International Journal of Multidisciplinary Research and Growth Evaluation.

Legal issues in refinery turn around in Nigeria: Real or ruse?

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Article Info

ISSN (online): 2582-7138
Volume: 04
Issue: 01
January-February 2023
Received: 01-01-2023;
Accepted: 16-01-2023
Page No: 302-307

Abstract
When it became public knowledge that NNPC upon becoming NNPC Limited may have left over N136 billion as operational deficit in its three refineries in Kaduna, Warri and Port-Harcourt, and that a total of 1,657 workers had been on their payrolls receiving salaries and not producing a single drop of fuel on the admission of Mele Kyari (GMD) that the three refineries had been shut down because of their operational un-sustainability, and that the NNPC Limited had not deposited a dime into the coffers of the State in the past six months (as at September, 2022), and that the N2.38 trillion made from crude oil sales within the period under consideration had gone into repairs of refineries, Frontier Exploration Funds, domestic gas development and the Moroccan pipeline project, the average researcher would be appalled. This study which adopts the doctrinal method examines the arguments for and against the turn-around of the Port-Harcourt refinery and the prospects of the three refineries. It is a study situated within the crisis that hit the capitalist world in the 1970s that found expression in Nigeria in the 1980s during the Shagari administration when austerity measure led to its overthrow by the military and the eventual imposition of structural adjustment programme and the virulent campaign of stagnation of public enterprises and withdrawal of the State from business. The refineries became the first-line casualties. Its findings are bleak on all fronts and it observes that the State is yet to come up with policy options that would rescue the petroleum economy from the woods.

Keywords: Petroleum, Refinery, Turn Around, Multi-nationals, Nigerian National Petroleum Corporation

1. Introduction

The centre ground of campaign of neo-liberal capitalism in the developing countries was to canvass them out of public sector economic development and state involvement in enterprise. In order to be eligible for western capital disbursed from the International Monetary Fund and International Bank for Reconstruction and Development, the crises ridden countries like Nigeria had to buy into the 'conditionalities' of the Imperial west the centre ground of which was state abstinence from its post-independence strategy of state-led development that saw to the building of the refineries by Gowon administration and to adopt market reforms aimed at reducing government expenditure to intensify private sector driven economy. In the oil sector, the refineries were vilified as white-elephant projects and before long, they became abandoned. Legal regimes like the Nigerian Enterprises Promotion Decree of 1972 and 1977 which allowed foreigners only 40 percent ownership was pulled down. And instead, 100 percent ownership was instituted with Technical Committee on Privatization and Commercialization put in place (Timbee, 2009, pp. 93-96) [19]. Time has now revealed that the advice of neo-liberal capitalists was the counsel of Ahithophel. The public enterprises were allowed to decay and the vaunted rejuvenation of private enterprises never grew up till date and the calls for turn-around of the refineries, ruse.

2. Statement of the problem

For a mono-cultural economy depending on oil, interest in Nigerian refineries' wellbeing is a currency, thus when it has been noted that Nigeria's four refineries have not refined a single drop fuel since about 25 years of existence and no neck is turn, the need to inquire becomes urgent and natural. When therefore in the face of the monumental move of the Dangote refinery coming into full stream, the NNPC and the Federal government started to fly the kite of refurbishing their four refineries and throwing hard foreign currency into contracting multinationals to do so, the need to ask whether the step is correct arose for this study.

2. Theoretical framework

2.1. Modernization and privatization theories

In *Understanding Development Theory and Practice in the Third World*, Rapley (1996, p.84) [14] has canvassed that the notion that private enterprises operate more effectively and productively than public enterprises is owned more to ideology than economic logic and since the 1970s many public enterprises across the world and particularly in the third world including Nigeria have performed below expectation due largely to issues that had little bearing with ownership structure than other circumstances such as corruption and lack of political will. But the modernization theory that institutions desirous of change must go through the European model have also come under attack and review. If the European-American capitalist model is to be followed, than liberalization, decentralization, privatization and commercialization ought to be pursued instead of the reverse. But in Nigeria, there is a hybridization (a theoretical framework) that has blurred a concrete policy thrust in the economic arena. While on the one hand the economic variables and institutions are pursuing privatization on another hand publicization is being instituted making the mapping of the economic growth analyses onerous (Anikeze, 2015, p. 70) [6] and raising the Marxian dialectical framework of conflicting economic agenda in the Port-Harcourt Refinery Turn Around. For instance, in an economy in which so much 'store' has been put in for Dangote private refinery which has been goaded on by the state by-in, how can the same state turn around its four moribund refineries?

2.2. Dependency theory

The dependency theory is also apt. Dependence on foreign multinational companies to build the four refineries that never worked, and the dependence on same to turn them around into productive enterprises smack of economic imperialism. It is the subordination of national economy to external influence, stimuli and dynamics. It demonstrates the structural disadvantage of the Nigerian economy in international division of labour. To be at the mercy and control of foreign multinational is to be subjected to their whims and caprices and the crisis of underdevelopment after political independence. It can also demonstrate capital flight and the out sourcing of critical technology and manpower. Such foreign companies are, together with the International Monetary Fund and World Bank, the agents of imperialism and to accept help from them or to contract with them in such an unequal relationship is to continue in the current economic order of underdevelopment (Eke, 2008, pp. 61-62). It is argued that the refineries were let down to decay in the decades after the cold war and the resurgence of capitalism and the campaign for deregulation, structural adjustment and reduction in public expenditure and privatization coinciding with the fall of the Shagari administration and military takeover.

3. Conceptual clarifications

3.1. Social problem

The condition of the Nigerian three refineries is a social problem. They were built to enable the country refine is abundant oil resources to provide fuel for domestic consumption and export in order to earn foreign exchange or attract direct foreign investment in the sector. But this cardinal objective has remained a ruse, a social problem. The oil driven economy has seriously impinged on the development of the other sub-sectors of the country's economy and there has been no serious consensus policy to reverse this down slip and the windfall from the sector since its inception has paradoxically made the public to work less for more pay and even drift away from agriculture to oil, civil service, rentier economy and prebendalism (Olojede & Fajonyomi, p. 144) [13].

3.2. Ameliorative problem

However, an ameliorative problem according to Akpochafo (2010, p. 4) [3] as stated above is one that has a solution and a condition is a problem when it is believed that something can be done about it in remediation. It is the belief in the possibility of remediation that characterizes its qualification as a problem and when the situation or condition is widespread, affecting a large number of persons in the country, it is considered a public issue. An issue arises when a public with a problem seeks government action in remediation and there is public disagreement over the best way to solve the problem (Anderson, 1997, p. 99) [5].

3.3. Social policy problem

A social policy problem is a condition affecting a significant number of people in varied ways considered undesirable about which it is thought that remediation can be made through collective or government action. Akpochafo believes correctly that the 'more people talk and write about a condition, the more it becomes a social problem' in that it is a situation that affects so many people negatively. The role of the media in policymaking and social problem transformation is to transmit information about the problem to the public and set agenda for the public debate of the problem, determine what the public thinks about the problem and influence the attitude of the public towards the problem. But the policy the government makes about the social problem is propositional and the decision it takes over the problem is a choice between alternatives. Thus for government to intervene, the social problem must be tractable and appropriate. It must be defined and articulated for the attention of the government by legislators or executive agencies which scout around for problematic situations to solve to gain credit and remain relevant till the next round of election (Anderson, 1997, pp. 94-95) [5].

3.4. Development administration

The onus of development administration in the face of the dissatisfactory social condition of the oil refineries in the country as captured above ought therefore to be one aimed that the transformation of the condition. Government's effort should not only be to carry out programmes designed to meet its developmental objectives, but also to enhance its administrative capabilities. It is to increase differential roles to better cope with change, growing inequality in the allocation of public resources and increase choice by enlarging opportunities in the decision making process (Akpomuvire, 2020, 116) [4].

4. Literature review

All hell was let loose when the announcement to rehab the Port-Harcourt refinery was made. The shared views had neither been supportive nor complimentary of the decision. Only organized labour: NLC, TUC and NUPENG were supportive of the move. The media was on the side of those who believed that it was a waste of time and resources. The arguments were in two trends. The threads were sentimental and sensational. First, the NNPC and government were believed not to be trusted to do a good job of the rehabilitation having failed serially in the past. Secondly, the refineries were believed to be far gone on the path of dilapidation to be effectively rehabilitated and any amount to be voted into them would be a colossal waste of fund and time. Thirdly, borrowing money from Afreixmbank to rehabilitate the refineries was going deeper into the debt trap. Fourthly, the approved sum of $1.5 billion was excessive and could have been better diverted into building new refineries instead of spending it on an old one out of the three carcasses (Sadou, 2021, 17) [16].

4.1. The state refineries

The old Port-Harcourt refinery complex was built in 1965 with a capacity of 60,000 barrels per stream day (bpsd). The new Port-Harcourt refinery was commissioned in 1989 with a capacity of 150,000 bpsd giving them a combined capacity of 210,000 bpsd. Chiyoda Group of Japan which built them was contacted by Jonathan administration to carry out a turn-around maintenance but militant insurgency in the Niger Delta made the group to decline. The group then recommended Maire Technimont of Italy but after several visitations failed to do the job (Obas, 2021, p. 20) [12]. The two refineries were shut down because internally generated power was not enough to run them and public power was unreliable.

The Warri refinery was commissioned in 1978 to process 100,000 bpsd. It was wholly owned by Nigeria. In 1987 it was debottlenecked to process 125,000 bpsd. In May 2020 a $7.6 million contract was awarded to Italian Comerint SPA to repair the plant after it became comatose due to an explosion in its crude distillation unit that damaged the main crude oil heater. It operated from January to February 2000 at about 10.3 percent of the installed capacity and was shut down because the main heater blew up.

The Kaduna refinery was commissioned in 1980 with 110,000 bpsd and has been in state of disrepair until it was shut down in August 2000 partly to allow rehabilitation of the heaters and partly because it's turn around maintenance which started in 1998 is yet to be completed and since 2017 it has not produced a drop of fuel (Teniola, 2021, p. 16) [17].

The refineries are limited liability companies which should be able to carry their production planning, funding projections and procurement. They should also have audited profit and loss account and balance sheet. With the Dangote refinery and its monopolistic policy patronized, endorsed, encouraged and approved by the Federal government of Nigeria whatever money may be spent on the Port-Harcourt refinery would go down the drains again (Teniola, 2021, p.18) [17]

At the signing ceremony of the contract to rehabilitate the Port-Harcourt refinery, the Group Managing Director, Mele Kyari, posited that the decision to rehabilitate the refinery was justifiable, the bidding process was transparent and the arguments that labour unions, transparency international, infrastructure concession and regulatory agencies were not invited in the bidding and tendering processes were imponderable as they were not legally required in such transactions. The misgivings in the public space around cost, around political compromises were rife as it was thought that the rehab was to be done through the original builders of the refinery only to be found that the original builders were not involved in fixing old refineries.

4.2. Critic of the rehabilitation

The campaign for and against the rehabilitation of the refineries have been trenchant. For Azu (2021, p. 15) [7] the decision of the Buhari regime to 'shell out another $1.5 billion to flog the dying refineries horse indicates that Abuja is clearly not in the mood to curtail corruption or rein in its appetite for waste.' Abuja's argument is that if the refineries are sold at their current rate, they will be flung for less than their scrap value. Officials are also arguing that with Dangote refinery of 650,000 barrels per day coming on stream, exiting the business of refining would leave the business of petrol supply completely in the hands of the private sector. This genre of argument which has been in the main since a decade has not done Nigeria any good. The questions the argument raise are: Why sell cheap when you can fix and manage cheaply to reduce petrol imports? Why divest from the refineries and leave such a vital national resource in the hands of the private sector? Why throw away the baby and the bathwater?

4.3. IEA warning

The International Energy Agency IEA has warned that the plans to repair and re-launch the three existing refineries that have not been operating in recent years are unlikely to materialize. But the Buhari government does not seem to be listening. It has made up its mind to use the rehabilitation to shore up funds for the 2023 elections. The way it has made up its mind to use military budget and allocations to store up funds for the 2023 elections. Azu argues that it has been fourteen years since the Yar'Adua government reversed the sale of the Port Harcourt refinery for $500 million to Blue Star set up by Dangote and Otedola. 'If government is prepared to spend three times what it would have earned from the sale to repair it, your guess is as good as mine what the current market value of the refineries would be today. But it would be worse by the time government finishes the $1.5 billion window dressing.'

Haste is also part of the points being made by the critics. Tecnimont that estimated the cost of repair at $290 million nine years ago revised the cost to $1.78 billion in its fresh bid. Government has neither publicly displayed the details of the first technical report in 2021 nor the details of the current one. All that is being heard from a government that is supposed to be deregulating is that after the repair, the Port Harcourt refinery would refine enough petrol to flood the Suez Canal. NNPC's importation monopoly, poor seaport infrastructure to admit and process larger vessels, the waste pipe of Petroleum Equalization Fund, changing energy landscape of the world and corruption are not being factored in (Azu, 2021, p. 15) [7].

The rehabilitation continues to draw flaks from Nigerians who are doubtful of government's sincerity in bringing lasting solution to the nation's comatose refineries. In fact the Federal government had spent N1.47 trillion on refineries maintenance in the past five years (2015 to 2020). Experts prefer that new refineries be built instead of wasting money on outdated ones. Ahmed Adamu (as cited in Udeme & Obasi, 2021, p. 6) [2] for instance, believes that past experiences do not suggest that the current effort will succeed as even Saudi Arabia had privatized its Aramco refinery. He states, 'Nigerian refineries are outdated. We should get rid of them. Port-Harcourt refinery is inefficient. We should have thought of building new ones instead of spending money rehabbing them.' The quest for local refineries is the way to go. Nigerian's daily domestic demand is 70 million liters of fuel. Babatunde Oluajo (as cited in Udeme & Obasi, 2021, p. 6) [2] states, 'We are to interrogate the motive behind spending such a huge amount on refineries rehab.'

In 2018, the Buhari administration had negotiated with Niger Republic to build a refinery of 100,000 barrels per day after promising in 2015 to rehab all the refineries. The promises came to naught. There is genuine doubt if the government can get it right. The time frame before 2023 is also a great constrain being the terminal date of the regime in the light of lack of continuity in government policies and programmes in Nigeria. No one seems also to have a fair technical knowledge of what is wrong with the refineries in their current state. They are probably corroded and that is a difficult condition in rehabilitation architecture, according to Alen Gelder of Wood Mackenzie ltd. (as cited in Udeme & Obasi, 2021, p. 6) [2].

Colman Obasi of OGSPAN also expresses strong doubt as similar exercises in the past had come to nothing. He strongly believed that the rehabilitation would be another way of spending and embezzling money in the face of the $15 billion Dangote refinery that would come upstream in 2022. If policies, laws and regulations are adequate and acceptable, private investors should have come in to build such plants. Obasi states, 'It should be noted that many international oil companies have refineries in their countries but refused to build in Nigeria because there is something with policies including regulations that are not encouraging in Nigeria.'

4.2. Government position

In 2020 NNPC started to make a detailed explanation and argument for the rehabilitation of the Port-Harcourt refinery with a deadline of 2021 for re-tender of the project to all the seven Engineering Procurement Construction (EPC) Companies initially interested. A total of four EPC companies declined further participation due to challenges with their sub-contractors, COVID-19 and the short bid submission period. By 30th November, 2020 only Messrs Technimont succeeded which was considered unsatisfactory. NNPC then approached Afreximbank for a $1 billion loan facility to be repaid in seven years through the delivery of crude oil from the refinery when refurbishment is completed! This led the Federal government to approve $1.5 billion (Obas, 2021, p. 20) [2].

Port-Harcourt refinery is the largest government owned refinery in Nigeria. The State believes that the rehabilitation would be in three phases to be by handled by Tecnimont SPA, an Italian concern. The first phase would be completed in 18 months, the second phase in 24 months and the third phase in 44 months. The funding for the rehabilitation would be coming from Nigerian National Petroleum Company (NNPC), internally generated revenue, budgetary allocations and funds from lender: Afreximbank. The condition for the rehabilitation is that a professional operator and maintenance company would be in-charge as dictated by the lender: Afreximbank. For labour, particularly NUPENG, the government decision is an indicator of its seriousness and it should be extended to Warri and Kaduna refineries. NUPENG boss, William Akporeha, submits that, 'All efforts should be fast-tracked to ensure massive local production of petroleum products' (Ahume-Young & Agbakuru, 2021, p. 19) [1].

4.3. Data of non-performance

But series of data obtained by Udeme and Obasi from NNPC show that Nigeria spent about N1.47 trillion on revamping, maintaining and running the four refineries from January 2015 to June 2020 and despite the unending revamp, the facilities continue to constitute a drain-pipe. In 2015 NNPC spent N82.82 billion on the refineries. In 2016 N78.95 billion was spent. In 2017 N604.127 billion more than half a trillion was spent. In 2019 it dropped to N426.66 billion and dropped further to N218.18 billion in 2019. In 2020 N64.534 was spent. On the other hand, NNPC posted trading deficit of N82.09 billion in 2015; N77.84 billion in 2016; N32.84 billion in 2017; N131.64 billion deficit in 2018 and N149.23 billion in 2019. Although the four refineries have an installed capacity of 445,000 barrels per day, NNPC reports show that the capacity utilization of the refineries were 4.88 percent in 2015; 11.92 percent in 2016; 18.13 percent in 2017; 10.13 percent in 2018 and a woeful 2.19 percent in 2019.

According to another set of data obtain by Obas (2021, p. 20) [2] from NNPC, the refineries have constituted the 'highest loss making centre in the NNPC group.' They have made a total loss of N118.048 in a year from October 2019 to September 2020. A breakdown was as follows: N44.124 billion for Kaduna refinery during the period; N35.083 billion for Warri and N38.841 billion for Port-Harcourt during the same period. Between 2013 and 2015 $396.33 million was said to have gone into financing turn around maintenance for the refineries with another N276.87 billion spent between 2015 and 2018 for the same purpose. Furthermore, the National Petroleum Investment Management Services (NAPIMS), a subsidiary of NNPC invested N21.47 billion to: rehabilitate the refineries, execute the Nigeria- Morocco gas pipeline and search for oil in the frontier basins of Lake Chad and Benue in January, 2021. The refineries alone gulped N8.33 billion to no avail (Vanguard, 2021, p. 23) [21].

4.4. What do experts and politicians say?

Experts see drain pipe investments and corruption in the approval of $1.5 billion (N600 billion) for the Port-Harcourt refinery because the Federal government has spent over 10 trillion so far on the refineries without positive result. The approval was the culmination of two years effort of NNPC to bring the refinery back on stream. Years of negligence and failed turn around maintenance had led Nigeria to the present cul-de-sac otherwise it had been self-sufficient when the four refineries were in top form. But now, it imports its product needs 100 percent (Obas, 2021, p.20) [2]. Atiku Abubakar (as cited in Yakubu, 2021, p. 9) [21] believes that it is too prohibitive to rehabilitate Port-Harcourt refinery at $1.5

billion when Shell (SPDC) sold a smaller refinery for $1.2 billion in California in 2019. It would amount to an 'unwise use of fund' to budget such a huge sum to rehab the refinery when unemployment was 33 percent and inflation had hit a record high of 17 percent with national debt growing from N12 trillion in 2015 to N32.9 trillion in 2021. He argues, 'At this critical period we must as a nation be prudent with the use of whatever revenue was can generate and even if we are to borrow, we must do so with utmost responsibility and discipline.' Recapturing the negative points he argues that first, the refineries had been making losses in the past; secondly, it was better to privatize them; thirdly, the cost was prohibitive; fourthly, there was no public tender for the rehab; and fifthly, due diligence was not performed. He states, 'We cannot as a nation expect to make economic progress by funding inefficiency and going deeper into debt trap for unnecessarily overpriced projects…future generations will have to suffer to pay for all these recklessness'(as cited in Yakubu, 2021, p. 9) [21]

Giving a political jab to the criticism Rivers State Governor, Nyesom Wike (as cited in Egufe *et al*., 2021, p. 12) [10] argues that the rehab is a political gimmick that should be taken with a pinch of salt. Wike thinks that Nigerians have seen this nature of promises before and nothing came out of it. It is an APC gimmick as the 2023 election is around the corner. It may not be far from storing and stacking away money for the 2023 election. He argues further, 'If PDP was in government and it never worked and you came and told Nigerians you are going to make it work; since 2015 till now has it worked? Why will it be that as you are going to the next transition now that you think it will work?' It is another financial jamboree for Sunny Onuesoke (as cited in Egufe *et al*., 2021, p. 12) [10]. 'Why not sell off the old scraps that never worked and build new ones? Nigeria as a nation is a massive theatre of comedy and waste of fund… In the past five years the four refineries have been producing just dust. It is ridiculous that they will get it to 90 percent production level if rehabbed. Nigerians should see the approval for what it is as another waste of public fund. Instead, government should use the fund to establish modular refineries.'

But the Ijaw Youths Council Worldwide (as cited in Egufe *et al*., 2021, p. 12) [10] believes it is a signal that the Federal government has woken up from slumber. In 2007 when the ex-President Obasanjo was exiting the Port-Harcourt and Kaduna refineries were sold to Bluestar Oil services Company owned by a Consortium of Dangote Group, Transcorp Plc, Zenon Petrol & Gas, Rivgas Petroleum & Jovis Nig. Ltd, and China Petroleum & Chemical Corporation (SINOPEC) in the total sum of $721 million: ($561 million for Port-Harcourt and $160 for Kaduna). Bluestar took 51 percent stake in the refineries. The resistance the privatization drew from labour led it to strike and led Bluestar to withdraw from the deal when it sensed that it would be reversed by the Shehu Musa Yar'Adua's administration in 2008. It was argued that, 'Our common patrimony was being sold to an individual.' Bluestar was refunded its funds but since 2008 till date not much has been achieved (Obas, 2021, p. 20) [2].

But Henry Adigun (as cited in Obas, 2021, p. 20) [2] an energy expert still declines to support the government position. It is a waste of money; government has no business in managing refineries. The exercise would not add value to the economy. Government needs to deregulate the sector or sell them off to people that would buy them at scrap value. Government had spent over $25 billion on repairs in the last 15 years and had lost over N775 billion on the refineries, so why is it putting another $1.5 billion? Same government which had earlier decided to concession the refineries? What twisted the position round if not corruption and inefficiency?

Faith Nwadishi (as cited in Obas, 2021, p. 20) [2], Executive Director, Women in Extractive Industries, campaigns that government should make the terms and conditions of the contract available for public scrutiny. Her concern is that in 2017 the same government approved about $300 million for the repair of the same refinery. Between 2018 and 2019 it approved N1.2 trillion for Port-Harcourt refinery turn around maintenance. In 2021 another $1.5 billion is approved for the same purpose. Meanwhile, a report shows that workers there had been receiving salaries without working. If all these are put together, what is the return on investment? Government should rather privatize them to competent concerns, 'How can we have four refineries and we are not able to refine crude? A private refinery will soon come on stream and we are pumping money into government comatose refineries.'

5. Conclusion

In the past 25 years, the refineries have been degraded and non-functional due to poor management and monumental corruption (Udora, 2022) [20]. These were the years that the Shagari administration and military rule held sway with neo-capitalist campaign for the collapse of the public sector for reintegration into the capitalist west after the cold war. Kyari captured it as follows, 'the degradation is monumental' (Balarabe, 2022) [8] Federal government's decision to rehabilitate now is thus a drainpipe. The refineries processed zero crude but cost Nigeria N10billion in June 2020 (Terhemba, 2022) [18]. Such negative positions can only induce lack of confidence and trust in the current effort.[36] Yet, March 2023 when a major break-through is expected is around the corner (Chibisi, 2022) [9].

6. Recommendation

- The revamping of refineries should no longer continue in the light of the sleaze associated with it.
- The refineries should be sold to Dangote refinery in the light of the tremendous impact it has made sector.
- The management of the refineries should be probed.

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