

INFORMATION BRIEF

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Constant Breach of Agreement and the National Reputation: Lessons Nigeria Must Learn from P&ID \$9.6 Billion Gas Deal Judgment

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Summary

- The main issue addressed in this brief is Nigeria's disregard for the sanctity of contracts and terms of agreement, and the failure of its representatives to enter into agreements that are in the best interest of the country.
- In 2010, the federal government entered into a deal with the Process and Industrial Developments Limited (P&ID) to build a gas processing plant in Calabar, Cross River state. However, the deal collapsed because Nigeria failed to honour its own part of the bargain.
- On August 16, 2019, a British court gave P&ID the authority to seize Nigerian assets worth \$9.6 billion. In its bid to overturn what it called an unfair judgment, the country filed a new and substantive challenge countering the English arbitration award and its enforcement, and started a fresh appeal against the High Court ruling.
- At the heart of the filing lies Nigeria's assertion that the original P&ID deal was a sham.
- Based on this, the brief recommends, among other things, that the National Assembly may have to make laws stopping government and its agencies from entering into contracts and obligations they are not ready to honour/fulfil.
- Also, there is need for a legislation by NASS to ensure continuity on the part of government in terms of contract execution in order to avoid a situation where every new government in Nigeria sees itself as not being bound by agreements and obligations entered into by the previous government(s).

Issue

A contract is a voluntary, deliberate, legally binding and enforceable agreement creating mutual obligations between two or more parties. It is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. The purpose of a contract being legally binding is to ensure that each party will have legal recourse in the event of a breach. A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfil their agreed upon obligations, according to the terms of the contract. The term party is very broad for its notion embraces any natural or legal person, including individuals, companies, foundations, unincorporated bodies, partnerships and publicly owned entities, it could be in

writing or verbal.¹ Each contracting party undertakes the obligation to do something for the other or others in exchange for a benefit. However, whilst all parties may expect a fair benefit from the contract (since otherwise the courts may set it aside as inequitable), it does not follow that they are entitled to benefit to an equal extent.²

On 11th January, 2010, Nigeria signed a 20-year gas harnessing agreement with a company called Process and Industrial Development (P&ID), a company based in the British Virgin Islands. The company was to process the gas for local consumption and for export while Nigeria was bound to supply the gas feedstock through building a gas supply pipeline to terminate at the location of the gas processing plant.³ One hundred and fifty million standard cubic feet (MSCF) of gas per day was to be supplied to P&ID plant and gradually to increase up to 400mscf per day in the later stages of the project during the 20-year period.⁴ However, P&ID alleged that after signing the agreement, the Nigerian government reneged on its obligation after negotiations were opened with the Cross River State Government for allocation of land for the project. The company argued that the country's failure to construct the pipeline system to supply the gas frustrated the construction of the gas project, thereby depriving it of the potential income and revenue benefits from over 20 years' worth of gas supplies.⁵ Seeing this as a breach of contract, P&ID instituted an arbitration action against Nigeria before a London Tribunal in March 2013.

At the tribunal, P&ID claimed that it had invested \$40 million in the project, even though it had not acquired the land or built any facilities for gas processing. In response, the Nigerian government argued that the damages claimed were not a fair and reasonable consequence of the government's breach of the agreement because P&ID had not commenced building of the gas processing facility. It also argued that P&ID should be awarded only three years' worth

¹ Cavalieri, R. & Salvatore, V. (2018), An introduction to international law: <https://www.giappichelli.it/media/catalog/product/excerpt/9788892114838.pdf>

² Ibid

³ Ibid

⁴ Ibid

⁵ Udo, B. (August 16, 2019). Contract violation: Nigeria vows to resist enforcement of N3.2 trillion judgement after British court ruling: <https://www.premiumtimesng.com/news/headlines/347075-contract-violation-nigeria-vows-to-resist-enforcement-of-n3-2-trillion-judgement-after-british-court-ruling.html>

of income as at the time of arbitration on the breach of contract.⁶ However, agreeing to pay only three years' worth of income was itself an indictment on the Nigerian government.

Background

Reputation and 'commitment management' are very important ingredients in supporting and enhancing a country's image. This is achieved through ensuring that the promises made are kept; by making commitments that align with agreements; and by focusing on 'ease of meeting promises' and honest and open communications.⁷ All these relate strongly to contract terms and practices, as well as being enabled through a very strong power of negotiation. Meeting contract agreements allows a party to be seen to be credible, reliable, and trustworthy.⁸ It is disheartening to hear that the government of Nigeria was in the news for the wrong reasons; even when the reasons are avoidable. One of these reasons is constant breach of contractual agreements which dragged the national and international reputation of the country in the mud. That Nigeria, being charged for violation of a contract obligation, is currently before a London court trying to reverse the \$9.6 billion arbitral judgment against the country over a dubious gas agreement signed with the Ministry of Petroleum Resources without passing through due process⁹ has serious implications for the country's reputation.¹⁰ Presently too, not less than 11 agreements signed with different firms have been breached and the companies are waiting for the outcome of the P&ID action to determine whether to press for claims.¹¹ Thus, Nigeria faces likely litigation for more breaches of contract agreements. The main interest of this brief is to analyze the present situation of breached agreements by Nigerian government in order to measure the loss we suffered as a country, and then call the attention of the federal government Nigeria to the lessons we can draw from it. This is

⁶ Udo, B. (August 16, 2019). Contract Violation: Nigeria vows to resist enforcement of N3.2trillion judgement after British court ruling: <https://www.premiumtimesng.com/news/headlines/347075-contract-violation-nigeria-vows-to-resist-enforcement-of-n3-2-trillion-judgement-after-british-court-ruling.html>

⁷ Cummins, T. (2008). Reputation and its role in contracts & procurement. Retrieved from <https://blog.iaccm.com/commitment-matters-tim-cummins-blog/2008/02/05/reputation-and-its-role-in-contracts-procurement> on 11/1/'21

⁸ Baldoni, R., Doria, L., Lodi, G., & Querzoni, L. (2009). Managing Reputation in Contract-Based Distributed Systems. On the Move to Meaningful Internet Systems: OTM 2009, Springer, Volume 5870, Pp. 760-772.

⁹ Abuja Reporters, "Nigeria in danger over 11 contract breaches, see list of contracts", October 2, 2019, <https://abujareporters.com.ng/nigeria-in-danger-over-11-contract-breaches-see-list-of-contracts/>

¹⁰ Onyekpere, E. (August 19, 2019), lessons from the \$9bn award against Nigeria: <https://punchng.com/lessons-from-the-9bn-award-against-nigeria/>

¹¹ Abuja Reporters, Op. Cit.

necessary because, in every thereat, there must be an opportunity to develop a strength and to learn the right lessons.

Rationale: Implications of Breached Agreements on the National Reputation

The unwarranted judgement has some implications on the economy which Nigeria has to avoid a reoccurrence of such unreasonable judgment. The following implications have been identified:

- i. The first issue is Nigeria's disregard for the sanctity of contracts and terms of agreement, even the private sector has been accused of failing to respect contractual agreements, the most recent example being the case of Nigerian airline operators and Boeing which has more or less blacklisted Nigerian airlines from leasing its aircraft. As it is with the Federal Government, so it is with the states also.¹²
- ii. This raises the issue of the reckless manner in which Nigerian government officials often enter into agreements on behalf of the country, without paying attention to the terms, condition and feasibility of the agreement entered into. The end result is usually the country incurring liabilities that are detrimental to its interest, just like the P&ID unjustifiable judgement debt of \$9.6billion.
- iii. This ruling has generated a lot of attention and questions in both domestic and international space, owing to the fact that the fine placed on the country (i.e. \$9.6bn or £7.4bn in penalties) is equivalent to 20% of the country's foreign reserves and this poses a significant threat to its economy.¹³
- iv. Another issue that comes to mind is the government officials and their collaborators if there are any who failed to ensure due diligence, both at the level of the contract and the management of the dispute with Process and Industrial Development Ltd before it was taken to the court of arbitration and even when it has gotten there, the Nigerian Government again did not respond in time, it waited till October 2018 before it finally acknowledged service and applied for relief for sanctions. Why wet gas was not made available? Did the Attorney General's office even vet the GSPA at all? From all indications, the dispute could have been settled out of court. Why did that option fail? \$9.6 billion is about 20% of the country's external reserves and 2.5% of GDP.¹⁴

¹² Abati, R. (August 20, 2019). P&ID Vs Nigeria: A review: <https://www.thecable.ng/pid-vs-nigeria-a-review>

¹³ Ibid

¹⁴ Ibid

- v. Nigeria’s failure to live up to its contractual commitments has great implication on energy supply. “The project would have generated 2,000 MW of power for the national grid and could have been transformative for millions of Nigerians. At present, the World Bank estimates that in 2017, only 59% of the country had access to a reliable supply of electricity.”¹⁵
- vi. This case also demonstrates government’s attitude to critical infrastructural projects. The Mambilla hydroelectric power project is a case in point. This is because in spite of the huge potential offered by the project, it has been plagued by several controversies ranging from corruption and embezzlement of funds to the “irregular” awarding of contracts and a general lack of political will.
- vii. The Nigerian Government continues to dispute the UK’s jurisdiction to hear the matter, Godwin Emefiele, Governor of the country’s Central Bank (CBN), said in an interview with Africa’s Premium Times: “We know that the implication of that judgment has some impact on monetary policy and that is why the CBN is going to step forward and strongly defend the country and the reserves of the federal republic of Nigeria.”
- viii. But unless the Nigerian government can reach a last-minute agreement, its assets are at risk. P&ID’s barrister Andrew Stafford QC said: “P&ID is committed to vigorously enforcing its rights, and we intend to begin the process of seizing Nigerian assets in order to satisfy this award as soon as possible.”
- ix. A flood of arbitration cases which can ground the nation’s economy has also been thrown up. The Table 1 below shows a list of 11 other pre-qualified investors for accelerated development of gas production facilities in the nation’s oil fields entered in to by the Ministry of Petroleum Resources on January 10, 2010. Some of these firms have initiated arbitration process. A few others are awaiting the outcome of Nigeria’s case at the UK Court of Appeal to make a stronger case for payment of damages.

Table 1: Other Breached Agreements between Nigerian Government and Private Firms

S/N	The Firm	Nature of the Contract	Period
1	Octopol Energy Limited	(LPG Extraction)	12-15 months

¹⁵ O. Akanmidu (2019). How Nigeria got hit with a \$9.6 billion gas deal judgment debt in a UK court available @ <https://qz.com/africa/1710707/how-nigeria-got-hit-with-a-9-6-billion-judgment-debt-in-the-uk/>

		4.676MMscf/d, 3.039MMscf/d.	
2	Petrolog Oil & Gas Limited	4.800MMscf/d, 2.100MMscf/d, 13.4MMscf/d; CNG 8.76MMscf/d, 20.600MMscf/d.	9-24 months
3	GFD Energy Nigeria Ltd (GFD)	(2million MT Floating LNG) 5.7MMscf/d, 7.5MMscf/d, 2.2MMscf/d, 9.2MMscf/d	N/A*
4	Global Gas & refining Limited (GGRL)	(LPG Extraction) 11.300MMscf/d, 12.398MMscf/d, 8.35MMscf/d.	N/A
5	Davubic Energy Development Comp. Ltd	(LPG Extraction) 8.4MMscf/d, 21.516MMscf/d, 18.1MMscf/d.	N/A
6	Consortium of Drake Oil Limited & Partners (DOL)	7.42MMscf/d, 6.856MMscf/d, 14.564MMscf/d;	N/A
7	Tricity Oil Nigeria Ltd	1.266MMscf/d, 4.977MMscf/d, 2.026MMscf/d, 4.979MMscf/d, 3.777MMscf/d.	N/A
8	Colechurch International Ltd	(LPG Extraction) 3.778MMscf/d, 3.335MMscf/d, 2.539MMscf/d, 2.071MMscf/d, 13.10MMscf/d, 1.000MMscf/d	N/A
9	Eurafic Oil & Gas Ltd	(LPG Extraction) 3.256MMscf/d, 5.075MMscf/d, 12.00MMscf/d;	N/A
10	Ibeto Group	(LPG Extraction) 23.00MMscf/d, 34.3MMscf/d.	N/A
11	Borkir International Company Ltd.	26.558MMscf/d, 26.7MMscf/d.	N/A

Source: The Nation, @ <https://thenationonline.ng/nigeria-in-danger-over-11-contract-breaches/>

Conclusion

This brief, therefore, concludes that for the sake of national interest, Nigeria needs to move expeditiously to engage the company in negotiations before her assets are seized. The country

could possibly ask the company to come back while she start constructing the requisite gas pipeline and fulfil her own part of the obligation or she re-negotiate the award to see if it can be reduced to a barest minimum. Though, the Nigerian government is yet to pay the judgement debt and allegations of domestic and international conspiracy surrounding the agreement continue to abound.

Areas for Legislative Consideration

Although evidences have shown that this is not the first time Nigeria has failed to meet its contractual obligations, the \$9.6 billion appears to be the largest amount of damages claimed against Nigeria to date. For a country with a foreign reserve of \$45 billion and sovereign debt profile of over \$80 billion, this judgment debt is quite a lot and it is potentially capable of rendering Nigeria technically insolvent.¹⁶ Based on the foregoing, the brief recommends the following:

1. The National Assembly may make a law stopping government from entering into contracts and obligations it is not ready to honour/fulfil. This is because signing of contract without the requisite will to implement does not add value to the local economy or the welfare of the citizens; rather it diminishes the reputation of the country.
2. NASS needs to streamline government activities by ensuring total compliance with legal procedure laid down for entering into contracts with foreign companies.
3. NASS may prevent government officials from signing agreements where all the penalty clauses are tilted against the country when there is little or no protection and all the benefits from the agreement accrue in favour of the other parties. Signing of agreements and contracts should be left in the hands of competent legal practitioners and scholars of national, regional and international repute, and professional jurists so as to avoid falling into cheap blackmail as seen in the case of P&ID.
4. To avoid waste of public funds, there is need for a legislation by NASS to ensure continuity on the part of government in terms of contract execution and avoid a situation where every new government in Nigeria seeing itself as not bound by agreements and obligations entered into by the previous government even when

¹⁶ Abati, R. (August 20, 2019). P&ID Vs. Nigeria: A review: <https://www.thecable.ng/pid-vs-nigeria-a-review>

the two governments come from the same political party and one handed over to the other.

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