UNDERSTANDING THE IMPACT OF CORONAVIRUS PANDEMIC AND THE CURRENT GLOBAL OIL PRICE WAR ON NIGERIA'S PETROLEUM SECTOR*

Abstract

The study explores and assesses the impact of the raging coronavirus pandemic disease and also, the present global oil price war on the petroleum sector of the nation's economy. The study acknowledges that earlier in 2020, that oil prices had fallen to almost frightening ebb per barrel above about the lowest ever recorded for quite years. Back then, the study further noted that the combination of shale oil production from the US and the predictions about sluggish global demand growth perhaps seemed to be responsible then. However, today, the study asserts that the coronavirus pandemic disease, which has slashed Chinese oil demand to a very challenging global threat, coupled with some renegades in the Organisation for Petroleum Exporting Countries (OPEC) who have decided to over shoot the approved quota, in the hope of compensating for the rapid decline in prices, appear to have aggravated the scenario. The outcome of these challenges seems to pose a threat to Nigeria in particular for being a mono economy, for her sole reliance on oil. The methodology adopted for the study was both descriptive and expository research methods. The findings of the study suggest that the current crash in oil prices and the rising debt profile of Nigeria seem to put a question mark on the future of the country, amongst others. The study therefore recommends, amongst others, an urgent diversification of the nation's economy to pre-empt future volatility in petroleum prices.

Keywords: Petroleum Profit Tax, Explore, Global, Diversification, Impact

1. Introduction: Conceptual Overview of the Petroleum Sector

The Oil business is a risky business. Investment in the search for and discovery of hydro-carbon is fraught with innumerable uncertainties, in spite of the technologies of today. Assumptions based on seemingly faultless data and predictions based on intricate analysis and interpretation, often come to naught, when another dry hole is struck. The huge investments in the Chad basins of Nigeria cannot be said to have been based on mere speculations,[1] yet multi-nationals, with proven world-wide expertise, had found no oil to justify efforts and resources expended so far. Even when the oil has been discovered in commercial quantity, its exploitation presents another daunting problem for the Oil companies. Oil where it is found may be the arid desserts of the Middle-East, or the impenetrable mangroves of the Niger Delta. It could even be found in environmentally unfriendly continental shelf, straddling both national and international boundaries. To harness this resource as the study shall disclose later, recourse has to be made to global expertise in the production and storage of petroleum, before its 'sale', or 'disposal'.[2] Another aspect, which is little understood but which is very crucial to the Petroleum Industry, is the volatility of crude oil prices in the international oil markets. It used to be the case that the multi-national oil companies of the years gone by, control the production, transportation, refineries and retail outlets, as a completely integrated entity. Under this regime, the management of their investment left nobody in doubt about who was in the driving seat. Crude oil producing countries, contributed nothing but concession rights, for meager returns in the nature of royalties. Then something drastic happened to the Industry, in the aftermath of the Yom-Kipur war[3] and the coming together of the Oil Producing Countries to form what is today known as the Organisation of Petroleum Exporting Countries (OPEC) cartel. The Multinational Oil Companies ceded control of the industry to the Cartel, albeit most unwillingly. Production rates and prices became what the cartel decides. The control of world economy momentarily moved to the Oil Producing nations, and both multi-national Oil companies and the world that had got addicted to previously cheap, but now expensive oil for their day to day needs, had no choice but to abide with the 'Posted Prices'[4] as dictated by the producing countries. Predictably, something again happened. At the height of the OPEC control, a barrel of crude oil which was sold for above $40 in 1979, inevitably started its downward nose-dive. The world economy was faced with one of the worst recessions and alternatives, including stringent measures were mobilized under the aegis of Organisation of Economic Co-operation and Development (OECD), to moderate oil consumption. Tacit support by the home governments of oil multinationals and cheap funds hitherto available to these 'majors' as they are often called, found other more

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[1] K. I. Dairo, Vanguard Newspaper, December 19, 2019, P.18.

[2] Part of definition of 'Petroleum Operation', Petroleum Profits, Tax Act, LFN 2004 (as amended) section 2.

[3] G. Umar, 'Causes of Yom-Kipur War', Available at www.ccsenet.org/journal/index.php/ijbm/article/view /6897(accessed07/10/2018) at 10.00am. (The Yom Kippur War resulted in the death of 2500 to 2700 Israelis and an estimated 10,000 to16000 Arab soldiers – and wounded over twice that number. The war was conceived by Egyptian President Anwar Sadat and Syrian leader, Hafer Al-Assad to recapture the Golan Heights and Sinai, which had been seized by Israeli forces in the humiliating Six Day War).

[4] Petroleum (Drilling and Production) Regulations, Petroleum Act, LFN 2004 (as amended), section 9 para 60(4).

profitable outlets[5]. Imperceptibly, but undeniably, financial speculators entered into the oil markets, and since then, neither the Oil Companies nor the Oil producing nations as major stake holders, had known any peace or certainty, in the control and/or determination of the Oil price.

The world oil market is today dominated by financial speculators who treat oil merely as they treat commodities like cocoa and coffee. Not only do these new controllers not know the colour of crude oil, they do not care what the level of price could be, inasmuch they can get their margin, from merely fiddling with computer key-boards, on which they play the oil game, oblivious or indifferent to the pains of the stake holders.[6] They are not bothered about the years of dogged and persistent exploration and the rigour associated with oil extraction from notably unfriendly environments by the Oil companies, who as in the case of Nigeria, are in Joint Venture participating agreements with the government, the huge investment notwithstanding. This graphic detail is considered very crucial otherwise our present effort to conceptualize the current discourse will turn to be a mere exercise in abstract speculation, or an arid academic exercise. The world has moved on from 1959 oil industry environment that midwifed the Petroleum Profit Tax Act, (PPTA). The PPTA is all about taxation of profits from petroleum operations which forms, amongst others, the subject of our next study. Today, the global oil politics seems to have taken a new twist. Oil prices have slumped to $30, the lowest in four years. Price of the Brent crude, for instance, has dropped by 10%, about $4 less than its price just recently. This slump in prices has been as fallout of the ongoing price war between Saudi Arabia and Russia. The drop-in demand, occasioned by the coronavirus outbreak and subsequent spread[7], was further worsened by the disagreement between OPEC and non-OPEC group on production reduction to stem undue oil price fall.[8] Russia and Saudi Arabia took an opposing stand, refusing to cut down production in line with the earlier arrangement. The result of the showdown is that oil-producing countries can now produce as much oil as possible, and sell at their desired price. Presently, Saudi Arabia's national oil company, Aramco, has declared its intention to increase production to 13 million barrels per day from April, whilst Russia declared that it could also increase its output to 12 million barrels daily. With their cost of production at $5 or less, the two countries (Russia and Saudi Arabia) could afford to sell their crude at rock bottom prices, leaving countries like Nigeria and some others in that bracket, to grapple with the after-effects whilst struggling to beat down production costs. No wonder Abba Kyari[9] had commented on how this could mean a disaster for Nigeria competing with countries which have low costs of production. He noted that with $23 per barrel as Nigeria's cost of production, the country seems to operate one of the highest oil production costs in the world.

2. Place and Role of Petroleum Profits Tax on Nigeria's Economy

Tax[10] is a compulsory financial exertion by government on its citizens aimed at servicing the needs of the state. Such levies take different hues, as they vary from government to government. In Nigeria, there are about five major statutes enacted for the purpose and they are: Personal Income Tax;[11] Companies Income Tax Act;[12] Capital Gains Tax Act;[13] Petroleum Profit Tax Act,[14] and Value Added Tax Act;.[15] Together, they form the hub around which government exercises its power of sovereignty by charging those that fall under each bracket, such as levying tax on income, gain, profit or purchases, as the case may be. Thus, Petroleum Profits Tax is perhaps the most important source of revenue generation for Nigeria,[16] and this is not difficult to explain. The shift from an agricultural based economy before and the early part of our independence in 1960, to petroleum based, particularly from the first military coup of 1965, has been monumental. Equally significant, has been government's fiscal teeth on profits accruing from the resource. Petroleum has been central to the economy as it has consistently provided over 90% of the foreign exchange earnings and had at various times contributed about 80% of the Gross Domestic Product (GDP).[17] With this type of imposing statistics, the Revenue Officials and other agencies of governments, had never stop tinkering with how best they can extract the maximum tax from the fertile source. From a seemingly

[5]P.S.A. Layade, Fiscal Reform Measures in the Oil and Gas Industries. A New Approach for Foreign Investment (1999) Mandatory Professional Training of Nigeria pp2-7.
[6]S. Antheme; challenges, Tides and Threats in Global Oil Politics Echoed by G. Kallo at IAFE Management Centre, Castle Gandolfo, Italy, May 29th – June2nd, 2000.
[7] R.Akinkugbe – Filani Coronavirus and the Global Oil Price War on Nigeria, *Sahara News*, March 24, 2020 pp11 15.
[8] *Ibid*.
[9] B. Kyari, Current Global Oil War A Threat To Nigeria, *ThisDay*, March 10, 2020.
[10] *FBIR v Nkob & Anor* (1974) 1 ALL NLR 1; *Pryce v Monoutshire Canal & RLY Companies* (1979) App Cas 197 at 202.
[11] Personal Income Tax Act CAP P8 LFN, 2004 (as amended).
[12] Companies Income Tax Act CAP P LFN, 2004 (as amended).
[13] Capital Gains Tax Act CAP C8 LFN, 2004 (as amended).
[14] Petroleum Profit Tax Act CAP VI LFN, 2007 (as amended).
[15] Value added Tax Act
[16]O.Okauru, Oil Accounts For About 75% Of Our National Budget, 2010. Available at http:/www.opec.org/opecweb/en/aboutus/24htm/(accessed4/3/2010)
[17] *Ibid.*

moderate and equitable 50/50 provision in the 60s, the scale gradually steeped to 85% of the profit from petroleum exploitation of today. However, with the decline in the global economy, and the drought in financial resources available to the multi-national oil producing companies, fresh fund to prosecute petroleum exploration and exploitation, dried up.[18] Prices in the crude oil market dropped to an all-time low, drilling and searches for new oil reserves reduced significantly, if not halted totally, and for a non-renewable resources, National governments, particularly Nigeria, had to do something. What they did was to mid-wife an agreement christened 'the Memorandum of Understanding' (MOU) in 1986, aimed at guaranteeing a minimum profit margin of $2.00 after tax and Royalty payments on the companies' equity crude oil and $1.00 per barrel margin on volume of crude oil lifted and sold, on behalf of NNPC, volumes, which the latter could not market on its own.[19] Apparently it was a compromise of exciting fiscal regime to arrest the dwindling revenue from the only economic life-line of government, during the lull in the global economy. However, twenty four years after, the MOU is still alive, having gone through a number of renewals and side letters, the last signed, with a commencement date of January 1st, 2000, existing side by side, with the Petroleum Profits Tax Act.[20] Given the time-tested axiom that while Revenue, (government) will always find ways of exerting the highest tax possible, and the Tax payer (international oil companies) will always strive for ways of paying the lowest tax possible, there must be obvious gaps between the PPTA and the MOU, to justify an interrogation of the fiscal regimes governing Petroleum Profits Taxation in Nigeria, with a view to bridging such gap, to the mutual benefit of all concerned. What is more, the role of the petroleum sector in the economy of the country is now seriously under threat sequel to the ravaging coronavirus pandemic, which has led to global shut down of plant and shops, coupled with the present oil glut, triggered off by world oil price war. The cumulative effect of these developments has resulted into a continuous decline in global oil price, with a mono economy such as ours at the receiving end.

3. Impact of the Coronavirus Outbreak and the Current Global Oil War on Nigeria's Petroleum Sector

On the last day of 2019, the World Health Organization's (WHO) China office heard the first reports of a previously unknown virus. The report was that the virus had triggered a number of pneumonia cases in Wuhan, the capital of Hubei province in central China, with a population of over 11 million. The virus, which has been renamed Corona virus Disease 2019 or COVID-19 (it was formerly known as the 2019-nCoV acute respiratory disease) by the WHO, has infected 76,936 people in mainland China, with a further 2, 051 cases reported from other countries[21]. At least 2,470 people had since died from the virus, a death toll far exceeding that of SARS (Severe Acute Respiratory Syndrome Virus) where 774 people were killed in more than two dozen countries in 2003. On Thursday, 6 February 2020, a 60-year-old US citizen the first confirmed non-Chinese victim of the illness had died in Wuhan's Jinyintan Hospital. Two days later, France confirmed five new cases in its Haute Savore region, including a nine-year-old, bringing the number of infected non-OPEC actors, fuelling a new era of volatility.[22] For Nigeria, an OPEC member, its path to quickly ramp up production is limited by operational, regulatory and infrastructural challenges. While non-oil GDP growth has shown welcome signs of improvement in recent years, close to 90%. Nevertheless, Nigeria's foreign reserves (FX) revenues still come from oil exports. Nigeria's oil price budget benchmark has already been blown out of the water several times in this 2020.[23] This latest rumble is the surest sign yet that the 2020 oil price average may be well below $50/bbI. Many countries that use commodity price benchmarks have not figured out how to weigh Black Swan events, that is, low probability, high impact of which the Corona virus is arguably one, in their budget assumptions. In this case, it is the manner in which Corona virus has spread in a deeply interconnected world that is alarming.

Global World Health Organization (WHO) Director-General, Tedros Adhanom Ghebreyesus, and his Organization, are at the brink of declaring a global pandemic with more than 100,000 cases now reported worldwide. Nigeria's economy has never fully recovered from the oil price crash that took hold in 2014 – 2015. The naira is still a classic petrocurrency whose fate remains intrinsically tied to global oil prices, at least without a seismic shift in economic structure. That shift is perhaps not a short-term task.[24] Right now, the stance by

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[18]M. Yusuf, UN Warning: Nigeria Economy Sliding Back To recession, *The Punch Newspaper*, March 30, 2020, Centre - Spread

[19] *Ibid.*

[20] Thus, the Supreme Court held in BPS Construction & Engineering Co. Ltd v FCDA that 'a Memorandum of Understanding or Letter of Intent/Side Letter, merely sets down in writing what the parties intend will eventually form the basis of formal contract
between them.

[21]U.Abdullahi, 'How the World Groans Under COVID-19 Pamdemic'. Available at www.ghtt.org/wordnews/php/ijbm/article/view/3402(accessed09/03/2020)

[22] *Ibid.*

[23]K. Okeke& U. Danladi, 'Evidence of, Petroleum Resources on Nigerian Economic Development', *Business and Economics Journal* Vol 2 5ED, 2020, 11-15.

[24]T.A. Ghebreyeusus, 'Assessing the Impact of Corona virus Pandemic on the World Economy' Available at http:/news.voa.us/2/h./Africa/7611407stm (accessed18/03/2020)

Nigeria's key economic actors to defend the naira will likely be tested by the expected further decline in Nigeria's foreign reserves - the Central Bank set a $30bn foreign reserves threshold for devaluation. Nigeria is treacherously close. About $9tn was wiped off in global equities in nine (9) days into early March.[25] A drop in foreign reserves in Nigeria, from $38 bn to $30 bn, can happen just as dramatically. Nigeria's FX reserves are there to help the Central Bank preserve the naira's value; Central Bank can sell FX reserves to buy their local currencies in all attempts to uphold the currency's value. This action depends on the supply of FX, and any action taken by Nigeria's Central Bank could actually provide an indicator to foreign speculators of impending devaluation. The cycle would be aggravated if foreign investors begin to exit Nigerian equities and bonds en masse. If the CBN strategy fails, and Nigeria runs extremely low on reserves, the naira could depreciate, allowing speculators to arbitrage. Nigeria's gross foreign reserves are at a similar level around $38 bn as they were in 2014/2015 when oil prices fall steeply - compare both periods with the $53bn in foreign reserves Nigeria had in 2008,[26] at the height of global financial crisis, and which still incurred a heavy economic toll on Nigeria. Devaluation would lead to increased importation costs for raw materials and other soft and hard commodities that have to be paid for using FX. Raw inputs for manufacturers will become more expensive and ultimate losers will be everyday consumers who will see further erosion in their purchasing power. A Central Bank intervention to adjust the value of the naira, is almost certain if FX reserves run below the threshold set. What is a bigger unknown is whether such an intervention will be heavily pre-emptive as the current official exchange rate is the longest-run of stability that Nigeria's FX regime has had in decades. Recently, lower interest rates in advanced economies have allowed Nigeria's Central Bank to ease rates locally, but if oil prices continue to come under pressure, putting further pressure on the naira, there will be pressure to like rates. The combination of rising inflation which is currently at about 12% and the naira devaluation risks may force the CBN's hand on rates. All of Nigeria's 2020 budget indicators; an oil production volume of 2.18 million barrel per day, oil benchmark of $57; N305 exchange rate to the US dollar, GDP growth rate of 2.93%, and inflation rate of 10.81%, now appear out of reach, and will most likely result in a downsizing of expenditure plans in 2020.[27] Global investment bank Goldman Sachs has lowered its Brent oil forecast to $30/bb1 for second and third quarter and by most estimates, the rest of the year will be gloomy. Demand is weak and dwindling; with cargoes of West African crude blends from Nigeria and other African countries now heavily discounted to buyers mostly in Europe or remaining unsold. There are no quick fixes for Nigeria, but this may be a good time to plug some of the wastages.[28] Nigeria needs to deregulate the downstream energy with a focus on gasoline subsidies, which promotes rent seeking and has fueled several inefficiencies within the downstream oil network. Nigeria spent approximately $28bn on subsidies between 2006 and 2018 alone,[29] a financial burden that hampers development in other crucial sectors. Nigeria is still three years away from the next election cycle in 2023, under an administration that is in its second and final term. Nigeria is still three years away from the next election cycle in 2023, under an administration that is in its second and final term. Thus, with little political capital to exploit here, there is probably no better time than this low price environment to revisit this issue. Deregulation before the end of 2020, would at least give the current administration the opportunity to demonstrate the longer-term benefits of a liberalized oil market, without the political pressure of high petrol prices.[30]

4. Current Reforms in Nigeria's Petroleum Sector

An Enquiry into the DOIBPSC (Amendment) Act 2019

Further to the Nigeria's government's announcement in 2017 of its intention to revisit the fiscal terms of existing Production Sharing Contracts, the Nigerian President Muhammad Buhari, on November 5, 2019 assented to the Deep Offshore and Inland Basin Production Sharing Contract (Amendment) Act 2019, otherwise known as the DOIBPSC (Amendment) Act. Although 11 years late, the PSC Amendment Act, which is a revenue-oriented legislation, seeks to introduce a new provisions in the Deep Offshore and Inland Basin Production Sharing Contract Act, (the 'PSC Act') with regards to royalty rates and periodic review of the PSC Act.[31] Under the erstwhile regime, royalties for Deep Offshore Production Sharing Contracts were based on sliding scale of water depth with the highest rate at 12% in areas between 201 to 500 meters water depth and 0% in areas in excess of 1000 meters if water depth. The PSC Amendment Act has changed this by having a combination of (i) a flat royalty rate for deep offshore and inland basins and (ii) changed in price of crude, gas and condensate. Thus this study examines the specific amendments introduced by the PSC Amendment Act and its implications.

[25] Hannex, 'Experts Predict Fluctuations in Prices', Daily Trust Newspapers, February 19, 2020.
[26] News Bulletin, Nigerian Bureau of Statistics, January – April Quarter, 2020, Centre spread.
[27] *Ibid.*
[28] D.Dairo, 'An Approval of 2020 National Budget', *Sunday Vanguard*, January 27, 2020, Centrespread.
[29] K. Idris, 'Reps Reject Motion On Repatriation', *The Nation Newspaper*, February 22, 2020, Front page.
[30] D. Lawal, 'Nigerians Health Status In China', *Sunday Vanguard*, March 03, 2020, p. 16.
[31] Deep Offshore Inland Basin Production Sharing Contract Act, Cap D3, LFN, 2019, sections 5 & 6.

An Examination of the Amendments:

Flat Rate Royalty Applicable to all PSCs Irrespective of Water Depth

Under the PSC Act, royalties were based on water depth depending on terrain with the relevant rates declining as water depth increases. The PSC Amendment Act provides for a flat royalty on all Deep Offshore PSCs (i.e. areas greater than 200m water depth) of 10% chargeable on the volume of crude oil and condensates produced from the relevant area. Also, the royalty rate of 7.5% on the volume of crude oil and condensate produced from the relevant area is applicable to Inland Basins which is a reduction from 10% applicable under the PSC Act. Price based royalty for the purpose of ensuring that

Royalty change on the basis changes in the price of crude oil, condensates and natural gas.[32]

Periodic Reviews of the Production Sharing Contracts

The PSC Amendment Act mandates the Minister of Petroleum Resources to review production sharing contracts every eight years. The erstwhile provisions of the PSC Act was silent on when the National Oil Company or the Minister of Petroleum Resources was expected to review production sharing contracts themselves but provided for the review of the PSC Act provisions after the first fifteen years from the date of its commencement and every five years thereafter.

Imposition of Penalties

The PSC Amendment Act provides for stiff penal provisions with regards to its violation. Specifically, it provides that any person who fails or neglects to comply with any obligations under the PCS Amendment Act commits an offence and is liable on conviction to a fine not below N500,000,000.00 (Five Hundred Million Naira) or to imprisonment for a period not less than five years or both. This new provision[33] under the PSC Act means that the fine or imprisonment not only applies to the provisions of the PSC Amendment Act but the violation of any provision of the PSC Act.

Matters Arising on PSC Amendment Act

There is no doubt that the Amendment Act would have far reaching implications on the economics of offshore exploration and production in Nigeria especially in the near term. However, the following are some salient implications arising mainly from the interpretation of the Act. The royalty rates under the price-based royalty are on a sliding scale basis with the rate changing on the basis of price. Historically, in the interpretation of the Petroleum (Drilling and Production) Regulations ('PDPR') with regards to the applicable royalty rates, we have seen instances where the Department of Petroleum Resources ('DPR') adopts an aggressive interpretation with regards to determining the applicable band for royalty without necessarily taking into consideration the sliding scale basis and this has led to disputes in the past. It is not unlikely that there may be interpretation issues on how royalties are to be determined for which judicial interpretation may be required. The PSC Amendment Act does not provide that the flat royalty rate is to be applicable to natural gas. Again, this may give rise to interpretation issues as to whether the existing flat royalty rates on natural gas of 5% for offshore areas under the PDPR would continue to apply in addition to price based royalties as contained in the PSC Amendment Act bearing in mind that the PSC Amendment Act is silent on the existing royalties under the PDPR, there is the likelihood that the existing royalty rate under the PDPR would apply in addition to the price-based royalty for natural gas. Also, we note that the PSC Amendment Act does not mention that price-based royalty shall be applicable to inland basin. While the PSC Amendment Act expressly mentions frontier acreages and deep water, it is arguable that the inclusion of 'Inland Basin' expressly excludes it from price-based royalty. This may be a source of potential dispute between the DPR and PSC Contractors as there is the likelihood of divergence of opinion with regards to interpretation of the PSC Amendment Act.[34]

Emergence of the Petroleum Industry Bill (PIB) 2019

It appears the present administration intends to split the Petroleum Industry Bill (PIB) into at least four separate bills to address the industry's reform, fiscal framework and revenue management of the oil and gas industry. The Nigerian Senate had passed[35] the Petroleum Industry Governance Bill (the Governance Bill), which deals mainly with the governance and institutional framework for the petroleum industry. The Governance Bill seeks to establish[36] a clear dichotomy between policymaking, regulation and commercial activities, and the authorities or bodies that are charged with those respective functions. It also seeks to engender value addition, transparency, accountability and a re-orientation towards optimal profit creation for the national petroleum assets. If the Governance Bill is assented to by the president, it will fundamentally restructure some organizations, like the

[32] *Opsit,* section 16.
[33] *Ibid, section 18*.
[34] *Op cit,* sections 9 & 11.
[35] Senate Okays PIGB, *Daily Trust,* November 27, 2019, Front page.
[36] Petroleum Industry Government Bill (The Government Bill), section 194 (1) & (2).

Nigerian National Petroleum Corporation and the Department of Petroleum Resources, while setting up new ones like the National Petroleum Assets Management Commission, amongst others.

The Following Bills Are Also Under Consideration by the Senate

Petroleum Industry Fiscal (PIF) Bill seeks to establish a robust fiscal framework that ensures the development and exploitation of petroleum resources in a rational and sustainable manner; *Petroleum Industry Administration Bill (PIA)* seeks to create a legal framework for the administration of upstream licenses and leases; provide regulations for the organization of the midstream operations and gas market and set out the procedures for administration of licensing and operations of the downstream; and *Petroleum Host Community (PHC) Bill* seeks to provide a legal framework for cost and benefits share among the government, oil and gas companies and host communities. However, the present authors are rather of the view that the legal and regulatory framework of the petroleum industry in Nigeria is yet to fully crystallised.

An X-ray of the 2020 Finance Act on Petroleum Profits Tax

The emergence of the 2020 Finance Act has brought the present reforms in the petroleum sector.

Removal of Tax Exemption on Petroleum Profits Dividends

The Finance Act revokes the Withholding Tax (WHT) exemption on income or dividends paid out of after-tax petroleum profits,[37] provided for under section 60 of the Petroleum Profits Tax Act (PPTA). It is important to note that the exemption under section 60 of the PPTA was introduced as a palliative to upstream oil and gas investors whose profits suffer tax at a higher rate of 85% for joint Venture operations, and 50% for the PSCs, compared to the 30%corporate income tax rate applicable to non-oil and gas business. Therefore, revoking the exemption will further aggravate the tax burden of the upstream oil and gas companies. A worsening tax profile for the upstream investors, combined with the uncertainties surrounding the Petroleum Industry Fiscal Bill (PIFB) and the impact of the recently enacted DOIBPSC (Amendment) Act, would make the Nigerian upstream sector less competitive and attractive to both foreign and local investors vis-à-vis other oil producing jurisdictions, such as Ghana, Mozambique and Angola, that have substantial oil and gas reserves with lower tax profiles than Nigeria.

Amendment of the Gas Utilization (Downstream Operations) Incentive Provisions

The Gas Utilization (Downstream Operation)[38] Incentives contained in the CITA confer some benefits on companies in the downstream sector of the Nigerian oil and gas industry. These incentives include a tax holiday for maximum of five (5) years, additional investment allowance and accelerated capital allowance utilization.

Finance Act Provides for the Following Amendments:

There is the removal of the requirement to obtain approval from the Minister of Finance prior to claiming interest expense as a deductible expense.[39] The requirement to obtain ministerial approval prior to claiming interest expense as tax-deductible was viewed as a disincentive by beneficiaries of the incentive. This is because companies operating in other sectors of the economy do not have similar obligations. The removal of this requirement is therefore, a welcome development. There is the restriction on the number of tax incentives that can be claimed on the qualifying capital expenditure. The Finance Act clarifies[40] that companies enjoying gas utilization incentive in respect of their qualifying capital expenditure shall not enjoy any other tax incentive including the Pioneer Status Incentive on the same project/assets. By so doing, the Finance Act has limited the potential of further tax revenue loss to the government.

5. Conclusion and Recommendations

Considering the positive and significant relationship between petroleum sector, and economic growth in Nigeria, the authors tend to raise an alarm, and in a very high tone too, that this symbolic relationship has been under threat presently, sequel to the raging coronavirus pandemic disease which has continued to batter the global economy due to shut down of plants and factories. Again, the present global oil glut occasioned by world oil price war led by Russia and Saudi Arabia, has resulted to continuous decline in oil prices. Thus the global economic downturn has decimated the Naira, and has further put a question mark on the implementation of the 2020 National Budget. Based on the findings made in the course of this study, the authors hereby recommend that an urgent diversification of the nation's economy to pre-empt future volatility in petroleum prices being occasioned particularly now by both the current coronavirus pandemic and the global oil war led by Russia and Saudi Arabia. The proposed road-map shall encompass both widening of the tax net and also through judicious use of petroleum profits to develop other sectors of the economy, thus de-emphasizing the nation's current mono economy. We

[37] 2020 Finance Act, sections 18(2) and 24(6).

[38] *Ibid, Section 14(2)(e).*

[39] *Ibid,* sections 13 and 17.

[40] *Ibid,* section 23.

further invite the government to prune down, in the interim, her proposed expenditure on capital projects, whilst deliberate plans shall be put in place to sustain and execute the 2020 National Budget under the recurrent allocations. Such measures, as the authors strategize, shall ensure that no Nigerian worker shall be thrown out of job, particularly in this austere time. More so, the authors are also of the opinion that there is a need for government to declare a tax credit or partial tax reduction for ongoing business concerns. We are equally proposing that the present economic challenges also call for suspension of payment of value added tax, say for the next 2-5 months, to cushion the effects of the current economic downturn on operators of businesses. These proposals, in our view, shall assist in particular in lowering import costs and further protect against shortages.