Developing Country Studies
ISSN 2224-607X (Paper) ISSN 2225-0565 (Online)
Vol 2, No.4, 2012

Legal and Policy Bases of Direct Foreign Investments in the Era of Indigenization (Economic Nationalism) in Nigeria, 1975 – 1985

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Abstract
The paper focuses on the legal and policy bases of direct foreign investments in Nigeria between 1975 and 1985. This was examined within the context of the indigenization (Economic nationalism) Policy which straddled the Olusegun military administration (1976 - 1979), and the President Shehu Shagari administration (1979-1983). The aim of the paper was to improve highlighting what has been done by past administrations in trying to develop the Nigerian economy in terms of economic nationalism and the attraction of direct foreign investors, and to chart the way forward. Data was generated from secondary sources only. Our findings reveal that little successes have been recorded in our drive to attract foreign investors into our economy because of weak legal and institutional frameworks, entrenched culture of corruption in the public sphere, inadequate power supply, violence and insecurity, etc. It was recommended that a lot needs to be done in terms of providing an enabling and ennobling environment that would be attractive to direct foreign investors.
Keywords: Legal and policy frameworks, direct foreign investments, indigenization policy, enabling environment, corruption.

1. Introduction

This paper focuses on the legal and policy bases of Direct Foreign Investments (DFIs) during the era of the military interregnum in Nigeria. Right from inception the establishment of law and order in Nigeria, was undertaken to create a stable political system conducive for economic development. This task was essentially undertaken by the ruling class within the context of a specific ideological orientation. In Nigeria, the emergent ruling class accepted the developmental precepts of the Western Capitalist societies as the guiding model for her economic development. This model encompassed identifying the particular barriers to Nigeria developmental efforts. The ruling, class guided by their foreign capitalist counterparts identified, among others, the following as factors militating against rapid socioeconomic development of Nigeria: high population growth and low per capita income, limitation of resources, low investment capital, and inadequate entrepreneurial class. Others included inefficient use of resources, lack of social overhead, and infrastructure. The above factors carefully considered are symptoms of underdeveloped nature of neo-colonial states in Africa, Latin American and Pacific and not the cause of it.

Over time, Nigeria has initiated programmes aimed at addressing the above listed problems. Inadequate infrastructure and low investment capital is especially identified as being very acute. That Nigeria has no sufficient capital to invest in its developmental efforts is not in doubt, given the neo-colonial character of the state. Huge sums of finance capital internally generated are expropriated and stashed in foreign banks by the ruling class. Hence, the needs to search for foreign capital especially in the form provided by multinational corporations (MNCs) become necessary. How the ruling class did this is the central focus of this paper. For that purpose, we have examined the legal and policy bases of MNCs in Nigeria in terms of first, the creation of enabling environments for DFIs to thrive; and, second, the impact of MNCs on Nigeria within a specific legal regime and historical context. These spanned the period from1975 to 1986 (the era of indigenization).

Nigeria has been under military rule more than it has under the civilian. A number of reasons have been advanced for this fact. These include: frustrations arising from rising expectations, economic ineptitude, political, and administrative malady accompanied by nepotism, ethnicism, corruption, and political assassinations, and vaunting ambition by military officers, etc. Against this background is the general socioeconomic and political instability that has been generated. Obviously, such an environment does not augur well for direct foreign investments. It is also against this background that this paper examined the role of the military in formulating and implementing policies aimed at stabilizing the environment such that foreign investments are attracted to the country. This is also examined against the background of the nature of the state that was bequeathed to Nigerians at independence. Therefore, these issues are explored as follows:

First, we focus on the role of the state, and public policy on the activities of multinational corporations in Nigeria from 1965 to early 1970s. This period falls directly under General Yakubu Gowon Military administration.

Primarily, consequent upon the dominant position of these global enterprises and the corresponding attempts by the host-State to exercise its power of dominium eminens, the investor-states have expectantly reacted to these dimensions. We believe that such attempts have in one way or the other affected capital inflow as well as the activities of the multinational corporations in the country. Of interest is the expressions and demands of the immediate host-communities to the activities of the multinational corporations on the one hand, and on the other hand, evaluate the responses of both government and the multinational corporations themselves. This enabled us to illustrate the extent to which they have contributed to capital inflow into Nigeria.

2. Conceptual Clarification

To further our greater understanding of the scope, content and context of this paper, we have conceptualized our major variables as follows:

2.1 Law and political order

The establishment of Law and Political Order in a peripheral capitalist nation such as Nigeria is apparently undertaken to create a stable political system conducive to economic development. Essentially, the ruling classes pursue the task of economic development in the context of an ideological orientation that accepts the developmental precepts of the metropolitan bourgeoisie (Ake, 1978). In fact, economic development policies of the ruling class encompass identifying the particular barriers to the level and kind of development desired and then devising policies to overcome them. Such barriers include high population growth and low per capita income, limitation of resources, low investment capital, and inadequate entrepreneurial class, inefficient use of resources, lack of socio-overheads, capital and infrastructure, and lack of technical expertise (Lipsey, 1982). Hence, the Government seeks more funds for investment from outside the country. In addition, they attempt to identify cultural, legal, social, and psychological barriers as well as undertake programmes of education, legal reforms, resources development, negotiation of trade treaties or actual investment, which they feel, could make way for rapid economic development.

The economic policies that these ruling classes embark upon only seek to strengthen their material base. They pursue public policies, which are contradictory, in nature and character. And these scenarios most often provoked dissatisfaction first, among the nationalists during the colonial period and later, after independence, against the new ruling class, by the masses and the fractions of the ruling class that are outside the machinery of government. This calls forth a question of legitimizing the oppressive economic and political relations. The Colonial authorities in order to legitimize their hegemony introduced the Indirect Rule System and English Common Law into their colonial territories of which Nigeria was one. Laws were made and Courts were established to adjudicate on these laws. Underlying the establishment of the Courts or the judicial structure was the imperative to establish and sustain a stable political order that could ensure an enabling atmosphere for colonial domination and exploitation. This relationship did not change, however, at independence as might have been expected but only metamorphosed into another form – dependency capitalism. Broadly speaking, the concept 'Law' refers to a rule of action or body of rules of human conduct, which involves an idea of obligation with consequent sanctions, if violated. A law in Nigeria includes local legislation and interpretation based thereon, Law Reports, Law textbooks, monographs, and judicial precedents (Elias, 1954).

It is important to note that Law does not create itself. There must be an institutional framework that produces and reproduces these laws or norms. These are variously referred to as the 'Grundnorm' (Esho cited in Elias, 1954). By 'Grundnorm' is meant that highest authority that is saddled with the responsibility of creating laws. The grundnorm therefore, must have no higher rule behind it. It is the fon et origo – that is the final norm, one that is regarded as so fundamental as to be termed the legal source. Beyond it, there must be no further inquiry. It is the alpha and omega. In other words, the grundnorm is where we no longer find any higher authority like the exceptio doli in Roman law; it is the Ultimate, the exceptio of all exceptiones. It is therefore the higher norm that would lay down such rules as would govern the application of these norms which are on a lower level of generality, and as such this highest norm would constitute the basic form of the whole system (The Guardian, Nigeria, Saturday 16th March: 1985). This provides the basis of business and legal as well as political environment in Nigeria.

2.2 Direct foreign investment

The term Direct foreign investment (DFI) or Foreign direct investment (FDI); used interchangeably in this paper designates private capital provided by foreign entities in the purpose of acquiring control of production capabilities in the resident economy. DFI is either directed towards the creation of new production facilities (green field investments) or towards the acquisition of exiting production (mergers and acquisitions). In terms of forms, DFI is undertaken either through equity capital (direct purchase of stocks and other forms of equity), reinvested

earnings, or inter-company debt transactions (the lending of money from the foreign parent to the resident subsidiary). In fact, direct foreign investments involve the acquisition of plant and equipment for the production in a custom area or a currency area other than the area in which a firm is domiciled. To him, the foreignness of the firm is reflected in "the movement across boundaries between customs area and between currency areas." The presence of boundaries demarcates foreign investments from the domestic. It is assumed that the investor has a monopolistic advantage called a "patent." This underscores how a firm decides to exploit its patent to satisfy the domestic as well as the various foreign markets. To Akinsanya, (1992), DFI may be described in terms of its role as a source of international capital and other scarce resources. It is the act by which capital is exported by some persons and, other organizations resident in one country to another for the purpose of earning a profit. These take various forms. In this study, we are concerned with DFIs via the Multinational corporations. It is auspicious to point out that the Multinational corporations are known variously as the "transnational Corporations," "Global Corporations", "Multinational Enterprises," "Engine of Growth," Transnational Organizations. In this paper, all the above contributions shall refer to the object of our research. However, we have chosen to depart from Bill's position that DFI occurs when a firm invests directly in facilities to produce and/ to market a product in a foreign country (Hill, 2002). This is due to its all-encompassing and simplifying nature.

2.3 Legal and policy frameworks as determinants of distribution of direct foreign investments.

Wint (1991) has argued that even though until recently, the impact of government policy on the inflows of direct foreign investments has been very minimal, the utilization of government policy as an instrument of industrialization becomes apparent "as many countries, especially developing countries, moved to create a climate conducive to the attraction of foreign direct investment." Also, Root and Ahmed attempted to determine the statistical association between it and inflows of DFIs by adopting government policy variable adopted such indices as levels of corporate taxation, tax incentive laws, and policies related to joint ventures, local content requirements, and foreign personnel. The inference drawn from their study was that the "only policy variable that had a significant influence was the corporate tax level" (see Wint, 1991). Accordingly, Wint discloses that this realization led many countries, especially developing countries to fashion policies aimed at creating a climate conducive for foreign investments to thrive in the 1980's. They focused on such policy variables as "levels of corporate taxation, tax incentive laws, and rules related to joint ventures, local content requirements, and foreign personnel". Only corporate tax level was suggested as having a significant influence on foreign investments inflows. Root and Ahmed (1979) therefore suggested that the sophistication of a country's physical infrastructure play a leading role in influencing the destinations of direct foreign investments. In a study by the United States Agency for International Development nine government policy instruments that influenced decisions to invest abroad were listed namely: controls on ownership; the approval process; dispute settlement procedures; the employment of nationals; Performance requirements; exchange controls; repatriation restrictions; tax rate, and; investment incentives (see Frost and Sullivan, Inc., Measurement of the Investment Climate for International Business, Wint, 1991).

Of the above government policy variables, Wint paid particular attention to investment incentives and investment promotion. A. Study on, the use by government of investment incentives conducted in the early 1980's by Guisinger and Associates (1985) found that specific incentives were effective in influencing decisions to invest abroad. Incentives such as tax holiday; referred to as: a "factor incentive' was found to "have a negligible impact on investments designed to serve a country's local market." Such factor incentives were rather found to have an impact on investments or export. The authors however argue that the incentive ("commodity-based") that facilitated foreign investment inflows is tariff protection. Chalker (1993: 24) notes that the role of Government in African economies encompasses establishing an enabling framework that will encourage private sector activity, while ensuring that services are provided where the market fails. He stresses that the necessary laws are enacted to safeguard private property. In addition, contract should be enforceable through legal means, while ensuring that the regulatory and taxation framework should be consistently faithfully applied allowing for only minimal arbitrary administrative decision making. He pointed out that business would thrive well in an environment where investors believe that the state will guarantee reasonable standard of law and order. Furthermore, the level of corruption and mismanagement should be reduced to its barest minimum if not eliminated. In a nutshell, Chalker recommends that political and economic reforms reinforce each other. The researcher agrees in totality with Chalker. What a Third World Country needs most, in her quest for rapid socioeconomic development is the existence of a political leadership not lacking in the "will" to sincerely formulate and faithfully implement policies that will provide and sustain requisite enabling environment for direct foreign investments.

3. Legal and policy bases of direct foreign investments in Nigeria

From the foregoing we shall explore in concrete terms the legal and policy frameworks initiated to attract direct investments into Nigeria. These are:

3.1 Provisions of Third National Development Plan, 1975 - 1980

It was against this background that the Third National Development Plan was enunciated as the bases for:

- an increase in per capita income;
- a more even distribution of income;
- a reduction in the level of unemployment;
- an increase in the supply of high-level manpower;
- a diversification of the economy;
- balanced development; and,
- indigenization of economic activity (Okigbo,1989: 103).

The plan was aimed at balancing growth with social equity. Hence, the policy of redistribution took a preeminent position in the Third National Development Plan. These covered interpersonal income, spatial and regional redistribution (between rural and urban sectors,) and redistribution of ownership and control of activity (between Nigerians and aliens). To achieve the above-listed objectives, the following strategies were adopted; namely:

a. Optimizing the growth of infrastructure for the long run growth of the economy;
b. Subsidizing facilities in low-income areas by the provision of social services;
c. Promoting employment-oriented activities; and,
d. Training for skills and especially for higher levels skills so as to resolve in five years the 'shortage of high level and intermediate level manpower' (Okigbo, 1989: 104).

In short, the overall strategy of the plan was to use the resources from the oil sector to develop the productive capacity of the economy. In addition, it was also reasoned that the plan would realize a more equitable distribution of incomes as well as check inflation. As with the 1970-74 plan, two policy measures underlay the philosophy of the 1975-80 development plan; namely: fiscal and incomes instruments. The plan set a government owned National Supply Company for the massive importation of essential commodities. Marketing Boards were also established to pay reasonably high prices for farm produce, as well as provide subsidies for agricultural inputs such as chemicals, fertilizers, seeds, etc (1989: 105). Nevertheless, the policy of liberalization of imports and the massive importation of so-called essential commodities tended to impact a "debilitating effect on agricultural production … as well as reduce the scope of capital formation below the level suggested by the growth of income," concludes Okigbo.

Under the plan, the manufacturing sector was divided into two: activities conducted solely by private entrepreneurs and those conducted by either the government by itself or in association with private agents (see Okigbo, 1989). The plan, during this period was more interested in the quality of roads constructed. Accordingly,

> The design specifications were laid down in the Plan. For all Federal Government roads, the aim was a design speed of 100 km per hour, right of way of 91metres, paved road of 7.3 metres, shoulders of 2.75 metres on either side, thus giving a carriage way width of 12.8 metres (1989: 122).

This programme led to the relative improvement in the quality of roads constructed at that time. However, Okigbo observed that the demand for these specifications increased the cost of building and construction that appeared to be burdensome to the government. For telecommunication services, the total of N1.338 billion was to be expended over a period of five years of the plan. In terms of electricity, out of a projected demand of 3000kWh at the end of the decade, the Third National Development Plan projected an estimated demand of 1336MW with a reserve of at least 404MW. However, it was observed that these projections were faulty if electricity consumption had risen by 20.5 per cent annum between 1970 and 1974 consumption would have been well over 7629kWh. Yet, the estimate of capacity expansion required was 3000k. Evidently, even if the Plan estimate had been met, consumer demand would not have been satisfied. With this hindsight, this has turned out to be true.

Another interesting component of the plan objectives relates to employment, which was specifically geared toward reduction in unemployment level as well as an increase in the supply of high-level manpower. The plan has been flawed on a number of grounds. We agree with Okigbo that:

> First, all existing measures of the Nigeria labour force are speculative because the population figures from which they are derived are speculative. Second, all existing measures of the number of jobs to be created and the extent to which existing unemployment can be relieved or reduced are guesswork. Third, there is, in fact no measure of the existing level of unemployment. Finally,

> we do not have in the Central Planning Office a constructive definition of unemployment (1989: 130).

This implies that the planners had apparently deduced a wrong definition of a definite problem: unemployment, and concomitantly offered a wrong solution. Indeed, it is vital to note that any employment that is not "gainful', constitutes a specific kind of the employment problem (Coker, 2003).

To improve on the availability of high-level manpower, the plan sought to enlarge enrolment in institutions of higher learning, train personnel at home and abroad, as well as upgrade those already in service. The plan adopted the number of vacant positions as the yardstick for measuring the dearth of requisite high-level manpower in both the Federal and States' civil and public services. The attempt to achieve an appreciable level of trained and qualified skilled manpower resulted in the establishment of a number of Universities to cope with increased enrolment. In addition, both the federal and states' governments made scholarships and bursary awards available to Nigerians both within and outside the country. In fact as noted elsewhere in this study, crash programmes were facilitated for Nigerians in countries such as Italy, Bulgaria, Romania, Belgium, etc in the late 1970's and 1980's. A spill over effect of the above government initiative was the production and reproduction of half-baked "professionals" and lowering of standards, which have permeated the entire socioeconomic and political fabrics of the Nigerian society.

In furtherance of the philosophy of the planners of the Third National Development Plan, attempts were made to indigenize the economy in order to optimize the local content of products. The plan intended to increase the local participation of indigenes in the productive initiative of their economy. However, it is question begging whether, the promulgated Nigerian Enterprise Promotion Decree/Act (NEPD) of 1972 and its amendment in 1977, could effectively increase the participation in local investments in domestic output, in terms of ownership, management, and control of premier enterprises by Nigerian citizens given the neocolonial character of the state. What follows is a discussion on the Indigenization Decree

3.2 *The Indigenization Decree*

It was during General Gowon's administration that the Nigerian Enterprises Promotion Decree (NEPD) was promulgated. Precisely, the Decree was enacted on February 23, 1972; to become effective from April I, 1974. The context, content, and ramifications of the Decree is described, explained, and evaluated in the latter part of this research paper. The period of NEPD spans both Gowon and Mohammed/Obasanjo era from 1975 to 1979.

The provisions of the Nigerian Enterprise Promotion Decree/Act 1972 and its amendment in 1977 were the underlying grundnorms that regulated the establishment and operation of direct foreign investments in Nigeria. Given the dissatisfaction expressed by Nigerians, about the dominance of foreign capital in the economy of their country, and arising from a conscious nationalist feelings and desire to increase indigenous participation of Nigerians in their economy, scholars, policy makers and advocates, intellectuals, bureaucrats, military as well as political elites, made a very strong case for the indigenization of the Nigerian economy.

Unlike the period between 1947 and 1968 when the Nigerian government pursued an "open door" policy within the framework of a "mixed" economy, the period immediately after the civil war, (informed by the desire to rehabilitate, and reconstruct the damage of the war) witnessed the increasing involvement of the government in the economy. The frontier of government direct participation in the economy was expanded. The government undertook a substantial provision of goods and services by establishing public utility corporations, foreign corporations; with a view to wrestling the economy from the firm grip of the multinational corporations. Sustained pressures were mounted on the government to seek a strategy that would ensure that Nigeria took control of the "commanding heights" of her economy. The Nigerian Enterprise Promotion Decree in 1972 provided the legal framework through which this shift in policy thrust was achieved. As noted earlier, General Yakubu Gowon enacted it. It was later amended in 1977 under General Obasanjo. It is auspicious to note at this juncture that the fundamental reason for the NEPD was not to salvage the Nigerian economy from the clutches of the "imperialists" (as assumed by the local bourgeoisie), but rather to transfer the management (not control) of local subsidiaries of multinational corporations into the hands of the emergent local bourgeoisie. The burgeoning emergent local bourgeoisie found the arrangement desirable and appropriate at the time. They had, from that moment access to the necessary funds and official positions (a determining factor in ownership of companies is finance which most of them appropriated and expropriated from the public purse) to assume the management of the state-owned enterprises in Nigeria. In other words, the assertion that the NEPD was essentially an outcome of nationalist desire to control the "commanding heights" of the Nigerian economy is being economical with the truth. To be precise, the NEPD was a class instrument, espoused, advocated, and enunciated by the emergent petit indigenous bourgeoisie in concert with their metropolitan counterparts to exercise effective domination of the economy in their own corporate interests. This became more glaring as the expected "benefits" of the NEPD were actually consummated by political and bureaucratic elite (local and foreign) class over the years.

The question is what was the consequence of the indigenisation Decree on direct foreign investment flows to Nigeria? Some scholars view the provisions of NEPD as having a very minimal impact on divestment of capital by foreign businesses from Nigeria due to the following reasons:

i. Negotiating exemptions from the provisions of NEPD 1972 and NEPD 1977;
ii. Appointing retired public servants as Chairman and members of the Boards of Directors, thus, using such officials as links between the government and MNCs ….;
iii. Exploiting loopholes in the indigenisation decrees;
iv. Fronting" or choosing the so-called "right" local partners;
v. Changing the Articles of Association or Voting Resolutions in such a way as to give veto power to minority shareholders in key areas of management or control;
vi. Encouraging public subscription of ordinary shares;
vii. Corrupting public officials in order to circumvent the provisions of the indigenisation decrees;
viii. Concluding Management, Technical and Sales Agreements with the major partners to ensure that the structure and standard operating procedures of former MNCs remain unchanged;
ix. Unilateral violations of law; and,
x. Playing members of the Boards of Directors against each other (2002: 299).

One pertinent observation of that period was that, only a handful of highly placed Nigerians "commandeered" ownership or controlled state-owned enterprises or public corporations. Akinsanya (2002) also argued that the same personalities were circulated among the vast number of public enterprises in the country of over a hundred million Nigerians. This implies that the entire philosophy behind its promulgation was not populist, but to transfer the stranglehold on the economy from foreigners to the emergent military and civilian bureaucratic class. These directors in a way constituted a "front" for their neo-colonial collaborators. This partially explains both the half-hearted and haphazard nature of its implementation. In another way, the NEPD tended to discourage DFIs for fear of nationalization, especially with the nationalization of the British Petroleum in 1976.

3.3 Establishment of institutional machineries

The Nigerian government Edame (2001) posits, has initiated programmes aimed at assisting private and public efforts (both local and foreign) through the granting of "labour, patents or exclusive sales privileges, guarantees of industrial raw materials, technological advice, loans at low interest rates at all, outright subsidies…." The government assists foreign investors to acquire land for factory sites specifically in the government-sponsored industrial estates. This is precisely what the government is doing in the Free Trade Zone in Calabar.

An Investment and Information Promotion Centre was set in 1952 under the Federal Ministry of Industries. The Nigerian Enterprises and Investment Promotion Commission, Corporate Affairs Commission, Raw Materials and Research Development Council have also been established with a view to guide and promote direct foreign investments in Nigeria.

In addition, the government grants loans to foreign investors. It is a common knowledge that funds needed for execution of project for most foreign businesses are internally generated rather than being imported. For instance, a number of financial houses such as the Nigerian Industrial Development Bank, the Nigerian Bank for Commerce and Industries and other first generation multinational banks in Nigeria make requisite loans available to foreign as well as local investors. The Nigerian Industrial Development Bank (NIDB) has the foremost function of developing and promoting Small and Medium Scale Enterprises (SMSE) through three major projects assisted by the World Bank. The estimated cost of the programme was put at $376.6 million. These projects are:

1) The Nigerian Industrial Development Bank (NIDB) IV Loan Agreement ($300 million) was to provide the NIDB with foreign exchange for funding of industrial projects and consultancy service aimed at strengthening its institutional capacities.

2) Small and Medium Scale Enterprises Schemes ($68.4) million was to fund manpower development and to provide technical and managerial advice to the Small Scale Enterprises Scheme.

3) Industrial Technical Assistance Project (ITAP) $8.6 million was aimed at the structural adjustment of the industrial sector in Nigeria. For instance,

4) ITAP was authorized to initiate industrial incentive policies as well as measures to promote financing policy studies.

5) Fiscal incentives in the form of Import Duty Relief (Import Relief Act of 1958), granting of partial or total tax relief from import duties in raw materials for up to ten years to new and expanding businesses.

6) "Approved Pioneer Industry" is granted relief from profit tax for period of two to five years through the Industrial Development Act of 1958. In addition, the Income Tax Relief Act 1958 (Amendment Decree No. 22 of 1971) granted specific tax holidays on corporate income.

7) Under the Customs Tariff Act of 1965 companies imported raw materials and equipment at reduced rates. To allay the fear of foreign investors concerning expropriation or nationalization of foreign enterprises, the Federal Military Government promulgated the International Settlement of Disputes (enforcement of awards) that provided reference to the International Court of Justice, that its decision would be binding on parties in dispute. Indeed, the role of MNCs in the development process of the developing countries has engendered much controversy.

8) Of particularly interest to the investor states is the provision of an enabling environment, which allows for their smooth operation without hindrance. It was against this backdrop that the United Nation General Assembly approved by an overwhelming majority on December 12, 1974**,** Resolution 3281 (XXIX), christened the "Charter of Economic Rights and Duties of States" which in Article 2 declares, *inter-alia*:

> Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities;

Each State has the right:

a) To regulate and exercise authority over foreign investments within its national jurisdiction in accordance with its law and regulation and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investments;
b) To regulate and supervise the activity of transnational corporations within its national jurisdiction and take measures to ensure such activity comply with its laws, rules and regulations and conform to its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State….
c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation shall be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent.

To answer the question, how are property acquired by aliens, juridical and/or natural? Akinsanya (1984) points to investment laws as providing the immediate and direct source of international relations with direct foreign investments as object of legal relations. Accordingly, the following sources of investment laws were posited: First, the Constitution of the host-state; second, Bilateral and Multilateral Agreements on Economic and Technical Co-operation between Capital-Importing Countries and Investor-States; and third, contracts between Host-States and Aliens (natural and juridical). Akinsanya (1984) went further to observe that apart from serving as investment laws, these sources also provided legal guarantees for direct foreign investments in the Third World Countries. Furthermore, he notes that investment laws not only facilitate and induce direct foreign investments to the less developed countries; it also creates the requisite structure of the legal relationships involved. Undoubtedly, the Constitution is a major source of investment laws attracts and encourages private foreign investments in the less developed countries since it draws from the provisions of Article 17(2) of the 1948 Universal Declaration of Human Rights adopted by the United Nations General Assembly. It emphasizes that no one shall be arbitrarily deprived of his property.

Also, bilateral and multilateral agreements or treaties on economic and technical co-operation usually referred to as Treaties of Friendship, Commerce and Navigation (FFN) generally contain provisions safeguarding the interests of the nationals of the contracting parties. They cover specific areas such as nationalization, compensation for nationalization, status of foreign national and settlement of disputes. In this section, we shall attempt a review of important bilateral and multilateral agreements entered into by the Third World countries and other investor-states, including those involving multinational and supranational organizations. These encompass those agreements between Nigeria and other entities such as the UN and its agencies, the US and other European countries and their financial institutions. Of note also are the ramifications of such multilateral agreements as the World Bank Convention for Settlement of Disputes between States and Nationals of Other States and Lome

Conventions, as well as the ECOWAS Protocols for the promotion of direct foreign investments for a country like Nigeria.

Other policy thrusts of the government to promote foreign investments in the country include; increased private sector participation, particularly through the policy on privatization and commercialization of the public sector investment. Government shares are sold to private individuals and corporate bodies whether indigenous or foreign. Most often, they are the foreign companies that have the requisite fund to buy up the Shares offered.

The government had initially established the Industrial Development Coordinating Committee (IDDC) saddled with the responsibility of ensuring that all required approvals for the setting up of new businesses /industries are given within sixty days. The government also liberalized the access to foreign exchange for individuals and companies through the establishment of the Foreign Exchange Market (FEM) in order to attract the much-needed foreign investments. FEM assisted the determination of the rate of the Nigerian currency vis-à-vis other foreign currencies by the interplay of "market" forces. Other parallel financial instruments as Bureau 'de change were provided for by law. Again, the government provided measures to facilitate dividend and capital repatriation by relaxing formerly cumbersome procedure.

3.3 Technology acquisition, transfer and development

One vital argument for the need to attract foreign investments is the possibility of its facilitating the rapid socioeconomic and political development of Nigeria. Indeed, such optimism is largely depended on the nature and pattern of technology supplied to the country. Nigeria is blessed with abundant natural and mineral resources. Most of these resources are yet to be explored; some have been exploited, but mostly with foreign technology. Since Nigeria at the moment is not self sufficient in the necessary technology, the need to acquire it from outside the country becomes imperative. To achieve this goal the government must provide an enabling environment for technological acquisition. One of such effort according to Singh & Jun (1995) was the promulgation of the Nigerian Enterprise Promotion Decree that permitted a 100% per cent ownership of enterprises by foreigners. In the same direction was the review of the defunct Industrial Development Co-ordination Decree (No. 36 of 1988). In its place, the Nigerian Investment Promotion Commission has been established. The task of the study is partially to examine the extent to which these institutions among others have promoted technological acquisition, transfer and development in Nigeria. For, as Singh & Jun (1995: 9) puts it

> Unless a suitable level of technological absorption and adaptation is achieved, the level of industrial growth would be adversely affected and the benefits to Nigerians may tend to become marginalized.

It is against this background that we examine the mechanisms for technological transfer through direct foreign investments with particular focus on the multinational corporations. The following has been identified (Singh 7 Jun, 1995:11-12) as the principal mechanisms for facilitating technological transfer and growth: wholly foreign-owned subsidiaries, joint ventures and non-affiliate licensing arrangements as well as various forms of contracts covering technical and management agreements. Investments by the MNCs in developing countries are generally through their subsidiaries, and specifically through joint ventures with local enterprises. According to Singh, "in many instances, however, foreign companies may wish to penetrate large markets such as Nigeria largely through non-affiliate licensing." The question that is worth asking is, which of these mechanisms is likely to facilitate and sustain technological acquisition and transfer through MNCs to Nigeria? This question has become necessary in view of the inability of the avalanche of MNCs to create any appreciable impact in that direction on the Nigerian economy, despite doing business in the country since the mercantilist's period to date. It has been acknowledged in the study that the type of business established and agreement entered into by local subsidiaries in Nigeria has determined and explained why despite years of establishing subsidiaries of such companies like Peugeot Nigeria Plc, Volkswagen Nigeria Plc, General Motors Plc, Mercedes Benz Plc, Iron and Steel complex at Ajaokuta, the Aluminum Steel Smelter Industry at Ikot Abasi, the industrialization process has not gone beyond the assembling plants for Completely Knock Down (CKD) parts. Due to the erstwhile dearth of foreign exchange to import these component parts most of these plants have been temporarily or completely closed down. One may also ask; why is it that these subsidiaries are doing actual production in most Latin American and Asian countries and not in Nigeria? A partial answer to the above inquisition may be found in the context and content of the Nigerian industrial policies. Singh & Jun (1995) opines that if Nigeria is to pursue technological acquisition and transfer through turnkey contracts and other management agreements, it is pertinent to ensure that the contracts are effectively complied with in terms of timing, costs, and quality of performance, and that local personnel are adequately associated. This encompasses the selection of suitable technology, machinery and equipment, determination of and compliance with construction, supply and installation schedules, guarantees of performance, timing and execution of trial runs, and penalties and liquidated damages, beside rectification of any faults. In fact, the determination of the technology desires ought to be given a deep thought before entering into any

agreement. The usefulness and relevance of a given technology including alternatives must be properly assessed and evaluated in terms of costs, availability of local raw materials extent of maintenance imports required over time, export potential, and potential for local absorption and adaptation (Singh & Jun, 1995). A vital directional input and output shift in the Nigeria's industrial policy thrust during most of the military rule era was the search for alternative sources of technology from countries other than Great Britain, France and their allies. Nigeria came to identify and appreciate the technological potentials of most Eastern European bloc of counties. Indeed "Crash Programmes" were instituted for training of Nigerian in middle level technology in countries like Bulgaria, Yugoslavia, Poland, etc. Soviet technology was represented with the signing and subsequent commencement of work of the Ajaokuta Steel Complex.

3.4 Institutional machinery for managing direct foreign investments

A country's ability to attract direct foreign investments depends to some extent on the institutional machinery established to achieve that goal. Wint (1991) posits that two major mechanisms are adopted by government to control the flows of investment to and out of their territories. First, Investment projects are screened by "Screens" which are "typically established to allows or disallow entry, and grant or reject application for government incentives"; Second, Modalities for the control exercise are carefully stated in the enabling instrument. This exercise is divided into two principal functions: administering the screening process, and making the final screening decision. In addition, monitoring programmes are initiated for evaluating the activities of existing foreign investments. Again, in his study of institutional machinery for managing direct foreign investments in ten countries Wint (1991) observes that nine of these countries centralized the administration of the screening process in a single organization. However, he notes that the degree of centrality of the screening exercise varied from country to country. Most governments exert control on foreign investment through monitoring. Specific governmental departments are assigned the responsibility of ensuring that all business outfits operate within the jurisdiction of the laws and policies that brought them into being. This is to ensure that investors adhere to the terms of incentive awards and contracts. Investors are expected to submit periodic reports and government officials should undertake occasionally unscheduled site inspections.

Other promotional efforts of the government include image building, investment-generation, and investment-service. Also, some countries carry out promotional activities through specially created investment organizations. In Nigeria, this is done by the Nigerian Investment Promotion Commission (NIPC).

Really, in the process of formulating and implementing policies to attract foreign investments, the legislative framework should not be overlooked. This is because such legislation forms the basis of economic development in the post independent period, since it has become obvious that such legislation must be in congruous with the declared economic visions and strategies. There is a close relationship between law and foreign direct investment. This covers the nature and content of the investment codes.

Generally, the content of investment codes outlines first, the economic objectives, which identifies the economic philosophies, policies, or objectives, sometimes as embodied in the constitution, development plan, or the investment code itself. In some instances, these are reflected in the numerous speeches of the head of states of government, in ministerial speeches, parliamentary debates and declarations and in various enactments.

Second, the investment codes define the areas of the economy in which foreign investment is allowed. There may be sectors or sub-sectors in which foreign participation are restricted or prohibited outright, and stringent sanctions may be imposed on indigenous persons acting as "fronts." In such circumstances, certain conditions to be made by foreign investors are stipulated, and once these are met approval is likely to be granted.

Third, certain economic incentives are embodied in the investment codes, depending on the nature of the industries, in particular, whether they fall into the priority or non-priority area. This includes corporate income tax holidays, capital allowances, tax deduction for research and development expenditure, exemption from property tax, export incentives, assurance of non-discrimination in the employment of all legal rights and business facilities accorded national investors, clause, etc.

Fourth, since nationalization is often predictable or unavoidable, it is often deemed proper to pay compensation, which then represents the equivalent of "consideration" in a freely negotiated contractual transfer of ownership. The study notes that while international law generally recognizes the right of state to expropriate foreign private property as an expression of its sovereignty, there is also, widespread disagreement as to the existence of an international obligation to pay compensation, or as to the acceptable formula for computing the compensation due.

Fifth, there must be forms of dispute settlement in transnational transactions whenever it arises. These include consultation, conciliation, judicial settlement, and arbitration. In addition to the above, investment codes provides for applicable law and administrative machinery.

Over the years, Nigeria has formulated and implemented investment codes that took particular note of the above components in its scope and content. It is pertinent to observe that these components are never static. It has moved by both the underlying philosophies of the ruling class and the change in the international political economy. There is no doubt that the scope and content of investment codes largely determines the flow of direct foreign investments into Nigeria. In the next chapter we explore the impact of the State on direct foreign investments in Nigeria since 1960.

Summary and Conclusion

The paper has enhanced our knowledge of the role played by the indigenous (both military and civilian) and metropolitan elites in designing and implementing Nigeria's industrialization policies. We particularly focus on those policies that are aimed at engineering Nigeria's socioeconomic development through direct foreign investments. The examination of the context and content of these policies or programmes has amply demonstrated the reasons for the minimal successes recorded in Nigeria's economic development since independence.

It was revealed that factors, such as Regulations for: starting business, price control, foreign trade, financing, labour, foreign currency, as well as inadequate physical infrastructure, and policy instability (or policy reversal) have contributed either positively or negatively to the flows of direct foreign investments into and out of Nigeria (Coker, 2008). Other factors identified that have impacted on flows of direct foreign investment into and out of Nigeria include, safety or environmental regulations, crimes and theft, inflation, general uncertainty, corruption, and, terrorism.

It is now obvious that since Nigeria's industrial policies are a reproduction of the interest of ruling classes of both the indigenous and international bourgeoisie, not much by way of socioeconomic development is likely to be achieved through direct foreign investments. This is due to the nature of the State, and of direct foreign investments itself. The nature of the State and DFIs are particularly philistinic, oppressive, parasitic, and exploitative and exodogenously orientated. Public policies are most often disjointed and disarticulated. Creation of internal vertical and horizontal linkages in the agricultural and manufacturing sub-sectors of the economy does not appeal to policy makers. Consequently, we must understand for instance, that as long as we continue to promote direct foreign investments through the assembling plants for Completely-Knocked-Down parts, very little by way transfers of innovations and technical knowledge is likely to be achieved. Hence, the study argues that if we are to achieve substantial socioeconomic development through direct foreign investments, we must first; re-orientate the focus and goals of public policy to reflect the general aspirations of masses of Nigerians. The goals and corporate practices of the direct foreign investments must aligned, or fit in with those of the host communities especially, if mutually beneficial relationship is to suffice.

Second, we argue that not much can be gain from direct foreign investments in Nigeria, because of these other factors, heavy politicization of investment locations, lack of transparency in the political and business environments, reluctance to transfer technology, the constitution of Nigeria as one of the dumping sites for obsolete goods and services, and continuous collaborations of both the indigenous business to underdeveloped Nigeria

Third, dependence on DFIs may not provide the answers to our developmental problems as much of the capital raised therewith are transferred out the country through a number of ways and means. These ways and means have been described elsewhere. In fact, substantial amount of the so-called direct foreign investments are locally sourced through loan facilities granted by local subsidiaries of the multinational finance houses. We therefore argue that if local entrepreneurs are adequately empowered financially to set up mega businesses like the ones in South Korea; Nigeria is likely to achieve an accelerated socioeconomic and political development.

Finally, a stable socioeconomic and political climate is prerequisite for attracting for not only local investments, but also foreign investments. We have seen that the governments in Nigeria have not sufficiently provided those conditions: the bad state of our infrastructure; lack of transparency and diligence in business, political instability induced by rigging of elections, political assassinations, arsons, military coups and other forms of violent behaviour displayed especially by the DFIs host community can only deter a smooth operations by these companies. It is now obvious that, if the government in Nigeria does not comprehensively address the fundamental problems of the Niger Delta area, with a view to solving them the recent spate of killings, arson, kidnapping or taking of hostages, vandalization or blowing up of pipelines will continue to be on the increase. This will definitely discount immensely on government efforts to achieve an integrated socioeconomic and political development in Nigeria through direct foreign investments.

4. The way forward

Given the little successes that have been achieved over the years, in attracting direct Foreign Investments into Nigeria, we recommend the following:

First, there is a need to further strengthen the State to provide sound institutional and legal frameworks as well as an enabling environment conducive for direct foreign investments in the economy.

Second, political and bureaucratic corruption must be fought with a renewed vigour to create an ennobling environment that will enlist the trust of foreign investors to come and invest in the sectors of the Nigerian economy where we lack expertise or funds. Anti-corruption agencies saddled with the responsibilities of fighting corruption and other related offences should be well funded and strengthened in terms of their legal and administrative efficacy.

Third, there is the need to, in a committed way, reform the power sector in such a way and manner that will lead to the sustained generation and distribution of electricity supply that will drive our economy. Once it is established that power supply is steady and reliable, direct foreign investments will be attracted to come and do business in Nigeria.

Fourth, investment policy should strive to ensure that adequate provisions are made for the social corporate responsibility of the MNCs especially in order to enhance peace and harmony between them and host communities.

Fifth, policies and legal frameworks that strive to induce peace should be pursued in managing, handling and resolving communal conflicts that tend to arise from ownership of land, distribution of benefits such as compensations and employment possibilities.

Sixth, the policy and legal frameworks for DFIs should be reviewed in line with the people desire for rapid socioeconomic development through transfer of genuine technology to the country: assembling plants for completely knocked-down-parts should de-emphasized and in its place green field investments with foreign investors with high technological knowledge should be pursued. In addition, the element of local value added content requirements on goods and service produced in Nigeria should be fully implemented.

Finally, the Nigerian governments must ensure that ethnic and religious violence is properly managed and resolved in order to induce an environment favourable for both local and foreign investments in the country as investment can only thrive in a stable and peaceful society.

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