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Holding It All in Tension: The Risks and Opportunities of Doing Business in Nigeria

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Nigeria has the largest economy in Africa, with deep potential for growth in the energy, technology, and financial services sectors. However, entrenched public corruption and terrorist violence continue to plague this nation of more than 219 million, complicating the economic calculus for international business actors. The COVID-19 pandemic has underscored the precariousness of Nigeria's reliance on oil and tested President Muhammadu Buhari's commitment to his anti-corruption platform. Despite these challenges, Nigeria's economy has proven resilient, quickly recovering from a recession fueled by a drop in oil demand and emerging as a promising Fintech and technology hub. Further, women are making significant strides at the top of Lagos' financial institutions despite the Boko Haram-controlled north threatening the role and safety of women.

This Alert will address (1) the anti-corruption landscape in Nigeria, including recent political initiatives to curtail public corruption; (2) the role of the oil industry in the Nigerian economy and the associated corruption risks; (3) emerging money laundering risks, including the heightened difficulty of remittances during the COVID-19 pandemic and the arrival of Nigeria's first cryptocurrency, the eNaira; and (4) a brief overview of the risks and opportunities for corporations and financial firms entering Nigeria.[1]

Nigeria: Quick Facts[2]

- **Government Type**: Federal Presidential Republic
- **Capital**: Abuja (replacing Lagos in 1991)
- **Population**: 219,463,862 (July 2021 est.)
- **GDP**: $1.014 trillion (2020 est.)
- **Official Language**: English
- **Main Exports**: crude petroleum, natural gas, scrap vessels, flexible metal tubing, cocoa beans (2019).

Introduction to Nigeria

Nigeria, Africa's most populous country, contains more than 250 ethnic groups who speak more than 500 indigenous languages.[3] The country's population is split nearly in half between Muslims, who dominate the north, and Christians in the south. Previously a British colony, Nigeria gained increased autonomy over its internal affairs through a series of constitutions after World War II and secured its independence in 1960.[4] The nation's early years were marred by political instability, coups, and military rule, with the death of a military head of state in 1998 paving the way for a peaceful transition to civilian government and new constitution in 1999.[5] Nigeria's democracy has suffered a tumultuous infancy, with the 2003 and 2007 elections characterized by irregularities and violence.[6] However, 2007 brought the first transfer of power between civilian leaders, and the election of Muhammadu Buhari in 2015 marked the first peaceful transition of power across political parties. Buhari, a former interim military dictator and "converted democrat" carried the elections of 2015 and 2019 on an anti-corruption platform.[7] Nigeria's elites have adopted an unwritten agreement governing the fragile democracy that requires that power alternate between an individual from the Muslim north and Christian south every two terms, an arrangement that many citizens argue has exacerbated a fractured political climate.[8]

Since 2009, Nigeria has captured international attention as Boko Haram, a radical Islamist terrorist group, has undertaken a campaign of kidnappings across the north-east. Following the highly publicized kidnapping of the Chibok schoolgirls in 2014, armed kidnappings of children has become a profitable crime, with a ransom often understood as part of the cost of an education.[9] As desperate parents have made these payments rather than relying on the police, these terrorists have grown emboldened, causing an educational crisis and exacerbating instability.

Simultaneously, Nigeria is facing a renewed separatist movement in the southeast, with kidnappings, once largely a northern phenomenon, now common across the country. Igbo secessionists have recently joined forces with militants in Cameroon to fight for an independent state of "Biafra."[10] Violent conflict in Nigeria's middle belt between farmers and pastoralists also continues to cause unnecessary bloodshed. These grave security threats, coupled with persistent poverty and youth unemployment, have created a complex, overlapping crisis for Nigeria's fragile democracy.

In October 2020, protests erupted across the country, and among diaspora Nigerians around the world, demonstrating against police brutality at the hands of the Special Anti-Robbery Squad ("SARS").[11] The #EndSARS protests drew worldwide attention to Nigeria, drawing international outcry as the Nigerian government responded with violence against its citizens. On November 15, 2021, a Nigerian judicial panel ruled that army soldiers had committed "a massacre" against the peaceful protesters demanding an end to police brutality at the Lekki toll gate in Lagos.[12] According to the report, the officers "shot, injured and killed unarmed, helpless and defenseless protesters, without provocation or justification."[13] Eleven men were killed in the assault, with another four missing and over 20 injured.[14] The Nigerian government disbanded SARS in late October 2020, but has continued to deny that security forces killed any protestors at the gate.[15] The panel disagreed, awarding USD 1 million in compensation to 70 individuals who filed police brutality claims.[16] The panel recommended "holistic police reforms" with a standing committee "to deal with cases of violation of human rights by security agencies."[17] It remains to be seen how government leaders in Nigeria and Lagos will respond to the ruling.

Overview of the Anti-Corruption Landscape in Nigeria

Corruption is endemic in Nigeria, with Transparency International ranking it the 149th least corrupt country out of the 180 included in its survey.[18] Over the last two decades, Nigeria has enacted a number of anti-corruption laws, including the Code of Conduct Bureau and Tribunal Act of 1991; Corrupt Practices and Other Related Offences Act of 2000; the Economic and Financial Crimes Establishment Act of 2004 ("EFCC Act"); and the Money Laundering (Prohibition) Act of 2011.[19] The EFCC Act established the Economic and Financial Crimes Commission ("EFCC"), which has the authority to investigate and prosecute financial crimes such as fraud and money laundering.

Muhammadu Buhari, a former interim military dictator, was elected President in 2015 on an anti-corruption platform and re-elected on a similar platform in 2019.[20] During his tenure, the EFCC pursued several significant anti-corruption targets, including the president of the Nigerian Senate, Bukola Saraki.[21] The EFCC has been increasingly aggressive—securing 189 convictions in 2017, 312 convictions in 2018, and a staggering 890 convictions in the first ten months of 2019.[22] The EFCC has focused largely on fraud, money laundering, and self-dealing by high-level officials in state and federal government.

President Buhari's commitment to anti-corruption efforts was questioned after his appointment of Timipre Sylva as Minister of State for Petroleum Resources in August 2019. Sylva was arrested by the EFCC for fraud in 2013 while he was Governor of Bayelsa State, though the charges were eventually dismissed.[23] Buhari is also facing a crisis of confidence among young people, with the #EndSARS protests that swept the country in late 2020 highlighting the generation's discontent with the culture of impunity among officials.

Another recent regulatory development is the Companies and Allied Matters Act 2020 ("CAMA"), which empowers a Corporate Affairs Commission to keep a register of beneficial owners of shell companies in an effort to increase transparency and reduce opportunities for corruption and money laundering.[24] This law is intended to target the use of complicated shell companies to obscure ownership by those committing corruption or money laundering offenses.

However, this Act only covers limited liability companies, which by law must be registered with the Commission, limiting its potential impact.[25]

On April 19, 2021, Babajide Sanwo-Olu, Governor of Lagos signed the Public Complaints and Anti-Corruption Commission Bill into law, creating an independent agency to investigate the misappropriation of state funds by state government officials and registered contractors.[26] The agency is intended to complement the EFCC, targeting economic crime at the state rather than federal level. The agency will be empowered to trace, seize and confiscate funds generated through corruption and other financial crimes. If successful, this commission may serve as a model for other states and allow for the harmonization of the fight against corruption across Nigeria. The state and city of Lagos are particularly important jurisdictions in Nigeria's fight against corruption. Numerous multinational corporations maintain operations in the city, including Microsoft, Nokia, and Nestlé. Importantly, it is a hub for several international oil companies.

The Proceeds of Crime (Recovery and Management) Agency Bill 2020

In October 2020, President Buhari introduced The Proceeds of Crime (Recovery and Management) Agency Bill 2020 ("PCRMA Bill" or "Bill"), which aims to improve the government's ability to pursue the proceeds of crime by bolstering the toolkit of civil and criminal orders available to prosecutors.[27] Buhari's stated purpose for the bill is to crack down on money laundering and the transfer of illicit funds through the country's financial institutions.[28] The Bill, if enacted, would be enforced by a yet-to-be-created Proceeds of Crime (Recovery and Management) Agency ("PCRMA"), which would collaborate with anti-corruption and other law enforcement agencies to seize, freeze, and confiscate the proceeds of crime and increase transparency and accountability over the management of recovered assets.[29] Presently, all asset recovery is managed by the Federal Ministry of Justice. The PCRMA Bill also seeks to tighten the enforcement of anti-corruption laws through criminal penalties, civil forfeiture, and regulation.[30]

> *Criminal penalties*: The Bill allows for restraint orders that will limit defendants' abilities to interact with realizable assets, including gifts, and gives the courts increased flexibility over applications for restraint orders and enhanced custody orders.[31] In addition, the Bill includes provisions to assist law enforcement in removing illicit assets from defendants.[32]
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> *Civil forfeiture*: Under the current legal regime, prosecutors may only seek interim forfeiture orders from courts in asset recovery cases. The Bill would increase the offerings to include orders for preservation,[33] forfeiture,[34] confiscation,[35] restraint,[36] production,[37] and discovery.[38] The court would be able to grant such orders for property that the court believes are or represent the proceeds of crime, or are involved in or intended to be used in the facilitation of corruption. In addition, the Bill would broaden the ability of law enforcement to apply for preservation orders over assets that are not held in the name of the defendant and are instead in the custody of relatives or companies.[39] Law enforcement would be empowered to seize, at the first instance, any property under a preservation order it believes is in danger of being destroyed, damaged, or absconded with.[40]
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> *Regulation*: The PCRMA Bill would represent Nigeria's first comprehensive framework for asset recovery and the first government agency with the express purpose of managing recovered proceeds of crime. It also would create a Confiscated and Forfeiture Account at the Central Bank of Nigeria in which funds would be properly reconciled and labeled for ultimate use in development projects approved by the National Assembly.[41] The PCRMA would also be empowered to appoint private asset managers to control recovered property on its behalf.[42]

In addition, the Bill would allow the Chief Justice of the Supreme Court of Nigeria to appoint special courts for asset recovery cases to confront the backlog of these cases currently stuck in limbo.[43]

The Bill is not without its detractors. The EFCC and the Independent Corrupt Practices Commission have complained that the Bill will dilute their authority, with others arguing that it will enhance bureaucratic duplication and exists merely to bolster President Buhari's political reputation.[44] Even those who embrace the law acknowledge that it will not be sufficient to win Nigeria's fight against corruption, noting that the country's Whistleblowing Policy has yet to be codified into law and that Nigeria has not yet come into alignment with the United Nations' Convention against Corruption.[45]

In order to secure its enactment, the Bill will need the support of civil society and a level of trust that the government will enforce the Bill properly. The Bill passed the second reading in June 2021 and was referred to the Senate committee on Judiciary, Human Rights and Legal Matters for deliberation. Although the committee's report should have been released two weeks later, no such report has been published as of January 17, 2021.[46]

International Enforcement Actions

Domestic actors are not alone in seeking to crack down on private-sector corruption in Nigeria. A former trader for Glencore, the Swiss multinational commodity trading and mining company, confessed to paying millions in bribes to Nigerian officials and intermediaries and agreed to cooperate in a U.S. Department of Justice investigation into his former employer.[47] Glencore had previously relied on intermediaries, which often act as conduits for bribes.[48] The trader's confession highlighted the widespread and institutionalized nature of the corrupt payments, which were frequently made to the benefit of state-owned oil company officials. In 2017, the Department of Justice's kleptocracy team seized $145 million in assets, including homes in New York and California that it alleged had been purchased for Nigeria's oil minister using embezzled funds provided by Glencore in exchange for crude oil cargoes.[49] In response to the allegations under the Foreign Corrupt Practices Act, Glencore has promised widespread reforms, including the elimination of intermediaries from its business model and reducing operations in high-risk countries.

Nigeria's Oil Industry

Nigeria's economy is heavily reliant on oil production: Oil represents 90 percent of total exports and two-thirds of government revenue.[50] The COVID-19 crisis drastically decreased global demand for oil, lowering the price per barrel and leaving Nigerian producers with excess supply. In November 2020, national production decreased from two million barrels per day to 1.4 million barrels.[51] Nigeria's budget assumes a price of $57 per barrel, but the actual price dipped below $30 in 2020, threatening a catastrophic budget shortfall.[52] Domestic instability exacerbated oil woes, with an estimated 200,000 barrels of crude oil lost every day to theft and vandalism.[53]

Nigeria's economy is not equipped to weather such shocks. As of early 2021, Nigeria has an unemployment rate of 27.1 percent, 43 percent of its population living in extreme poverty (less than $2 per day), and 41 million children out of school.[54] At least two out of every three households saw their wealth decrease in 2020. By 2022, Nigeria is expected to have 20 million more citizens enter extreme poverty, raising the total to around 100 million.[55]

The drop in oil demand simultaneously led to the devaluing of the naira and a shortage of dollars and other foreign currencies. Nigeria officially entered recession in 2020 after its GDP contracted for two consecutive quarters, as the cumulative GDP for the first nine months of the year hit -2.48 percent.[56] However, the economy showed hopeful signs of recovery in the final quarter of 2020, as growth in the agriculture and telecommunications sectors offset a portion of oil losses.[57] By 2021, Nigeria's economy was experiencing consistent growth: Nigeria's National Bureau of Statistics reported 0.51 percent growth in Q1, 5.01 percent in Q2, and 4.03 percent in Q3.[58]

Nigeria's oil wells continued producing throughout 2020 despite the drop in demand. The country lacked the capacity to store all of the excess oil it generated, forcing a choice between shutting down wells and paying someone to take the oil off their hands.[59] Government officials preferred the latter. The decision to pay third parties to move and store oil presents a major opportunity for corruption in an industry known for graft.[60]

Nigeria's anti-corruption initiatives have sought to address widespread corruption in the oil industry. In 2017, the EFCC charged two major oil companies and several individuals, including the former Nigerian Attorney General Mohammed Adoke, in connection with a 2011 sale of an offshore oil block.[61] The Commission alleged that the firms paid $1.8 billion for the block while knowing that the money was to end up in the private accounts of Dan Etete, a former petroleum minister who had previously been convicted for money laundering.[62] Nigeria first filed suit against the oil companies and several executives in Milan. The corporations were acquitted of bribery and corruption on March 17, 2021.[63]

Money Laundering Risks: Remittances and the Advent of the eNaira

Money laundering is a persistent issue in Nigeria that presents in a variety of forms. In addition to the money laundering risks associated with the concealment and transfer of corrupt payments to officials and intermediaries, deficiencies in the financial services offered to everyday citizens provide opportunities for private actors to move illicit funds through alternative channels. Given the alarming role of insurgent groups in the country, money transfers conducted in Nigeria often pose a heightened risk of terrorist financing.

Nigeria has experienced consistently high rates of youth unemployment, forcing many young people to seek work abroad.[64] Many of these individuals return at least a portion of their paychecks to family members at home.[65] COVID-19 has severely restricted the ability of many Nigerians living and working abroad to send money home as remittances. In addition to lost jobs and income, the actual process of sending money has become more difficult.[66] The COVID crisis has forced many Nigerians to turn to mobile money transfers.[67] However, remittance transfers carry a number of money laundering and terrorist financing risks, including the laundering of proceeds from internet fraud, a persistent issue in Nigeria.

Lagos's burgeoning Fintech scene has stepped in to fill the gap for banking services. The former capital city has become the largest tech hub in Africa, attracting diaspora Nigerians who have been working and studying abroad to the start-ups in "Yabacon Valley."[68] Many individuals and companies in Nigeria lack access to traditional banking services, and are hungry for the access to mobile banking services Fintech innovators can provide. In October 2021, MFS Africa agreed to purchase the Nigerian start-up Baxi.[69] Baxi provides accounts, money transfer, and payment services across the country, and has processed over USD 1 billion in transactions since its inception.[70] The acquisition, which remains subject to approval by the Central Bank of Nigeria, will bring Baxi's customers into the MFS network, enabling international payments and access to additional services.[71]

Digital currencies have also emerged as a viable option, both for the ease of transfer and the perceived stability of their value as compared to the ever-depreciating naira. Nigeria's government has sought to get in the game: Nigeria became the first country in Africa to launch a digital currency with the introduction of the eNaira on October 25, 2021.[72] The Central Bank of Nigeria has identified a number of goals for the currency, including facilitating remittances, lowering transaction costs, allowing more people to enter the financial system and facilitating welfare spending.[73] Despite complaints of a cumbersome enrollment process, the first week and a half saw the registration of 400,000 new digital wallets and transactions of 46.3 million naira (USD 113,000). An official at the Central Bank called these numbers a "resounding success."[74]

Despite signs of early success, many citizens are not convinced. eNaira, which is based on blockchain technology, but is not a cryptocurrency, is viewed with suspicion by many who do not trust the government and argue that existing digital currencies could more easily meet the country's professed economic goals.[75] Nigeria's Central Bank banned cryptocurrencies in January after they were used to finance the #EndSARS government protests, to the uproar of Lagos's Fintech community.[76] The government took the position that cryptocurrencies would put the existing financial system in jeopardy and create opportunities for terrorist financing.[77] Many point to the government's decision to freeze the bank accounts of protesters as evidence that the eNaira will not be a safe investment.[78] Similarly, some doubt that eNaira, as a digital currency, will provide greater protection against money laundering and terrorist financing. Unlike cryptocurrencies, the eNaira is not an independent financial asset and is instead a virtual form of the existing national currency.[79] Without the unique capabilities of blockchain technologies, the eNaira remains susceptible to the same compliance deficiencies and economic and political pressures that often provide fertile ground for money laundering to proliferate in existing financial instructions, while making it easier for more individuals to engage in transactions. While the government has promised enhanced security protocols intended to mitigate the risk of abuse, the novel nature of this platform promises inherent uncertainty in how it will be utilized and potentially exploited.[80] It remains to be seen how the eNaira, and the other digital currencies with which it will undoubtedly continue to compete, will stimulate economic growth and provide new bribery and money laundering risks.

Conclusion

In the face of persistent corruption, money laundering, and terrorism risks, promising signs of hope remain. This includes the advancement of women in Nigerian society. Despite the dangers posed to women and girls throughout insurgent-controlled areas, women have been making notable gains at the top of Nigeria's financial institutions. Almost one in three CEOs at Nigeria's commercial banks are women, outpacing the rest of Africa as well as Britain, France, and Germany.[81] According to some estimates, achieving gender equity in Nigeria could increase GDP by $229 billion, or 23%, by 2025.[82] Additionally, despite widespread fears of the effect of the COVID-19 crisis on Nigeria's heavily oil-dependent economy, the country emerged from a brief recession in advance of expectations and has enjoyed economic growth in 2021.

The #EndSARS protests and the culture of technological innovation emerging in Lagos demonstrate that the next generation is no longer willing to abide by the status quo, instead demanding an end to official corruption and seeking to cultivate opportunities through the private sector. These developments represent an exciting opportunity for international business actors looking to tap into this growing and dynamic economy.

1. Disclaimer: Ropes & Gray attorneys are not practicing as Nigerian lawyers and do not provide direct assistance with litigation matters in the courts of Nigeria nor appear before any government agencies or other regulatory bodies in Nigeria.
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