Promoting sustainable renewable energy-related Foreign Direct Investment in Nigeria: Identifying the Gaps in Nigeria's Domestic Law and Institutions

By:

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1. **Introduction**

Nigeria has tremendous potential for Renewable Energy (RE) generation across the country to bridge the energy gap of over 30,000MW, such as with solar, small and large hydro, biomass, biogas and wind energy. In spite of this, government efforts that include articulation of the Nigeria's Renewable Energy Master Plan and the Nigerian Renewable Energy and Energy Efficiency Policy (NREEEP), have not attracted the needed level of Foreign Direct Investment (FDI) in the sector. So far only an insignificant volume of FDI has been attained and the level is declining due to a myriad of impediments (particularly those related to legal and institutional frameworks) coupled with weak national commitment. The trend must be reversed to enable Nigeria to achieve its RE targets.

Thus, the purpose of this blog post is to examine the legal barriers that militate against the attraction of sufficient FDI to develop the RE sector, which has resulted in the failure of government to close its energy gap, enhance decarbonisation and ensure a sustainable environment in the face of climate change' adverse impacts.

2. Policy and Legal framework for RE and FDI in Nigeria

Nigeria has made some strides to develop RE. The RE Master Plan (REMP) was developed in 2005, and reviewed in 2012, to increase the supply of renewable electricity from 13% of total electricity generation in 2015 to 36% by 2030. Laudable as the bill is, the REMP is yet to be approved by the National Assembly. Similarly, the National Renewable Energy and Energy Efficiency Policy (NREEEP, 2014) outlines the overall thrust of the policies and measures for the promotion of RE in Nigeria. The government also established the Nigerian Biofuel Policy and Incentives (NBPI, 2006) in order to create additional tax revenue, while also improving energy and environmental benefits through the reduction of fossil fuel related greenhouse gases (GHGs) in the transport sector. However, these policies are yet to be fully implemented.

There are also several relevant laws governing foreign investment in Nigeria such as the Companies and Allied Matters Act 2004 and the Nigeria Investment and Promotion Act (NIPA) 2004. The Nigerian Investment and Promotion Commission was established by NIPA to encourage, promote and co-ordinate investments in the Nigerian economy. Additionally, the government established the Infrastructure Concession Regulatory Commission to promote effective Public Private Partnership for infrastructural projects such as power supply, roads, ports, and railways, that support RE ventures. Recently, Nigeria also introduced the Green Bonds into the stock exchange to fund projects under the climate change Accord, estimated to cost US$142 billion. However, there appears to be a gap between the policy framework and effective implementation.

3. **Issues, Challenges and Strategies for inflow of FDI for RE development in Nigeria**

i. **Policy framework**:

Most governments in Nigeria fail to continue with the policies of previous governments making the policy direction of government inconsistent. For example, the commencement date for the anti- gas flaring law has been shifted several times. Also, the REMP has still not been approved by the National Assembly 14 years after its conception. Similarly, there are issues with policy coordination and implementation. There is equally the issue of the non-inclusion of the FDI financial gap in Nigeria's energy policy. The government has to synergize, harmonise, coordinate and make consistent various policies on RE.

ii. **Legal framework**:

Here, the issues relate to law enactment and tax incentives. The government needs to push harder for legislators to enact the relevant laws. For example, the Biofuel Usage Action Plan (on the use of E5, E10, B10, and E20), the Rural Electrification Strategy and Implementation Plan (RESIP), and REMP are all awaiting enactment.Furthermore, complete exemption on tax can stimulate investment in renewables to a reasonable extent. Meanwhile, the policy of zero tax incentives on RE equipment is not being implemented.

iii. **Institutional framework**:

The issues here include corruption, transparency and administrative procedures, insecurity, rule of law and awareness. The gory evidence of systemic corrupt practices in the oil sector are impediments to attracting FDI in Nigeria. For example, Nigeria lost more than US$32 billion to the massive corruption that characterized oil sales by the Nigerian National Petroleum Corporation. Even at the 8th National Assembly in Nigeria the budget for RE was alleged to have "disappeared." These issues weigh negatively on the mind of investors.

Another issue has to do with insecurity. Nigeria is presently a high security risk country, based on the high incidence of religious and ethnic conflicts, terrorism, and rising cases of kidnapping of foreign workers and more. Furthermore, the government's non-inclusion of financial gap is a major challenge. Energy access is still classified as high financial risk investment due to limited technology and the little or no insurance portfolio to cover such risks. Furthermore, foreign investors place a premium on adherence by the host countries to the rule of law. Similarly, one of the greatest barriers to improving Green FDI is lack of awareness as many investors are unaware of various investment opportunities. The strategy to create awareness could include campaigns through international workshops, trade fairs and so on.

Notwithstanding the challenges, the potential for FDI in Nigeria remain very high. The government's Vision 20:2020 is an economic transformation blueprint designed to propel Nigeria to be among the top 20 economies in the world by the year 2020. In line with the blueprint the Infrastructure Concession Regulatory Commission (ICRC) 2005was established to accelerate investment in national infrastructure through private sector funding by assisting the FGN and its MDAs to implement and establish effective Public Private Partnership's (PPP) process. The government also established the Nigerian Investment Promotion Commission to encourage, facilitate and monitor foreign investment activity in Nigeria. Specifically, its sections 17 & 18 liberalized ownership of investment by any national in any Nigerian enterprise 100 per cent except enterprises with activities listed on the 'negative list' which are prohibited for both foreign and Nigerian investors. Section 25 provides guarantees to investors against nationalization and expropriation while section 26 grants a foreign investor the option of recourse to international arbitration machinery for the settlement of disputes. This grant in addition to the role being played by the National Industrial Court of Nigeria and the introduction of the One-Stop Investment Centre designed to provide a well-coordinated, speedy, and transparent service to investors.

4 Conclusion

This blog post examined how legal and institutional barriers have affected FDI in Nigeria's RE sector and proffered strategies to resolve the identified issues. It was established that though Nigeria has considerable potential for generating solar, small and large hydro, biomass, biogas and wind energy to bridge her huge energy gap, the current RE production from these sources is abysmally low. Meanwhile, the FDI inflow in the sector is declining despite the government's renewed favourable disposition. The situation is further exacerbated by some legal and institutional impediments that include policy inconsistency, inadequate legal framework, corruption, ineffective administrative processes, poor adherence to the rule of law, lack of awareness and insecurity.

The post noted that notwithstanding the challenges discussed above that Nigeria has good potentials for attracting FDI for RE development. Therefore recommendations were made on how to enhance these potentials to promote sustainable RE -related FDI in Nigeria. These recommendations include the need to enact a RE law to enable effective harmonisation of relevant RE policies, implementation and the enforcement of such policies. There is equally the need to determine what the financial gap is so as to know in financial terms the total FDI needed to achieve Nigeria's RE target and to harmonise her various investment policies to be in sync with other relevant national policies.

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