstream oil sector in the country, it has become a frequent national discourse to date and such debate sometime was based largely on World Bank and International Monetary Fund (IMF) driven policy reform. In the beginning of oil production in Nigeria the attention of government was focused mainly on the upstream sector of the Nigeria oil industry, however, due to expansion of economic activities in the country after the civil war, attention of the Federal Government was later extended to the downstream oil sector through regulation of supply and distribution of petroleum products in the country.

The most important regulation before the establishment of Petroleum Products Pricing Regulatory Agency (PPPRA) was the Petroleum Act of 1969, which empowered the Minister of Petroleum Resources under Section 6(1) to fix the price at which a litre of petrol is to be sold to consumers in the downstream sector. This was the basis of the introduction of Uniform Pricing Law in the downstream oil sector in 1973 that was further reviewed on several occasions. However, further examination of various statutes revealed that there is currently no law that obliges the government to subsidize anything including petroleum products. Government therefore introduced subsidies on petroleum products as an administrative mechanism to serve as a social welfare programme in order to assist consumers have easy access to petroleum products and also assist industries reduce cost of production of goods and services. Currently, there are two laws which merely empower the government to "fix" the prices of petroleum products. Section 6(1) of the Petroleum Act gave such power to the Minister of Petroleum Resources while Section 7 of the Petroleum Products Pricing Regulatory Agency Act gave such power to the Board to determine pricing policy on petroleum products. Neither law imposes an obligation on the government to actually subsidize petroleum products. At any rate, both enactments cannot be construed to validate the designation of petroleum products as essential commodities by the National Assembly, neither the Price Control Act. Such a designation is required by Item 62(e) of the Exclusive Legislative List of the Constitution in order to validate any price control legislation. To that extent, there

is no where subsidy of petroleum product is mentioned in any section of the Price Control Act or the Petroleum Act. The same thing also applies to the Petroleum Products Pricing Regulatory Agency Act and the Petroleum Equalization Fund Act. This becomes a problem in the implementation of uniform pricing policy on petroleum products in Nigeria.

To tackle the problem of refining petroleum products in the country, government established four (4) refineries located in Port-Harcourt I and II, Warri and Kaduna with a total refining capacity of 445,000 bpd that will supply and distribute to all retail outlets in the country but lack of its maintenance and the vandalization of pipelines has turned the facilities to become obsolete. The increase in demand of petroleum products by consumers in the downstream oil sector also outpaced the Pipelines Products Marketing Company (PPMC) capacity to meet consumers' demand. The gross under utilization and low participation by private sector in the industry is another factor that caused irregular supply of petroleum products in the country. The inability of the Nigerian National Petroleum Corporation (NNPC) to import petroleum products that will meet domestic demands also led to scarcity of the product in the country. While government had the noble intention of selling petroleum products at uniform price all over the country through Petroleum Equalization Fund, however this has never been achieved for obvious reasons of corruption, poor transportation infrastructure, product supply shortfalls, smuggling of petroleum product between Nigeria and her immediate neighbouring countries.

The expectation of government was that the four refineries should be able to meet its domestic consumption requirements, estimated at approximately 100,000 bpd or 35 million litres of premium motor spirit (PMS) per day but unfortunately the country continue to witness scarcity of petroleum products caused by shortfall in supply. The increase in population in the country has also impacted negatively to the supply of petroleum products leading to perpetual shortages in refined petroleum products. While Petroleum Products Pricing Regulatory Agency (PPPRA) was playing very vital roles in the distribution, marketing and regulation of petroleum product prices in the country, other variable factors also set in to influence increase in the price of petroleum products in the country. These include; demand and supply, the state of the economy, cost of production and distribution, external factors, political factors and smuggling of petroleum products. All these play very vital roles in the increase in price of petroleum products in Nigeria beyond the regulated price.

Though the Federal Government claimed that the downstream petroleum sector has been deregulated there is no law provided for this. Petroleum under Section 44(3) of the 1999 Constitution is a Federal Government property. The case of **Attorney General of the Federation vs. Attorney General of Abia State (No.2) (Supra)** reinforces the ownership of petroleum resources on the Federal Government. Even if licence is given to individuals, will they sell as they like, or the Federal Government has to say how individual refine and distribute and how to sell? This is why there is no deregulation yet, but liberalization may be

feasible. This shows that the control and management of the downstream sector, including the distribution, refining and pricing are still in the control of government. Thus, in the area of refining, the Minister of Petroleum Resources prescribes the terms and conditions for the grant of licence to construct and operate refinery. In the area of pricing, the Petroleum Products Pricing Regulatory Agency (PPPRA) determines the pricing policy. The agency also regulates the supply and distribution of petroleum products.

This means that there is no deregulation of petroleum products yet in Nigeria because of the difficulty the policy will encounter as result of the Constitutional provision of Section 16(1)(b) and (c).⁸⁴⁶ The oil sector being the major economy of Nigeria, should not be deregulated but rather regulated in order to allow citizen easy access to petroleum products at an affordable price.

This is a wake up call for the National Assembly to urgently pass the proposed Petroleum Industry Bill (PIB) because as it is now the downstream petroleum sector remains regulated. This means that all energy requirements and pricing is governed by regulation, either by the Petroleum Product Pricing Regulatory Act (PPPRA)⁸⁴⁷ or the Petroleum Act.⁸⁴⁸ The PPPRA is the agency that determines pricing policy on petroleum product; create an information data bank through liaison with all relevant agencies to facilitate the making of informed and

⁸⁴⁶ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁸⁴⁷ Cap. P.43, Vol.14, Laws of the Federation of Nigeria, 2004.

⁸⁴⁸ Cap. P.10 Vol. 13, Laws of the Federation of Nigeria, 2004.

realistic decisions on pricing policies among others.⁸⁴⁹ As rightly decided by the High Court, Abuja in the case of **Bamidele Aturu vs. The Minister of Petroleum Resources**,⁸⁵⁰ until a new law is passed repealing Section 6 of the Petroleum Act or the Act in its entirety, the nation's petroleum industry including the downstream sector remains regulated and not deregulated. If we had and still have such statutory provisions that are clearly opposed to deregulation, on what basis was the Federal Government planning to proceed with its deregulation policy?

The National Assembly should see this case as a clarion call and challenge, coupled with the recent oil subsidy scandal and acute shortages of petroleum products as an example for the need to pass the Petroleum Industry Bill (PIB). Passing the PIB into law will enable the government implement full deregulation policy in the downstream sector, which among other things will lead to efficient use of scarce economic resources by subjecting decisions to the operations of the forces of demand and supply. This will also attract new sellers, buyers and investors into the market, thereby increasing competition, promoting overall higher productivity and, consequently, lowering prices over time. The ultimate effect of this chain of activities will be gains to consumers.

Furthermore, deregulation will reduce economic waste and lighten social burdens caused by government control, stimulate economic activities, and decrease the cost of doing business drastically. Deregulation promises to be the way forward in expanding opportunities for economic growth and a competitive

⁸⁴⁹ Section 7, Cap. P.43, Vol.14, op. cit.

⁸⁵⁰ Suit No. FHC/ABJ/CS/591/2009 (unreported).

downstream petroleum sector. Appropriate pricing of petroleum products will be one of the pre-eminent antecedents that will attract private investment into the Nigerian downstream petroleum sector. The fact is that the prices of the petroleum products will be set by independent marketers based on the interaction of supply and demands of the products – independent oil marketers would be free to set their prices, which the resultant market price is dependent on these fundamental components.

7.2 FINDINGS

From the study conducted the following findings were made:

1. There are apparent conflicts between the Petroleum Act and the Petroleum Products Pricing Regulatory Agency Act with respect to price fixing of petroleum products. For example Section 6(1) of the Petroleum Act⁸⁵¹ give the power to the Minister to determine the price of petroleum products, while on the other hand, Section 7(a) and (b) of the PPPRA Act⁸⁵² give power to its Board to determine the price of petroleum products.
2. Despite the Uniform Price Law on petroleum products, government continue to deregulate the price of petroleum products that has given rise to different pricing.
3. Subsidies on petroleum products are only provided in the yearly budget estimates submitted to the National Assembly by the President of the

⁸⁵¹ Cap. P.10 Vol. 13, op. cit.

⁸⁵² Cap. P.43, Vol.14, op. cit.

Federal Republic of Nigeria instead of making such provision in the Uniform Price Policy.

4. Despite the provision of equalization on cost of transporting petroleum products all over the country, it has not been able to stabilize petroleum products prices at a uniform price because of the inability of government to promptly pay marketers the cost incurred in transporting the products to different locations in the country.
5. There is lack of enforcement of the law on uniform price by the regulatory agencies and the criminalization of offences under Section 2 of the Petroleum Production and Distribution (Anti-Sabotage) Act⁸⁵³ and the penalty provided for non-compliance in the sale of petroleum products at uniform price under Section 13(3) of the Petroleum Act is too small to deter offenders.
6. Though prices of petroleum products are regulated by the government under Section 6(1) of the Petroleum Act, there are other variable factors that varies price of petroleum products, such as; scarcity and hoarding that affects availability of petroleum products in the market.

7.3 Recommendations

In view of the findings, the study recommends that:-

- (i) The National Assembly should harmonize the provisions of Petroleum Act and the Petroleum Products Pricing Regulatory Agency Act relating to price

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Cap. P.12, Vol.20, Laws of the Federation of Nigeria, 2004

fixing in order to address the problems of variation in the price of petroleum products in the country.

- (ii) The National Assembly should reform the regulatory and legal framework for regulation of Uniform Price Law to provide for deregulation of the pricing of petroleum products by amending the Provisions of Section 7(a) and (b) of the Petroleum Products Pricing Regulatory Agency Act⁸⁵⁴ by inserting another subsection (c) to read:

The objective in this Act is to deregulate and liberalize the downstream petroleum sector that will allow full participation by private investors, where the pricing of petroleum products will be determined by the forces of supply and demand instead at a regulated uniform price.

- (iii) Section 6 of the Petroleum Act⁸⁵⁵ and Section 7 of the Petroleum Products Pricing Regulatory Agency Act⁸⁵⁶ should be amended to include the provision for payment of subsidy to marketers. Therefore a new subsection (3) should be inserted after Section 6(2) of the Petroleum Act to read:

The Minister in determining the pricing policy at which petroleum products or any particular class or classes mentioned in subsection (1) of this section may

854 Cap. P.43, Vol.14, op. cit.

855 Cap. P.10 Vol. 13, op. cit.

856 Cap. P.43, Vol.14, op. cit.

also determine the amount of subsidy that will be paid to marketers in the course of importation of petroleum products into the country.

The same should also apply to the Petroleum Product Pricing Regulatory Agency Act⁸⁵⁷ by inserting a new subsection (2)(a) and (b) after Section 7 to read:

7(2) The Agency shall through the Board determine from time to time:

(a) The amount of subsidy that government will pay to marketers who import petroleum products into the country; and

(b) The method of calculating subsidy on petroleum products to be paid to marketers as specified under this section shall be based on the Pricing Template provided by the Petroleum Products Pricing Regulatory Agency after taken into consideration all other cost components built into the importation of petroleum products.

- (iv) The National Assembly should repeal the Petroleum Equalization Fund Management Board Act⁸⁵⁸ because the operation of equalization schemes has been bedeviled by corruption and inefficiency that causes delay in

⁸⁵⁷ Cap. P.43, Vol.14, op. cit.

⁸⁵⁸ Cap. P.11, Vol.20, Laws of the Federation of Nigeria, 2004.

payment of cost of transporting petroleum products by marketers to all parts of the country.

- (v) The Agencies responsible for the enforcement of regulations of petroleum products pricing, such as; the Department of Petroleum Resources (DPR), The Nigerian Police and the Economic and Financial Crime Commission should ensure proper enforcement of Section 2 of the Petroleum Production and Distribution (Anti-Sabotage) Act⁸⁵⁹ and all provisions of the law relating to sale of petroleum products in the country. The National Assembly should amend Sections 6 and 13(3) of the Petroleum Act⁸⁶⁰ by providing more stringent fine for those who violate the law in order to deter offenders.
- (vi) The Federal Government should repair all exiting refineries in the country that will address the supply and hoarding of petroleum products in the country instead of relying on importation of refined petroleum products.

7.4 Concluding Remarks

The downstream oil sector which is a strategic sector of the economy affects the lives of the citizens directly therefore, consultation is an important tool that must be used to secure common understanding and consensus on a durable policy reform. Many lofty government programmes that are intended to make the lives of the citizenry better are often peremptorily done, without effective

⁸⁵⁹ Cap. P.11, Vol.20, op. cit.

⁸⁶⁰ Cap. P.10, Vol.13, op. cit.

consultation and public enlightenment, which have made many Nigerians to become more reactive rather than proactive. Political interference on the powers of the various regulatory agencies is some of the reasons why they are not operating effectively. Government must allow them unfettered hands to regulate the downstream sector in order to realize the huge investment made in the sector rather than concentrating its attention more in the upstream sector. Privatization and deregulation will no doubt bring healthy competition that will make petroleum products readily available and at affordable prices, which will remove shortages and smuggling to other countries.

For privatization and deregulation policy to be globally embraced by several developed countries in the world they had planned and mapped out an effective policy strategy which transcended into a full deregulation, therefore Nigeria should do the same. The economic reforms of the downstream sector therefore become rather imperative since they are geared towards reviving the ailing sector as was done in other sectors that have been fully deregulated, which achievements are so tremendous that Nigerians had forgotten the scares of the initial experiences. Some years ago,⁸⁶¹ government deregulated the telecom sector by allowing the private investors to run it thus de-emphasizing government's control. The initial prices of SIM cards from MTN and other service providers were within the range of N10,000 to N25,000 but today, the success story is that SIM cards are virtually free by all the service providers, the scratch

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Government started the privatization of Telecommunication Sector in Nigeria in 2000 by the Regime of President Olusegun Obasanjo.

cards have been reduced to N100 denominations, including per second billings, which makes it affordable for every strata of the population.⁸⁶² It is not government funding that is oiling the sector but private capital. However, one thing is clear, under privatization policy consumers have a wide range of options to choose from, thus promoting healthy rivals among operations, with each trying to outwit the other in their marketing strategies.

Nigeria will become an onlooker in the polity of oil producing nations if it fails in the implementation policy of privatization and deregulation of the downstream sector. There is no point running away from grasping the reality, effort should instead be made to face the challenges squarely than postponing the evil day that will eventually come. It is not only the revenue generated from the oil sector that fund social welfare schemes but taxes from other sectors can better fund social welfare programmes. It would be recalled that Nigeria rejected the 1% tax built into the cost of fuel price⁸⁶³ simply because of the lack of trust on the leaders on how judicious and justifiable the money will be put into use. All we need to do is to be attuned to what deregulation and privatization policies are. The following areas of contributions can easily be identified from this study:

- The introduction of the legal framework for regulation of prices of petroleum products initially worked well but due to increase in population and economic activities the Federal government has to introduce other

⁸⁶² Uhunmwangho, S.O. and Aibiye, S. (2012). Policy of Deregulation and Liberalization of the Downstream Oil Sector in Nigeria: The Implication on the Nigerian Economy in the 21st Century. *Current Research Journal of Economic Theory* 4(4):112-119.

⁸⁶³ Uhunmwangho, S.O. and Aibiye, S. (2012).

policies, such as subsidy and deregulation that are not within the purview of the legal framework

- The Federal Government was able to actualize its policy objective when it implemented the uniform price policy but due to recent happenings in the international and domestic markets, such policy is no longer feasible.
- The complex nature of the activities of oil marketers operating in the downstream sector may not yield a good result for the continued existence of Petroleum Equalization Fund Management Board.

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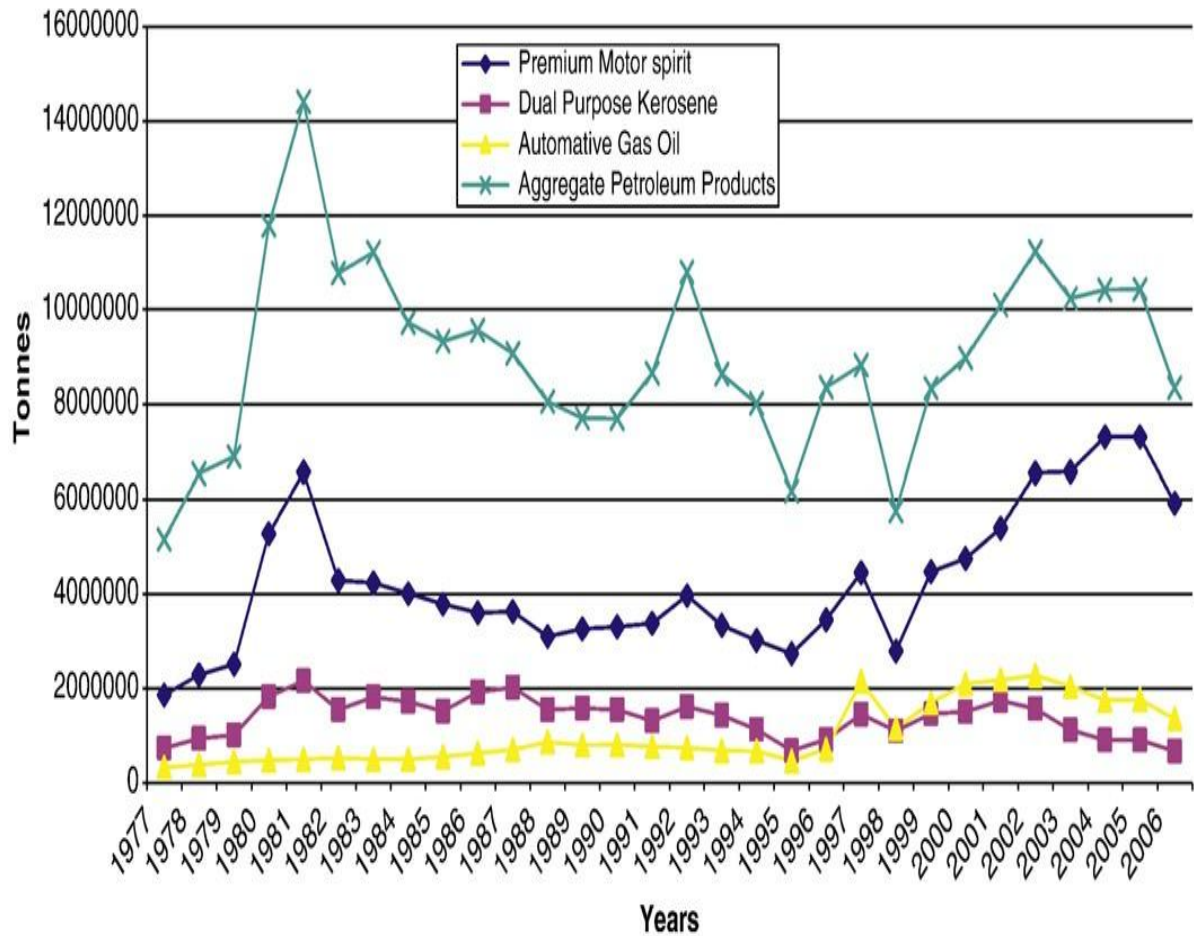
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Appendix 1: Petroleum products consumption (1977-2006)



Source: Akin, et. al.: Estimating petroleum products demand elasticities in Nigeria: A multivariate cointegration approach. Energy Economics, Vol. 32, pp.73-85, Elsevier Publication, 2010

Appendix 2: Methods used to smuggle Petrol out of Nigeria (www.guardianweekly.co.uk)



Jerry cans filled with fuel are dragged from the waves at the border town of Aneho, Togo, after being towed there by swimmers from Nigerian boats offshore.



Large, empty barrels are floated to the shore and stored ready for filling.



Jerry cans of 240-litre barrels of fuel are transported by men from the beach after being delivered by boats anchored nearby in the Gulf of Guinea



Boys float empty barrels to a warehouse near the Togo-Benin border where tens of thousands of litres of illegal fuel are stored.



A young woman carries a roped-up bundle of empty jerry cans into a warehouse to be loaded with fuel



A boy bottles smuggled fuel on a street in Cotonou

Appendix 3: Shows Illegal Oil Bunkering and smuggling in the Niger Delta Area and Nigeria water ways



Labourer operates the engine of a locally built machine, which contains a plastic drum used in siphoning crude oil for an illegal refinery in the Niger Delta. Source: www.bbc.com/news/world-africa-175257



A man paddles a canoe with plastic containers used to transport oil siphoned from pipelines through the Diebu Creek in Bayelsa State



Oil thieves' paradise....showing an illegal bunkering site. Source: www.bbc.com/news/world-africa-175257



Foreign ship on Nigerian Water importing illegal fuel into the country in order to claim from subsidy fund (available at: <http://www.dailytrust.com/photos>)

Appendix 4: Pictures showing protesters taken to the streets of Lagos and many parts of Nigeria to demand restoration of fuel subsidy (courtesy: www.bbc.co.uk/news, 9 January 2012)



Deputy Speaker, House of Representatives addressing NLC President during a "Save Our Nation rally" at the National Assembly in Abuja (www.vanguardngr.com of 23 September 2011)



Members of NLC demonstrators outside the National Assembly, Abuja during the last fuel price increase in January 2011



Members of Occupy Nigeria at a mass rally at Ojota, Lagos Nigeria in January, 2012 when fuel price was increased to N140.00.



NLC and TUC in a joint demonstration against fuel price increase In Abuja







Appendix 5: Pictures showing angry youth demonstrating against increase in price of petroleum product



Withdrawal of fuel subsidy on 1 January 2012 triggered nationwide unrest (www.guardian.co.uk)



Picture of protesting youth against subsidy removal (Available at www.guardian.co.uk)



Students were also part of the demonstrators in Lagos against fuel price increase



Chinua Achebe was part of the demonstrators against fuel price increase (available at: www.guardian.co.uk, 9 Jan. 2012)

Appendix 6: Shows different prices displayed by filling stations, including NNPC station



| OUTRAGEOUS | |
|-------------|-----------|
| States | Price/Ltr |
| Lagos | N400 |
| Ogun | N300 |
| Kebbi | N300 |
| Sokoto | N300 |
| Cross River | N250 |
| Bayelsa | N200 |
| Kogi | N200 |
| Kwara | N200 |
| Adamawa | N160 |
| Akwa Ibom | N150 |
| Osun | N150 |
| Enugu | N150 |



Sources of information: Fuel crisis crippled Nigeria: available at: <http://www.nairaland.com/2334541>

Appendix 7: Effect of scarcity of petroleum product on lives and properties



Motorists queued for fuel in Abuja (courtesy: <http://www.dailytrust.com.ng/images>)



Queued by motorcyclists on a filling station (www.bbc.co.uk/news, 9 January 2012)



Motorists stranded in traffic caused by queued for fuel in a filling station in Oshodi Expressway (www.vanguardngr.com)



Motorists queued for fuel at Kuje Abuja (Leadership Newspaper) Tue, 24/01/2012



Crowded motorcyclists at a filling station



Passengers struggling to board a vehicle during fuel crises



Protester allegedly shot dead in Ilroin by Nigerian police during fuel subsidy removal protest.



Abuja demonstrators against fuel increase in Jan. 2012



Accident involving a tanker carrying fuel along Lagos-Ibadan Express way



Burnt houses in Enugu as result of fuel tanker that discharge its content during accident



Victim of subsidy removal of petroleum receiving treatment in the hospital (Available at www.Guardian.co.uk)

Sources of information: www.dailytrust.com/ng/imag, www.bbc.co.uk/news, www.vanguardngr.com, www.guardian.co.uk and Leadership Newspaper of Tuesday 24/1/2012

Appendix 8: Shows Daily Spot Market Data of imported petroleum products and price charged at filling station

| PPPRA PRODUCTS PRICING TEMPLATE | | | | | | |
|--|-----------------|------------|------------|------------|-------------|------------|
| COMPONENT | CURRENCY | PMS | AGO | HHK | LPFO | ATK |
| C + F (NGN PORT) | \$ | 0.76 | 0.86 | 0.87 | 0.67 | 0.87 |
| | N | 121.62 | 138.25 | 138.37 | 107.59 | 138.87 |
| Other Charges (N) | | 6.45 | 4.51 | 4.51 | 4.34 | 4.53 |
| Landing Cost (N) | | 128.07 | 142.76 | 142.88 | 111.93 | 143.40 |
| Margins (N) | | 13.20 | 13.20 | 13.20 | 11.71 | 9.50 |
| Expected Price (N) | | 143.56 | 158.25 | 158.37 | 123.64 | 153.20 |

Source: Petroleum Products Pricing Regulatory Agency (PPPRA) Bulletin – The Monitor.

Key: PMS = Premium Motor Spirit, AGO = Automative Gas Oil, HHK = House hold kerosene, LPFO = Low Price Fuel Oil

Appendix 9: Picture showing petrol filling stations sealed by officials of DPR for cheating customers at the pumps



Source: Guardian Newspaper of 24 January, 2012 and Vanguard (available at: www.guardiannewsngr.com and vanguardngr.com/2016/04/dpr-seals-5-filling-stations-imo)

**APPENDIX 10: QUESTIONNAIRE ADMINISTERED ON THE ASPECT OF
DEREGULATION OF THE DOWNSTREAM OIL SECTOR IN
NIGERIA**

PREAMBLE

I am a Ph.D student in the Department of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria. My area of research interest is in the downstream oil sector, and the title of my research is: **An Analysis of the Legal Framework for the Regulation of Uniform Pricing of Petroleum Products in Nigeria**. The under-listed questionnaires will enable me analyze the variable factors that are affecting the price of petroleum products in the downstream oil sector. Information supplied will be treated with utmost secrecy. Please tick the box that best suit your response accordingly. Thank for your kind assistance in response to my request.

(a) **Socio-Economic Variables of Respondents**

1. Position of respondent: (a) academic (b) Non-academic (c) Self-employed
2. Highest qualification: (a) Secondary School Certificate (b) Diploma
(c) First degree (d) Master degree (e) Ph.D degree
3. Do you belong to: (a) ASUU (b) SSANU (c) NLC (d) NASU (e) Others
4. Age (years): (a) Below 25 years (b) 26 to 35 years (c) 36 to 45 years (d) 46 to 55 years (e) 56 years and above
5. Marital status: (a) Married (b) Single (c) Divorced/separated
6. Salary income per month: (a) Below N50,000.00 (b) From N51,000.00 to N80,000.00 (c) From N81,000.00 to N120,000.00 (d) From N121,000.00 to N250,000.00
(e) From N251,000.00 and above

7. Price hike in petroleum products lead to increase expenditure on foodstuff and other house-hold products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
8. Price hike in petroleum products lead to industrial action by labour union: (a) Strongly agreed [] (b) Disagreed [] (c) Strongly disagreed [] (d) Disagreed []
9. Price hike in petroleum products lead to agitation for wage increase by labour union: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []

(b) **Effects of Petroleum Crisis on Economic Activities**

1. Price hike in petroleum products lead to increase in transport fares: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
2. Price hike in petroleum products lead to increase in the price of agricultural products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
3. Price hike in petroleum products lead to hoarding in the filling stations: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
4. Price hike in petroleum products lead to long queues at the filling stations: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
5. Price hike in petroleum products lead to diversion of products to black market: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
6. Overloading of passengers is common during price hike in petroleum products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
7. Vehicles are very few on road during price hike in petroleum products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []

8. Workers' productivity often reduced during price hike of petroleum product due to unavailability of vehicles to transport passengers: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
9. Non-repair of refineries causes scarcity of fuel: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
10. Removal of fuel subsidy affect both the lower and higher class in the society: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []

(c) **Effects of Conflicts/Insecurity on supply and Distribution of Petroleum Products**

1. Vandalization of oil pipelines leads to scarcity in supply and distribution of petroleum products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
2. Strikes by labour unions lead to scarcity in supply and distribution of petroleum products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
3. Conflicts/Insecurity, e.g (Religious, ethnic and civil unrest) affect the supply and distribution of petroleum products: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
4. Deregulation of petroleum products affects supply and distribution of petroleum products in the country: (a) Strongly agreed [] (b) Agreed [] (c) Strongly disagreed [] (d) Disagreed []
5. Any other comment(s) _____

(d) **Perception of Nigerians on the Deregulation and Privatization Policy in Downstream Oil Sector**

1. Should the monopoly enjoyed by the Nigerian National Petroleum Corporation (NNPC) be sustained? Yes [] No []
2. Will the deregulation and privatization of the downstream sector force down the prices of petroleum products? Yes [] No []
3. Will the deregulation and privatization result in the elimination of smuggling of product across the border? Yes [] No []
4. Do you agree that there are political implications for deregulation and privatization policies? Yes [] No []
5. Do you agree that deregulation and privatization policies will improve the Nigerian economy? Yes [] No []
6. Do you agree that the political implications outweigh the economic implications for deregulation and privatization? Yes [] No []
7. Do you agree that the government should go ahead with deregulation and privatization of the downstream sector? Yes [] No []
8. Do you agree that the removal of fuel subsidy is necessary? Yes [] No []
9. Do you agree that government should subsidize the prices of petroleum products? Yes [] No []

10. Do you believe that deregulation and privatization of the downstream sector will create job opportunities for Nigerians? Yes [] No []
11. Do you think that government should deregulate and privatize the downstream sector gradually? Yes [] No []
12. Do you believe that the deregulation and privatization of the downstream sector will be a blessing to Nigerians? Yes [] No []
13. Do you believe that the deregulation and privatization of the downstream sector will be a curse to Nigerians? Yes [] No []

Thank you.

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