

INSIGHTS

Nigeria's Energy Sector: Looking Back at 2022 and Looking Ahead in 2023

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We review the key events of 2022 in Nigeria's energy sector – a year that saw significant steps in the implementation of PIA, intermittent M&A activity and the continuing effects of crude theft. We also consider what we can expect in 2023, ahead of what appears to be Nigeria's closest presidential election yet.

2022: What happened in legal matters?

The Petroleum Industry Act (**PIA**) entered its second year of effectiveness and continued its slow march of implementation. The most notable step was the official "relaunch" of The Nigerian National Petroleum Corporation as NNPC Limited in July in a high profile ceremony led by President Buhari. As mandated in the PIA, NNPC Limited was incorporated as a new CAMA company which is wholly owned by the Nigerian government. Key consequences of this transition include:

- **Commercial entity:** NNPC Limited is a limited liability company (rather than a state-owned and state-funded corporation) and is intended to operate as a commercial entity. It is expected to publish annual reports and audited accounts and declare dividends to its shareholders – the Nigerian government, and therefore should remain a vital contributor to state revenues.
- **Independence from government and self supporting:** The new NNPC Limited is independent and should not depend on government support for its operations. It is expected to raise its own funds, which may lead to wider adoption of the incorporated joint venture model (as provided for, but is not mandatory, under PIA). Whether this will help unlock NNPC's capability to be a functioning and cash call paying partner in its joint operations remains to be seen. The extent of actual government control and direction over NNPC Limited will also only become clear through practice. PIA retains (for now) total government ownerships of NNPC Limited and control over the selection of its management team.
- **Royalty-paying entity:** NNPC Limited is, like any other oil and company operating in Nigeria, required to pay its share of all fees, rents, royalties, profit oil shares and taxes to the government in relation to any participating interests it holds in petroleum leases or licences.

NNPC Limited's first actions as a commercial entity were notable: these included exercising pre-emption rights over a 40% stake in OML 86 and OML 88 and buying OVH Energy's downstream assets (giving NNPC access to 380 fuel stations and eight liquefied petroleum gas plants), along with other purported pre-emptions over upstream M&A transactions. NNPC Limited has partnered with Afreximbank to raise US\$5 billion to support NNPC Limited's upstream business and energy transition plans. NNPC Limited also made senior appointments in 2022 with Senator Margery Chuba Okadigbo as chair and Mele Kyari continuing as CEO.

Another consequential step in PIA implementation was the promulgation of the Nigeria Upstream Petroleum Host Communities Development Regulations in June, setting out the requirements for the establishment and funding of host community development trusts. The new trust structure was one of the more controversial parts of PIA, with licence holders required to pay into the trust a levy of 3% of their actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the fund was established.

What happened in politics / regulatory matters?

The continuing impact of the global pandemic, the war in Ukraine, rising energy costs and the consequences of crude theft and spills made for a challenging final year in office for President Buhari.

Progress was made on some of Nigeria's key gas projects that form part of the "Decade of Gas" programme. Construction is under way on Nigeria LNG's Train 7 project, which promises to increase LNG production capacity by 35%. The Assa North-Ohaji South Gas project moves closer to completion and promises to accelerate Nigeria's transition towards cleaner fuels and improve availability of natural gas for power generation.

New projects were also lined up: Nigerian Minister of State for Petroleum Resources Timipre Sylva, alongside the Ministers of Energy of Niger and Algeria signed a memorandum of understanding to build an over 4,000km trans-Saharan gas pipeline at an estimated cost of US\$13 billion. The pipeline is intended to start in Nigeria and end in Algeria and be connected to existing pipelines that run to Europe.

The government launched its energy transition plan in 2022 as it works towards Nigeria's commitment to reach net zero by 2060 and provide access to affordable, reliable and sustainable energy to all of its citizens by 2030. Vice President H.E Yemi Osinbajo said that Nigeria would need to spend an additional US\$10 billion per annum on energy projects. Nigeria's federal minister of power, Engr. Abubakar D. Aliyu also announced new renewable energy policies: the national renewable energy and energy efficiency policy, the national renewable energy action plan, the national energy efficiency action plan and the sustainable energy for all action agenda.

Crude theft was rampant in 2022 and remains a huge critical and unresolved issue for Nigeria, resulting in the shutdown of two of Nigeria's major pipelines in July. Its impact is significant: the petroleum regulator estimated that Nigeria suffered a US\$1 billion loss in revenue in the first quarter of 2022 as a result, and the (attempted) flight of international oil companies from the worst-affected onshore acreage has continued.

What deal activity happened?

Panoro Energy received government approval for the sale of its interest in OML 113 to PetroNor at the start of the year. The Majors divestment plans continued but encountered significant delays, with some being indefinitely postponed and others becoming mired in regulatory approval roadblocks and facing the new appetite of NNPC to assert purported pre-emptory rights.

What is expected in 2023?

- **Politics:** The 2023 elections loom large, with the Presidential and National Assembly elections commencing on 25 February and Governorship and State House elections following on 11 March. The Presidential election is presently too close to call and we make no predictions. The onset of electioneering will slow regulatory decision making. International investments may pause until the election outcome is decided, key appointments made and the direction of economic and energy policies are explained.
- **Legal:** Industry participants will continue to grapple with the new PIA regime, while its implementation continues over the coming year. Expected key steps include:
 - The deadline for voluntary conversion of existing OPLs and OMLs into their new forms was set for February 2023. Licence holders will need to decide whether to adopt early conversion, balancing the extent of improved PIA fiscal terms against the consequences, including termination of all outstanding arbitration and court cases related to the relevant OPL / OML, removal of any stability provisions or guarantees given by NNPC, and relinquishment of no less than 60% of the acreage. If not converted by this date, then it becomes mandatory on licence expiry / renewal.
 - The deadline for segregation of upstream, midstream and downstream operations also falls in February. Any midstream and downstream activities that were being carried out as part of upstream operations require the grant of a new midstream / downstream licence.
- **Regulatory:** A new licensing round covering seven deepwater blocks has been announced for 2023, marking Nigeria's first offshore bid round in 15 years. A pre-bid conference is taking place this month with pre-qualification applications due by the end of January.
- **Transaction activity:** Upstream deals may need to wait for the dust from the 2023 election to settle, but there should be a resumption of the divestment programmes of the Majors in 2023. Outside of M&A, Nigeria is due to go to trial in London in January 2023 as it seeks to overturn an approximately US\$11 billion (including interest) arbitration award won by Process and Industrial Developments Ltd in relation to a 2010 gas project agreement. The award is now worth about a third of Nigeria's foreign reserves.
- **Projects:** Following significant delays, in part due to the COVID-19 pandemic, we understand that the Dangote refinery is expected to be officially commissioned by President Buhari in January and start up mid-2023. First gas from both the Ajaokuta-Kaduna-Kano pipeline and from Seplat's Assa North-Ohaji South Gas project is forecast for the first half of 2023.