[Vanderbilt Journal of Transnational Law](https://scholarship.law.vanderbilt.edu/vjtl)

Volume 10
Issue 4 *Fall 1977*

Article 3

1977

The Foreign Investment Climate in Nigeria

Bernard Blankenheimer

THE FOREIGN INVESTMENT CLIMATE IN NIGERIA

*Bernard Blankenheimer**

TABLE OF CONTENTS

I. THE NATION: ITS RICHES AND PROBLEMS 589
A. *The Colonial Heritage* 589
B. *The Petroleum Boom* 590
C. *Lag in the Agricultural Sector* 592
D. *Tribal Conflicts* 592
II. ECONOMIC POLICY UNDER THE FEDERAL MILITARY GOVERNMENT 593
A. *The Five-Year Plan* 593
B. *Government Participation in Business* 594
C. *The Effects of the Land Tenure System* 595
D. *The 1972 Indigenization Decree* 596
E. *The 1977 Indigenization Decree* 596
F. *Special Incentives* 597
G. *Available Business Organization Forms* 598
H. *Taxes* 599
III. CONCLUSIONS 599

I. THE NATION: ITS RICHES AND PROBLEMS

A. *The Colonial Heritage*

Nigeria did not exist as a national entity at the beginning of the 20th century. It was notable in world commerce chiefly as a supplier of tropical products, such as palm oil and spices. During earlier centuries, its commercial history was dominated by the dark pages of the slave trade. Even as late as 1960, when the then Federation of Nigeria was proclaimed an independent member of the British Commonwealth, the country was still little known to American businessmen. Of the some 200 Americans who annually visited Nigeria, most were government officials, missionaries, or academic researchers. At that time, United States investments

* Assistant Director, Economic Consulting Services, Wolf and Company, Washington, D.C. Former Director, Africa Division, United States Department of Commerce. B.A., 1941, Brooklyn College; M.A., (Economics), 1950, George Washington University.

were negligible,[1] and the total United States export and import trade with Nigeria amounted to only $66 million.[2]

For the United Kingdom, however, Nigeria was a prize jewel among its former colonial territories, both in the size of British equity investments and the amount of foreign trade, for Nigeria —then as now—constituted a vast and populous market with a diversified resource base, still largely unexploited. As a result of its colonial relationship with Britain, much of Nigerian mining, manufacturing, distribution, and trade was in the hands of large expatriate companies, headquartered in the United Kingdom or on the continent, with little indigenous ownership or participation. Since Nigeria achieved independence, the changing of this situation has received major governmental attention.

B. *The Petroleum Boom*

With its varied agricultural and pastoral products, such as palm oil, cocoa, coffee, rubber, peanuts, cotton, hides and skins, plus tin and columbite, Nigeria has always had a broad resource base.[3] The discovery and development of petroleum, however, effected an overnight transformation of the country's economic structure. Surface seepages of oil had for a long time indicated the possibility of oil deposits in Nigeria. Intensive prospecting by two companies—one British and the other American—led to extensive strikes in the late 1950s in the Port Harcourt and the Niger River delta area. Subsequent work in the 1960s revealed commercially exploitable resources of oil and natural gas beyond the most optimistic expectations. It is now calculated that Nigeria has proved recoverable reserves of 20 billion barrels.[4] The oil and gas industry, which became the fastest growing sector of the Nigerian economy, accounted in 1976 for over 40 percent of the nation's gross domestic product, 93 percent of the value of all exports, and about 87 per-

---

1. The book value of United States direct investments in all of West Africa stood at $290 million, most of which was in Liberia. *See* Wilken, *Present U.S. Business Interests in Africa,* in AFRICA, SALES FRONTIER FOR U.S. BUSINESS (U.S. Dep't of Commerce ed. 1963).

2. *See* U.S. DEP'T OF COMMERCE, AFRICA, A GROWTH MARKET FOR U.S. BUSINESS, table iv, at 87 (1968).

3. Nigeria is the second largest world exporter of cocoa and the leading exporter of peanuts (groundnuts) and palm oil. *See* Rydlun, *Marketing in Nigeria,* in OVERSEAS BUSINESS REPORT SERIES, OBR 74-76 (U.S. Dep't of Commerce ed. 1974), at 7.

4. *See id.* and revised edition (1976).

cent of federal government revenues.[5]

Crude petroleum production has risen spectacularly; for example, it amounted to 28 million barrels in 1963 and by 1966 stood at 152 million barrels. Although virtually suspended during the early civil war period, production recovered fully by 1969 and, thereafter, expanded rapidly to 825 million barrels in 1974. Nigeria thus became the sixth largest exporter of oil in the world. The effects of the worldwide recession in 1975 led to a substantial decline in daily output to 1.8 million barrels, but this has, in part, been offset by higher oil prices. More recently, in 1976-77, petroleum output leveled off to about 2 million barrels per day, almost all of which is exported, one half going to the United States.[6] Nigerian oil is highly prized for its low sulphur content. For this reason, as well as to reduce dependence on Arab sources, United States oil companies have turned increasingly to Nigeria as a major source of supply. Currently, over 100 oil and gas companies operate in Nigeria; 55 are owned in whole or in part by American citizens or American parent companies. The major producing company is Shell-BP; Gulf is second; others include Mobil, AGIP-Phillips, Texaco, Chevron, and Ashland.

The boom in crude oil production and exportation has resulted in a dramatic expansion of Nigeria's foreign trade and foreign investment inflow. Oil sales give Nigeria a tremendous annual trade surplus, both with the world as a whole and with the United States, which has become the principal customer for its oil. In 1974, for example, Nigeria's global trade surplus was well over $6.5 billion, almost half of which was with the United States.[7] Rising imports and a lower level of oil sales in 1975 reduced the overall trade surplus to $2.7 billion in 1975 and to $2 billion in 1976.[8] Even these figures, though, are substantial, and there is an obvious potential for larger future trade balances as a result of expanded oil shipments abroad. The rapid development of the oil sector makes

---

5. U.S. EMBASSY, LAGOS, NIGERIA, SEMI-ANNUAL REVIEW OF ECONOMIC CONDITIONS IN NIGERIA: JANUARY-JUNE 1977, (published as U.S. Dep't of Commerce ed. 1977).

6. International Monetary Fund, Recent Economic Developments: Nigeria 17 n.5 (unpublished manuscript) (August 1974).

7. Exports (FOB) totalled $9.3 billion, of which exports to the United States amounted to $3.3 billion. Nigerian imports (CIF) amounted to $2.8 billion, with $346 million of that coming from the United States. U.S. EMBASSY, LAGOS, NIGERIA, SEMI-ANNUAL REPORT ON ECONOMIC CONDITIONS IN NIGERIA, JULY-DECEMBER 1975, (U.S. Dep't of Commerce ed. 1976).

8. *See* U.S. EMBASSY, LAGOS, NIGERIA, *supra* note 5.

it difficult to monitor foreign investment flows, but total foreign private investment is estimated at over $2 billion, 80 to 90 percent of which is in the oil sector. Over half of the foreign investment in petroleum (crude oil exploration and production) is of United States origin.[9]

C. *Lag in the Agricultural Sector*

Nigeria, which covers a vast area larger than Texas and Utah combined, has the largest Negro population on the African continent. Of its estimated population of almost 80 million, only some 50,000 are non-African or expatriate residents. Despite the strides made towards economic diversification since 1960, the basic economic activity of the bulk of the population is still agriculture, much of which is subsistence production within a tribal economy. Nigerian food production is inadequate to meet demand, but only 25 to 35 percent of all land suitable for agricultural production is under cultivation. Agriculture occupies about 70 percent of the population, mostly on farms of less than three-acre plots. These are mostly small family holdings which are unmechanized and in need of fertilizer, irrigation, and extension services. Thus, even with its new found wealth in oil, Nigeria is among the lesser developed nations of the world, although the annual value of goods and services produced there is the highest of any country in Africa except the Republic of South Africa. The gross 1977 domestic product is estimated at over $28 billion, yielding a per capita income of approximately $352.[10]

D. *Tribal Conflicts*

Nigeria has some 250 tribal groupings. The three major groups are the Yorubas in the west, the Ibo in the east, and the Hausa in the northern area. The diversity of Nigeria's population groupings, with their deep-rooted cultural differences, underlies some of the dramatic political changeovers, including the assumption of power

---

9. At the end of 1976 the *book value* of United States direct private investments in Nigeria amounted to $341 million. The total United States investment in Africa was $4.5 billion, $1.7 billion of which was in South Africa. Nigeria, therefore, represents 7.5 percent of total United States investments in Africa. *See* U.S. DEP'T OF COMMERCE U.S. DIRECT INVESTMENT ABROAD IN 1976, SURVEY OF CURRENT BUSINESS (1977).

10. The per capita income is based on an estimated total population of 79,740,000 in 1977. Per capita income was estimated at $305.5 in 1975 and $238.3 in 1976. *See* U.S. EMBASSY, LAGOS, NIGERIA, *supra* note 5.

by a military government under General Yakubu Gowon in 1966, the tragic civil war period between 1968 and 1970, and the bloodless coup in July 1975 by Brigadier Murtala Muhammed, who was himself assassinated in February 1976 in a subsequent unsuccessful coup. The present head of state, also a military officer, is Lieutenant General Olusegun Obasanjo.

II. Economic Policy Under the Federal Military Government

The basic economic structure in Nigeria is firm, and government economic policies have shown a logical continuity in evolution from the premilitary civilian administration period of the early 1960s. The basic economic problem confronting the nation is that while striking progress has been made toward transformation of the traditional subsistence economy into a modern production-for-exchange economy, much of Nigeria's output still consists of primary products for export rather than home consumption. The Nigerian prosperity thus depends on demand and price levels in industrial countries for primary products such as timber, coffee, and cocoa, in addition to petroleum.

A. *The Five-Year Plan*

As a member of the international oil cartel, OPEC, Nigeria has seen its oil prices quadruple since 1971. Such expanded revenue prospects have enabled the country to finance a new ambitious Five-Year Development Plan which projects a phenomenal (for Africa) $50 billion in capital expenditures between 1975 and 1980, of which $32 billion is to be in public sector expenditures. The 1975 to 1980 Development Plan[11] anticipates improvement to roads costing $5.5 billion, and $3.2 billion is set aside for education, including universal primary education. In the agricultural sector, nearly $2.3 billion is to be spent in the distribution of fertilizer, the irrigation of 1.4 million acres of land, and the planting of over 5 million acres of crops. This is to be done through a program of aid to individual farms, farm cooperatives, and state enterprises. Nearly $10 billion has been allocated to industrial sector projects, which call for expansion of three existing cement plants and the establishment of three new cement plants, a blast furnace capable

11. Central Planning Office, Ministry of Economic Development, Nigeria Third National Development Plan, 1975-1980. In April, 1977, the government issued revised cost estimates of $68 billion for the total plan through 1980. *See* U.S. Embassy, Lagos, Nigeria, *supra* note 5.

of producing one million tons of steel per annum, two plants half that size utilizing the direct reduction process, integrated sugar mills, pulp and paper mills, etc. In the petroleum sector, the plan envisages the construction of two liquified natural gas facilities which will utilize the estimated two billion feet of natural gas produced as a by-product of petroleum, but now wasted by flaring. This will be accomplished through joint ventures between the federal government, Shell-BP, and Phillips-AGIP. Additional oil refineries and the development of a sophisticated petrochemicals complex are also contemplated.

Completion of all projects under the Five-Year Plan is, of course, doubtful. The Plan, however, is important evidence of an official determination and drive to move ahead on economic diversification. To attain the level of economic development desired, the government must seek to attract additional outside equity and loan capital, as well as thousands of foreign technicians. Stated government policy is to facilitate the acquistion of this needed help from abroad.

B. *Government Participation in Business*

The role of government in the Nigerian economy is all pervasive. Not only does the government influence economic activity through the formulation of policy, laws, and regulations affecting business activities, but it also plays an ever increasing part in direct production through government owned or financed corporations. Direct statutory corporations, such as the utilities, railways, and airlines, operate in areas either so marginally profitable that they are unattractive to private enterprise or of such broad national interest that they are properly within the province of public enterprise. The statutory corporations are capitalized from public funds, and though the scope of their business activities are regulated by law, they are expected to operate along commercial lines. They employ their own staffs and are subject to taxation, as are other companies.

In recent years the government has extended its participation in the economy, reserving for itself either full or majority ownership in certain activities considered of strategic importance. These areas include oil exploitation and petrochemical, iron, and steel production. Most government ventures have been partnership projects with private enterprises (both local and foreign). The government has announced that most such businesses should eventually pass entirely into private hands. The government likewise encourages private Nigerian enterprises to participate in joint ventures with foreign investors. Particular favor is given to those investments that might lead to the transfer of technology and managerial skills to Nigerians.

C. *The Effects of the Land Tenure System*

Historically, British colonial administration in Nigeria was, in part, exercised through a form of indirect rule, under which native authorities were given responsibility for local laws and regulations. Except for a small area around Lagos that had Crown Colony status, the rest of Nigeria was a British protectorate. The basic administrative policy recognized the desirability of retaining, insofar as possible, African concepts of land tenure and the traditional organs of internal administration. This policy had two important effects: it served to discourage permanent white settlement and it prevented extensive alienation of land for plantation cultivation since traditional land tenure policy generally prohibited the transfer of freehold title. Nigerian land tenure laws today reflect this tradition, and aliens cannot generally obtain land except on a leasehold basis. Long-term leases can, however, be negotiated with the state authorities. The land tenure laws are quite complex and are a frequent cause of litigation, especially in connection with investments in industry and housing.

Nigeria's current small non-African or expatriate population is largely a consequence of the traditional administrative policy by which Nigeria was able to avoid the kind of internal racial problems that have plagued Southern Africa. On the other hand, the country desperately lacks technology and managerial skills. Filling this need will necessitate a much larger expatriate resident community. An increase in this community is being actively encouraged by Nigerian officials, who speak of quadrupling the present level of some 50,000 expatriate residents.

The lack of indigenous entrepreneurship and management know-how has stimulated the government to direct its energies into the productive sector. In fact, Nigeria had no choice but to perform the functions of an entrepreneur, diverting state funds into productive investments and assuming management responsibilities. For Nigeria, the development of indigenous entrepreneurship has been a fundamental concern. Such "indigenization" should not, however, be confused with nationalization. While recent government policy has been to acquire holdings in many existing activities wholly occupied by foreign enterprise, this has always been done by orderly negotiations with company approval. There is no precedent for expropriation.

D. *The 1972 Indigenization Decree*

In recent years, participation by Nigerians in selected activities has been required by law. The Nigerian Enterprises Promotion Decree of 1972,[12] often referred to as the Indigenization Decree, stipulates that 22 types of small scale business enterprises are to be reserved exclusively for Nigerian ownership and that 33 types of larger enterprises must have a minimum of 40 percent Nigerian ownership.[13] Businesses in the second category are those having either paid-in capital in excess of $600,000 or annual turnover exceeding $1.5 million.[14] This category includes beer brewing, soft drink bottling, furniture, bicycle, cement, and plywood manufacturing, printing, and fishing. The law is intended to aid the development of indigenous entrepreneurship. This is not nationalization since the enterprise will remain in private hands. The law applies both to new and established enterprises in the specified categories. Foreign-owned businesses were given two years to comply. Most were able to do so or to obtain approval for extension.

In addition to the areas reserved for indigenization promotion, the federal military government has indicated its intention to achieve majority participation in industries deemed to be of strategic importance, such as oil and gas. It has already purchased 40 percent of most expatriate banks, 40 to 49 percent of expatriate insurance companies, and 55 percent of major oil companies. These acquisitions have been conducted in an orderly manner with reasonable arrangements for payment.

Foreign investments are not restricted outside these defined limits, but in practice, even when not required, foreign investors generally consider it advantageous to seek local Nigerian partners who may have land or familiarity with the market.

E. *The 1977 Indigenization Decree*

A tougher Nigerianization ownership policy for business was established by a sweeping new decree, the Nigerian Enterprises Promotion Decree of 1977, which was officially promulgated January 12, 1977, though it provided that it shall be deemed to have come

---

12. *See* MINISTRY OF INDUSTRY, NIGERIA, BUYING AND SELLING UNDER THE NIGERIA ENTERPRISES PROMOTION DECREE (1972); MINISTRY OF INDUSTRY, NIGERIA, NIGERIAN ENTERPRISES PROMOTION BOARD.

13. *See* note 12 *supra*. *See also* U.S. EMBASSY, LAGOS, NIGERIA, GUIDE TO FOREIGN INVESTMENT IN NIGERIA.

14. *See* note 13 *supra*.

into force on January 29, 1976.[15] This Decree, which supercedes all previous measures, retains the schedule feature of the 1972 Decree, which reserves or delineates the scope of Nigerian versus foreign capital in given types of enterprises. These, however, have been considerably extended so as to quicken the pace and scope of further Nigerianization of business.

The aim of the 1977 Decree is to enlarge the role of Nigerians in local business activities by requiring more indigenous equity ownership in enterprises and to extend the activities exclusively reserved for Nigerian enterprises. Schedule I of the 1977 Decree contains 40 categories of business in which foreign participation is barred; they include wholesale distribution of locally produced goods, advertising, garment manufacture, and blending and bottling of alcholic drinks. Schedule II contains 56 categories in which foreign equity participation may not exceed 40 percent; such enterprises include banking, beer brewing, construction, distribution, and servicing of motor vehicles, manufacture of plastic and rubber products, and mining. Schedule III includes 56 categories of business in which foreign equity may be permitted up to a maximum of 60 percent.

Some flexibility in implementing these industrial sector restrictions, however, is provided by permitting existing foreign-owned enterprises engaged in Schedule I activities to be treated as Schedule II enterprises, provided: (1) annual turnover exceeds N25 million (U.S. $39.5 million); (2) operations are carried on in at least ten Nigerian states; and (3) foreign equity was reduced to 40 percent by the end of June, 1977. For all other nonexempt foreign companies, the deadline for compliance with the Decree is December 31, 1978.[16]

F. *Special Incentives*

Special incentives are given to approved industrial enterprises deemed to be in the national interest. Foremost among these are the incentives established by the Industrial Development Decree of 1971,[17] known as the Income Tax Relief Decree, which provides for income tax exemptions to new limited liability Nigerian companies engaged in "pioneer" industrial activities. The object is to encourage establishment of enterprises deemed important to the

15. Fed. Military Gov't Decree No. 3 (1977).
16. *Id.* at A34.
17. *See* note 13 *supra.*

country's economy by granting income tax relief during the first three to five years of the company's existence. To benefit from this exemption, the company must be approved as a "pioneer" company. Among the factors considered for such approved status are the proposed location, size, ratio of expatriates to Nigerians, financial status, and management of the company. A company granted "pioneer" status must begin operations within one year of the date specified in the application and may not engage in any other enterprise during this tax relief period. Other incentives given to new industries are exemption or reduction of duties on imported material used in the manufacture or processing of goods or in the provision of services. Again, such duty relief is intended as a temporary measure (normally not exceeding three years) to assist newly established industries.

G. *Available Business Organization Forms*

The approval of the Ministry of Internal Affairs is required for establishing any new business in Nigeria and for the entry and employment of non-Nigerians. Expatriate quotas are normally granted for a three-year period (residence permits are normally valid for two years), subject to extension as circumstances require. Registration of a new company with the Registrar of Companies, Ministry of Trade, must be completed before the company can apply to the Ministry of Finance for approved status as a "pioneer" company for tax relief purposes.

Other than the government-owned concerns and statutory corporations, the principal forms of business organizations in Nigeria are companies, partnerships, and sole proprietorships. In a partnership there may be no more than twenty partners, who may be of any nationality and may be a corporate body. The partners are jointly and severally liable to auditors for the debts and obligations of the firm. Companies may be unlimited, limited by guarantee, or limited by share, the form most commonly adopted by foreign investors in Nigeria. The liability of each member of a company limited by shares is limited to the amount, if any, unpaid on the shares held by that member. Once a member has paid for his shares he has no further liability. There is no maximum or minimum amount of share capital, and shares may be pegged at any value.

A limited liability company may be incorporated as a public or as a private company. In practice there is little difference between the two. Public companies are normally formed to enable the investing public to share in the profits of an enterprise without taking part in the management. Such companies usually have no limitation on the maximum number of members, but they must have a minimum of seven. Their articles of association must provide for unrestricted transfer of shares and for subscription by the public. A private company must have at least two but no more than 50 members, restrict the right to transfer its shares, and prohibit any invitation to the public to subscribe to its shares or debentures.

H. *Taxes*

There are three basic taxes in Nigeria: income tax, capital gains tax, and the petroleum profits tax. A double taxation agreement is in effect between Nigeria and the United States.[18] Tax regulations apply equally to domestic and foreign companies resident in Nigeria. Company income taxes are administered by the Federal Board of Inland Revenue in accordance with the Income Tax Management Act of 1961,[19] the Companies Income Tax Act of 1961,[20] and numerous subsequent amending acts and decrees. Generally, all gains of a revenue nature that accrue in, are derived from, are brought into, or are received in Nigeria are regarded as taxable income of companies established in Nigeria. The tax year ends on March 31. The rate of company income tax, as of April 1, 1975, is 40 percent on profits above $9,600; no tax is leviable below this figure.

Interest, royalties, and management fees (undefined, but including, as a minimum, technical and consultancy fees) are subject to a 40 percent withholding tax. However, by virtue of the double tax treaty between the United States and Nigeria, resident American firms are not subject to withholding tax on interest earned in Nigeria unless they control more than 50 percent of the Nigerian company making payment. Furthermore, they are not subject to the withholding tax on royalty payments as long as they are not engaged in trade or business in Nigeria.[21]

III. CONCLUSIONS

Foreign investment in Nigeria requires careful planning and attention to local requirements. For those investors willing to take

18. *See* Rydlun, *supra* note 4.
19. *Id.*
20. *Id.*
21. *Id.*

the necessary time and effort the opportunities offered can be rewarding. The prospective American investor must inform himself of political, economic, and social conditions. He must adapt himself to dealing with Africans and must try to understand their social and cultural patterns and their historical evolution. In the past this was desirable, but not essential, since business contacts were predominantly European. Today it is critical.

Invitations by Nigerians for joint projects involving public participation need not be regarded as an overriding obstacle to private foreign investment. Indeed, given the limited supply of local private capital and the extent of state regulation of business enterprise, a measure of government participation may provide compensatory advantages. For example, clear leasehold titles to land sites could perhaps be more effectively acquired with the government sharing in the venture. Also, operational problems involving power, transport, and communication, which are public sector activities in Nigeria, could be more effectively resolved. This is not to suggest that a United States private investor uniformly accept government participation. American investors should understand Nigerian aspirations and not be inflexible in their negotiations with government or individuals. Indeed, those foreign investors who invite participation by local African capital, who adopt policies to train local labor, and who indicate their sincere desire to assist economic progress, will find themselves held in the highest esteem in the host country.