

# Tracing the development of oil regimes in Nigeria from discovery until the present: who & how it was designed to serve

## Introduction

Oil legal and fiscal regimes in Nigeria since the discovery of oil in 1907 have been influenced by several key factors, and can be organised according to five overarching and broadly chronological themes. First of all, the period between 1907 until independence in October 1960 can be characterised as the British monopoly era, when an exclusive exploration licence for the whole country was granted to Shell D'Arcy (a consortium of Shell and the precursor to BP – the Anglo-Persian Oil Company). Secondly, in the late colonial era and into the post-independence period, there was a broad movement of indigenisation, influenced in part by global trends and more specifically by Nigeria's increasingly close relationship to OPEC. This led to a rise in government take and ultimately to the formation of a state agent for equity participation – firstly the Nigerian National Oil Corporation (NNOC) and then the Nigerian National Petroleum Corporation (NNPC). Thirdly, the Nigerian civil war was fundamentally a resource war masquerading as ethnic conflict, centring on the question of whether control of Nigeria's oil assets in the Niger-Delta should be at the centre or in the region. Fourthly, the influence of global market dynamics on the increasingly petro-dominated economy (at least in terms of government revenues) has led to dramatic boom and bust cycles, reaching the high water mark under President Shagari in the 1980s, and arguably at their lowest ebb in the present moment. Finally, there has been a slow shift from a Shell-dominated onshore sector to a more competitive offshore sector. While onshore oil remains technically more feasible, tensions and insecurity in the Niger Delta, in the context of a more globalised crude supply chain, mean that deep-water is likely to be the cornerstone of the Nigerian oil sector, as long as it lasts. To complement this move, there have been repeated attempts at wholesale reform of the legal and fiscal regimes for the sector, which have so far not met with success.

What follows is a more in-depth assessment of these five key themes/eras.

## 1. The British Monopoly Era

Oil exploration in Nigeria was stimulated by successes recorded by the Anglo Persian Oil Company in the Gulf, in particular the discovery of the Masjed Soleiman Field in 1908 and events leading up to this discovery. The previous year, Nigerian Bitumen Oil Corporation had been granted an exploration licence for southwestern Nigeria under the Southern Nigeria Mining Regulation (oil) of 1907. However, the firm, owned by John Simon Bergheim - a British Engineer and businessman with previous experience in the Persian Gulf - left the country at the onset of World War I, despite having found some oil along the Lekki-Lagos Lagoon. The 1907 regulation caused friction among Lagos elites, particularly section 5, which granted the Governor of Lagos the rights to enter into agreement with traditional rulers on the sale of surface and sub-surface minerals without any rental payment.

The process of unifying the Lagos colony, the southern and northern protectorates

into the country of Nigeria began in 1906 when the colony of Lagos was amalgamated with the rest of southern Nigeria. The aim was to secure a central policy and pooling of resources, enabling revenues from southern Nigeria to cover the costs of the financially unproductive protectorate of the North and reduce expenditures from London. By the time of the outbreak of the First World War, this issue had become a financial imperative. Amalgamation of the Northern and Southern protectorates consequently took place in 1914, overseen by Lord Lugard.

### **1914 – Colonial Mineral Ordinance**

The first oil related legislation in the newly amalgamated state, replacing the 1907 legislation, was the Colonial Mineral Ordinance of 1914. Section 6(1) of the ordinance gave birth to the British monopolistic period of Nigerian oil:

“No lease or license shall be granted except to a British subject or to a British company registered in Great Britain or in a British colony and having its principal place of business within her majesty’s dominion, the chairman and managing director (if any) and the majority of the directors of which are British subjects.”

The ordinance effectively restricted the granting of leases and licences to British subjects and/or British companies, ensuring that local companies could not participate in the early days of Nigerian oil. As Sarah Ahmed Khan notes, “Thus the Nigerian oil industry was made into a British monopoly, with complete ownership rights vested in the Crown.” The granting of sole concessionary rights over minerals empowered the Governor General to grant licences only to British companies and subjects and facilitated the entry of two British oil companies a decade later.

In 1916, a follow-up Mineral Ordinance became law, consolidating the British Crown’s control and ownership of mining and oil assets by providing a foundational definition of ownership. Section 3(1) stated,

“The entire property in and control of the minerals, and mineral oils, in under or upon any land in Nigeria, and of all Rivers, streams and water courses, throughout Nigeria, is and shall be vested in the Crown, save in so far as such rights may in any case have been limited by the express grant made before the commencement of this ordinance.”

This definition of ownership was not repealed until the Petroleum Act of 1969. It should be noted that the 1916 ordinance recognised the role of local landowners and required that compensation be paid for damage to buildings, economic trees or crops. The ordinance also made reference to surface rental payments, although its not clear if these payments were ever made to landowners. In a confidential report from the time, the British Colonial Office required that mining operations be carried out in accordance with a planned programme which determined social implications in advance in order to regulate and counter the potential negative effects of mineral exploration and exploitation – an early precursor of the social and environmental impact assessments of modern times.

In 1921, the 1916 ordinance was finally implemented, with exploration rights in the Niger Delta granted to D’Arcy Exploration Company (a nod to William Knox D’Arcy, founder of the Anglo-Iranian Oil Company) and Whitehall Petroleum Company. However, neither company found oil of commercial value and returned their licences in 1923. In 1937, Shell D’Arcy (a consortium of Shell and Anglo-Iranian Oil Company, which became BP in 1954) was then granted exclusive exploration and prospecting rights for the whole of Nigeria, through the Colonial Mineral Ordinance,

marking a watershed for Nigerian petroleum, which resulted in an initial discovery of hydrocarbon deposits.

The Mineral Oil Ordinance of 1945 led to tension with local landowners in the Niger Delta as well as the National Council of Nigeria and the Cameroons (NCNC) political party, on the grounds that this legislation did not require consultation or consent from landowners prior to exploration or production. This was the first significant local resistance to the development of the oil sector in Nigeria, to be echoed in the 1960s with Isaac Boro and Nottingham Dick and then after 2003 with Niger Delta militancy and the rise of the Niger Delta People's Volunteer Force and the Movement for the Emancipation of the Niger Delta (MEND) and more recently (since early 2016) with the Niger Delta Avengers.

Shell D'Arcy began drilling in 1951, with the first test well near Owerri. That same year, Shell's Oil Exploration Licence (OEL) was reduced from covering the whole country to 1/6<sup>th</sup> the size and focused on acreages in southern Nigeria. Finally, in January 1956, Shell discovered in large commercial quantities at Oloibiri at a depth of 12,000 feet. Further discoveries were made by Shell at Afam, Bomu and Ebubu. In April 1956, the company changed its name to Shell-BP Petroleum Development Company of Nigeria. By 1957, Shell-BP's acreage was further reduced by a third into OPLs, and by 1962, 38,860km<sup>2</sup> of these OPLs were converted into OMLs, relinquishing the remaining area to the government.

Production of petroleum at Oloibiri began in February 1958 after installation of a pipeline network from the field to Port Harcourt. By March 1958, daily production had reached 5000 barrels. It's not clear what tax or royalty Shell-BP initially paid on this production, but the Petroleum Profits Tax Act clarified arrangements the following year (see next section).

In terms of a challenge to Shell-BP's historical monopoly over Nigerian petroleum, in 1955, Mobil was granted an OEL covering 730,005km<sup>2</sup> of the northern Nigerian acreage relinquished by Shell. Further OELs were granted to Mobil, but all expired and were returned to government due to lack of discovery. However, the commercial discovery of 1958 combined with OMLs granted to Shell in 1962 led to greater interest from competitors, with Gulf, Agip and Safrap granted OPLs in the early 1960s. This period was also the beginning of interest in offshore concessions - Shell-BP's exploration and production activity had all been onshore. In 1961, Shell-BP was granted four offshore OELs, while Mobil, Texaco and Gulf were granted two each.

Despite the added competition, in this pre-OPEC and pre-indigenised era for Nigerian oil, oil companies determined their own production levels and price. Until Nigeria's involvement with OPEC (first as an observer, then as a member), its interest up until the mid 1960s was simply to collect tax, rent and royalty. Significant incentives were given to exploration and production, sometimes at the expense of government take.

## **2. Late Colonial to Post-Independence**

In 1954, Nigeria was divided into three regions (Eastern, Western and Northern) through the Lyttleton Constitution, which firmly established federalism and paved the way for independence. Three years later, the Western and Eastern regions became formally self-governing under a parliamentary system. It was in this context that the late colonial period of Nigeria – the remaining years up to independence in 1960 -

saw a challenge to the ownership and control of oil from the centre – a legacy of the 1916 Mineral Ordinance.

In 1958, the Raisman report on fiscal policy in Nigeria recommended that instead of extractive rents and royalties remaining wholly in the three regions (as previously), they should be shared via a Distributable Pools Account, on the basis of the host region receiving 50%, the federal government 20% and the other regions deriving 30%. The uptake of this report marked the beginning of the dilution of powers of the regions in favour of national government. It also set the stage for a confrontation between secessionists in “Biafra” and the Nigerian side, and led to civil war.

Colonial correspondence from the time reveals just how much steam was building up in the late 1950s. In June 1956, a British colonial official reported back to base (London) on his meeting with Nnamdi Azikiwe, head (and funder) of the NCNC, a political party with strong affiliations to south-eastern Nigeria and the Igbo ethnic group specifically,

“Dr Azikiwe then tackled me on the question of revenue allocation. Briefly, his point was that if the West and the North were to continue to insist on the principle of derivation, the East would then ‘regionalise everything’, including minerals.”

By February 1959 and post the implementation of the Raisman report, with independence looming, British officials were increasingly aware that the tensions between an entitled (and colonially privileged) north, with no petroleum resources and an undeveloped economy, and the oil-rich south-east, might threaten to pull the country apart. This was for the most part the strongest legacy of amalgamation, which had created a country divided into two parts. As Ruth First noted, “For all the formal act of unification, Nigeria was still run as two colonies... two heirs shared the estate, but they were unequally treated in the will.” The clash between north and south, in the context of the power vacuum of independence and increasing oil revenues, had a worst-case scenario. One passage, in a colonial document from February 1959, reveals this fear,

“Initially on independence therefore it seems pretty clear that the sentiment of unity will prevail. Whether it will stand up to all the strains of independence and the new pressures that will then be put on Nigeria is a little more difficult to foretell [...] If the North continues in power, there will clearly be little urge on their part to break away from the Federation. Nor can one see the West wishing to do so. There is a slight possibility that the East, fortified by oil royalties, might seek to do so but it is not at all probable.”

### **1959 – Petroleum Profits Tax Act**

It was in the context of a demand for greater fiscal control of the petroleum sector that the Petroleum Profits Tax Act (PPTA) became law in 1959. Although dated 23<sup>rd</sup> April 1959, the Act was given retroactive effect from 1<sup>st</sup> January 1958, ensuring that all commercial production at Oloibiri was covered under the law.

The key component of this ordinance was to increase government take. The ordinance set out a 50-50 profit-sharing split with foreign producers, with assessment based on the companies’ realised price for the volume of crude oil produced and exported. This 50-50 profit-sharing model was borrowed from practices in the Middle East in the 1950s, themselves basing their model on Venezuela, which introduced an equal take system in 1948.

Demand for an increased government take was only one element in reaction to the

history of a foreign-controlled sector. The call for greater ownership of productive assets was the second key component. In 1962, the Nigerian government signed a concession agreement with the Nigerian Agip Oil Company, which included the option for the government to acquire 1/3 equity in the company. This option was finally exercised nine years later in 1971, together with a 35% stake in Safrap (the French-government owned forerunner to Elf). Nigeria's interest in partial ownership of private sector exploration and production was driven by both an internal dynamic – the heyday of immediate post-independence pride and nationalism, but also by an increasing general interest in the international dimension of the oil business, and the manoeuvres of OPEC in particular. In 1964, Nigeria attended its first OPEC conference as an official observer. The influence of OPEC was first felt tangibly in 1967, when OPEC terms for tax assessment were adopted in Nigeria with the passing of the Petroleum Profits Tax (Amendment) Decree. This decree ensured taxes and profits were assessed on posted prices, with royalty assessed on the basis of current operational expenditure rather than bundled into the state's 50% share of profits. For the next few years (until 1973), the royalty rate was set at 12.5% and the Petroleum Profits Tax at 50%.

### **3. Biafra and Beyond**

While most discussions, papers and books on the causes of the Nigerian civil war (1967-70) have tended to focus on the ethnic aspect of the conflict (Igbo “Biafrans” secessionists versus “Nigerians”) comparatively little attention has been placed on the civil war as driven by the struggle to capture oil rents. By 1967, Nigeria was producing 580,000 barrels per day, of which 84% was produced by Shell-BP. At this time, Britain was also the major (40%) recipient Nigerian oil. A military coup in 1966 had removed the independence civilian Prime Ministership of Tafawa Balewa, with General Ironsi taking over power as acting president. Soon after this, the 1966 coup began to be perceived as ethnically-driven, with mostly Northern and Western region politicians killed and Ironsi himself was Igbo. A pogrom of Igbos living in the north began and then a counter coup, with Colonel Yakubu “Jack” Gowon coming to power. By now, Colonel Chukwuemeka Odumegwu Ojukwu, the Governor of the Eastern Region, began to call Igbos to return home, and a secessionist movement began. After a deadlock in talks between delegates of the Eastern Region and the Federal Republic of Nigeria in 1967 in Aburi in Ghana, a breakaway and Igbo-dominated Biafran government was formed, with the intent to replace the Eastern Region with autonomous government outside the purview of the Federal Republic of Nigeria.

Immediately, the question of taking control of Niger Delta oil became of prime importance. The nascent Biafran government began to demand exclusive royalties from Shell-BP. The military head of state, General Jack Gowon, responded by dividing the country into twelve states, with the Eastern Region divided into three states: South Eastern State, Rivers State and East Central State. The core Igbo state – East Central – was effectively cut off from the oil-producing Niger Delta to the south. Ojukwu responded by declaring the Eastern Region to be the Republic of Biafra. This tit-for-tat over control of Niger Delta oil production quickly acquired an international setting, with the French government backing the Biafran forces, partly with the aim of reducing British influence in West Africa, but also to protect its interests in Safrap. The British government eventually fully committed to backing the Federal Government to protect its own interests in Shell-BP.

The scene was set for the first civil war of television era, with an alleged starvation programme inflicted on the southeast leading to memorably awful images of children

with kwashiorkor symptoms projected around the world. After three years and over two million direct and indirect deaths as a consequence of the war, the Biafran side capitulated in January 1970. In terms of consequences of the civil war for the petroleum sector, the trajectory for much stronger central control was firmly set in place for the rest of the decade and beyond.

### **The Petroleum Act 1969**

In June 1968, an OPEC conference resolution advised member countries to acquire participation in and control over all aspects of oil operations and included a participation clause allowing host governments to acquire a 'reasonable level of participation in concessions'. The Companies Decree of Nigeria complemented this guidance in October 1968, requiring all companies operating in Nigeria to be registered as Nigerian Corporations. This enabled the Nigerian state to have better access to financial information for fiscal compliance purposes.

Once promulgated, the 1969 Petroleum Act (Decree No. 51) finally annulled the original 1914 Mineral Ordinance. The Act vested all ownership and control of the industry in the state and included local content provisions. The Act first of all required the continuous recruitment and training of Nigerians. For example, OML holders were obliged to ensure that within ten years of their lease being granted, a specific percentage of employees (across various ranks) were Nigerian citizens. The legislation also specified the forms, rights, powers and restrictions on the various exploration and production licences. Again, Oil Exploration Licences, Oil Prospecting Licences and Oil Mining Leases could only be granted to Nigerian citizens or companies incorporated in Nigeria – a clear reversal of the 1914 ordinance.

An OPEC resolution in 1970 included as an objective for its members a minimum tax rate of 55%, which was later confirmed as a requirement in the Tehran Agreement of February 1971. In line with this, further amendments were made to the original PPTA in 1973, when petroleum tax was raised to 55%, while royalty rates remained at 12.5%. Then, in 1974, the petroleum tax was further raised to 67.75% and royalty rates to 16.67%. Again, in 1975, the petroleum tax was raised to 85% with a 20% royalty. It should be noted that the changes in 1974 and 1975 were in line with various OPEC conferences in 1974.

Alongside hikes in the fiscal regime and increased royalty demands, the 1970s saw a much stronger requirement for state involvement. As Sarah Ahmed Khan notes,

“As production grew and the oil sector became significant for the Nigerian economy, petroleum legislation evolved to take into greater account the interests of the state in terms of oil revenues and profits and to reflect this changing balance of power... Wholly owned oil company concessions evolved into joint-venture participation agreements where the state held equity interest in the concession, as well as into at least one production-sharing contract and one risk-service contract, where the government retained exclusive title to oil in the ground and contracted out production operations to the oil companies.”

Legislation requiring increased state participation in the 1970s was primarily focused on the gradual process of nationalisation deployed by the state through the Nigerian National Oil Corporation (NNOC) and its successor, the Nigerian National Petroleum Corporation (NNPC). The Nigerian government increased its stake in various joint ventures to 35% in 1971, to 55% in 1974 and to 60% in 1979.

The Nigerian National Oil Corporation (NNOC) was established in May 1971 by Decree No. 18, following on from the OPEC resolution of 1968. As noted, the

Biafran war had left the Federal government with the strong view that it should secure greater control over the petroleum sector and permanently ward off any possibility of secessionist movements in the future. The creation of the NNOC was therefore first key step in the indigenisation of Federal Nigerian interests – serving as the main agent of the state in the partial nationalisation of the industry.

After years of ever-closer involvement, in July 1971, Nigeria finally formally joined OPEC as a member country. By this year, crude production had increased from 5000b/d in 1958 to 1.5mb/d. Contributions from petroleum to export earnings had jumped from 1% of the total in 1958 to nearly 75%. In other words, Nigeria had become heavily dependent on oil – a petro state - and influenced by circumstances beyond her control such as the vicissitudes of the international market price for crude. The Nigerian military government under General Jack Gowon felt that OPEC membership would act as a buffer between the country and the often-volatile world oil market.

Following the establishment of the NNOC, a 1972 declaration mandated that no new concessions could be sold wholly to foreign concerns, requiring also that all unallocated/abandoned acreage (i.e. Shell assets) would become the property of the state. In 1973, the OPEC oil embargo during the Yom Kippur war saw the market price of crude quadruple from \$3 to \$12 – the so-called “first oil shock”, instigating a global economic recession. Nigeria did not join the embargo and thereby became second largest supplier of oil to the US and of critical geo-political significance to the West.

The following year (1974), NNOC had increased its participation in oil-producing companies to 55% and in 1976 it drilled its first exploratory well offshore, discovering commercial quantities of oil and gas. That same year, Major-General Olusegun Obasanjo became the military head of state, following the assassination of General Murtala Mohammed (who had deposed General Gowon in a military coup). Under Obasanjo (who ruled until elections in 1979), the current president Muhammadu Buhari was Federal Commissioner for Petroleum and Natural Resources.

The Nigerian National Petroleum Corporation (NNPC) was established by Decree No. 33 on 1<sup>st</sup> April 1977, integrating the functions of the NNOC and the Ministry of Petroleum. The NNPC therefore had the mandate over production, transportation, refining and marketing of crude oil and petroleum products, but also had extensive regulatory powers through its Petroleum Inspectorate department, which was established in the same Act. In addition, the NNPC had greater control in both borrowing and awarding contracts than the NNOC.

By 1979, the NNPC had acquired a 60% participation in most oil producing ventures, with an 80% stake in the former Shell-BP venture, following the nationalisation of BP in 1979.

#### **4. Boom and Bust**

By 1980, advancing on its gains from the first oil shock and the 1979 second oil shock (in the wake of the Iranian revolution), Nigeria had acquired 3.27% of global production of crude. Meanwhile, the naira was worth nearly half a US dollar. This was the era of conspicuous consumption among the government and the petro-elite in Nigeria. President Shagari, winner of the 1979 elections, famously stated that, "Nigeria's problem is not money but how to spend it."

As a consequence of reports emerging in 1979 that N2.8 billion was missing from crude oil sales for the period 1976 to 1979 (the equivalent of a year's crude oil sales from the NNPC), a commission was set up, led by a Supreme Court judge, Ayo Irikefe. The Irikefe Commission report of June 1980 found that no oil proceeds were missing or not properly accounted for, dismissing the allegations as "the greatest hoax of all time." However, this finding was met with great public scepticism at the time, with speculation around the missing billions long after the end of Shagari's tenure as president. As late as 1988, a former government official alleged that funds had been transferred from the NNPC's UK account to a private account, to avoid seizure by the British government after Nigeria nationalised BP's Nigeria interests in retaliation for British support for the apartheid regime in South Africa.

Nonetheless, the Irikefe Commission recommended that the NNPC be restructured, with the recreation of the Ministry of Petroleum and Energy, as well as nine NNPC subsidiaries, as well as the decentralisation of the three refineries. The new Minister would also Chair the NNPC Board to enable the NNPC to be more responsive to changes in the international oil industry, and in particular to OPEC.

The emergence and rise to global prominence of North Sea crude led it to become the dominant influence on Nigerian crude pricing from 1981 onwards. This had the consequence that Nigeria straddled two pricing systems – Brent and OPEC. In February 1983 and then October 1984, Nigeria unilaterally cut its crude oil ceiling price, responding to cuts in both British and Norwegian crude. OPEC was obliged to follow suit. Nigeria at the time was therefore the linchpin of the world crude oil pricing system, see-sawing between being influenced by North Sea Crude pricing and influencing OPEC pricing in turn.

Former petroleum commissioner Buhari became head of state as Major-General Buhari in 1983, in a coup that deposed Shagari, whose tenure continued to reek of massive corruption in the oil sector. However, Buhari's tenure was in turn characterised by murky "counter-trade dealings." An estimated 175,000b/d of crude oil was exchanged for lorries, car parts, chemical products, food and even airplanes. The main trading partners for these dealings were Brazil, Austria, Italy and France. It is estimated that approximately \$1.75bn goods were exchanged through these deals in 1984 and 1985, providing circumstantial evidence that Nigeria was significantly discounting its oil in return for goods and providing a disincentive for regular lifters of Nigerian crude.

In yet another coup, General Ibrahim Babangida (popularly known as "IBB") deposed Buhari in August 1985 and immediately discontinued the questionable counter-trade system. Babangida had a more accommodating stance towards OPEC, with Nigerian Rilwanu Lukman becoming Secretary General of OPEC in June 1986 as reward. The policy outlook under IBB became one of a focus on moderate prices, long-term price agreements and the restoration of confidence between buyers and sellers.

The NNPC was again restructured in 1988 – with the Petroleum Inspectorate separated out from the NNPC and merged with the new Ministry of Petroleum. Negotiated settlements on fiscal incentives developed in the 1980s and 1990s, such as the 1986 Memorandum of Understanding (MOU), which was revised in 1991 with additional incentives, as well as improved terms in Production-Sharing Contracts in 1992 and 1993 for deep-water acreages. The incentives typically took the form of enhanced production cost allowances and profit margins, as well as reduction in taxes (PPT and royalty) linked to capital/development expenditure.



By 1990, joint venture production accounted for 96% of total crude production in Nigeria, with NNPC's equity share being 1.7mb/d. Meanwhile, open bid rounds were held in 1991 and 1992. \$20 per barrel oil prices during the first Gulf War created a downturn in the petroleum sector in Nigeria. By the early 1990s, Nigeria took the first step in the direction of partial divestment of its share of certain ventures as a result of acute financial constraints. The profligate era of Shagari had become a distant memory.

## **5. Deepwater and Reform**

The dark days of the brutal military dictatorship of General Sani Abacha came to a close with his untimely death in 1998. Following on from an interim period with General Abdulsalami Abubakar in office, Nigeria returned to a democratic dispensation under President Obasanjo in 1999. A key feature of the Obasanjo era till the present has been increasing militancy in the Niger Delta, which rose to prominence following the 2003 elections shortly after the beginning of Obasanjo's second term. Alongside volatility and insecurity in the region has been the growth in illegal oil bunkering, both at a local, small-scale/artisanal level and at an industrial scale for an international market.

A suite of solutions to the conflict in the Niger Delta have been implemented following on from Obasanjo's second term and the tenure of Musa Yar'Adua (2007-2010) and then Goodluck Jonathan (the Vice President to Yar'Adua who became President in 2010 following the premier's untimely death). The Amnesty Programme provided benefits and training to ex-militants in return for handing in weapons; the Niger Delta Ministry was set up to provide further resources to the region. While these mechanisms quelled unrest under the tenure of a Niger Delta president and high oil prices, the return of Buhari as the democratically elected president in 2015 and the crash in oil prices has made the Amnesty Programme increasingly unsustainable. Increasingly powerful attacks on infrastructure and the return of kidnapping of expats in 2016 have returned Nigeria to the conditions of the second term era of Obasanjo, with shut-ins and low oil prices a double whammy that has dramatically impacted government revenues and raised the threat of a return to debt.

While there have been bid rounds from Obasanjo's first term in 1999 onwards (in 2000, 2001 (marginal fields), 2005, 2006, 2007 and 2013 (for marginal fields), the key dynamic of the democratic era has been the attempt at wholesale reform of Nigeria's legal and fiscal regimes for the oil sector. Successive Nigerian government administrations have tried to overhaul the petroleum sector, with limited success. Since Obasanjo's first term as democratically elected president, the reform has centred on policy and legislation. The policy and legal reform process began with the formation of the Oil and Gas Sector Reform Implementation Committee (OGIC) under Obasanjo in 2000 under the Chairmanship of Rilwanu Lukman, then serving as the Presidential Adviser on Petroleum and Energy.

By 2004, the OGIC had developed a national oil and gas policy, which covered upstream, midstream, downstream and also petrochemicals. The OGIC was reconstituted under President Yar'Adua in 2007, and the first draft of the PIB was prepared and circulated under his administration. In simple terms, this draft legislation separated the national oil company (the NNPC) from the regulator, set new fiscal provisions and addressed community issues. The Jonathan government continued with further drafts of the PIB, and on one reading began to prepare the NNPC for commercialisation as a standalone national oil company by setting up the so-called "strategic alliances" between the Nigerian Petroleum Development

Company (NPDC) and local oil firms, to take over the onshore assets divested by Shell and other International Oil Companies (IOCs). However, despite the president and his oil minister being from the Niger Delta, the PIB was not passed during Jonathan's tenure.

The reform process could have gone otherwise. During the era of high oil prices, the Production Sharing Contracts (PSCs) could have been renegotiated to increase government take. The three the three "re-opener" conditions – of the price of oil rising above \$20 per barrel, mega discoveries of reserves above 500 million barrels and more than ten years period since the signing of the contract all obtained. Alternatively, the Yar-Adua and Jonathan governments could have focused on restructuring the NNPC and institutional reform. Another option would have been to agree a strategic policy framework and an over-arching "petroleum master plan" (as happened in the energy sector). Instead, since 2007, the PIB itself became the battleground for policy disputes, principally between the government, which wanted to shore up discretionary power and government take, the IOCs through the local trade body the Oil Producers Trade Section (OPTS) and to a lesser extent local companies belonging to the Lagos Oil Club.

In terms of royalty rates and a fiscal regime, successive versions of the bill introduced different frameworks. For instance, the 2011 iteration prescribed a progressive royalty linked to production rates and oil prices with differentiations for oil and gas. In contrast, the 2012 update (the most recently available draft), stated (in clause 197) that, "There shall be paid in respect of licences, leases and permits under this Act such royalties, fees and rentals as may be contained in this Act and in any regulations made by the Minister pursuant to this Act." There was, in other words, no explicit reference to specific royalty rates in the main fiscal provisions clause, or elsewhere in the PIB. However the savings provisions indicate the existing royalty rates will continue to apply pending new regulations by the Minister. There was speculation at the time about the royalty regime that would subsequently be proposed, along the lines that,

"Information from official sources suggests that the minister is considering a new royalty regime which would replace the existing single-tier royalty regime with a two-tier regime, where the total royalty would be an aggregate of two distinct royalties: the royalty by average daily production plus the royalty by value based on price. Under the two-tier regime, production from all fields would attract royalties. The significant impact would be that producers from deep offshore fields which currently pay no royalties would become liable to pay royalties."

Despite Shell's longstanding history in Nigeria and at times entwined relationship with federal government officials, the company began divesting its onshore assets in the past few years as part of a strategic review process, which began in 2010 in the face of mounting security risks and losses. The company has suffered more than all others operating in Nigeria from pipeline vandalism, militant attacks and oil theft, losing \$1bn in 2013 alone due to sabotage. Shell sold eight blocks for a total of \$2.7bn in 2012. Shell's divestment was part of a trend. In the same year, Conoco Phillips sold its stake in the Brass LNG project as well as other upstream assets and a power plant to local company Oando for \$1.79bn. In the past five years, the IOCs switched their focus to more secure and operationally straightforward deep offshore operations.

These divestments presented an opportunity for Nigerian oil firms to step in and continue to develop the fields in the name of local content. Several local companies, such as Oando, Sahara and Seplat (as well as older players such as Conoil) became

well established under Jonathan and poised for growth. However, revelations in early 2014 by the former governor of the Central Bank, Sanusi Lamido Sanusi, that there was a \$20bn shortfall in oil revenues from the NNPC to the treasury through a range of bad practices (such as a fixed domestic crude allocation, crude oil swaps, revenue retention by the NNPC and so on) highlighted there had likely been massive oil theft.

It remains to be seen whether a sequenced approach to legal reform, beginning with the Petroleum Industry Governance and Institutional Framework (PINGIF) can be achieved in the remaining time available under President Buhari.

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