

The Role of Law Reform in Economic Development

Last week the Minister of Finance Mrs. Kemi Adeosun while briefing the Senate on the state of the nation's economy was forthright in her confirmation that the country's economy is in recession. The poor state of the economy is evident and no one can say otherwise as the economic crunch is felt right

across the country. We are indeed at our lowest ebb but conversely, as we try to escape our economic woes and kick start growth, a timely opportunity to re-shape our policies and regulations presents itself.

At last year's Nigerian Bar Association Section on Business Law Annual Conference Mr. John Hawksworth, Chief Economist at PricewaterhouseCoopers (PwC) delivered a keynote speech based on PwC's World in 2050 study report where Nigeria is predicted to have the fastest average increase in GDP of any country in the world in the next 35 years to 2050 at 5.3%. Even China predicted to become the world's largest economy is estimated to only grow about 3.4%. This also gives credence to recent assessments of world economic bodies like the World Bank and the fact that the Nigerian economy is imagined to be more dynamic and diversified than previously thought. However much of this projection is premised on the ability to convert the predicted increase in a young working population into a productive and employed labour force.

Nigeria's future productivity is premised largely on the available institutions being involved in successfully assessing, evaluating, directing through planned policy and information, all activities within an effective and comprehensive national developmental plan. PwC's positive report based as it is on the current available institutions we have in Nigeria easily finds challenges to be faced because of Nigeria's poor, inefficient or inadequate national institutions. In particular they draw attention to the need to build strong institutions for economic growth and investment, political stability, law enforcement and accountability and the rule of law. As such these areas should necessarily attract law reforms and national priorities in planning and policy making.

I certainly believe that law reform and economic development are intertwined and this is the time for the Government to take advantage of the opportunities to build strong institutions. Only last Thursday 21st July a major milestone was recorded when the Senate passed the Nigerian Railway Corporation Act 1955 repealed and enacted as the Nigerian Railway Authority Bill, 2016. The entire process of the bill took over 10 years but was thankfully accelerated by the comprehensive review contained in the Institutional, Regulatory, Legislative & Associated Instruments Affecting Businesses in Nigeria Report by Prof. Paul Idomigie, SAN and his team through the DFID ENABLE 2 programme. It is however hoped that it will go through the House of Assembly swiftly.

The objectives of Nigerian Railway Authority Bill, 2016 are to

- promote and regulate the efficient and sustainable development and operation of the railway sector;
- facilitate the development of competitive markets for services in the railway sector;
- promote the provision of safe, reliable and efficient railway services;
- increase the network of railway services and accessibility to railway infrastructure nationwide;
- encourage and promote private sector, state and local governments participation in the provision of railway infrastructure, operation and services; and
- ensure the provision of a conducive environment for the protection of the rights and interests of operators, customers and other persons operating in the railway sector.

Reading through the Bill Part VI section 23 (1) on the power to grant concessions provides thus 'the grant of a concession under this Act shall be subject to the provisions of the Infrastructure

Concession Regulatory Commission (ICRC) Act, the Public Procurement Act and such other laws, regulations or guidelines approved and published by the Federal Government from time to time relating to or governing concession and procurement.' To encourage the use of Public Private Partnerships (PPPs) in Nigeria the ICRC Act 2005 has to be reviewed to provide clear roles for all stakeholders involved in PPPs. Specifically, the Act has to include provisions for compensation for private investors in unforeseen circumstances such as changes in government policies, sudden termination of contracts or appropriation of same by government, which is always a major cause for concern. It should take account of matters relating to private investors such as criteria for evaluating projects and monitoring their implementation. There should also be specific laws for PPPs in each sector of the economy and the Commission should further be given more powers to sanction erring private investors by imposing penalties and fines.

Part VII of the Bill on Policy and Regulation of Railway Transport (section 25) provides for the role of the Minister in 25(b) as being 'to facilitate the establishment of international protocols on railway services and (d) to encourage co-operation within the ECOWAS region for the adoption of common standards, safety practices and international railway networks.

The Bill additionally provides for a series of stiff penalties and in the Second Schedule on Conflict of Interests, states that no member or staff of the Authority shall have direct or indirect financial interest or investment in any rail company throughout the tenure of his office or employment with the Authority. All in all the Nigerian Railway Authority Bill, 2016 seeks to bring our Railway sector into the 21st century.

Since 2000/2001 when the National Council on Privatization (NCP) set up various committees to reform sectors of the economy in order to allow for greater private sector participations, the committees produced National Policies and Reports which have led to the passage of the Nigerian Communication Commission Act, 2003 and the Electric Power Sector Reform Act, 2005.

It is worthy of note that there are at least a further seven (7) Reform Bills still under consideration by the National Assembly. They are namely:

- National Transport Commission Bill 2015
- Nigerian Ports and Harbour Authority Bill 2015
- National Inland Waterways Authority Bill 2015
- National Roads Fund Bill 2015
- Federal Roads Authority Bill, 2015
- Federal Competition and Consumer Protection Commission Bill 2015
- Petroleum Industry Bill

Brief objectives of the 7 reform bills are as follows:

- National Transport Commission Bill, 2015
The National Transport Commission Bill seeks to establish the National Transport Commission (NTC) designed to be a multi-modal/sector regulator covering the transport sub-sectors of roads, rail, and marine. In addition to the establishment of the NTC to be an effective, impartial and independent economic regulator of the regulated transport industry; the other objectives of the Bill include:
 - to promote the implementation of the national transport policy;
 - to provide for an economic regulatory framework for the provision of services and supply of goods in the transport sector or regulated transport industry;
 - to provide a mechanism for monitoring compliance of government agencies and transport operators in the regulated transport industry and provide advice to the Federal Government on matters relating to economic regulation of the regulated transport industry;
 - to provide for an efficient operation and

regulation of the transport sector through the consolidation and the removal of multiple and duplicate regulatory functions by the Federal Government and its Agencies;

- to protect the rights and interests of service operators and users within Nigeria; and
- to create an enabling environment for private sector participation in the provision of services in the transport sector.

2) Nigerian Ports and Harbour Authority Bill, 201

The purposes of this Act are to –

- provide an appropriate institutional framework for the ownership, management and development of ports and harbours;
- ensure the integrity, efficiency and safety of the ports based on the principles of accountability, competition, fairness and transparency;
- encourage private sector participation in the provision of port services and port infrastructure; and
- promote and safeguard Nigeria's competitiveness and trade objectives.

The purposes stated above shall be further achieved through the –

- establishment of an authority which shall be vested with the control and ownership of all ports and harbours on behalf of the Federal Government of Nigeria;
- transfer of the technical regulatory powers relating to ports to the Authority; and transfer of the ownership of the land and assets relating to ports currently vested in the Nigerian Ports Authority to the Authority

3) National Inland Waterways Authority Bill, 2015

The objectives of this Act are to –

- develop and improve the National Inland Waterways for water transportation and navigation purposes;
- increase and promote private sector investment and participation in the management and operation of the assets of the National Inland Waterways Authority;
- provide for the technical and safety regulations of the National Inland Waterways;
- promote intermodalism in the transport sector;
- provide an alternative mode of transportation for the evacuation of goods and persons; and
- implement the National Transport Policy as it concerns National Inland Waterways in Nigeria.

4) National Roads Fund Bill, 2015

The objectives of this Act are to –

- establish the Road Fund which shall be a repository for revenues accruing from road user charging systems and any other sources for the purpose of financing the maintenance and other activities related to the provision and upkeep of national roads;
- establish the National Roads Fund Board which shall be responsible for the management of the Roads Fund in accordance with the provisions of this Act; and
- promote the sustainable development and operation of the road sector;

5) Federal Roads Authority Bill, 2015

The objectives of this Act are to –

- manage the Federal Roads Network so that it is safe and efficient, with a view to meeting the socio-economic demands of the country;
- establish the Federal Roads Authority to perform the functions set out in accordance with the provisions of this Act;
- promote the sustainable development and operation of the road sector; and
- facilitate the development of competitive markets and the promotion of enabling environment for private sector participation in the financing, maintenance and improvement of roads in Nigeria;

When passed into law, the Federal Roads Maintenance Agency Act will be repealed.

6) Federal Competition and Consumer Protection Commission Bill, 2015



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Since the enactment of Privatization and Commercialization Act in 1998, public enterprises have been transferred to the private investor in the absence of any legal framework for promoting and regulating competition.

The objectives of the Federal Competition and Consumer Protection Commission Bill therefore are:

- repeal the Consumer Protection Commission Act and consequential repeals in the Investments and Securities Act, 2007.

(ii) to promote competition in the Nigerian economy;

(iii) to ensure fair trading practices, efficiency, equal opportunities for all players in production, trade and commerce;

(iv) to guarantee adaptability and balanced development of the Nigerian economy; and

(v) to protect consumers and end users of products and services from exploitation, unfair trade practices, price collusion etc.

a) Petroleum Industry Bill

The Oil and Gas industry cannot be evaluated without mention of the controversial Petroleum Industry Bill. The bill was introduced in 2008 under late President Umaru Ya' Adua as a means of implementing longstanding plans to reform the Oil and Gas industry which till then was regulated by the Petroleum Act of 1969. 8 years from that time Nigeria is no nearer to the passage of any law to reform the industry than it was then. The Oil and Gas regime in practice today is still regulated by a 47 year old legislation which may or may not have served us well up to this time but is now undoubtedly in dire need of modernisation.

The succeeding administration of President Goodluck Jonathan attempted to pass the PIB into law but unfortunately the proposed legislation never saw the light of day in the 7th Assembly. In December 2015 the new administration of President Buhari was then said to be working on legislation that broke the PIB into multiple legislations. However the National Assembly under the leadership of Bukola Saraki, Senate President and Yakubu Dogara, Speaker of the House of Representatives, dissatisfied with the long wait for the Executive to introduce the expected bill began working on another version of the PIB that has now passed a first reading in the Senate.

Regardless of which version of the legislation to reform the industry is eventually passed there is a consensus among stakeholders that there is an urgent need for new laws that assist in the development of the sector in the following areas:

- fiscal rules governing the sector
- restructuring of regulatory bodies
- transparency and accountability
- restructuring of NNPC and
- environmental sustainability

There is no gainsaying that there is a dire need to review existing Acts which should be repealed or significantly amended to bring them up to par with international best practices, most especially those that will make a significant impact and improve the Nigerian business environment. Only then can we expect increased and sustained private sector development, attract foreign investment into the country and witness the economic growth and development that we so seek.